The Legal Intelligencer

Local Attorneys Work to Keep Local Papers Alive

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As attorneys for Philadelphia Newspapers and its secured creditors were gearing up for their first appearance in bankruptcy court Tuesday, a number of local attorneys had entered their appearance in what is considered one of the largest cases the Eastern District Bankruptcy Court has seen in some time.

The bankruptcy filing of a large Philadelphia institution coupled with the selection of a local venue has meant plenty of work for local bankruptcy and finance attorneys representing debtors, creditors and other third parties looking to make sure their interests are protected.

And from filings made late Monday night by the secured creditors led by agent Citizens Bank and arguments made in a hearing Tuesday, it looks like this could be a somewhat contentious battle.

While attorneys from Proskauer Rose's Chicago office will be heading up much of the work for Philadelphia Newspapers, local counsel has been and will continue to be Dilworth Paxson.

In the 11 months that the owners of *The Philadelphia Inquirer* and Philadelphia *Daily News* have been in negotiations with their bank to restructure between $400 million and $500 million in debt, Dilworth Paxson attorneys have been on hand to help.

The firm has represented the newspaper company since it was created when a group of investors led by Brian Tierney purchased the papers in 2006. Tierney's brother, Michael, is a partner at Dilworth Paxson.

Partner Marjorie Obod has handled much of the company's labor and employment needs, Roger Wood handled the initial financing deal, Matt Whitehorn has worked on pension and ERISA matters, and Laura Vendzules and Maura McIlvain have handled any litigation needs. Partner Lawrence McMichael said much of that litigation would probably be stayed while the bankruptcy proceedings progress.

McMichael, who has a blended bankruptcy and white-collar defense practice and has recently represented Adelphia Communications' founder and CEO in their fraud cases, has been brought on to serve as lead local counsel for Philadelphia Newspapers.

McMichael had been consulted on and off throughout negotiations with the bank and the newspapers in the event a Chapter 11 bankruptcy would be filed. He said the papers were trying to avoid it, but the filing became inevitable and he was pulled in full-time Feb. 13.

It became clear then, McMichael said, that the papers needed to be prepared to file a Chapter 11 if necessary, but negotiations went up until the final day. He said the lenders were pressuring Philadelphia Newspapers to enter bankruptcy, and that is ultimately what they did Feb. 22.

The case could have been filed in Delaware, McMichael said, but "the company decided that Philadelphia was the proper choice just because of who the company was — it's a local institution."

Citizens Bank, the agent in the case, is represented by Drinker Biddle & Reath executive partner Andrew C. Kassner, partner Andrew Flame and associate David Aaronson. The secured creditor of the syndicated loan is owed more than $300 million.

Whether the banks were pressuring the papers into filing for Chapter 11 is unclear. Kassner said he couldn't comment on that. He made clear in court filings and in the hearing Tuesday that they were not happy with the papers' proposed use of cash collateral for the duration of the bankruptcy proceedings.

In the court filing, Citizens Bank said Philadelphia Newspapers had come to a debtor-in-possession agreement with the bank in which it would help the company with operational costs during the proceedings. That "incredibly" was terminated by the newspapers, however, and hours later a Chapter 11 proceeding was commenced and a new debtor-in-possession, or DIP, agreement was announced with a separate entity, the bank said.

That entity, Callowhill Partners acting as an agent for BET Associates, is represented by Klehr Harrison Harvey Branzburg & Ellers partner Jeffrey Kurtzman.

Kurtzman said Callowhill Partners is an agent representing a group of investors acting as a debtor-in-possession that have collectively come up with $25 million to help with the operations of the papers moving forward. He said he didn't expect his client to be too involved with the bankruptcy proceedings unless called in by the other parties.

Kassner said in an interview that the bank was unhappy with the way the newspapers handled the Chapter 11 filing.

"The company had executed a commitment letter for DIP financing by [Citizens Bank] and terminated it and at the same time filed for Chapter 11 without advance notice to the agent," he said. "We were disappointed by the way that the case was filed but at the same time we very much support the continued operating of the two newspapers which we recognize are important to our community."

Not only is Citizens Bank unhappy with how Philadelphia Newspapers plans to use cash during the proceedings and the fact that Brian Tierney got a $232,000 bump in pay in December to $850,000, but the bank doesn't like the company's choice for a new DIP lender.

According to the court filings, Citizens Bank said Philadelphia Newspapers didn't disclose in any of its filings that BET is controlled by Bruce Toll, the chairman of Philadelphia Media Holdings, which is the parent company to Philadelphia Newspapers.

In Tuesday's hearing, attorneys for Philadelphia Newspapers said Tierney would reduce his salary back to pre-December levels of $618,000. The remaining issues will be heard in a second hearing March 9.

The attorneys involved are expecting a difficult and complex case based on its sheer size and expected legal issues.

"The size and complexity are going to carry a lot of issues," Kurtzman said. "This is the first case of this size for the judge to whom it was assigned. She's well equipped for that challenge and the court is too. We were very enthusiastic about the *Inquirer* 's choice of venue."

The case has been assigned to Bankruptcy Judge Jean K. FitzSimon, who was first appointed to the bench in 2006.

McMichael said this case is one of the largest the area has seen in a while, but the company is in a better situation than some other media outlets that have recently filed for bankruptcy.

He said the company is operationally sound and making money on that end, but it just has too much debt compared to the worth of the company. The bankruptcy is not in any way intended to review operational structures, get out of leases or review union agreements, he said. It's purely to renegotiate the company's debt situation.

"The problem is very simply that the owners paid too much for it at a time when they thought it was worth more than it is," McMichael said.

The promise of healthy operations hasn't stopped attorneys for other interested parties from entering their appearances in the case. Neal Goldstein and Susan Murray of Freedman & Lorry in Philadelphia have asked to be kept in the loop on the proceedings on behalf of the Newspaper Guild of Greater Philadelphia-CWA Local 38010.

Kent G. Cprek and Dawn M. Costa of Jennings Sigmond in Philadelphia have entered their appearance on behalf of the Carpenters Pension and Annuity Fund of Philadelphia and Vicinity.

Dechert attorney Michael Sage out of New York is listed as a contact along with O'Melveny & Myers Los Angeles attorney Ben Logan for 18 of the top 30 creditors with unsecured claims to Philadelphia Newspapers, according to a court filing. Those 18 creditors collectively have nearly $100 million in subordinate notes, which would come behind Citizens Bank when it comes time to collect.

McMichael said the Philadelphia Newspapers' situation is different from the bankruptcies recently entered into by Yardley-based Journal Register Co. and the Tribune Co.

The Tribune Co., for example, owns a number of papers across several markets. For Philadelphia Newspapers, the case is a one-market town, which makes the $400 million to $500 million in debt a much larger sum for just one market compared to spreading the debt across several markets.

"I think this is a good position to be in because this is a case where the community has supported a major community asset and you don't have that same [situation] when you're in 25 or 30 communities," McMichael said. "You're a business at that point."

He said one person recently analogized Philadelphia Newspapers' situation to the community support rallied around Thomas Eakins' "The Gross Clinic" when it was put up for sale. Local investors and museums came together to ensure the painting remained in the city.

In terms of the money being paid to attorneys in this case, the fees for Dilworth Paxson and Proskauer Rose were made public through court filings last weekend.

Proskauer Rose partners requested they be paid between $490 and $975 an hour for partners, $350 to $725 for senior counsel and $180 to $650 for associates. As of Feb. 22, Dilworth Paxson held $350,000 as a joint retainer for services provided and services to be rendered in the Chapter 11 filing. McMichael will be charging $675 an hour and other legal services will be charged at rates ranging from $215 to $325 an hour, according to court documents. •