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Reader's Digest Chapter 11 Bankruptcy

Laughter May Be the Best Medicine, But It Can't Pay the Bills

Walter Machnicki

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I. The Beginnings of the Proceedings

A. Introduction

The Reader's Digest Association, Inc., better known as simply Reader's Digest, was created in 1921 by William Roy DeWitt Wallace in Minnesota after he was able to solicit 1,500 subscriptions at \$3 apiece for his personally written condensations of articles.¹ Today, the company, led by CEO Mary Berner, is a global multi-brand media and marketing company with offices in 44 countries and a customer database of more than 130 million people in 78 different countries.² Reader's Digest, the company's main magazine and an American literary staple for decades, is the world's largest paid-circulation magazine.³ In today's ever-increasingly technological world, the manually printed word has unfortunately become a thing of the past, as more literature and other writings have flocked to digitalization via the Internet or other sources, such as the Amazon Kindle. All manually printed documents have been feeling the heat, including newspapers and other magazines, and Reader's Digest has been no exception. On August 24, 2009 (the "Petition Date"), Reader's Digest filed for Chapter 11 Bankruptcy in the Southern District of New York Bankruptcy Court, reflecting the company's struggles in the current economy.⁴

The Reader's Digest Association, Inc. voluntarily filed for Chapter 11 protection in the Southern District of New York because its headquarters, according to the petition, is located in

¹Corporate Timeline and Milestones, http://phx.corporate-ir.net/phoenix.zhtml?c=71092&p=corp_history (last visited April 21, 2010).

²Corporate Overview, http://phx.corporate-ir.net/phoenix.zhtml?c=71092&p=corp_overview (last visited April 21, 2010).

³Corporate Overview, http://phx.corporate-ir.net/phoenix.zhtml?c=71092&p=corp_overview (last visited April 21, 2010).

⁴*In re Reader's Digest Assoc., Inc.*, No. 09-23529, Voluntary Petition for Chapter 11 Bankruptcy (Bankr. S.D.N.Y. Aug. 24, 2009) (Entered into the Docket with the Southern District of New York Bankruptcy Court August 24, 2009).

Pleasantville, New York, a city in Westchester County.⁵ Therefore, the Bankruptcy Court had personal jurisdiction over Reader's Digest and the petition was rightly filed in that court.

According to the officially filed petition, the company's debts are primarily business debts as opposed to consumer debts. After all secured creditors are paid, the company believes that funds will remain to reimburse at least some of the unsecured creditors.⁶ The company has between 10,000 and 24,999 estimated creditors, both secured and unsecured, and more than an estimated \$1 billion in both assets and liabilities.⁷ Reader's Digest has employed Kirkland & Ellis, LLP to represent them as general restructuring counsel during the bankruptcy proceedings.⁸

Included with the petition is a schedule of 48 different subsidiaries of Reader's Digest that have all filed for bankruptcy protection with the court along with their corporate parent.⁹ Some of the major subsidiaries that filed for protection separately are CompassLearning, Inc., Weekly Reader Corporation, and Funk & Wagnalls Yearbook Corp.¹⁰ Clearly, a separate bankruptcy proceeding for each respective subsidiary would be not only unnecessarily costly to Reader's Digest, but it would be a savage drain on the court's resources. Therefore, joint

⁵*In re Reader's Digest Assoc., Inc.*, No. 09-23529, Voluntary Petition for Chapter 11 Bankruptcy at 1 (Bankr. S.D.N.Y. Aug. 24, 2009).

⁶*In re Reader's Digest Assoc., Inc.*, No. 09-23529, Voluntary Petition for Chapter 11 Bankruptcy at 1 (Bankr. S.D.N.Y. Aug. 24, 2009) (These facts all come from boxes that have been checked in the Voluntary Petition, presumably with much guidance and counseling from Reader's Digest's counsel in this Bankruptcy proceeding.).

⁷*In re Reader's Digest Assoc., Inc.*, No. 09-23529, Voluntary Petition for Chapter 11 Bankruptcy at 1 (Bankr. S.D.N.Y. Aug. 24, 2009) (Again, these are facts and numbers derived from boxes checked in the Voluntary Petition.).

⁸*In re Reader's Digest Assoc., Inc.*, No. 09-23529, Voluntary Petition for Chapter 11 Bankruptcy at 1 (Bankr. S.D.N.Y. Aug. 24, 2009).

⁹*In re Reader's Digest Assoc., Inc.*, No. 09-23529, Voluntary Petition for Chapter 11 Bankruptcy at 4 (Bankr. S.D.N.Y. Aug. 24, 2009).

¹⁰*In re Reader's Digest Assoc., Inc.*, No. 09-23529, Voluntary Petition for Chapter 11 Bankruptcy at 4 (Bankr. S.D.N.Y. Aug. 24, 2009).

administration of the cases, as requested by the lead debtor, will promote the efficiency of this matter.

Kirkland & Ellis filed a formal petition for joint administration of the collective subsidiaries' bankruptcy proceedings with the court under Bankruptcy Rule 1015(b) the same day that the parent company's voluntary petition for Chapter 11 was filed, and included the names of all the companies listed in the schedule attached to the corporate parent's petition.¹¹ Within this motion is a summary of the very basic reasons why Reader's Digest and its respective subsidiaries are filing for Chapter 11 protection. The company blames the current economic recession for reduction in advertising, retail, and subscription revenues that have affected the company despite its leading position in the (dying) industry.¹² The motion also mentions that the "withdrawal of certain international lines of credit and heightened pressures from trade creditors have also weakened the [company]'s liquidity position."¹³ Therefore, Reader's Digest has entered into "extensive negotiations" with their prepetition secured creditors regarding a "comprehensive debt restructuring," the culmination of which is this largely pre-negotiated bankruptcy proceeding.¹⁴ Reader's Digest came before the Court with a restructuring plan that "will reduce the [company]'s total debt by 75%, provide...adequate exit financing and provide substantial recoveries to the [company]'s valued suppliers that continue to do business

¹¹*In re Reader's Digest Assoc., Inc.*, No. 09-23529, Motion for Joint Administration at 12-13 (Bankr. S.D.N.Y. Aug. 24, 2009).

¹²*In re Reader's Digest Assoc., Inc.*, No. 09-23529, Motion for Joint Administration at 10-11 (Bankr. S.D.N.Y. Aug. 24, 2009) (words in parenthesis added by author and such a position is not reflected in the cited document itself).

¹³*In re Reader's Digest Assoc., Inc.*, No. 09-23529, Motion for Joint Administration at 11 (Bankr. S.D.N.Y. Aug. 24, 2009).

¹⁴*In re Reader's Digest Assoc., Inc.*, No. 09-23529, Motion for Joint Administration at 11 (Bankr. S.D.N.Y. Aug. 24, 2009).

with the[m].”¹⁵ Secured creditors who held more than 80% of the bank debt discussed this plan with Reader’s Digest and supported it, and the parties intended to come before the Court in the near future with the details of this plan.¹⁶

As of the Petition Date, Reader’s Digest acted as the Debtor in Possession in its Chapter 11 case. A “Debtor-in-Possession” is a “Chapter 11...debtor that continues to operate its business as fiduciary to the bankruptcy estate.”¹⁷ All of the lesser subsidiaries fall under the parent Debtor-in-Possession because they are all “affiliates” as defined by Section 101(2) of the Bankruptcy Code.¹⁸ The motion for joint administration relied on the fact that the parent company and all its subsidiary-affiliates operate as a “global corporation with common ownership and control,” sharing a number of financial and operational systems.¹⁹ Finally, all of the subsidiaries confirmed to the court through the Motion that joint administration with the parent company as Debtor-in-Possession would be “in the best interests of the[] estates, the[] creditors, and all other parties in interest.”²⁰

The last meaningful introductory docket document that represented Reader’s Digest and its affiliates’ intention to file for joint administration Chapter 11 was the Declaration of Thomas A. Williams, CFO of The Reader’s Digest Association, Inc. Pursuant to Southern District of

¹⁵*In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Motion for Joint Administration at 11 (Bankr. S.D.N.Y. Aug. 24, 2009).

¹⁶*In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Motion for Joint Administration at 11 (Bankr. S.D.N.Y. Aug. 24, 2009).

¹⁷ BLACK’S LAW DICTIONARY 276 (8th ed. 2004).

¹⁸*In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Motion for Joint Administration at 13-14 (Bankr. S.D.N.Y. Aug. 24, 2009).

¹⁹*In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Motion for Joint Administration at 14 (Bankr. S.D.N.Y. Aug. 24, 2009).

²⁰*In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Motion for Joint Administration at 15 (Bankr. S.D.N.Y. Aug. 24, 2009).

New York Bankruptcy Court Rule 1007-2, Williams was required to submit a declaration in his capacity as CFO in support of the voluntary petitions for relief filed by both Reader’s Digest and its subsidiaries.²¹ In his Declaration, Williams stated under oath that, “absent immediate access to additional financing and authority to make certain essential payments and otherwise continue ordinary course business operations...,” Reader’s Digest and its subsidiaries would suffer “irreparable harm.”²² This statement was based upon his personal observations and analysis of the financial status of the corporation as well as the counsel provided by Kirkland & Ellis, LLP, AlixPartners LLP, and Miller, Buckfire & Co., all of which were hired to provide the company with ongoing counsel and advice during the bankruptcy proceedings.²³ Under the prenegotiated plan proposed by Reader’s Digest after deliberation with both counsel and creditors, \$1.2 billion of prepetition debt would be eliminated, and \$150 million of new money Debtor-in-Possession financing would be created.²⁴ The newly created financing was to “provide substantial recoveries to general unsecured claimants that do business with the reorganized company.”²⁵

Not only would it improve the financial position of the company to pay off secured creditors, but the restructuring plan in Williams’ opinion would be the jolt Reader’s Digest needed to “transform the perception of the company as a legacy print brand into a multi-platform

²¹*In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Declaration of Thomas A. Williams at 2 (Bankr. S.D.N.Y. Aug. 24, 2009).

²²*In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Declaration of Thomas A. Williams at 2 (Bankr. S.D.N.Y. Aug. 24, 2009).

²³*In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Declaration of Thomas A. Williams at 2 (Bankr. S.D.N.Y. Aug. 24, 2009).

²⁴*In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Declaration of Thomas A. Williams at 3 (Bankr. S.D.N.Y. Aug. 24, 2009).

²⁵*In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Declaration of Thomas A. Williams at 3 (Bankr. S.D.N.Y. Aug. 24, 2009).

media company....”²⁶ Much of this is based in Williams’s belief that all Reader’s Digest needs to survive the “global financial crisis” is the added funding resultant from Chapter 11 restructuring to improve the company’s liquidity position and move forward accordingly.²⁷ The \$150 million in Debtor-in-Possession and exit financing this plan would create would “serve[] as a crucial signal to [the company’s] customers, employees, and trade vendors that [Reader’s Digest] will maintain viable and competitive business operations going forward.”²⁸ Therefore, Williams believed that the Chapter 11 Plan that they, their counsel, and their creditors had devised would not only financially aid the corporation in its future endeavors, but would also boost morale and perception, which are intangible but particularly valuable assets in today’s competitive economy.

One interesting and glaring aspect of the proposed plan described in Williams’s Declaration was that it didn’t provide for any recoveries for the company’s “subordinated shareholders.”²⁹ Qualifying holders of “senior subordinated notes” would be able to purchase up to \$50-100 million of the restructured Reader’s Digest’s stock, but could not obtain an ownership stake of more than 20 percent.³⁰ This demonstrated how the plan that the parties had proposed focused on cutting the debt owed to secured creditors while not allowing the holders of notes to call in those notes early or to collect any funds beyond what the notes and the accompanying interest payments were worth. The clause allowing for the purchase of more of Reader’s Digest

²⁶*In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Declaration of Thomas A. Williams at 3 (Bankr. S.D.N.Y. Aug. 24, 2009).

²⁷*In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Declaration of Thomas A. Williams at 4 (Bankr. S.D.N.Y. Aug. 24, 2009).

²⁸*In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Declaration of Thomas A. Williams at 5 (Bankr. S.D.N.Y. Aug. 24, 2009).

²⁹*In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Declaration of Thomas A. Williams at 5-6 (Bankr. S.D.N.Y. Aug. 24, 2009).

³⁰*In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Declaration of Thomas A. Williams at 5-6 (Bankr. S.D.N.Y. Aug. 24, 2009).

stock after its restructuring seems to have been included merely to keep those noteholders and shareholders from feeling as if they were cut completely out of the reorganization. Such a focus makes it clear that Reader's Digest's financial officers were focused on maximizing working capital both by shedding debt owed to many of the company's secured creditors and by minimizing payouts to rightful shareholders and long-term noteholders who may have been trying to "get out of the game" when the company declared for Chapter 11. The early parameters of the prenegotiated plan certainly appeared to fulfill this focus more than adequately.

In the Declaration, Williams also delineated in moderate detail the prepetition credit agreements that Reader's Digest had with certain creditors and the amounts owed on those notes.³¹ Though these agreements and their specifics will be discussed in much more detail as this paper drills further into the details of the company's Chapter 11 Plan, it is appropriate to lay out the basics at this point in order to demonstrate the foundation upon which Reader's Digest and its creditors devised their final, Court-approved plan. Reader's Digest and its subsidiaries had a six-year, \$300 million revolving line of credit through J.P. Morgan Chase Bank, which had been fully drawn, as well as a seven-year, \$1.31 billion loan from JPMCB upon which \$1.18 billion was still owed when the company voluntarily filed for protection.³² A \$100 million loan also existed between the bank and RD German Holdings GmbH, a non-debtor German subsidiary of the parent company, upon which \$103.9 million (the principal plus interest overdue) was still owed (to be paid in Euros).³³ Under the proposed plan, these loans would be mostly forgiven, shedding billions of dollars in debt and allowing the company to focus any

³¹*In re Reader's Digest Assoc., Inc.*, No. 09-23529, Declaration of Thomas A. Williams at 17 (Bankr. S.D.N.Y. Aug. 24, 2009).

³²*In re Reader's Digest Assoc., Inc.*, No. 09-23529, Declaration of Thomas A. Williams at 17 (Bankr. S.D.N.Y. Aug. 24, 2009).

³³*In re Reader's Digest Assoc., Inc.*, No. 09-23529, Declaration of Thomas A. Williams at 17 (Bankr. S.D.N.Y. Aug. 24, 2009).

working capital it had on furthering the corporation rather than paying debts and remaining in stagnancy.³⁴

As you can see, Reader's Digest as a global corporation owed a lot of money to a lot of different creditors, and in today's economy, paying those debts off would have been nearly impossible absent some form of divine intervention. Though the company attempted to "weather the storm" with a "recession plan" before resorting to filing for Chapter 11 protection, this plan did very little to advance the corporation.³⁵ Choosing the last resort of Chapter 11 reorganization became an inevitable path to take, and Reader's Digest decided to venture that path in August of 2009. Some companies decide to file for Chapter 11 because they know that their time has passed, and Chapter 11 aids in the winding-up of the corporation's activities. However, from reading the initial documents in this case, Reader's Digest appears to be using Chapter 11 as a tool to help the company weather the presently turbulent economic storm in order to get to the light at the end of the tunnel, where the company's executives truly believe they can thrive. The focus of the originally proposed plan, from the words of Reader's Digest's CFO, is to maximize working capital in order to innovate and transform the company from a print-media stalwart into a multi-faceted cutting-edge multimedia corporation. However, this is just the very beginning of the Reader's Digest Chapter 11 story, and many changes were in store for this original plan, as it didn't exactly make every interested party happy with its provisions. Let's take a look at just how the Reader's Digest Chapter 11 Court-approved plan evolved from this basic framework into the final product.

B. The Petition and the Initial Motions

³⁴*In re Reader's Digest Assoc., Inc.*, No. 09-23529, Declaration of Thomas A. Williams at 5-6 (Bankr. S.D.N.Y. Aug. 24, 2009).

³⁵*In re Reader's Digest Assoc., Inc.*, No. 09-23529, Declaration of Thomas A. Williams at 20-21 (Bankr. S.D.N.Y. Aug. 24, 2009).

One of the first motions filed by Reader's Digest counsel that made up the specific framework of the original proposed plan was the Motion to Authorize the Payment of Prepetition Claims of Critical Vendors and Lien Claimants. Based on the records as of the Commencement Date (August 24, 2009), Reader's Digest had "approximately 1,400 vendors" with outstanding claims totaling "approximately \$90 million."³⁶ The company expressed an intent to "ensure continued deliveries of essential goods and services on favorable terms to avoid the adverse effects of supply chain interruptions," while keeping in mind the Bankruptcy Code requirements and the "fiduciary obligations to preserve and maximize the value of [the company's] estates."³⁷ However, Reader's Digest and its counsel realized that paying all these vendors would be impossible given the current financial status of the company. The motion pays lip service to all of the vendors with which the company maintains business relationships, stating that "almost all of the vendors provide invaluable services" to Reader's Digest.³⁸ The company sought the ability to only pay the claims of "critical vendors," a list of vendors that:

"(1) provide unique goods or services that are otherwise unavailable; (ii) provide goods or services that the Debtors are unable to procure without incurring significant migration costs or compromising quality; or (iii) do not have long-term written supply contracts or other relationships with the Debtors such that they could not be compelled to continue providing goods or services to the Debtors postpetition."³⁹

Other vitally important critical vendors according to the company are its local operations and may be "impossible or impracticable to replace."⁴⁰ Examples of these vendors were paper

³⁶*In re Reader's Digest Assoc., Inc.*, No. 09-23529, Motion to Authorize Debtors to Pay Certain Prepetition Claims of Critical Vendors and Lien Claimants at 5-6 (Bankr. S.D.N.Y. Aug 24, 2009).

³⁷*In re Reader's Digest Assoc., Inc.*, No. 09-23529, Motion to Authorize Debtors to Pay Certain Prepetition Claims of Critical Vendors and Lien Claimants at 6 (Bankr. S.D.N.Y. Aug. 24, 2009).

³⁸*In re Reader's Digest Assoc., Inc.*, No. 09-23529, Motion to Authorize Debtors to Pay Certain Prepetition Claims of Critical Vendors and Lien Claimants at 6 (Bankr. S.D.N.Y. Aug. 24, 2009).

³⁹*In re Reader's Digest Assoc., Inc.*, No. 09-23529, Motion to Authorize Debtors to Pay Certain Prepetition Claims of Critical Vendors and Lien Claimants at 6-7 (Bankr. S.D.N.Y. Aug. 24, 2009).

vendors, intellectual property vendors, and merchandise vendors, among many others.⁴¹

Therefore, the company has focused on keeping operations functional and preserving the underlying structure of the business while filing for Chapter 11 protection.

Reader's Digest did not seek to pay all of their critical vendors due to the impracticability of such a plan and the necessity to preserve liquidity. The company, in one of its critical initial motions, sought the authority to pay up to \$25 million of critical vendor payments because it believed that some of these vendors would "refuse to provide goods or services...on a postpetition basis if the [company did] not pay all or part of th[eir] prepetition claims."⁴² It also sought the ability to pay the prepetition claims of "third parties who may be entitled to assert various lien claims against the [company] or their property or other assets if the[y] fail[ed] to pay for prepetition goods...."⁴³ Payment of these claims was necessary again to preserve the vital structure of the business and continue main operations while Chapter 11 proceedings ensued. Without the guarantee of the vendors' continued business both during and after Chapter 11 proceedings, Reader's Digest knew that such a reorganization would fail before it even came to fruition.

Because of the requirement for a company to maximize the value of its estates and assets during a Chapter 11 proceeding, requesting the ability to pay certain critical vendors and lien claimants is an integral part of devising an effective reorganization plan. As pointed out,

⁴⁰*In re Reader's Digest Assoc., Inc.*, No. 09-23529, Motion to Authorize Debtors to Pay Certain Prepetition Claims of Critical Vendors and Lien Claimants at 7 (Bankr. S.D.N.Y. Aug. 24, 2009).

⁴¹*In re Reader's Digest Assoc., Inc.*, No. 09-23529, Motion to Authorize Debtors to Pay Certain Prepetition Claims of Critical Vendors and Lien Claimants at 10-11 (Bankr. S.D.N.Y. Aug. 24, 2009).

⁴²*In re Reader's Digest Assoc., Inc.*, No. 09-23529, Motion to Authorize Debtors to Pay Certain Prepetition Claims of Critical Vendors and Lien Claimants at 7 (Bankr. S.D.N.Y. Aug. 24, 2009).

⁴³*In re Reader's Digest Assoc., Inc.*, No. 09-23529, Motion to Authorize Debtors to Pay Certain Prepetition Claims of Critical Vendors and Lien Claimants at 7-8 (Bankr. S.D.N.Y. Aug. 24, 2009).

Reader's Digest believed that certain vendors and claimants would cease business relationships with the restructured company if their claims or debts were not paid immediately. The cessation of these relationships could irreparably harm Reader's Digest should it survive Chapter 11 reorganization, and this harm would defeat the purpose of restructuring in the first place. Therefore, designing a plan the Court will approve because it falls within the Bankruptcy Code requirements while still keeping the vendors' and claimants' rights in mind is a tough tightrope to walk, but is a necessary one. Such critical vendors' and lien claimants' interests is thus a focal point of the creation and refining of Reader's Digest Chapter 11 court-approved reorganization plan.

Another group that a company must focus on when devising an appropriate reorganization plan is the company's customers and their rights. Therefore, on the Petition Date, Reader's Digest also filed a Motion to authorize the company to maintain and administer customer programs and honor related prepetition obligations.⁴⁴ The main reason for the inclusion of such a motion in the original proposed plan was to protect the "strong brand loyalty among end-user consumers and [the] established substantial credibility among distributors, marketing partners, and competitors."⁴⁵ One customer program that the company specifically found essential to maintain was their programs specific to school and educational services business, "which, in addition to increasing profitability, promote school-wide literacy and develop goodwill from an important consumer – U[nited] S[tates] schools."⁴⁶ Reader's Digest thus focused on both economic success as well as holistic success when determining the

⁴⁴ *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Motion to Authorize Debtors to Maintain and Administer Customer Programs (Bankr. S.D.N.Y. Aug. 24, 2009).

⁴⁵ *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Motion to Authorize Debtors to Maintain and Administer Customer Programs at 4 (Bankr. S.D.N.Y. Aug. 24, 2009).

⁴⁶ *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Motion to Authorize Debtors to Maintain and Administer Customer Programs at 4 (Bankr. S.D.N.Y. Aug. 24, 2009).

parameters of the plan, sticking with a customer base that may not be the most profitable, but has been one of the most loyal. This reflects the Reader's Digest corporate mission of being a "global multi-brand media and marketing company that *educates*, entertains, and connects audiences around the world."⁴⁷

The focus in a reorganization plan is not only on gaining much-needed liquidity and keeping the financial status of the company afloat, but is also on preserving the goodwill, relationships, and business transactional deals that existed prepetition. Maintaining customer programs with valuable and loyal entities is thus a necessary element to a successful Chapter 11 plan. Reader's Digest saw how important maintaining such relationships was to "capitalize on future growth prospects, capture new market share, and continue [its] expansion into creating multi-platform communities based on branded content across [its] many powerful media brand names."⁴⁸ The company, for example, wished to keep its subscription customer base completely because they collectively accounted for 28% of net revenue in fiscal 2008.⁴⁹ An element unique to the subscription consumer base is that Reader's Digest only incurs the obligation to deliver the goods to the subscriber unless the subscriber cancels the subscription and asks for a refund, but the company still has to record the subscription liability, which totaled \$400 million at the time of filing.⁵⁰ Therefore, the company would like to maintain these "liabilities" on the books because they are listed as liabilities, but they aren't really liabilities at all. This would be

⁴⁷ Reader's Digest Investor Relations, <http://phx.corporate-ir.net/phoenix.zhtml?c=71092&p=irol-IRhome> (last visited Apr. 22, 2010) (emphasis added by author).

⁴⁸ *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Motion to Authorize Debtors to Maintain and Administer Customer Programs at 4-5 (Bankr. S.D.N.Y. Aug. 24, 2009).

⁴⁹ *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Motion to Authorize Debtors to Maintain and Administer Customer Programs at 5-6 (Bankr. S.D.N.Y. Aug. 24, 2009).

⁵⁰ *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Motion to Authorize Debtors to Maintain and Administer Customer Programs at 7 (Bankr. S.D.N.Y. Aug. 24, 2009).

explained in more detail in the company's financial statements, such as its balance sheet. Thus, maintaining customer programs such as subscriptions would be a very valuable portion to an effective Chapter 11 reorganization plan.

One of the most important first day motions was the motion to approve Debtor-in-Possession Financing. DIP Financing is often one of the integral parts of a Chapter 11 plan that allows the company to obtain funding in order to not only continue its operations, but also to attempt to grow out of its current financially stagnant position. This particular motion sought to authorize Reader's Digest, "on an interim basis, to obtain postpetition financing on a senior, secured, superpriority basis, and use the cash collateral, and [to] grant[] adequate protection to the prepetition secured lenders ...for the priming of their existing liens on the prepetition collateral."⁵¹ The basic structure of the DIP Financing included the authority to use the company's cash on hand, as well as the authority to "obtain postpetition loans in a principal amount not to exceed \$100 million" and other financial agreements and adequate protection liens.⁵² The motion contained a concise statement and a summary of the Postpetition DIP Financing Agreements and Orders, as required by Bankruptcy Rules 4001(b), 4001(c), and 4001(d) as well as New York Local Rule 4001-2.⁵³ The Final DIP Loan would amount to \$150 million less the amount of the Initial DIP Loan taken, which could have been up to \$100 million,

⁵¹ *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Debtors' Motion for Entry of Interim & Final Orders Authorizing the Debtors to Obtain Postpetition Financing and Letters of Credit at 2 (Bankr. S.D.N.Y. Aug. 24, 2009).

⁵² *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Debtors' Motion for Entry of Interim & Final Orders Authorizing the Debtors to Obtain Postpetition Financing and Letters of Credit at 3-4 (Bankr. S.D.N.Y. Aug. 24, 2009).

⁵³ *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Debtors' Motion for Entry of Interim & Final Orders Authorizing the Debtors to Obtain Postpetition Financing and Letters of Credit at 4 (Bankr. S.D.N.Y. Aug. 24, 2009).

and would be funded by J.P. Morgan Chase Bank.⁵⁴ In exchange for this loan, pursuant to Bankruptcy Code §364(c)(2), the Bank will receive a lien on “all tangible and intangible prepetition and postpetition property in which the [company] has an interest...and that is not subject to valid, perfected, non-avoidable, and enforceable liens in existence on the Commencement Date...”⁵⁵ This provision is not surprising given the exorbitant amount of the loan and the circumstances surrounding it, as the Lender wishes to protect itself by gaining a security interest in all collateral possible, maximizing its recovery in case of Debtor default. The Lender seeks not only adequate protection, but maximum recovery, and this provision bestows both.

An interesting element of the proposed DIP Financing was the repayment provision included in the plan pursuant to Local Rule 4001-2(a)(3). Reader’s Digest, under this proposed plan, would be able to prepay loans to the bank in increments of at least \$5 million if it provides 3 business days notice to the bank.⁵⁶ This provision prevents the bank from issuing any penalty for paying the loan early, which could be a very valuable provision for the company to avoid unnecessary interest payments should its financial position improve and its ability to pay the loans quicken. The bank had the protective element placed in this provision that there had to be a \$5 million minimum prepayment, in order to prevent the company from avoiding interest payments through much smaller additional payments on the loans. This prevents unnecessarily

⁵⁴ *In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Debtors’ Motion for Entry of Interim & Final Orders Authorizing the Debtors to Obtain Postpetition Financing and Letters of Credit at 7 (Bankr. S.D.N.Y. Aug. 24, 2009).

⁵⁵ *In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Debtors’ Motion for Entry of Interim & Final Orders Authorizing the Debtors to Obtain Postpetition Financing and Letters of Credit at 8-9 (Bankr. S.D.N.Y. Aug. 24, 2009).

⁵⁶ *In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Debtors’ Motion for Entry of Interim & Final Orders Authorizing the Debtors to Obtain Postpetition Financing and Letters of Credit at 12 (Bankr. S.D.N.Y. Aug. 24, 2009).

difficult interest calculations on prepayments that don't meet such a minimum threshold and also protects the essence of the DIP Financing Agreement. Such a repayment provision reflects an element of compromise between the company and the lending bank. However, should Reader's Digest default on the loans, all existing and future subsidiaries would be jointly and severally liable for the repayment of the loans.⁵⁷ Thus, the Lender would be able to go after not only the parent company in case of default, but also all of its subsidiaries covered by joint administration.

Also, should the company default on the loans, the proposed motion contains an "automatic stay" provision where the bank can give 5 business days' notice and then is entitled to "exercise any remedies" that it has rights to exercise as provided for in the plan.⁵⁸ The provision in this motion doesn't have any special elements unique to this particular DIP Financing, and appears to be standard boilerplate. However, the fact that the provision appears to be boilerplate does not detract from its importance in the motion, as it grants the bank as DIP Lender an incredibly valuable and efficient "out clause" should Reader's Digest's financial conditions worsen further. Again, adequate and maximum protection is the Lender's utmost goal in Chapter 11 proceedings, and this is yet another protection built into the motion that fulfills such a goal.

The company and the lenders agreed in this motion to deem the DIP Lenders (the bank) "good faith lenders" under Bankruptcy Code §364(e).⁵⁹ Such a description is important because

⁵⁷ *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Debtors' Motion for Entry of Interim & Final Orders Authorizing the Debtors to Obtain Postpetition Financing and Letters of Credit at 12 (Bankr. S.D.N.Y. Aug. 24, 2009).

⁵⁸ *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Debtors' Motion for Entry of Interim & Final Orders Authorizing the Debtors to Obtain Postpetition Financing and Letters of Credit at 13 (Bankr. S.D.N.Y. Aug. 24, 2009).

⁵⁹ *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Debtors' Motion for Entry of Interim & Final Orders Authorizing the Debtors to Obtain Postpetition Financing and Letters of Credit at 39 (Bankr. S.D.N.Y. Aug. 24, 2009).

under §364(e), “the reversal or modification on appeal of an authorization...to obtain credit or incur debt...does not affect the validity of any debt so incurred...to an entity that extended such credit in good faith....”⁶⁰ Therefore, the DIP debts incurred here will not be deemed invalid if there were an objection and an appeal of the order approving the DIP loan because Reader’s Digest and J.P. Morgan Chase Bank engaged in “arm’s length, good faith negotiations” concerning the DIP Financing.⁶¹ This could be a very important thing to keep in mind should the Chapter 11 Plan fall apart in the future because the company would have no grounds to deem any debt invalid in any litigation that should arise between itself and the bank.

The proposed DIP Financing, except for a couple of particular provisions already mentioned, appears to be fairly basic as well as cut and dry. There are no special bells and whistles between the parties that trigger certain special events of default or of increased funding. This is a very simple financing transaction that involves incredibly large sums of money and potentially high amounts of interest payments on the loans. However, Reader’s Digest and the DIP Lenders are entering into this Financing Agreement in good faith and after having discussed the specifics of the Agreement, which the Court always looks at when determining whether or not to approve the deal. Only time will tell whether the Bankruptcy Court of the Southern District of New York will do just that with this particular motion.

All of these introductory motions and schedules were filed through Kirkland & Ellis LLP with the Court on August 24, 2009. The case was assigned to Southern District of New York Bankruptcy Judge Robert D. Drain (“Judge Drain”), who subsequently heard all of these

⁶⁰ *In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Debtors’ Motion for Entry of Interim & Final Orders Authorizing the Debtors to Obtain Postpetition Financing and Letters of Credit at 39 (Bankr. S.D.N.Y. Aug. 24, 2009).

⁶¹ *In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Debtors’ Motion for Entry of Interim & Final Orders Authorizing the Debtors to Obtain Postpetition Financing and Letters of Credit at 39 (Bankr. S.D.N.Y. Aug. 24, 2009).

motions. On August 26, just two days later, Judge Drain entered his Orders regarding all of these motions, the first of which was his Order granting the Motion for Joint Administration.⁶² Judge Drain found that “the relief requested in the Motion [was] in the best interests of the Debtors’ estates, their creditors, and other parties in interest,” and that the Motion “appear[ed] adequate and appropriate under the circumstances.”⁶³ Therefore, rather than having 48 different proceedings that would drain both court resources and much-needed capital from Reader’s Digest and its subsidiaries, “one consolidated docket, one file, and one consolidated service list shall be maintained” for the purposes of this Chapter 11 proceeding.⁶⁴

An interesting observation to take from the granting of this motion is that it did take place within two days of the filing of the motion. This reflects the Southern District of New York’s general policy of taking an efficient, customer satisfaction focused, transactional approach to bankruptcy cases due to the deluge of proceedings that it sees, especially in today’s struggling economy. In the transactional approach, the Court skims over the documents presented and looks for anything out of the ordinary, but largely depends upon objecting parties to bring any problems with the documents to light. Assuming no objection and an agreement of the affected parties, the court will then order the relief requested with little independent searching analysis, unless something out of the ordinary appears on the face of the document. This appears to be the manner in which Judge Drain operates in Chapter 11 cases.

One motion that Judge Drain granted was the Order authorizing Reader’s Digest to prepare a list of creditors in lieu of a formatted mailing matrix. The general practice in Chapter

⁶² *In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Order Granting Motion for Joint Administration (Bankr. S.D.N.Y. Aug. 26, 2009).

⁶³ *In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Order Granting Motion for Joint Administration at 6 (Bankr. S.D.N.Y. Aug. 26, 2009).

⁶⁴ *In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Order Granting Motion for Joint Administration at 8 (Bankr. S.D.N.Y. Aug. 26, 2009).

11 proceedings is to provide a list of the company's 20 largest unsecured creditors, but here, Judge Drain allowed Reader's Digest to compile a list of their 30 largest unsecured creditors, a 50% increase from the standard.⁶⁵ Also, "in lieu of submitting a formatted mailing matrix," the company was allowed to make available an electronic list of all of its creditors in order to promote efficiency, as there were far too many creditors to make an effective mailing matrix quickly.⁶⁶ Such a motion isn't substantively important to this proceeding, but it is a key reflection of the attitude that the Court is taking throughout the matter. Judge Drain demonstrates here that he understands that this is a massive proceeding with billions of dollars and thousands of creditors involved, and that minor, procedural deviations from the norm for efficiency's sake will be necessary to best navigate the proceeding. Again, this demonstrates the transactional approach that is quite apparent from the very beginning in Reader's Digest's Chapter 11 bankruptcy proceeding.

The next Order that Judge Drain issued on August 26th was the Interim Order authorizing Reader's Digest to obtain postpetition financing, to use cash collateral, and granting adequate protection to the prepetition secured lenders. The Court here found that there was "good cause...shown for the entry of [an] Order," and that "the Debtors [do] have an immediate need to obtain the DIP Financing and to use the prepetition collateral..."⁶⁷ It also found that "[t]he Debtors are unable to obtain financing, when taken as a whole, on more favorable terms from

⁶⁵*In re Reader's Digest Assoc., Inc.*, No. 09-23529, Order Authorizing Debtors to Prepare a List of Creditors in Lieu of a Formatted Mailing Matrix at 2 (Bankr. S.D.N.Y. Aug. 26, 2009).

⁶⁶*In re Reader's Digest Assoc., Inc.*, No. 09-23529, Order Authorizing Debtors to Prepare a List of Creditors in Lieu of a Formatted Mailing Matrix at 2 (Bankr. S.D.N.Y. Aug. 26, 2009).

⁶⁷*In re Reader's Digest Assoc., Inc.*, No. 09-23529, Interim Order Authorizing the Debtors to Obtain Postpetition Financing at 6 (Bankr. S.D.N.Y. Aug. 26, 2009).

sources other than the DIP Lenders....”⁶⁸ For those reasons, as well as the finding that the Financing Agreement was entered into after “good faith, arm’s length discussions between the parties,” Judge Drain approved the DIP Financing Agreement as it was requested in the Motion for DIP Financing filed on August 24.⁶⁹ Again, the approval of the DIP Financing came just two days after it was requested in the court, demonstrating the transactional approach that Judge Drain took early on in the proceedings. There is no way that he was able to determine whether Reader’s Digest could obtain more favorable financing terms from any other lender in just two days of having the motion on his desk, so he simply took the parties’ words for it and allowed the motion because it didn’t contain anything out of the ordinary. Therefore, the DIP Financing was approved by the Court in the interim, which is a very important hurdle for the company to have jumped, especially this early in the proceedings.

Judge Drain also issued an Order on August 26th granting Reader’s Digest’s motion to pay certain prepetition claims of critical vendors and lien claimants. The methods and amounts for these payments were approved as they were written in the original motion filed on August 24th.⁷⁰ This order authorized, but did *not* direct, Reader’s Digest to pay the prepetition claims that it had mentioned in the motion it previously filed, which gave the company leeway in determining whose claims to pay first and when.⁷¹ This type of flexibility is very important in proceedings such as this, because with so many creditors and debts to pay off with the financing

⁶⁸*In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Interim Order Authorizing the Debtors to Obtain Postpetition Financing at 6 (Bankr. S.D.N.Y. Aug. 26, 2009).

⁶⁹*In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Interim Order Authorizing the Debtors to Obtain Postpetition Financing at 6-7 (Bankr. S.D.N.Y. Aug. 26, 2009).

⁷⁰*In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Interim Order Authorizing Debtors to Pay Certain Prepetition Claims of Critical Vendors and Lien Claimants at 2-3 (Bankr. S.D.N.Y. Aug. 26, 2009).

⁷¹*In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Interim Order Authorizing Debtors to Pay Certain Prepetition Claims of Critical Vendors and Lien Claimants at 3 (Bankr. S.D.N.Y. Aug. 26, 2009).

approved by the Court, following a strict order set by the Court in paying those debts off could prove difficult or inefficient at times. The Court did direct Reader's Digest to perform a couple of specific duties when paying off these prepetition claims however. The first was that "the Debtors shall undertake all appropriate and reasonable efforts to condition payment to Critical Vendor Claims upon the execution of a Trade Agreement...."⁷² Such a direction is to promote uniformity and concreteness in the dealings between the company and its vendors in order for the Court to realize how these claims will exactly be paid. Reader's Digest also needed to "maintain a matrix summarizing the name of each Critical Vendor..., the amount paid to each Critical Vendor, and a brief description of the goods or services provided by such Critical Vendor" and provide this matrix periodically to the Southern District of New York for examination.⁷³ Again, this is for the Court to have some concrete evidence of the proceedings of the financial relationships between the company and its vendors. Therefore, Judge Drain authorized the motion the company had requested from the Court, but directed the company to maintain records of its dealings in order for the Court to enforce the order and to prevent any side-dealings or disruptions in the proceedings.

Judge Drain also summarily approved Reader's Digest's motions to continue using its existing cash management system and to maintain and administer its existing customer programs and honor related prepetition obligations.⁷⁴ As with the aforementioned motions, this reflects the transactional approach taken in this proceeding, as Judge Drain approved the motions quickly

⁷² *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Interim Order Authorizing Debtors to Pay Certain Prepetition Claims of Critical Vendors and Lien Claimants at 3 (Bankr. S.D.N.Y. Aug. 26, 2009).

⁷³ *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Interim Order Authorizing Debtors to Pay Certain Prepetition Claims of Critical Vendors and Lien Claimants at 3-4 (Bankr. S.D.N.Y. Aug. 26, 2009).

⁷⁴ *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Interim Order Authorizing Debtors to Continue Using Their Existing Cash Management System (Bankr. S.D.N.Y. Aug. 26, 2009); Interim Order Authorizing Debtors to Maintain and Administer Customer Programs and Honor Related Prepetition Obligations (Bankr. S.D.N.Y. Aug. 26, 2009).

because he didn't find anything extraordinary in the motions that would constitute a possible rejection. The same can be said for the final order he granted on August 26th, the order authorizing, but not directing, the company to pay certain prepetition wages and reimbursable employee expenses.⁷⁵ Because Judge Drain didn't find anything awry with these motions, they were approved in order to promote the efficiency of such a large and complicated bankruptcy proceeding. Based on the proceedings so far and the almost instant approval of Judge Drain and the Court, Reader's Digest's Chapter 11 case was running smoothly without a hitch. The light at the end of the dank economic tunnel appeared to be growing brighter and closer by the day for Reader's Digest and its creditors. However, as we shall see, nothing this large and complicated ever goes off without a hitch, and the reorganization plan was not to be accepted by all parties as quickly as Judge Drain accepted a motion.

C. Between the Petition and the Plan: Motions, Orders, and Objections

After Judge Drain granted all of the original motions that set out the basic framework of the prenegotiated plan, Reader's Digest began filing more specific motions and applications concerning particular aspects of these prenegotiations. The first motion the company filed was a motion to authorize the rejection of certain unexpired nonresidential real property leases. As of the Petition Date, Reader's Digest and its subsidiaries "were tenants under approximately 23 nonresidential real property leases across 14 states."⁷⁶ In general, the company didn't own the property on which it commenced operations, but instead leased nonresidential real estate

⁷⁵*In re Reader's Digest Assoc., Inc.*, No. 09-23529, Interim Order Authorizing, But Not Directing, Debtors to Pay Certain Prepetition Wages (Bankr. S.D.N.Y. Aug. 26, 2009).

⁷⁶*In re Reader's Digest Assoc., Inc.*, No. 09-23529, Debtors' Motion for Entry of an Order Authorizing Rejection of Certain Unexpired Nonresidential Real Property Leases at 4 (Bankr. S.D.N.Y. Aug. 28, 2009).

properties, “some of which [were] subsequently subleased to third parties.”⁷⁷ Some of these leases, in the company’s opinion, are unnecessary expenses that are detracting from the value of the estate.⁷⁸ Pursuant to Section 365 of the Bankruptcy Code, which allows a debtor in possession to “reject any executory contract or unexpired lease subject to the Court’s approval,”⁷⁹ Reader’s Digest filed this motion to reject 8 of these leases (and 1 sublease) worth “approximately \$3,650,000” “in an effort to reduce postpetition administrative costs.”⁸⁰ Such a provision is included in the Bankruptcy Code so that Debtors who have executory contracts and leases detracting from the value of the estate may reject these leases and prevent these “dead liabilities” from further diminishing the company’s economic situation. Here, the company filed this motion to reject the leases it holds but keeps vacant or out of operation.⁸¹ Should the motion be granted, the rejection of these leases would save the company \$3,650,000 that could be otherwise used as liquidity to improve financial position and help Reader’s Digest get out of the fire, which is the purpose of the Chapter 11 filing. Therefore, this motion reflects the company’s usage of a specific statutory tool that can help a Chapter 11 company gain needed liquidity, and also demonstrates how Reader’s Digest is looking at all possible avenues in order to improve its financial situation and return to prominence.

⁷⁷ *In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Debtors’ Motion for Entry of an Order Authorizing Rejection of Certain Unexpired Nonresidential Real Property Leases at 4 (Bankr. S.D.N.Y. Aug. 28, 2009).

⁷⁸ *In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Debtors’ Motion for Entry of an Order Authorizing Rejection of Certain Unexpired Nonresidential Real Property Leases at 4 (Bankr. S.D.N.Y. Aug. 28, 2009).

⁷⁹ *In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Debtors’ Motion for Entry of an Order Authorizing Rejection of Certain Unexpired Nonresidential Real Property Leases at 9 (Bankr. S.D.N.Y. Aug. 28, 2009) (citing Bankruptcy Code Section 365(a) specifically).

⁸⁰ *In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Debtors’ Motion for Entry of an Order Authorizing Rejection of Certain Unexpired Nonresidential Real Property Leases at 4-5 (Bankr. S.D.N.Y. Aug. 28, 2009).

⁸¹ *In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Debtors’ Motion for Entry of an Order Authorizing Rejection of Certain Unexpired Nonresidential Real Property Leases at 3-5 (Bankr. S.D.N.Y. Aug. 28, 2009).

With the initial prenegotiation motions granted, Reader's Digest then applied to the court to have certain third-party entities employed as key advisors and providers of specific guidance throughout Chapter 11 proceedings. The company sought the court's approval of AlixPartners LLP as its restructuring advisor and of Ernst & Young LLP as its independent auditor and tax services provider.⁸² Citing AlixPartners's "excellent reputation for services it has rendered in large and complex Chapter 11 cases throughout the United States,"⁸³ Reader's Digest requested that the firm be able to render restructuring advisory services on its behalf throughout the Chapter 11 proceedings.⁸⁴ Such services would include:

"assist[ing] the Debtors in developing a global operating plan and long term business plan which will facilitate the development of potential cost reduction opportunities,... assist[ing] the Debtors in developing and implementing a global cash management system,... advis[ing] the Debtors' senior management with respect to the negotiation and implementation of restructuring initiatives,...[and] manag[ing] the claims and claims reconciliation processes...."

among others.⁸⁵ These services however would be under close scrutiny as to prevent "duplicative efforts" that would unnecessarily increase the costs of such services.⁸⁶ Again, this demonstrates how the focus of these proceedings is to maximize liquidity by increasing the influx of financing as well as minimizing the costs of necessary services connected with the proceedings.

⁸²*In re Reader's Digest Assoc., Inc.*, No. 09-23529, Application to Employ Ernst & Young LLP as Independent Auditor and Tax Services Provider (Bankr. S.D.N.Y. Sept. 4, 2009).

⁸³*In re Reader's Digest Assoc., Inc.*, No. 09-23529, Application for Entry of an Order Authorizing the Retention and Employment of AlixPartners LLP as Restructuring Advisor at 4-5 (Bankr. S.D.N.Y. Sept. 4, 2009).

⁸⁴*In re Reader's Digest Assoc., Inc.*, No. 09-23529, Application for Entry of an Order Authorizing the Retention and Employment of AlixPartners LLP as Restructuring Advisor at 6 (Bankr. S.D.N.Y. Sept. 4, 2009).

⁸⁵*In re Reader's Digest Assoc., Inc.*, No. 09-23529, Application for Entry of an Order Authorizing the Retention and Employment of AlixPartners LLP as Restructuring Advisor at 6-7 (Bankr. S.D.N.Y. Sept. 4, 2009).

⁸⁶*In re Reader's Digest Assoc., Inc.*, No. 09-23529, Application for Entry of an Order Authorizing the Retention and Employment of AlixPartners LLP as Restructuring Advisor at 7 (Bankr. S.D.N.Y. Sept. 4, 2009).

One very interesting caveat about this minimization of costs arises in another motion that Reader's Digest filed on the same day. In this motion, the company wishes to seal the portion of the agreement with AlixPartners concerning its "success fee" should the Chapter 11 reorganization work. Though this portion of the agreement would be "made available, on a confidential basis, to the U.S. Trustee, counsel to the Committee, and counsel to the prepetition and postpetition secured lenders," it would otherwise be kept from third parties' knowledge.⁸⁷ The company believed the sealing was necessary to prevent them from being "significantly disadvantaged in pursuing a compromise of the Project California liabilities, which would jeopardize [their] ability to obtain the greatest possible reduction of those liabilities."⁸⁸ However, there is no further explanation of why such a disadvantage would arise from the divulgence of the "success fee." One could postulate that the company sought to have the fee amount sealed because it was rather generous, but no proof of this exists. Regardless of the reason behind the motion, Judge Drain approved the motion the same day, provided that the company did make the information available to the U.S. Trustee, the Committee, and the secured lenders on a confidential basis.⁸⁹ This is very interesting given the parties' intention to minimize costs as much as possible, but again, this demonstrates the "hands-off" approach Judge Drain has taken in examining the motions of the parties thus far.

The next important motion that came between the petition and the first proposed plan was Reader's Digest's motion to authorize and approve the assumption of the Time Life sublicense

⁸⁷*In re Reader's Digest Assoc., Inc.*, No. 09-23529, Debtors' Ex Parte Motion for Entry of an Order Authorizing the Debtors to File Schedule to Amendment to AlixPartners LLP's Engagement Letter Under Seal at 5 (Bankr. S.D.N.Y. Sept. 4, 2009).

⁸⁸*In re Reader's Digest Assoc., Inc.*, No. 09-23529, Debtors' Ex Parte Motion for Entry of an Order Authorizing the Debtors to File Schedule to Amendment to AlixPartners LLP's Engagement Letter Under Seal at 6 (Bankr. S.D.N.Y. Sept. 4, 2009).

⁸⁹*In re Reader's Digest Assoc., Inc.*, No. 09-23529, Order Authorizing the Debtors to File Schedule to Amendment to AlixPartners LLP's Engagement Letter at 2 (Bankr. S.D.N.Y. Sept. 4, 2009).

agreement. To begin with, this was the first filed motion that provided for exact procedures by which objections to the motion needed to be made, demonstrating the importance of this motion to all parties.⁹⁰ The substance of the motion concerns the agreement between Reader's Digest's non-debtor affiliate Direct Holdings IP, L.L.C. and Time Warner, Inc. where Direct Holdings IP is the exclusive licensee of Time Life's trademarks, trade names, and domain names.⁹¹ Direct Holdings U.S., a subsidiary of Direct Holdings IP, is a debtor in the Chapter 11 proceedings and holds a sublicense agreement with its parent under which it acts as the "operating company of the IP assets," including the Time Life assets.⁹² Before Chapter 11 proceedings began, Reader's Digest believed that its filing would possibly terminate the License Agreement and its corresponding Sublicense Agreement, or at least shorten the term of the agreement and affect its terms.⁹³ Therefore, "after consider[ing] certain alternatives," Reader's Digest decided to enter into negotiations with Time Warner to discuss amending the Agreement on favorable terms, and subsequently filed this motion to approve the amendments.⁹⁴

Under the proposed amendments, Reader's Digest would assume the newly negotiated Sublicense Agreement between Direct Holdings U.S. and Time Warner.⁹⁵ This agreement is possible due to Section 365 of the Bankruptcy Code, which permits a debtor in possession to

⁹⁰ *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Debtors' Motion for Entry of an Order Authorizing and Approving the Assumption of the Time Life Sublicense Agreement at 2-4 (Bankr. S.D.N.Y. Sept. 14, 2009).

⁹¹ *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Debtors' Motion for Entry of an Order Authorizing and Approving the Assumption of the Time Life Sublicense Agreement at 4 (Bankr. S.D.N.Y. Sept. 14, 2009).

⁹² *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Debtors' Motion for Entry of an Order Authorizing and Approving the Assumption of the Time Life Sublicense Agreement at 4-5 (Bankr. S.D.N.Y. Sept. 14, 2009).

⁹³ *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Debtors' Motion for Entry of an Order Authorizing and Approving the Assumption of the Time Life Sublicense Agreement at 5 (Bankr. S.D.N.Y. Sept. 14, 2009).

⁹⁴ *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Debtors' Motion for Entry of an Order Authorizing and Approving the Assumption of the Time Life Sublicense Agreement at 6 (Bankr. S.D.N.Y. Sept. 14, 2009).

⁹⁵ *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Debtors' Motion for Entry of an Order Authorizing and Approving the Assumption of the Time Life Sublicense Agreement at 9 (Bankr. S.D.N.Y. Sept. 14, 2009).

“assume, subject to the court’s approval, executory contracts or unexpired leases of the debtor.”⁹⁶

The amendments to the original Sublicense Agreement include an extension of the agreement between the parties as well as an express waiver of certain prior defaults.⁹⁷ This motion demonstrates again that Reader’s Digest has examined all avenues to try to maximize working capital and minimize costs and expenses throughout Chapter 11 proceedings. Judge Drain’s decision on the motion depends on 7 factors delineated in the motion:

“(a) the balance between the litigation’s possibility of success and the settlement’s future benefits, (b) the likelihood of complex and protracted litigation, with its attendant expense, inconvenience, and delay, (c) the paramount interests of the creditors, including each affected class’s relative benefits and the degree to which creditors either do not object to or affirmatively support the proposed settlement, (d) whether other parties in interest support the settlement, (e) the competency of counsel supporting the settlement, (f) the nature and breadth of releases to be obtained by officers and directors, and (g) the extent to which the settlement is the product of arm’s length bargaining.”⁹⁸

He would weigh all of these factors and his decision on the motion would come in the future.

On September 17, the Court handed down a series of Orders concerning various aspects of the proceedings. The first was the order authorizing the retention and compensation of certain professionals utilized in the ordinary course of business. This was coupled with the order establishing procedures for interim compensation and reimbursement of expenses for professionals involved in the proceedings. The first order authorized, but did not require, Reader’s Digest “to retain and pay reasonable fees and expenses for the services of various

⁹⁶ *In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Debtors’ Motion for Entry of an Order Authorizing and Approving the Assumption of the Time Life Sublicense Agreement at 9 (Bankr. S.D.N.Y. Sept. 14, 2009) (statutory and case citations omitted).

⁹⁷ *In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Debtors’ Motion for Entry of an Order Authorizing and Approving the Assumption of the Time Life Sublicense Agreement at 7-8 (Bankr. S.D.N.Y. Sept. 14, 2009).

⁹⁸ *In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Debtors’ Motion for Entry of an Order Authorizing and Approving the Assumption of the Time Life Sublicense Agreement at 15 (Bankr. S.D.N.Y. Sept. 14, 2009).

attorneys in the ordinary course of their businesses.”⁹⁹ It also requires that all such attorneys file a “declaration of disinterestedness” with the Court, meaning that they have no personal stake in the Chapter 11 proceedings.¹⁰⁰ This provision in the order is meant to prevent any Reader’s Digest attorney from acting in any way that may invoke a conflict of interest. The second order established a schedule for the proceedings’ discovery and hearings, as well as a protocol for the discovery process.¹⁰¹ The Confirmation Hearing for the reorganization plan was preliminarily set for January 13, 2010, provided that the Disclosure Statement was approved “on or before November 30, 2009.”¹⁰² Therefore, the Court wishes to move the proceedings along quickly, having the confirmation hearing for the plan 5 months after the filing date. In today’s economy, especially in a jurisdiction as saturated as the Southern District of New York, the courts are bombarded with bankruptcy proceedings, so quick and efficient litigation is a clear goal. A brief schedule for the proceedings such as this helps fulfill that goal.

The next order issued by Judge Drain was the final order authorizing Reader’s Digest to pay certain prepetition claims of critical vendors and lien claimants. Like the interim order, the final order “authorized, but [did] not direct[.]” Reader’s Digest to “pay or honor all or part of the prepetition claims of Critical Vendors.”¹⁰³ Again, the payments must be conditioned at all

⁹⁹*In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Order Authorizing the Retention and Compensation of Certain Professionals Utilized in the Ordinary Course of Business at 2 (Bankr. S.D.N.Y. Sept. 17, 2009).

¹⁰⁰*In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Order Authorizing the Retention and Compensation of Certain Professionals Utilized in the Ordinary Course of Business at 2-3 (Bankr. S.D.N.Y. Sept. 17, 2009).

¹⁰¹*In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Professionals at 3-4 (Bankr. S.D.N.Y. Sept. 17, 2009).

¹⁰²*In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Professionals at 3 (Bankr. S.D.N.Y. Sept. 17, 2009).

¹⁰³*In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Final Order Authorizing Debtors to Pay Certain Prepetition Claims of Critical Vendors and Lien Claimants at 2 (Bankr. S.D.N.Y. Sept. 17, 2009).

possible times “upon the execution of a trade agreement.”¹⁰⁴ The final order does not follow the interim order verbatim however, and includes a very important clause not contained within the interim order for the payment of prepetition claims. Prior to making a payment “in excess of \$350,000 to any Critical Vendor,” Reader’s Digest must obtain the consent of the official committee of unsecured creditors and its counsel.¹⁰⁵ However, such consent must “not be unreasonably withheld.”¹⁰⁶ This reflects the court’s requirement that adversarial parties in bankruptcy proceedings act in good faith toward one another. The company must also keep a matrix of all the payments made to critical vendors, and it must be provided “on a bi-monthly basis to the United States Trustee for the Southern District of New York” for recording and examination.¹⁰⁷ The final order on the matrix was basically the same as the interim order, but was more specific in when it had to be reported to the U.S. Trustee. Therefore, Judge Drain issued a final order on the subject that not only included the provisions from the interim order previously issued, but also added clauses that promoted disclosure and specificity.

Other orders were issued authorizing Reader’s Digest to retain and employ Kirkland & Ellis as its attorneys¹⁰⁸, authorizing the company to maintain and administer its customer

¹⁰⁴*In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Final Order Authorizing Debtors to Pay Certain Prepetition Claims of Critical Vendors and Lien Claimants at 3 (Bankr. S.D.N.Y. Sept. 17, 2009).

¹⁰⁵*In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Final Order Authorizing Debtors to Pay Certain Prepetition Claims of Critical Vendors and Lien Claimants at 3-4 (Bankr. S.D.N.Y. Sept. 17, 2009).

¹⁰⁶*In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Final Order Authorizing Debtors to Pay Certain Prepetition Claims of Critical Vendors and Lien Claimants at 3 (Bankr. S.D.N.Y. Sept. 17, 2009).

¹⁰⁷*In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Final Order Authorizing Debtors to Pay Certain Prepetition Claims of Critical Vendors and Lien Claimants at 5 (Bankr. S.D.N.Y. Sept. 17, 2009).

¹⁰⁸*In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Order Authorizing Debtors to Retain and Employ Kirkland & Ellis LLP (Bankr. S.D.N.Y. Sept. 17, 2009).

programs¹⁰⁹, authorizing, but not directing, the company to pay certain prepetition wages and employee expenses¹¹⁰, and authorizing the debtors to pay taxes and fees.¹¹¹ These orders were very basis and don't warrant more than a glancing discussion. The last order issued on September 17 worth discussing in detail was the order authorizing Reader's Digest to reject the unexpired nonresidential real property leases it held. All 8 of the leases requested in the motion were deemed rejected in this very cursory order which simply stated that "the leases...are hereby rejected effective as of August 28, 2009."¹¹² Reader's Digest was also authorized to "abandon any personal property, furniture, fixtures, and/or equipment at the premises underlying the [rejected] Leases."¹¹³ This cursory order again reflects Judge Drain's approach to the Debtors' motions in the proceedings: that he will grant motions that the parties have negotiated as long as nothing out of the ordinary appears on their faces. After these motions were granted, the real nitty-gritty of the pre-plan negotiations and statements began.

D. Reader's Digest's Financial Situation

After the Court issued all the pre-plan orders, Reader's Digest began to divulge many of its financial statements and schedules to both the court and the other parties involved in the Chapter 11 proceedings. On September 24, the company released 2 major financial statements:

¹⁰⁹ *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Final Order Authorizing Debtors to Maintain and Administer Customer Programs (Bankr. S.D.N.Y. Sept. 17, 2009).

¹¹⁰ *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Final Order Authorizing, But Not Directing, Debtors to Pay Certain Prepetition Wages (Bankr. S.D.N.Y. Sept. 17, 2009).

¹¹¹ *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Final Order Authorizing Debtors to Pay Taxes and Fees (Bankr. S.D.N.Y. Sept. 17, 2009).

¹¹² *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Order Authorizing Rejection of Certain Unexpired Nonresidential Real Property Leases at 2 (Bankr. S.D.N.Y. Sept. 17, 2009).

¹¹³ *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Order Authorizing Rejection of Certain Unexpired Nonresidential Real Property Leases at 2 (Bankr. S.D.N.Y. Sept. 17, 2009).

its statement of financial affairs and the schedule of its assets and liabilities. Interestingly, because Reader's Digest is "part of a complex enterprise," it reserved the right "to dispute the validity, status, or enforceability of any contracts, agreements, or leases set forth [in the statement]." ¹¹⁴ Even though it makes sense to reserve the right to do this in case a mistake was made, one would believe that in proceedings like these where every financial statistic is vitally important to the determination of an effective plan, every effort would be made to make sure the financial statement is ironclad. Such a reservation casts doubt on how accurate the numbers truly are, although the specificity of the numbers disclosed demonstrate an acute attention to detail.

The first set of numbers that demonstrates Reader's Digest is using Chapter 11 as a tool to weather the economic storm rather than to wind the company's operations up is its "Income from Employment or Operation of Business." While the company states a loss of approximately \$5.8 million in fiscal 2008, it reports a \$72.2 profit in fiscal 2009, a number that would shock anyone hearing that Reader's Digest was filing for bankruptcy. ¹¹⁵ However, the fact that the company has declared becomes much less shocking after reading the numbers from Attachment 3b of the Financial Statement, which lists the creditors and the payments made to them within the 90 day period prior to the filing of the statement. ¹¹⁶ In just a 90 day period, Reader's Digest had paid \$99.7 million to different creditors, a simply staggering amount compared to its entire 2009 fiscal income. ¹¹⁷ When comparing these numbers, it becomes much clearer why the

¹¹⁴*In re Reader's Digest Assoc., Inc.*, No. 09-23529, Statement of Financial Affairs at 13 (Bankr. S.D.N.Y. Sept. 24, 2009).

¹¹⁵*In re Reader's Digest Assoc., Inc.*, No. 09-23529, Statement of Financial Affairs at 23 (Bankr. S.D.N.Y. Sept. 24, 2009) (Numbers from Attachment 1 to the Financial Statement).

¹¹⁶*In re Reader's Digest Assoc., Inc.*, No. 09-23529, Statement of Financial Affairs at 25-128 (Bankr. S.D.N.Y. Sept. 24, 2009).

¹¹⁷*In re Reader's Digest Assoc., Inc.*, No. 09-23529, Statement of Financial Affairs at 128 (Bankr. S.D.N.Y. Sept. 24, 2009).

company is in trouble and has turned to Chapter 11 to try and help weather the economic storm by improving its financial condition. While the company is making a significant profit via its operations, it simply isn't enough to keep up with the payments that it makes to its creditors. Therefore, the only way to overcome the situation was to try to reduce the debts it owes its creditors, and Chapter 11, at least according to the prenegotiated motions, was the best way to do just that.

The schedule of assets and liabilities (with certain portions redacted) paints an even more harrowing picture of Reader's Digest's financial situation prior to Chapter 11 filing. In the schedule filed on September 24, the company lists just under \$58 million in held assets, which seems like a fairly high amount.¹¹⁸ When compared to the nearly \$2.7 billion the company lists in liabilities however, the dollar amounts of these assets pale in comparison.¹¹⁹ The difference between the listed assets and liabilities is therefore an astounding \$2.6 billion, and demonstrates just how disturbing the financial position Reader's Digest was before it filed for Chapter 11.¹²⁰ Without the aid that the Chapter 11 reorganization plan could bring in reducing the massive debts the company owes, Reader's Digest, from the inferences drawn from the financial statements, was basically doomed to fail. Therefore, the effectiveness of the proposed plan in minimizing debt and maximizing liquidity would be of the utmost importance to the company's continued operations.

The last financial statement filed during this time, a day later than the other two, was the company's periodic report regarding the profitability of entities in which it held a substantial or

¹¹⁸*In re Reader's Digest Assoc., Inc.*, No. 09-23529, Schedules of Assets and Liabilities at 2 (Bankr. S.D.N.Y. Sept. 24, 2009).

¹¹⁹*In re Reader's Digest Assoc., Inc.*, No. 09-23529, Schedules of Assets and Liabilities at 2 (Bankr. S.D.N.Y. Sept. 24, 2009).

¹²⁰*In re Reader's Digest Assoc., Inc.*, No. 09-23529, Schedules of Assets and Liabilities at 2 (Bankr. S.D.N.Y. Sept. 24, 2009).

controlling interest. This report is a bit of a misnomer, as it only lists the international entities in which the company holds an interest, rather than both domestic and international entities.¹²¹ The report lists the different international entities as well as the book value and the percentage interest that the company holds of each entity.¹²² Reader's Digest holds a 100% interest in the vast majority of these international subsidiaries, but there are a few in which the company holds slightly less, such as its 99.99% interest in its French subsidiary Selection du Reader's Digest S.A.¹²³ An interesting sidenote to consider that is not listed in the financial statements or the motions in this case is how exactly a company loses a 0.01% interest in a subsidiary. Most of the subsidiaries have a net book value in the positive range, but the company also holds some subsidiaries that are worth negative amounts; a couple of these subsidiaries are worth negative tens of millions of dollars.¹²⁴ One solution the company might want to consider when negotiating the reorganization plan with its creditors and counsel is how to eliminate these liability subsidiaries. As with the burdensome leases that have already been rejected by the Court at this point in the proceedings, the company would greatly benefit from casting aside these liabilities in order to increase liquidity and minimize debt. Then, the company could use its funds on more efficient operations by focusing its undertakings on subsidiaries that create revenue and have a positive value rather than distributing these needed funds into operational

¹²¹ *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Periodic Report Regarding Value, Operations, and Profitability of Entities in which Debtor Holds Substantial or Controlling Interest at 4-5 (Bankr. S.D.N.Y. Sept. 25, 2009).

¹²² *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Periodic Report Regarding Value, Operations, and Profitability of Entities in which Debtor Holds Substantial or Controlling Interest at 4-5 (Bankr. S.D.N.Y. Sept. 25, 2009).

¹²³ *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Periodic Report Regarding Value, Operations, and Profitability of Entities in which Debtor Holds Substantial or Controlling Interest at 4 (Bankr. S.D.N.Y. Sept. 25, 2009).

¹²⁴ *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Periodic Report Regarding Value, Operations, and Profitability of Entities in which Debtor Holds Substantial or Controlling Interest at 4-5 (Bankr. S.D.N.Y. Sept. 25, 2009).

black holes. As long as a motion to do so didn't look out of the ordinary, Judge Drain would probably approve it unless the creditors objected.

E. The Last Statements, Motions, and Orders Leading Up to the Chapter 11 Plan

At this point in the proceedings, the way that everything had worked was that Reader's Digest would file a motion and Judge Drain would approve it without input from any other parties. On October 1, the Official Committee of Unsecured Creditors issued its first statement regarding the proceedings in a cursory but important document.¹²⁵ The Committee in this statement accepts the DIP Financing Agreement between Reader's Digest and the lender banks, but expresses concern over a couple of the Agreement's aspects.¹²⁶ "Understand[ing]...that debtor-in-possession financing is necessary to ensure that [Reader's Digest] ha[s] adequate liquidity to operate their businesses,"¹²⁷ the Committee accepts Judge Drain's order regarding DIP Financing as "an acceptable compromise."¹²⁸ However, while the Committee "supports the majority of the relief requested in the DIP Financing Motion," it "fe[lt] compelled to note that many requested changes were rejected by the DIP Lenders."¹²⁹ The Committee was explicitly

¹²⁵ *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Statement of Official Committee of Unsecured Creditors Regarding Debtors' Motion for Entry of Interim and Final Orders Authorizing Debtors to Obtain Postpetition Financing (Bankr. S.D.N.Y. Oct. 1, 2009).

¹²⁶ *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Statement of Official Committee of Unsecured Creditors Regarding Debtors' Motion for Entry of Interim and Final Orders Authorizing Debtors to Obtain Postpetition Financing at 2 (Bankr. S.D.N.Y. Oct. 1, 2009).

¹²⁷ *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Statement of Official Committee of Unsecured Creditors Regarding Debtors' Motion for Entry of Interim and Final Orders Authorizing Debtors to Obtain Postpetition Financing at 2 (Bankr. S.D.N.Y. Oct. 1, 2009).

¹²⁸ *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Statement of Official Committee of Unsecured Creditors Regarding Debtors' Motion for Entry of Interim and Final Orders Authorizing Debtors to Obtain Postpetition Financing at 3 (Bankr. S.D.N.Y. Oct. 1, 2009).

¹²⁹ *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Statement of Official Committee of Unsecured Creditors Regarding Debtors' Motion for Entry of Interim and Final Orders Authorizing Debtors to Obtain Postpetition Financing at 2 (Bankr. S.D.N.Y. Oct. 1, 2009).

concerned with the different fees involved in the DIP Financing, including “an unused commitment fee, exit fee[s], and an administrative agency fee,” that prohibit the optimization of the company’s funding from this agreement.¹³⁰ This statement is important because it reflects the Committee’s willingness to compromise and “work[] cooperatively with the Debtors” to achieve a Chapter 11 Plan that will pull the company out of its damaged financial position.¹³¹ The Committee, in fact, makes light of how important compromise is in these “fast track” cases in achieving a “basis for a consensual plan of reorganization” and achieving Chapter 11’s desired result.¹³² This statement demonstrates how the Committee will act reasonably in compromising with Reader’s Digest and counsel in achieving an effective plan that is acceptable to all parties, but will also maintain and state its reservations at the appropriate time in order to place such concerns on the record. The continued interaction between the Committee and Reader’s Digest would play an integral role in the determination of the Chapter 11 Plan that was eventually approved by the court toward the end of these proceedings. The Committee was officially appointed on October 9, when a list of the participants and their respective addresses for correspondence was filed on behalf of the U.S. Trustee.¹³³

The next order granted by Judge Drain before the Chapter 11 Plan was proposed to the court was the order authorizing and approving the company’s assumption of the Time Life

¹³⁰ *In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Statement of Official Committee of Unsecured Creditors Regarding Debtors’ Motion for Entry of Interim and Final Orders Authorizing Debtors to Obtain Postpetition Financing at 2-3 (Bankr. S.D.N.Y. Oct. 1, 2009).

¹³¹ *In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Statement of Official Committee of Unsecured Creditors Regarding Debtors’ Motion for Entry of Interim and Final Orders Authorizing Debtors to Obtain Postpetition Financing at 3 (Bankr. S.D.N.Y. Oct. 1, 2009).

¹³² *In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Statement of Official Committee of Unsecured Creditors Regarding Debtors’ Motion for Entry of Interim and Final Orders Authorizing Debtors to Obtain Postpetition Financing at 3 (Bankr. S.D.N.Y. Oct. 1, 2009).

¹³³ *In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Amended Notice of Appointment of Committee of Unsecured Creditors (Bankr. S.D.N.Y. Oct. 9, 2009).

Sublicense Agreement as motioned for. The agreement was approved as an assumption of an executory agreement or lease under Section 365 of the Bankruptcy Code, and all of the prior defaults on the Sublicense Agreement, “other than those expressly waived,” were cured.¹³⁴ This order also modified the Section 362 automatic stay provision to “permit [Time Warner] to exercise their termination rights arising after [October 6].”¹³⁵ This was a pre-plan victory for Reader’s Digest, as the terms of the original Sublicense Agreement was harming the company’s ability to garner liquidity and the new Agreement was able to eliminate some of the problems that existed. It also was yet another motion that Judge Drain granted without much deliberation, as this case has been one of those “fast track” cases the Committee discussed in its statement.¹³⁶

Reader’s Digest filed another motion on the same day that order was issued regarding the rejection of certain executory contracts. The company sought the rejection of these executory contracts because it determined that each contract listed in the motion was a “burdensome agreement” and that the company would “otherwise seek to reject [them] in connection with their reorganization.”¹³⁷ This determination is very similar to the reasoning behind the motion, and subsequent order, allowing the company to reject certain “dead liability” leases it had accrued but were simply taking up space and valuable liquidity. The statutory provision supporting this particular motion is also Section 365(a) of the Bankruptcy Code, just like it was with the

¹³⁴ *In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Order Authorizing and Approving the Assumption of the Time Life Sublicense Agreement at 2-3 (Bankr. S.D.N.Y. Oct. 6, 2009).

¹³⁵ *In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Order Authorizing and Approving the Assumption of the Time Life Sublicense Agreement at 3 (Bankr. S.D.N.Y. Oct. 6, 2009).

¹³⁶ *In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Statement of Official Committee of Unsecured Creditors Regarding Debtors’ Motion for Entry of Interim and Final Orders Authorizing Debtors to Obtain Postpetition Financing at 3 (Bankr. S.D.N.Y. Oct. 1, 2009).

¹³⁷ *In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Debtors’ Motion for Entry of an Order Authorizing the Debtors to Reject Certain Executory Contracts at 6 (Bankr. S.D.N.Y. Oct. 9, 2009).

previous motion.¹³⁸ Again, this is another demonstration of how Reader's Digest has examined its entire complex business to determine which portions of its operations are carrying the least weight, and then using the options given it by the Bankruptcy Code to eliminate them in order to increase liquidity and minimize debt. If the previous motions are any indication, Judge Drain will quickly grant this motion provided that nothing on its face is out of the ordinary and that the creditors don't object.

II. The Plan is Proposed, and the Parties React

A. The First Proposed Chapter 11 Plan

On October 10, less than two months after Reader's Digest filed for Chapter 11 protection, the company came to the court with its proposed joint Chapter 11 Reorganization Plan.¹³⁹ The Plan was accompanied by the Disclosure Statement pursuant to Section 1125 of the Bankruptcy Code "for use in the solicitation of votes to accept [its] [C]hapter 11 plan."¹⁴⁰ The very basic structure of the Plan would allow the company to emerge from Chapter 11 proceedings with "approximately 75% less funded debt," a percentage that will surely go a long way in aiding Reader's Digest weather its recent economic turmoil.¹⁴¹ The company's hopes was that the Plan would "maximize[] creditor recoveries, provide[] for an equitable distribution

¹³⁸ *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Debtors' Motion for Entry of an Order Authorizing the Debtors to Reject Certain Executory Contracts at 9 (Bankr. S.D.N.Y. Oct. 9, 2009).

¹³⁹ *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Proposed Joint Chapter 11 Plan of Reorganization (Bankr. S.D.N.Y. Oct. 10, 2009).

¹⁴⁰ *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Disclosure Statement for the Proposed Joint Chapter 11 Plan of Reorganization at 1 (Bankr. S.D.N.Y. Oct. 10, 2009).

¹⁴¹ *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Disclosure Statement for the Proposed Joint Chapter 11 Plan of Reorganization at ii (Bankr. S.D.N.Y. Oct. 10, 2009).

to the Debtors' stakeholders, and protect[] the jobs of employees."¹⁴² The company believed that this plan will provide for the maximization of the "significant value" its assets have that "would not be realized in a liquidation, either in whole or in substantial part."¹⁴³ Also, each subsidiary Debtor would "continue to exist after the Effective Date as a separate corporate entity or limited liability company," subject to any restructuring transactions permitted under the plan.¹⁴⁴ Therefore, as stated in the prenegotiation and pre-plan motions and orders, the purpose of the plan was to maximize liquidity and minimize debt, and the company believed that this plan would accomplish this goal, as well as promote corporate continuity by keeping each subsidiary in existence after the plan.

"In accordance with Section 1123(a)(1) of the Bankruptcy Code, [Reader's Digest] ha[s] not classified Administrative Claims, DIP Facility Claims, and Priority Tax Claims."¹⁴⁵ Therefore, these three types of claims were not included in the portion of the plan that classified particular groups of claims and how that respective group of claims would be settled under the proposed plan.¹⁴⁶ According to the proposed plan, "subject to [S]ections 328, 330, and 331 of the Bankruptcy Code," the holder of an allowed Administrative Claim would be paid the full amount of the claim "unless the Holder....and the Debtors agree to less favorable treatment of

¹⁴²*In re Reader's Digest Assoc., Inc.*, No. 09-23529, Disclosure Statement for the Proposed Joint Chapter 11 Plan of Reorganization at iii (Bankr. S.D.N.Y. Oct. 10, 2009).

¹⁴³*In re Reader's Digest Assoc., Inc.*, No. 09-23529, Disclosure Statement for the Proposed Joint Chapter 11 Plan of Reorganization at iii (Bankr. S.D.N.Y. Oct. 10, 2009).

¹⁴⁴*In re Reader's Digest Assoc., Inc.*, No. 09-23529, Disclosure Statement for the Proposed Joint Chapter 11 Plan of Reorganization at 24 (Bankr. S.D.N.Y. Oct. 10, 2009).

¹⁴⁵*In re Reader's Digest Assoc., Inc.*, No. 09-23529, Disclosure Statement for the Proposed Joint Chapter 11 Plan of Reorganization at iv (Bankr. S.D.N.Y. Oct. 10, 2009).

¹⁴⁶*In re Reader's Digest Assoc., Inc.*, No. 09-23529, Proposed Joint Chapter 11 Plan of Reorganization at 11 (Bankr. S.D.N.Y. Oct. 10, 2009).

that claim.”¹⁴⁷ The same treatment was delineated for holders of allowed Priority Tax Claims “due and payable on or prior to the Effective Date [of the plan].”¹⁴⁸ The DIP Facility Claims would either “convert into the New First Priority Term Loan pursuant to the Exit Credit Agreement or be paid off in full in [c]ash.”¹⁴⁹ The rest of the claims covered by the proposed plan were listed explicitly in Article III of the plan.

The classes of claims listed in Article III encompassed the claims against each of the 48 separate Debtors jointly administrated by motion in this singular proceeding, even though the Plan states that it “constitutes a separate Chapter 11 plan of reorganization for each Debtor.”¹⁵⁰ The proposed plan listed 10 different classes of claims, 4 of which were unimpaired by the plan (were to be paid in full according to the plan) and thus the Debtors with these claims were deemed to accept the plan whether they voted on the plan or not.¹⁵¹ Of the 6 groups of claims that were impaired by the plan, 3 of them were entitled to vote whether they approved or rejected the proposed plan.¹⁵² These 3 groups were the holders of Prepetition Credit Agreement Claims, Unsecured Ongoing Operations Claims, and Other General Unsecured Claims.¹⁵³ Each holder of a prepetition credit agreement claim was to receive a pro rata share of each of the Reinstated

¹⁴⁷ *In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Proposed Joint Chapter 11 Plan of Reorganization at 11 (Bankr. S.D.N.Y. Oct. 10, 2009).

¹⁴⁸ *In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Proposed Joint Chapter 11 Plan of Reorganization at 12 (Bankr. S.D.N.Y. Oct. 10, 2009).

¹⁴⁹ *In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Proposed Joint Chapter 11 Plan of Reorganization at 12 (Bankr. S.D.N.Y. Oct. 10, 2009).

¹⁵⁰ *In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Proposed Joint Chapter 11 Plan of Reorganization at 11 (Bankr. S.D.N.Y. Oct. 10, 2009).

¹⁵¹ *In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Proposed Joint Chapter 11 Plan of Reorganization at 13-16 (Bankr. S.D.N.Y. Oct. 10, 2009).

¹⁵² *In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Proposed Joint Chapter 11 Plan of Reorganization at 13 (Bankr. S.D.N.Y. Oct. 10, 2009).

¹⁵³ *In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Proposed Joint Chapter 11 Plan of Reorganization at 13 (Bankr. S.D.N.Y. Oct. 10, 2009).

Euro Term Loan, the New Second Priority Term Loan, and 100% of the new shares of common stock issued in the reorganized company.¹⁵⁴ Because this pro rata share might not, and probably will not, equal the full amount of their respective claims, these Debtors were allowed to vote on whether they approved or rejected the plan.¹⁵⁵ The holders of unsecured ongoing operations claims were deemed impaired for a different reason than the holders of prepetition credit agreement claims. Debtors in this class were to be paid in full unless they agreed to “less favorable treatment,” but the timing of the payment would be on the Effective Date of the plan or “as soon as reasonably practicable thereafter.”¹⁵⁶ Holders of these claims were also not entitled to postpetition interest or penalties, thereby reducing the present value of their claims due to the diminishing value of money over time.¹⁵⁷ This class of Debtors therefore wasn’t guaranteed a timetable on when they would receive their reimbursement nor would they receive any extra money for their patience, and thus they were deemed impaired by the plan and were able to vote on the plan.¹⁵⁸ Holders of other general unsecured claims were also impaired by the plan because they were to receive a “pro rata share of the Other General Unsecured Claims Distribution,” which might not fully satisfy their respective claims.¹⁵⁹ Therefore, these three

¹⁵⁴ *In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Proposed Joint Chapter 11 Plan of Reorganization at 14 (Bankr. S.D.N.Y. Oct. 10, 2009).

¹⁵⁵ *In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Proposed Joint Chapter 11 Plan of Reorganization at 14 (Bankr. S.D.N.Y. Oct. 10, 2009).

¹⁵⁶ *In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Proposed Joint Chapter 11 Plan of Reorganization at 14 (Bankr. S.D.N.Y. Oct. 10, 2009).

¹⁵⁷ *In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Proposed Joint Chapter 11 Plan of Reorganization at 14 (Bankr. S.D.N.Y. Oct. 10, 2009).

¹⁵⁸ *In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Proposed Joint Chapter 11 Plan of Reorganization at 14 (Bankr. S.D.N.Y. Oct. 10, 2009).

¹⁵⁹ *In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Proposed Joint Chapter 11 Plan of Reorganization at 15 (Bankr. S.D.N.Y. Oct. 10, 2009).

groups would vote on the proposed plan and the results of the vote would determine whether the plan would be accepted by the Court to fulfill the Chapter 11 proceedings. If either of the 3 classes votes to accept the plan, then that would satisfy the requirement of Section 1129(b) of the Bankruptcy Code, and the plan would be accepted.¹⁶⁰

Three other groups of Debtors were classified as impaired by the proposed plan, but were not allowed to vote on the plan because they were predetermined to have rejected the plan. These groups were the holders of Senior Subordinated Note Claims, of Section 510(b) Claims, and of Equity Interests in RDA Holdings.¹⁶¹ Each class was deemed to have rejected the plan on its face because they were each to receive nothing from the plan's resultant distributions of funds.¹⁶² Because they were to receive nothing whatsoever, but held claims against Reader's Digest, the holders of these claims would never rationally accept such a plan on their own volition, and thus it was intuitive to simply list them as rejecting the plan rather than having them vote that way. These parties would retain their rights to pursue "any and all rights and defenses" concerning their claims because they have not been deemed allowed under the plan.¹⁶³

If this plan were to be approved by these classes of Debtors, the Reorganized Debtors would enter into the "Exit Credit Agreement and the New Second Priority Term Loan Agreement" as they were each proposed.¹⁶⁴ The Lenders would then have "valid, binding, and

¹⁶⁰ *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Proposed Joint Chapter 11 Plan of Reorganization at 17 (Bankr. S.D.N.Y. Oct. 10, 2009).

¹⁶¹ *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Proposed Joint Chapter 11 Plan of Reorganization at 13 (Bankr. S.D.N.Y. Oct. 10, 2009).

¹⁶² *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Proposed Joint Chapter 11 Plan of Reorganization at 15-16 (Bankr. S.D.N.Y. Oct. 10, 2009).

¹⁶³ *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Proposed Joint Chapter 11 Plan of Reorganization at 31 (Bankr. S.D.N.Y. Oct. 10, 2009).

¹⁶⁴ *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Proposed Joint Chapter 11 Plan of Reorganization at 19 (Bankr. S.D.N.Y. Oct. 10, 2009).

enforceable liens on the collateral specified in the relevant agreements executed by the Reorganized Debtors” in connection with the aforementioned Agreements.¹⁶⁵ These collateral agreements were included in the proposed plan to reflect the company’s good faith as well as to induce “the lenders to extend credit thereunder.”¹⁶⁶ In other words, given the financial circumstances of the company, Reader’s Digest was only going to be able to receive these loans, as well as loans in the future, if it granted the lending banks a security interest in all of its collateral. Therefore, that’s just what the company did in the proposed plan.

The plan also included an Article explicitly stating that its executory and unoccupied leases have been assumed, as was allowed by Judge Drain’s previously issued orders.¹⁶⁷ Another Article discussed the manner by which Reader’s Digest employees would be compensated, both currently and through their pension agreements.¹⁶⁸ Interestingly, these agreements were treated as executory contracts and were assumed by the parent Debtor even though “the Debtors [did] not believe that all of the Compensation and Benefits Programs [were] executory contracts.”¹⁶⁹ This statement reflects how Reader’s Digest was willing to compromise to get the proposed plan passed and agreed upon, even when the company itself didn’t necessarily believe that every provision was in its best interest. The rest of the provisions in the proposed plan were standard

¹⁶⁵ *In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Proposed Joint Chapter 11 Plan of Reorganization at 19 (Bankr. S.D.N.Y. Oct. 10, 2009).

¹⁶⁶ *In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Proposed Joint Chapter 11 Plan of Reorganization at 19 (Bankr. S.D.N.Y. Oct. 10, 2009).

¹⁶⁷ *In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Proposed Joint Chapter 11 Plan of Reorganization at 23-26 (Bankr. S.D.N.Y. Oct. 10, 2009).

¹⁶⁸ *In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Proposed Joint Chapter 11 Plan of Reorganization at 22-23 (Bankr. S.D.N.Y. Oct. 10, 2009).

¹⁶⁹ *In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Proposed Joint Chapter 11 Plan of Reorganization at 22 (Bankr. S.D.N.Y. Oct. 10, 2009).

boilerplate provisions regarding such matters as service of documents, reservation of rights to claims, and the immediate binding effect of the plan were it to be accepted.¹⁷⁰

Reader's Digest filed a motion to approve the adequacy of the plan's Disclosure Statement, its dates and deadlines related to confirmation of the plan, and its method for balloting 11 days later on October 21.¹⁷¹ The motion lists the 15 topics that case law under Section 1125 of the Bankruptcy Code has stated "a court should look for in a proposed disclosure statement when evaluating the adequacy of the disclosures therein," including the relationship of the debtor with the affiliates and the future management of the debtor among other factors.¹⁷² The motion then goes on to specifically delineate the reasons why its Disclosure Statement fulfills these requirements and should be approved by the court.¹⁷³ Now, Reader's Digest would have to wait for the vote and hope that the classes of Debtors would agree to the plan without any objections.

B. Post-Proposal Motions, Statements, and Objections

After the plan was proposed, the Official Committee of Unsecured Creditors filed a statement regarding its opinion of Reader's Digest's Omnibus Motion regarding the assumption of executory contracts. Though the Committee "[was] not requesting that the Court deny the motion" in accordance with the motion rather than the proposed plan, it did have qualms about

¹⁷⁰ *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Proposed Joint Chapter 11 Plan of Reorganization at 40-43 (Bankr. S.D.N.Y. Oct. 10, 2009).

¹⁷¹ *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Debtors' Motion for Entry of an Order Approving the Adequacy of the Disclosure Statement (Bankr. S.D.N.Y. Oct. 21, 2009).

¹⁷² *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Debtors' Motion for Entry of an Order Approving the Adequacy of the Disclosure Statement at 6-7 (Bankr. S.D.N.Y. Oct. 21, 2009).

¹⁷³ *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Debtors' Motion for Entry of an Order Approving the Adequacy of the Disclosure Statement at 7-8 (Bankr. S.D.N.Y. Oct. 21, 2009).

some of the possible ramifications of this procedure.¹⁷⁴ First, the Committee believed that the motion could be “premature” because the proposed plan “provide[d] for assumption of all contracts...not previously rejected or identified in the Plan Supplement to be rejected.”¹⁷⁵

Basically, the Committee viewed this provision as possibly redundant and unnecessary, and thus resulting in unnecessary administrative costs that would detract from the liquidity of the plan. It also saw a problem with assuming Contracts for Cure Costs at a cost of \$11 million along with administrative costs now when “unsecured creditors [were] slated to receive a distribution ranging from zero to a pro rata share of \$3 million under the Proposed Plan.”¹⁷⁶ Again, the Committee thought that this would detract from the liquidity arranged for within the proposed plan, and thus was not in its best interests as unsecured creditors.

This statement by the Committee reflects erosion in its belief that the Debtors and their counsel can make decisions regarding Reader’s Digest’s post-plan liquidity position that would appease all parties. The statement ends with the Committee pointing out that it is keeping “a cautious eye on the issue of valuation that must be faced in these cases,” but is still “committed to cooperate with the Debtors with the hope of reaching a basis for a consensual plan of reorganization.”¹⁷⁷ This is in stark contrast to the Committee’s tone of hope and affability in its

¹⁷⁴ *In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Statement of the Official Committee of Unsecured Creditors Regarding the Debtors’ Omnibus Motion for Entry of an Order Approving the Assumption of Certain Executory Contracts at 2 (Bankr. S.D.N.Y. Oct. 21, 2009).

¹⁷⁵ *In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Statement of the Official Committee of Unsecured Creditors Regarding the Debtors’ Omnibus Motion for Entry of an Order Approving the Assumption of Certain Executory Contracts at 2 (Bankr. S.D.N.Y. Oct. 21, 2009).

¹⁷⁶ *In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Statement of the Official Committee of Unsecured Creditors Regarding the Debtors’ Omnibus Motion for Entry of an Order Approving the Assumption of Certain Executory Contracts at 2 (Bankr. S.D.N.Y. Oct. 21, 2009).

¹⁷⁷ *In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Statement of the Official Committee of Unsecured Creditors Regarding the Debtors’ Omnibus Motion for Entry of an Order Approving the Assumption of Certain Executory Contracts at 4-5 (Bankr. S.D.N.Y. Oct. 21, 2009).

first statement where they believed it “was in the best interests of the creditors to reach the compromise achieved by the terms of the proposed Final DIP Order.”¹⁷⁸ Therefore, Reader’s Digest appears to be getting on the nerves of the creditors a bit with some of its motions that stray from the provisions of the proposed plan, when the parallel action in this case would occur “a mere two months or so in the future pursuant to the Proposed Plan.”¹⁷⁹ It would remain to be seen whether the parties could work such kinks out of their relationship in determining the final court-approved Chapter 11 plan. The Court did grant this particular motion on October 26 as proposed by the company and as (reluctantly) accepted by the Committee.¹⁸⁰

Two days later, the parent company and the Committee did bring an agreement to the Court concerning a stipulated order regarding creditor access to debtor information during the Chapter 11 proceedings, demonstrating how communication between the two had at least not broken down. This agreement made logical sense, as it provided that the Committee could not divulge or provide access to Reader’s Digest’s confidential information to any entity during the proceedings without the express consent of the debtor.¹⁸¹ This confidential information included “the acts, conduct, assets, liabilities, business operations, and financial condition of any or all of the Debtors..., any projections [and] analyses...prepared by the Debtors..., and any other matter

¹⁷⁸ *In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Statement of the Official Committee of Unsecured Creditors at 3 (Bankr. S.D.N.Y. Oct. 1, 2009).

¹⁷⁹ *In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Statement of the Official Committee of Unsecured Creditors Regarding the Debtors’ Omnibus Motion for Entry of an Order Approving the Assumption of Certain Executory Contracts at 4 (Bankr. S.D.N.Y. Oct. 21, 2009).

¹⁸⁰ *In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Order Approving the Assumption of Certain Executory Contracts & Authorizing the Payment of the Cure Amounts (Bankr. S.D.N.Y. Oct. 26, 2009).

¹⁸¹ *In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Notice of Presentment of the Stipulation and Agreed Order Between the Official Committee of Unsecured Creditors and the Debtors Regarding Creditor Access to Information at 2-3 (Bankr. S.D.N.Y. Oct. 23, 2009).

relevant to the Debtors' Chapter 11 cases..."¹⁸² While the parties couldn't necessarily fully agree on which course of action was best regarding the payment and assumption of executory contracts, they could at least agree that confidential information within these proceedings should stay confidential. Sometimes, it's the little battles that win the war.

As an aside to the negotiations between Reader's Digest and the Committee, LV Liquidation Corp., one of the 48 debtor subsidiaries of Reader's Digest involved in the Chapter 11 joint administration, and its Official Committee of Unsecured Creditors filed a motion to modify the automatic stay provision of the proposed plan pursuant to 11 U.S.C. §362(d)(1) in order to file an objection to a claim and commence an adversary proceeding against Direct Holdings U.S. regarding a transaction that occurred in 2006.¹⁸³ Because these claims, having occurred in 2006, could have been commenced prior to the commencement of the Chapter 11 proceedings, they are stayed by §362(a) unless the motion for modification is granted.¹⁸⁴ The motion lists the 12 factors that should be considered when determining whether the automatic stay provision should be modified "for cause," including "whether stay relief would result in a partial or complete resolution of the issues, whether the action involves primarily third parties, and the impact of the stay on the parties and the balance of the harms," among others.¹⁸⁵ This is not the type of motion that Judge Drain would accept on its face because it actually would have

¹⁸² *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Notice of Presentment of the Stipulation and Agreed Order Between the Official Committee of Unsecured Creditors and the Debtors Regarding Creditor Access to Information at 3 (Bankr. S.D.N.Y. Oct. 23, 2009).

¹⁸³ *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Joint Motion of the Plan Administrator of LV Liquidation Corp. for Entry of and Order Modifying the Automatic Stay at 6-7 (Bankr. S.D.N.Y. Oct. 21, 2009).

¹⁸⁴ *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Joint Motion of the Plan Administrator of LV Liquidation Corp. for Entry of and Order Modifying the Automatic Stay at 7 (Bankr. S.D.N.Y. Oct. 21, 2009).

¹⁸⁵ *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Joint Motion of the Plan Administrator of LV Liquidation Corp. for Entry of and Order Modifying the Automatic Stay at 8 (Bankr. S.D.N.Y. Oct. 21, 2009) (case citation omitted).

some meaningful ramifications on the outcome of LV's Chapter 11 proceeding, its timing, and its resolution. How Judge Drain handles this particular motion would demonstrate just how much of a transactional approach he would take with this proceeding, as the statutory requirement demands that he weigh at least some of the factors listed in the motion.¹⁸⁶

The court issued other minor orders during the time period directly after the Chapter 11 plan was proposed, including one approving procedures for the sale, transfer, or abandonment of de minimis assets and one authorizing the debtors to reject certain executory contracts. The motion to “sell, transfer, or abandon non-core assets” pursuant to Sections 105(a) and 363(b) of the Bankruptcy Code was granted because it was “unopposed.”¹⁸⁷ The proceedings of this order would only apply to “asset sale transactions outside the ordinary course of business” however.¹⁸⁸ If there was a lien or encumbrance on the asset, the consent of the party holding said lien or encumbrance was necessary to sell the property.¹⁸⁹ This order again demonstrated the transactional approach Judge Drain took with the motions filed before him that were unopposed by the other parties in the proceedings. The order authorizing Reader's Digest to reject certain executory contracts was also granted through a very cursory Judge Drain order.¹⁹⁰

After the motion to approve the proposed plan disclosure statement was filed, the docket revealed that Verizon Business Global LLC filed an opposition to the motion on November 2.

¹⁸⁶ *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Joint Motion of the Plan Administrator of LV Liquidation Corp. for Entry of and Order Modifying the Automatic Stay at 8-9 (Bankr. S.D.N.Y. Oct. 21, 2009).

¹⁸⁷ *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Order Approving Procedures for the Sale, Transfer, or Abandonment of De Minimis Assets at 1-2 (Bankr. S.D.N.Y. Oct. 26, 2009).

¹⁸⁸ *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Order Approving Procedures for the Sale, Transfer, or Abandonment of De Minimis Assets at 2 (Bankr. S.D.N.Y. Oct. 26, 2009).

¹⁸⁹ *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Order Approving Procedures for the Sale, Transfer, or Abandonment of De Minimis Assets at 3 (Bankr. S.D.N.Y. Oct. 26, 2009).

¹⁹⁰ *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Order Authorizing Debtors to Reject Certain Executory Contracts (Bankr. S.D.N.Y. Oct. 26, 2009).

However, the substance of this opposition was not all that important to the transaction, as Verizon “[did] not oppose the relief requested, but instead request[ed] that [they] receive notice of any assumption or rejection” of the special Customer Arrangement it had with Reader’s Digest.¹⁹¹ Therefore, Verizon’s only opposition to the Disclosure Statement was that they were not included in it, and they believed they should have been given their customer arrangement with Reader’s Digest.¹⁹² This opposition was withdrawn a day later, seemingly because the parties either agreed to inform Verizon should any proceedings concern their particular agreement with Reader’s Digest or agreed that the agreement in question had nothing to do with the Chapter 11 proceedings.¹⁹³ Thus, this opposition to the disclosure statement was really much ado about nothing.

On November 17, Reader’s Digest filed a notice of an amended proposed order approving the adequacy of the Chapter 11 Proposed Plan Disclosure Statement. The amendment to the Disclosure Statement was also a major amendment to the plan, allowing Debtors with Class 6 claims, Senior Subordinated Note Claims, to vote whether or not they approved the proposed plan.¹⁹⁴ Under the original Disclosure Statement, Class 6 was predetermined to have rejected the plan because they were to receive nothing for their subordinated note claims, and

¹⁹¹ *In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Opposition to Debtors’ Motion for Entry of an Order Approving Adequacy of Disclosure Statement Brought by Verizon Business Global LLC at 3 (Bankr. S.D.N.Y. Nov. 2, 2009).

¹⁹² *In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Opposition to Debtors’ Motion for Entry of an Order Approving Adequacy of Disclosure Statement Brought by Verizon Business Global LLC at 3 (Bankr. S.D.N.Y. Nov. 2, 2009).

¹⁹³ *In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Notice of Withdrawal of Limited Opposition to Debtors’ Motion for Entry of an Order Approving Adequacy of the Disclosure Statement (Bankr. S.D.N.Y. Nov. 3, 2009).

¹⁹⁴ *In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Notice of Filing of the Amended Proposed Order Approving the Adequacy of the Disclosure Statement (Bankr. S.D.N.Y. Nov. 17, 2009) (This information was taken from Exhibit 2-D, which contained the Class 6 Ballot for voting on the Proposed Plan.).

common sense would have said that they would reject the proposed plan.¹⁹⁵ This amended Disclosure Statement would be approved by the Court pursuant to Section 1125(a)(1) of the Bankruptcy Code as well as Bankruptcy Rule 3017(b), and with that approval, the company would only be authorized to “make non-material changes to the Disclosure Statement, the Plan, and related documents...before distributing [voting ballots] to each [voting] creditor.”¹⁹⁶ The proposed order also provided a “fast track” schedule for the submission of documents with the court as well as the solicitation of ballots from creditors.¹⁹⁷ Otherwise, the proposed amended Disclosure Statement was substantially the same as the originally proposed Disclosure Statement. The question remained as to whether the different classes of claim-holders (now 4 instead of 3) would vote to accept the proposed plan and the amended Disclosure Statement.

C. Creditor Opposition to the Proposed Plan and the Disclosure Statement

On November 17, the Official Committee of Unsecured Creditors filed an objection to Reader’s Digest’s Disclosure Statement. The tone of this objection not only mirrored, but actually furthered, the feeling stemming from the second Committee statement that the Committee and Reader’s Digest were beginning to feel at odds with one another.¹⁹⁸ The beginning of the objection claimed that the Debtors were like “The Red Ball Express” in its actions because Reader’s Digest was filing statements and the proposed plan well ahead of the

¹⁹⁵*In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Proposed Joint Chapter 11 Plan of Reorganization at 13 (Bankr. S.D.N.Y. Oct. 10, 2009).

¹⁹⁶*In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Notice of Filing of the Amended Proposed Order Approving the Adequacy of the Disclosure Statement at 5 (Bankr. S.D.N.Y. Nov. 17, 2009).

¹⁹⁷*In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Notice of Filing of the Amended Proposed Order Approving the Adequacy of the Disclosure Statement at 6-7 (Bankr. S.D.N.Y. Nov. 17, 2009).

¹⁹⁸*In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Statement of the Official Committee of Unsecured Creditors Regarding the Debtors’ Omnibus Motion for Entry of an Order Approving the Assumption of Certain Executory Contracts at 4-5 (Bankr. S.D.N.Y. Oct. 21, 2009).

court's timetable.¹⁹⁹ Later in the same paragraph, using much more eloquent and academic terms, the Committee called the Debtors' timeline for action "unnecessarily aggressive as compared to even the rapid milestones in the Plan Restructuring Agreement."²⁰⁰ Then, reverting back to its analogy, the Committee states that the "Red Ball Express...intend[s] to flatten all in [its] way," rather than using the time allotted to examine different agreements that would grant retirees and holders of senior subordinated notes "any distribution on account of their claims."²⁰¹ These retirees and holders of notes would receive nothing, while, "in flagrant disregard of the absolute priority rule," certain shareholders would be released from all claims against them as well as gain a potential "dividend" from estate property.²⁰² Clearly, the Committee was not happy with either the speed or the substance of the disclosure statement and the proposed plan, and had enough cooperating with Reader's Digest without objecting to these provisions.

To further its argument that the proposed plan should be amended or completely rewritten, the Committee even claimed there could be possible conflicts of interest involved, where certain individuals and entities were receiving preferential treatment due to their filial relation to Reader's Digest's CFO.²⁰³ The Committee believed that even the hint of this type of treatment "warrant[ed] denying approval of the Disclosure Statement and compel[led] a detailed

¹⁹⁹ *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Objection of the Official Committee of Unsecured Creditors to Debtors' Disclosure Statement at 2 (Bankr. S.D.N.Y. Nov. 17, 2009).

²⁰⁰ *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Objection of the Official Committee of Unsecured Creditors to Debtors' Disclosure Statement at 2 (Bankr. S.D.N.Y. Nov. 17, 2009).

²⁰¹ *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Objection of the Official Committee of Unsecured Creditors to Debtors' Disclosure Statement at 3 (Bankr. S.D.N.Y. Nov. 17, 2009).

²⁰² *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Objection of the Official Committee of Unsecured Creditors to Debtors' Disclosure Statement at 3 (Bankr. S.D.N.Y. Nov. 17, 2009).

²⁰³ *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Objection of the Official Committee of Unsecured Creditors to Debtors' Disclosure Statement at 4 (Bankr. S.D.N.Y. Nov. 17, 2009).

investigation.”²⁰⁴ Also, it believed that Reader’s Digest was “*undervalue[ing]* its] business” by evidence of its “overly conservative business plan,” and therefore there needed to be a better valuation of the assets and liabilities of the company done on a more conservative schedule.²⁰⁵ Because of all these reasons, among others, the Committee believed “precious judicial resources” should not be wasted on “a plan that is patently unconfirmable,” and that “th[e] Court should deny...the Debtors’ request for approval of the Disclosure Statement.”²⁰⁶

Clearly, the Committee did not believe that the Disclosure Statement, as amended and proposed, disclosed enough proper information to the creditors who were to vote on it for them to make a proper, informed decision. The objection to the disclosure statement had a very adversarial and dismissive tone, and in the Committee’s opinion, this tone was appropriate for the proposed plan put before the court. The Committee believed that certain parties in the proceedings were going to receive preferential treatment, while other parties, such as the retirees from Reader’s Digest, would receive nothing of what they rightfully deserved. Therefore, the Committee beseeched the Court to reject the plan until it was amended to be much more reflective of what the Committee believed it should be. To get to that point, the Committee believed that much more time, analysis, and disclosure was necessary.

D. The Proposed Plan is Amended....Twice

²⁰⁴ *In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Objection of the Official Committee of Unsecured Creditors to Debtors’ Disclosure Statement at 4 (Bankr. S.D.N.Y. Nov. 17, 2009).

²⁰⁵ *In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Objection of the Official Committee of Unsecured Creditors to Debtors’ Disclosure Statement at 6-7 (Bankr. S.D.N.Y. Nov. 17, 2009).

²⁰⁶ *In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Objection of the Official Committee of Unsecured Creditors to Debtors’ Disclosure Statement at 7-8 (Bankr. S.D.N.Y. Nov. 17, 2009).

On November 20, just three days after the Committee filed its objection to the proposed Plan and the proposed Disclosure Statement, Reader's Digest filed its second amended proposed Chapter 11 plan to the court. The first noticeable difference between the first proposed plan and the second did not derive from the Committee's objection, and regarded the company's agreement to pay all of the U.S. Trustee quarterly fees until a Final Order accepting the Chapter 11 plan was entered.²⁰⁷ The next difference was the inclusion of Class 6 Senior Subordinated Note Claims holders in the group of claimholders who were entitled to vote on the proposed plan.²⁰⁸ Only those claimholders under Class 6 who were an Accredited Investor or a Qualified Institutional Buyer and voted in favor of the proposed plan were "eligible to participate in the Rights Offering."²⁰⁹ Therefore, a focus of the second proposed plan was to include members of Class 6 in the voting procedures, but only a select group of the Class 6 claimants. If the Class 6 claimant did not vote in favor of the plan, then he/she would not receive any of the proceeds of the distributions according to the additional provisions in this plan. This seems like it's forcing these claimants to vote in favor of the proposed plan even if they don't believe in it just so that they could possibly receive something for the claims they hold. Under the Bankruptcy Code, if one of the impaired classes votes in favor of the plan, then the plan is deemed accepted, so this seems like a manufactured way to pass the plan and have it accepted by the Court. This could be a problem that the Committee would object to in the future.

²⁰⁷ *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Second Amended Proposed Joint Chapter 11 Plan of Reorganization at 13 (Bankr. S.D.N.Y. Nov. 20, 2009).

²⁰⁸ *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Second Amended Proposed Joint Chapter 11 Plan of Reorganization at 13 (Bankr. S.D.N.Y. Nov. 20, 2009).

²⁰⁹ *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Second Amended Proposed Joint Chapter 11 Plan of Reorganization at 16 (Bankr. S.D.N.Y. Nov. 20, 2009).

Another change involved Class 10 Intercompany Claims, and the amended plan does not impair these claims, but changes the way that the claims are handled should they become compromised by the plan's proceedings.²¹⁰ In the case of a compromised Class 10 claim, the beneficiary would not receive less than if it had a Class 5 claim.²¹¹ How this doesn't impair this class of claims doesn't make sense to me, as Class 5 itself is listed as an impaired class, but the language and logistics of the plan may be beyond what I could comprehend as far as the nuances go. Therefore, I will go no further into this and focus on other parts of the amended plan that I do comprehend more fully. The last substantial portion of the second amended proposed plan that was different from the first was the inclusion of a provision not releasing the Debtors from any claim brought against it "by the United States Government or any of its agencies."²¹² Again, this was not brought about by any portion of the Committee's objection to the first plan, but was instead an amendment done entirely by Reader's Digest and its counsel. Thus, the second amended plan substantially focused on changing the voting status of Class 6 claims and the treatment of certain Class 10 claims, rather than changing anything that the Committee requested. That could have put the parties even more at odds with one another than they already were.

After the second amended plan was proposed to the creditors and the court, Judge Drain granted the motion of LV Liquidation to modify the automatic stay provision and "to expunge

²¹⁰*In re Reader's Digest Assoc., Inc.*, No. 09-23529, Second Amended Proposed Joint Chapter 11 Plan of Reorganization at 17 (Bankr. S.D.N.Y. Nov. 20, 2009).

²¹¹*In re Reader's Digest Assoc., Inc.*, No. 09-23529, Second Amended Proposed Joint Chapter 11 Plan of Reorganization at 17 (Bankr. S.D.N.Y. Nov. 20, 2009).

²¹²*In re Reader's Digest Assoc., Inc.*, No. 09-23529, Second Amended Proposed Joint Chapter 11 Plan of Reorganization at 40 (Bankr. S.D.N.Y. Nov. 20, 2009).

the Direct Holdings U.S. Claim filed in the LV Chapter 11 Cases.”²¹³ The reasoning behind the granting of this motion isn’t stated in the motion, but as aforementioned, it required some weighing of factors by Judge Drain, which must be assumed was completed.²¹⁴ Therefore, the court was willing to modify the automatic stay provisions included in the motions and proposed plan if cause was shown, which LV Liquidation must have done, because otherwise the motion would not have been granted. Unfortunately, more reasoning was not included in the order, because it would have been interesting to see why Judge Drain had allowed the motion, but in these “fast track” Chapter 11 proceedings, the efficiency of orders is of the utmost importance.

Without further opposition or objection by the Committee of Unsecured Creditors, Reader’s Digest filed a third amended proposed plan on November 24, just four days after it had filed its second amended proposed plan. This new plan included the “New Warrants,” which were “Agreements to purchase up to 6.5% of the New Common Stock on a fully diluted basis.”²¹⁵ These Agreements were part of the new proposition for holders of Class 3 Prepetition Credit Agreement Claims, and were apparently an attempt at taking what the Committee stated in its objection to the first proposed plan and trying to rectify the discrepancy between what the creditors wanted and what they were getting in that plan.²¹⁶ The New Warrants were also to be distributed to holders of Class 6 Claims, as they were to receive a pro rata share of these

²¹³*In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Stipulation and Agreed Order Resolving Joint Motion of Turn One Group, Plan Administrator of LV Liquidation Corp. at 5 (Bankr. S.D.N.Y. Nov. 23, 2009).

²¹⁴*In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Joint Motion of the Plan Administrator of LV Liquidation Corp. for Entry of and Order Modifying the Automatic Stay at 8 (Bankr. S.D.N.Y. Oct. 21, 2009) (case citation omitted).

²¹⁵*In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Third Amended Proposed Joint Chapter 11 Plan of Reorganization at 8 (Bankr. S.D.N.Y. Nov. 24, 2009).

²¹⁶*In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Third Amended Proposed Joint Chapter 11 Plan of Reorganization at 15 (Bankr. S.D.N.Y. Nov. 24, 2009).

Warrants in the third amended proposed plan.²¹⁷ Like in the second proposed plan however, the receipt of this pro rata share was still dependent on their voting in the affirmative for the plan; those who voted to scrap the plan still would not receive any share of the New Warrants.²¹⁸ This still would not solve the possible problem of a forced acceptance of the plan that existed in the second plan. Unlike in the second plan, Claim 6 Holders did not need to be Accredited Investors or Qualified Institutional Buyers to receive their respective pro rata share of the New Warrants if they voted to accept the plan.²¹⁹ Therefore, the third plan included more claimants than the two previously proposed plans into the group who would receive part of the plan's distributions if the plan were accepted and carried out. This was the only substantive change from the previous 2 proposed plans that was included in the third plan; all of the other changes proposed in the third plan were merely procedural and did not get to the heart of the matter.²²⁰ The third plan reflected Reader's Digest's willingness to start compromising with the Committee of Unsecured Creditors and hopefully provide for some of the provisions it was expecting from the Chapter 11 plan and proceedings. Whether the Committee and the claimholders would accept this proposed plan remained to be seen.

III. Between the Third Amended Proposed Plan and Court Approval

A. Judge Drain Finally Approves the Debtors' Disclosure Statement

²¹⁷*In re Reader's Digest Assoc., Inc.*, No. 09-23529, Third Amended Proposed Joint Chapter 11 Plan of Reorganization at 17 (Bankr. S.D.N.Y. Nov. 24, 2009).

²¹⁸*In re Reader's Digest Assoc., Inc.*, No. 09-23529, Third Amended Proposed Joint Chapter 11 Plan of Reorganization at 17 (Bankr. S.D.N.Y. Nov. 24, 2009).

²¹⁹*In re Reader's Digest Assoc., Inc.*, No. 09-23529, Third Amended Proposed Joint Chapter 11 Plan of Reorganization at 17 (Bankr. S.D.N.Y. Nov. 24, 2009).

²²⁰*In re Reader's Digest Assoc., Inc.*, No. 09-23529, Third Amended Proposed Joint Chapter 11 Plan of Reorganization (Bankr. S.D.N.Y. Nov. 24, 2009).

On November 30, Judge Drain granted the motion approving the third amended Disclosure Statement associated with the third amended Proposed Plan.²²¹ From this point forward, the Debtors, “with the consent of the Creditors’ Committee, wh[ose] consent shall not be unreasonably withheld,” were only authorized to “make non-material changes to the Disclosure Statement.”²²² With the Disclosure Statement approved, Reader’s Digest could begin solicitation procedures and begin receiving votes from the voting Classes of Claimholders on whether they accept or reject the proposed plan. This marked the clearing of a gigantic hurdle between the proposal of the plan and its acceptance, as the claimholders could now decide, with proper disclosure in hand, whether they agreed with the proposed plan.

B. Motions and Filings Between Proposal and Confirmation

On December 4, Reader’s Digest filed a motion to sell its CompassLearning Business under Bankruptcy Code Section 363(b) through bidding procedures with “Stalking Horse Bid” protections.²²³ CompassLearning was a “wholly-owned subsidiary of WRC Media..., which, in turn, is wholly-owned by Reader’s Digest.”²²⁴ It was part of the “School and Educational Services” component of the company’s complex business framework, and had “declining revenue and operating profits” for fiscal 2008 and 2009 that forced its sale.²²⁵ Therefore, the

²²¹*In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Order Approving the Adequacy of the Debtors’ Disclosure Statement (Bankr. S.D.N.Y. Nov. 30, 2009).

²²²*In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Order Approving the Adequacy of the Debtors’ Disclosure Statement at 5 (Bankr. S.D.N.Y. Nov. 30, 2009).

²²³*In re Reader’s Digest Assoc., Inc.*, Debtors’ Motion for Entry of Order Approving and Authorizing Bidding Procedures with Stalking Horse Bid Protections for Sale of CompassLearning (Bankr. S.D.N.Y. Dec. 4, 2009).

²²⁴ *In re Reader’s Digest Assoc., Inc.*, Debtors’ Motion for Entry of Order Approving and Authorizing Bidding Procedures with Stalking Horse Bid Protections for Sale of CompassLearning at 5-6 (Bankr. S.D.N.Y. Dec. 4, 2009).

²²⁵*In re Reader’s Digest Assoc., Inc.*, Debtors’ Motion for Entry of Order Approving and Authorizing Bidding Procedures with Stalking Horse Bid Protections for Sale of CompassLearning at 6 (Bankr. S.D.N.Y. Dec. 4, 2009).

company believed it was best, “in association with CompassLearning, WRC, and the stalking horse bidder,” to discuss the sale of CompassLearning with 8 potential purchasers determined through “extensive, arms-length, and good faith negotiations.”²²⁶ After these discussions, the parties devised an Asset-Purchase Agreement (“APA”) subject to competitive bidding against the Stalking Horse Bidder, CompassLearning Acquisition Corp.²²⁷

The APA provided for CompassLearning Acquisition Corp., as the Stalking Horse Bidder, to purchase CompassLearning for \$20.25 million (the true total was \$43.18 million if assumed liabilities were included) subject to competitive higher bids from other potential purchasers.²²⁸ Should another party bid higher and win the rights to purchase CompassLearning, the break-up fee to be provided to the Stalking Horse Bidder was \$607,500, or 3% of the initial purchase price of \$20.25 million.²²⁹ The Bidding Procedures were simple, and were meant to “permit a fair and efficient competitive sale process..., to confirm that the stalking horse bid is, indeed, the best offer, or promptly identify the alternative bid that is higher or otherwise better.”²³⁰ If no bid was better than the Stalking Horse Bidder’s, then CompassLearning would be sold to it for the purchase price stated in the APA. However, if a more enticing bid were to arise, then that bidder would pay the purchase price equal to the bid it put in, and Reader’s

²²⁶ *In re Reader’s Digest Assoc., Inc.*, Debtors’ Motion for Entry of Order Approving and Authorizing Bidding Procedures with Stalking Horse Bid Protections for Sale of CompassLearning at 7 (Bankr. S.D.N.Y. Dec. 4, 2009).

²²⁷ *In re Reader’s Digest Assoc., Inc.*, Debtors’ Motion for Entry of Order Approving and Authorizing Bidding Procedures with Stalking Horse Bid Protections for Sale of CompassLearning at 6-8 (Bankr. S.D.N.Y. Dec. 4, 2009).

²²⁸ *In re Reader’s Digest Assoc., Inc.*, Debtors’ Motion for Entry of Order Approving and Authorizing Bidding Procedures with Stalking Horse Bid Protections for Sale of CompassLearning at 8 (Bankr. S.D.N.Y. Dec. 4, 2009).

²²⁹ *In re Reader’s Digest Assoc., Inc.*, Debtors’ Motion for Entry of Order Approving and Authorizing Bidding Procedures with Stalking Horse Bid Protections for Sale of CompassLearning at 8 (Bankr. S.D.N.Y. Dec. 4, 2009).

²³⁰ *In re Reader’s Digest Assoc., Inc.*, Debtors’ Motion for Entry of Order Approving and Authorizing Bidding Procedures with Stalking Horse Bid Protections for Sale of CompassLearning at 13 (Bankr. S.D.N.Y. Dec. 4, 2009).

Digest would pay the break-up fee stated in the APA to the Stalking Horse Bidder. The Court would then examine this motion, and on December 18, Judge Drain approved the motion and bidding procedures because there was a “compelling and sound business justification for authorizing the payment of the break-up fee and the expense reimbursement” to the Stalking Horse Bidder.²³¹ Therefore, the APA for CompassLearning under Section 363(b) was approved, and Reader’s Digest had availed itself to more liquidity through the sale of one of its flailing subsidiaries, something the Committee of Unsecured Creditors had to be thrilled with.

CompassLearning was sold to Marlin Equity, the Guarantor of the Stalking Horse Bidder, at \$32.5 million in an auction that took place on January 11, 2010 in Nassau County, New York.²³² CompassLearning Acquisition Corp. was an acquisition subsidiary of Marlin Equity, so the winning bidder was indeed the Stalking Horse Bidder, and the break-up fee did not need to be paid.²³³

On December 11, Reader’s Digest filed a Supplement to its third amended proposed plan that contained the specific terms of the Exit Credit Agreement with J.P. Morgan Chase Bank in its capacity as Lender.²³⁴ It also contained such documents as the New Warrant Agreement already discussed in the Third Proposed Plan, the Shareholder Agreement, and the Enterprise Value Maximization Plan.²³⁵ All of these documents were specific and tangible manifestations

²³¹ *In re Reader’s Digest Assoc., Inc.*, Order Approving and Authorizing Bidding Procedures for Sale of CompassLearning at 3 (Bankr. S.D.N.Y. Dec. 18, 2009).

²³² *In re Reader’s Digest Assoc., Inc.*, Notice of Sale of Substantially All the Assets of CompassLearning at 48 (Bankr. S.D.N.Y. Jan. 11, 2010).

²³³ Marlin Equity Partners – Portfolio, <http://www.marlinequity.com/portfolio.html> (last visited April 30, 2010).

²³⁴ *In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Supplement for the Third Amended Proposed Joint Chapter 11 Plan of Reorganization (Bankr. S.D.N.Y. Dec. 11, 2009).

²³⁵ *In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Supplement for the Third Amended Proposed Joint Chapter 11 Plan of Reorganization (Bankr. S.D.N.Y. Dec. 11, 2009).

of the agreements as they were listed in the Third Proposed Plan, and warrant no further discussion beyond that, as any interesting or extraordinary provisions were presented in that portion of the story. These documents were filed so that the court could see the exact verbiage of the provisions that the third proposed plan had already requested, so it was more of a convenience filing than anything else.

On December 15 and 16, the company filed notice to the court of the schedules of executory contracts and unexpired leases that it proposed to be both assumed and rejected. The schedule of executory contracts and unexpired leases to be assumed was the important filing, as it was the “Contract-Lease Assumption Schedule” to be filed as part of the plan timeline approved by the court via the Accepted Disclosure Statement.²³⁶ These assumptions were incredibly numerous, and included the cure amounts the company would pay in order to fully assume the rights.²³⁷ These cure amounts were important to the Committee of Unsecured Creditors because it delineates the payments necessary to cure the problems with the leases, which would require liquidity that would otherwise go to fulfilling claims against the company. The majority of the proposed assumed leases would cost the company nothing, which the Committee would obviously approve, but some of the leases’ estimated cure amounts were in the 5-digit range, which might cause the Committee to think twice about approving the schedule in light of the company’s current financial standing.²³⁸

²³⁶*In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Order Approving the Adequacy of the Debtors’ Disclosure Statement (Bankr. S.D.N.Y. Nov. 30, 2009).

²³⁷*In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Notice of Filing of Schedule of Executory Contracts and Unexpired Leases Proposed to be Assumed (Bankr. S.D.N.Y. Dec. 15, 2009).

²³⁸*In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Notice of Filing of Schedule of Executory Contracts and Unexpired Leases Proposed to be Assumed (Bankr. S.D.N.Y. Dec. 15, 2009).

Only one objection was filed concerning the Contract-Lease Assumption Schedule, and it was by Original Sound Record Co. on January 5, 2010.²³⁹ In the Schedule, the estimated cure amount for the executory contract with Original Sound Record was \$0.00, an amount that Original Sound was rather displeased with seeing.²⁴⁰ They officially objected to this amount, and instead sought the pre-petition amount they were owed under the IP Agreement between the two parties, which was \$53,664.75.²⁴¹ With the amounts of money in question throughout this plan, it would seem that Reader's Digest lucked out in only receiving one objection to its Schedule for a paltry \$53,000 in comparison to some of the other executory agreements listed. As of May 10, 2010, this objection to the Schedule has not been decided.

A similarly small objection to the cure amounts proposed by Reader's Digest in its Proposed Plan and corresponding supplements was brought by Omniture, Inc. on January 4, 2010.²⁴² The proposed cure amount for Omniture was \$56,672.45, but Omniture claimed that Reader's Digest owed it over \$300,000 for services rendered.²⁴³ Omniture sought the full amount of this \$300,000, and as of yet, the claim has been unresolved.²⁴⁴ Again, in relation to

²³⁹ *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Conditional Objection in Part to the Schedule of Executory Contracts and Unexpired Leases to be Assumed (Bankr. S.D.N.Y. Jan. 5, 2010).

²⁴⁰ *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Conditional Objection in Part to the Schedule of Executory Contracts and Unexpired Leases to be Assumed at 1 (Bankr. S.D.N.Y. Jan. 5, 2010).

²⁴¹ *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Conditional Objection in Part to the Schedule of Executory Contracts and Unexpired Leases to be Assumed at 1 (Bankr. S.D.N.Y. Jan. 5, 2010).

²⁴² *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Omniture's Objection to Cure Amounts (Bankr. S.D.N.Y. Jan. 4, 2010).

²⁴³ *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Omniture's Objection to Cure Amounts (Bankr. S.D.N.Y. Jan. 4, 2010).

²⁴⁴ *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Omniture's Objection to Cure Amounts (Bankr. S.D.N.Y. Jan. 4, 2010).

the other cure amounts both separately and in the aggregate, Reader's Digest may be lucky to only have to settle this amount with Omniture.

On December 30, just before the new year, Reader's Digest filed supplements to both the third amended Proposed Plan and the Contract-Lease Schedule. The supplement to the Proposed Plan itself added the forms for the Enterprise Value Maximization Plan, the Variable Compensation Plan, and the Term Sheet for Interim Executive Severance Plan.²⁴⁵ Again, this amendment was just to provide the court and the parties involved with the exact words of the different contract agreements involved in the Third Proposed Plan. No substantive changes were made to the Proposed Plan itself or its consequences. The supplement to the Contract-Lease Schedule merely stated the management employment agreements to be assumed in the transactions proposed in the Schedule itself.²⁴⁶ Again, this filing did not change any substantive portion of the proposed Contract-Lease Schedule or its proposed results or cure amounts. Therefore, these motions filed by Reader's Digest between the third amended proposal and its eventual confirmation were mainly procedural, and had no effect on the substantive portions of the agreements supplemented. This was in accordance with Judge Drain's prior order that the company would not make any material change to the Disclosure Statement, the Plan, or any other associated documents without the consent of the Court and the creditors.²⁴⁷

An interesting, and as of yet unresolved, problem arose on December 31, when Travis County, Texas filed an objection with the court against the Third Amended Proposed Plan,

²⁴⁵ *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Notice of Filing First Supplement to the Plan Supplement for the Third Amended Proposed Joint Chapter 11 Plan of Reorganization at 2 (Bankr. S.D.N.Y. Dec. 30, 2009).

²⁴⁶ *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Notice of Filing First Supplement to the Contract/Lease Schedule for the Third Amended Proposed Joint Chapter 11 Plan of Reorganization at 2, 6-9 (Bankr. S.D.N.Y. Dec. 30, 2009).

²⁴⁷ *In re Reader's Digest Assoc., Inc.*, No. 09-23529, Order Approving the Adequacy of the Debtors' Disclosure Statement at 5 (Bankr. S.D.N.Y. Nov. 30, 2009).

believing that it had a “Secured Claim...secured by a lien on the Debtors’ Property.”²⁴⁸ Travis County believed that the Proposed Plan’s failure to pay this secured claim “render[ed] the plan unfair and inequitable” and a violation of “Sections 511(a) and 1129(b)(2)(A) of the Bankruptcy Code [as well as]...Texas Property Code.”²⁴⁹ Travis County also refused to allow “state created property rights [to] be destroyed in a bankruptcy context” by settling the claim in a way that was “much less favorable than the statutory treatment of the claim under state law.”²⁵⁰ Although this claim has not been settled as of yet, Travis County does bring up a possibly valid and definitely serious question of the Proposed Plan’s settlement of certain state claims that may be encumbered by the company’s liens. It will be interesting to see how this claim plays out post-confirmation.

On January 6, Reader’s Digest filed three separate omnibus objections to three different types of claims. The first omnibus objection was against certain duplicate claims and subsequently amended claims.²⁵¹ The objection’s Exhibit A lists the claims that the company believed should be disallowed under Bankruptcy Rule 3007(d) because they were either duplicates of already handled claims or because they were already amended or superseded.²⁵² The second omnibus objection was against certain claims that had already been satisfied during

²⁴⁸*In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Travis County’s Objection to the Third Amended Proposed Joint Chapter 11 Plan of Reorganization at 1-2 (Bankr. S.D.N.Y. Dec. 31, 2009).

²⁴⁹*In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Travis County’s Objection to the Third Amended Proposed Joint Chapter 11 Plan of Reorganization at 2 (Bankr. S.D.N.Y. Dec. 31, 2009).

²⁵⁰*In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Travis County’s Objection to the Third Amended Proposed Joint Chapter 11 Plan of Reorganization at 2 (Bankr. S.D.N.Y. Dec. 31, 2009).

²⁵¹*In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Debtors’ First Omnibus Objection to Certain Duplicate Claims and Subsequently Amended Claims (Bankr. S.D.N.Y. Jan. 6, 2010).

²⁵²*In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Debtors’ First Omnibus Objection to Certain Duplicate Claims and Subsequently Amended Claims (Bankr. S.D.N.Y. Jan. 6, 2010) (The listing of claims is contained within Exhibit A and is too numerous to write here exhaustively).

the case in accordance with the Bankruptcy Code.²⁵³ The reasoning for this omnibus motion is pretty self-explanatory and needs no further discussion; if a claim has been satisfied, there is no reason to bring it again. The last of the 3 omnibus objections was brought against the hearing of claims that had been brought in the wrong proceeding.²⁵⁴ These claims were brought in the correct proceeding, but have been brought against multiple subsidiary debtors when “the claims should only exist against one [singular] Debtor.”²⁵⁵ In other words, these claims will have already been amended, superseded, or handled when brought against the second or other subsequent Debtors, and are thus not rightfully brought in the proceedings against those Debtors also. There are already enough claims against Reader’s Digest, and thus they shouldn’t have to hear some of them twice when such hearing isn’t allowed by the Bankruptcy Code or by fundamental legal principles.

IV. The Third Amended Plan is Confirmed, and the Beat Goes On

A. The Memorandum of Law

On January 12, 2010, Reader’s Digest filed its Memorandum of Law in Response to the Objections brought against the Third Amended Proposed Plan.²⁵⁶ Needless to say, Reader’s Digest believed the court should approve the Proposed Plan because it had “reached agreements with their key economic stakeholders on the terms of a complicated, multi-national financial and

²⁵³*In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Debtors’ Second Omnibus Objection to Certain Claims Satisfied During the Case (Bankr. S.D.N.Y. Jan. 6, 2010).

²⁵⁴*In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Debtors’ Third Omnibus Objection to Certain Claims Filed in the Wrong Case (Bankr. S.D.N.Y. Jan. 6, 2010).

²⁵⁵*In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Debtors’ Third Omnibus Objection to Certain Claims Filed in the Wrong Case at 5 (Bankr. S.D.N.Y. Jan. 6, 2010).

²⁵⁶*In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Reply to Objections to Confirmation of the Third Amended Proposed Joint Chapter 11 Plan of Reorganization (Bankr. S.D.N.Y. Jan. 12, 2010).

operational restructuring.”²⁵⁷ Interestingly, the Memorandum of Law also stated that the company had come to an agreement with the Committee of Unsecured Creditors, something that didn’t look possible when the 2 parties were at odds with one another previously.²⁵⁸ One main objection to the Proposed Plan remained however, and that was whether the Plan “unfairly discriminate[d] by treating holders of general unsecured claims different than trade creditors whose continued support generates value and goodwill essential to the going concern enterprise.”²⁵⁹ These general unsecured claims at question were brought by the Retirees of Reader’s Digest.²⁶⁰

In response to these claims of unfairness, Reader’s Digest respectfully submitted that any feasible plan arranged by the company would “accomplish nothing” because the Retirees “would be entitled to share in less than \$1 million in additional value.”²⁶¹ This would be after an extensive and painstaking alternative plan structure where distributions to trade vendors would need to be moved around and reorganized, and the company believed that such effort was “not meaningful.”²⁶² The company bolstered this claim by stating that the Proposed Plan satisfies all the requirements of Section 1129 of the Bankruptcy Code, and that there are “legitimate,

²⁵⁷*In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Reply to Objections to Confirmation of the Third Amended Proposed Joint Chapter 11 Plan of Reorganization at 1 (Bankr. S.D.N.Y. Jan. 12, 2010).

²⁵⁸*In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Reply to Objections to Confirmation of the Third Amended Proposed Joint Chapter 11 Plan of Reorganization at 2 (Bankr. S.D.N.Y. Jan. 12, 2010).

²⁵⁹*In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Reply to Objections to Confirmation of the Third Amended Proposed Joint Chapter 11 Plan of Reorganization at 2-3 (Bankr. S.D.N.Y. Jan. 12, 2010).

²⁶⁰*In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Reply to Objections to Confirmation of the Third Amended Proposed Joint Chapter 11 Plan of Reorganization at 3 (Bankr. S.D.N.Y. Jan. 12, 2010).

²⁶¹*In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Reply to Objections to Confirmation of the Third Amended Proposed Joint Chapter 11 Plan of Reorganization at 3 (Bankr. S.D.N.Y. Jan. 12, 2010).

²⁶²*In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Reply to Objections to Confirmation of the Third Amended Proposed Joint Chapter 11 Plan of Reorganization at 6 (Bankr. S.D.N.Y. Jan. 12, 2010).

reasonable business reasons supporting the disparate treatment of the dissimilar Claims in Classes 4 and 5.”²⁶³ One of these business reasons was that the Plan “could not be consummated absent the discrimination because the senior secured lenders...have...required as a condition for their debt for equity exchange that ongoing operations claims be paid in full.”²⁶⁴ To make a long story short, Reader’s Digest believed that the Proposed Plan was the best they could do for the Retirees, and while it isn’t perfect, no other Plan would be able to provide for what the Retirees wanted given the current financial condition of the company.

B. The Court-Approved Chapter 11 Plan

On January 19, 2010, Judge Drain issued his Final Order approving and confirming the Third Amended Proposed Chapter 11 Plan for Reader’s Digest.²⁶⁵ After the voting tabulations took place on January 11, “Classes 3, 4, 6, and 10 voted to accept the plan,” while Class 5 Claimholders voted to reject the Plan.²⁶⁶ Because “at least one impaired Class of Claims...voted to accept the Plan,” Sections 1124 and 1126 of the Bankruptcy Code were satisfied, and Judge Drain was allowed to examine the Plan himself for the Court’s final confirmation.²⁶⁷ The Plan, in the Court’s opinion, also satisfied all of the requirements of Section 1123 of the Bankruptcy

²⁶³*In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Reply to Objections to Confirmation of the Third Amended Proposed Joint Chapter 11 Plan of Reorganization at 7-8 (Bankr. S.D.N.Y. Jan. 12, 2010).

²⁶⁴*In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Reply to Objections to Confirmation of the Third Amended Proposed Joint Chapter 11 Plan of Reorganization at 7 (Bankr. S.D.N.Y. Jan. 12, 2010).

²⁶⁵*In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Findings of Fact, Conclusions of Law, and Order Confirming the Third Amended Joint Chapter 11 Plan of Reorganization (Bankr. S.D.N.Y. Jan. 19, 2010).

²⁶⁶*In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Findings of Fact, Conclusions of Law, and Order Confirming the Third Amended Joint Chapter 11 Plan of Reorganization at 11 (Bankr. S.D.N.Y. Jan. 19, 2010).

²⁶⁷*In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Findings of Fact, Conclusions of Law, and Order Confirming the Third Amended Joint Chapter 11 Plan of Reorganization at 11 (Bankr. S.D.N.Y. Jan. 19, 2010).

Code.²⁶⁸ The Court also determined that the Plan was brought before the Court “in good faith,” as required by not only the Bankruptcy Code, but by general legal principles.²⁶⁹ The Court also approved of the Agreements included as written in the Third Amended Proposed Plan, including the Exit Credit Agreement and the New Second Priority Term Loan Agreement.²⁷⁰

Any objections to confirmation that have not yet been resolved, waived, or settled prior to this Confirmation Order were “overruled on their merits.”²⁷¹ Also, any unresolved and unsecured claims that had not been included in the plan were cancelled, keeping these Claimholders from having any recourse after the Confirmation Date.²⁷² All other Interim and Final Orders issued by Judge Drain before the Confirmation Date were assumed by the Confirmation Order and were still binding in effect unless otherwise noted.²⁷³ Basically, this Confirmed Plan was now the end-all and be-all of agreements, and all that was within it was ordered, and all that was outside it was cancelled or invalid.

As of April 30, 2010, no major problems have arisen as a result of the Confirmation of the Plan, and the docket documents between the Confirmation Date and the present date have been filed reports from the now-restructured Reader’s Digest and claims from the different

²⁶⁸*In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Findings of Fact, Conclusions of Law, and Order Confirming the Third Amended Joint Chapter 11 Plan of Reorganization at 14-17 (Bankr. S.D.N.Y. Jan. 19, 2010).

²⁶⁹*In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Findings of Fact, Conclusions of Law, and Order Confirming the Third Amended Joint Chapter 11 Plan of Reorganization at 31 (Bankr. S.D.N.Y. Jan. 19, 2010).

²⁷⁰*In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Findings of Fact, Conclusions of Law, and Order Confirming the Third Amended Joint Chapter 11 Plan of Reorganization at 32-34 (Bankr. S.D.N.Y. Jan. 19, 2010).

²⁷¹*In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Findings of Fact, Conclusions of Law, and Order Confirming the Third Amended Joint Chapter 11 Plan of Reorganization at 36 (Bankr. S.D.N.Y. Jan. 19, 2010).

²⁷²*In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Findings of Fact, Conclusions of Law, and Order Confirming the Third Amended Joint Chapter 11 Plan of Reorganization at 38 (Bankr. S.D.N.Y. Jan. 19, 2010).

²⁷³*In re Reader’s Digest Assoc., Inc.*, No. 09-23529, Findings of Fact, Conclusions of Law, and Order Confirming the Third Amended Joint Chapter 11 Plan of Reorganization at 42-44 (Bankr. S.D.N.Y. Jan. 19, 2010) (I used the Order Assuming Executory Contracts as an example of this assumption of Orders for efficiency and citation’s sake).

holders as allowed by the Confirmation Plan. Whether the Plan will pull Reader's Digest out of the economic circumstances that triggered the need for Chapter 11 Reorganization remains to be seen, as it is far too early to tell with such a complex business structure. Hopefully, the Plan and the resulting consequences will allow the company to go from a mainly print media company to a multimedia corporation on the cutting edge as the original petitions stated was the intent of reorganization. All parties involved obviously hope for the best, and it's definitely something to keep a watchful eye on, as this "fast track" reorganization might become a shining example of how complex Chapter 11 bankruptcies can be completed quickly, efficiently, and effectively.