

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re:) Case No. 10-50494
)
FAIR FINANCE COMPANY) Chapter 7
)
Debtor.) Judge Marilyn Shea-Stonum
)

STATUS REPORT FOR FEBRUARY 21, 2012 STATUS CONFERENCE

Brian A. Bash, Trustee herein, submits the following summary of the status of the Trustee's administration of the estate:¹

Pending Litigation

To date, the Trustee has filed the following lawsuits and is pursuing claims in those lawsuits for the benefit of the estate:

- a) The *Textron / Fortress* litigation (more than \$1 billion).
- b) The *Laikin* litigation (approximately \$25 million).
- c) The *National Lampoon* litigation (approximately \$9 million).
- d) The *FCS Advisors* litigation (approximately \$2 million).
- e) The *Osler and Geist Sports* litigation (approximately \$1.2 million).
- f) The *BGBC and Somerset* litigation (approximately \$900,000).
- g) Litigation against certain insiders, including Timothy Durham, James and Susan Cochran, John Head, Rick Snow and Terry Whitesell (approximately \$83 million).
- h) Litigation against Fair Holdings, Inc. and DC Investments LLC (approximately \$141 million).

While these defendants have assigned all of their assets to the Trustee for the benefit of the estate, the Trustee is seeking a judgment against these defendants in order to preserve potential claims against subsequent transferees.

¹ The Trustee and his professionals have addressed and resolved many of the administrative issues in this matter. This list is not exhaustive, but focuses on the issues most significant to asset recovery.



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i) Loan and state-law fraudulent transfer litigation: 86 complaints against persons who received money from the Debtor or related persons or entities as loans or avoidable transfers, for a total of over \$37 million, commenced in orderly manner as follows:

- a. Wave one (filed 11/2011): 5 complaints seeking a total of \$834,000;
- b. Wave two (filed 12/23/11): 10 complaints seeking a total of \$1.3 million;
- c. Wave three (filed 1/20/12): 23 complaints seeking a total of \$11.5 million;
- d. Wave four (filed 1/27/12): 3 complaints seeking a total of \$760,000;
- e. Wave five (filed 2/3/12 and 2/7/12): 41 complaints seeking a total of \$22.4 million; and
- f. Wave six (filed 2/10/12): 4 complaints seeking \$520,000.

j) Preference complaints against non-investors: 6 complaints against persons receiving preferential payments from the Debtor, for total of more than \$184,000, commenced in orderly manner as follows:

- a. Wave one (filed 1/19/12): 4 complaints seeking a total of \$108,000; and
- b. Wave two (filed 1/27/12): 2 complaints seeking a total of \$76,000.

k) The Trustee has filed the *McKibben* action against insiders of the Debtor and entities they controlled, which seeks to recover all investor losses.

Forthcoming Litigation

a) The vast majority of the lawsuits the Trustee expects to file have been filed.

b) Upon further review and analysis of potential fraudulent transfer claims against “net winner” investors of Fair Finance, the Trustee has made the determination that he will not pursue those claims in view of (i) legal uncertainties surrounding the claims, (ii) the expected cost of pursuing the claims when weighed against the potential recovery, and (iii) the potential financial hardship that such claims could impose on investors.

c) Preference claims against investors: A very small number of investment certificate investors received payments from the Debtor in the 90-day period prior to the date of the filing of the Debtor’s bankruptcy petition. The preference payments at issue total \$932,865.94. The Trustee has made the determination to seek recovery of those payments under section 547 of the Bankruptcy Code. In

connection with any such claims, the Trustee is committed to taking into consideration the possible financial impact of the Fair Finance bankruptcy on the investor and reviewing any individual cases of financial hardship in connection with any such claims. To date, the Trustee has approved a number of financial “hardship” cases in which the Trustee has decided to not pursue the claim or accept a reduced amount to settle the claim. In those cases where a hardship has not been approved or a settlement has not been reached, the Trustee will be filing his section 547 preference claims this week.

d) The Trustee expects that some of the defendants in the loan and fraudulent transfer litigation may not have the financial ability to pay the amounts sought by the Trustee. If the Trustee’s claims are successful, the Trustee will consider pursuing subsequent transferee claims against transferees of those defendants.

e) The Trustee is presently engaged in settlement negotiations with several parties against whom the Trustee has loan or fraudulent transfer claims. To the extent those negotiations do not result in settlements, the Trustee will be filing additional loan or fraudulent transfer lawsuits this week.

f) The Trustee continues to evaluate additional potential claims that may be pursued for the benefit of the estate, including loan and fraudulent transfer claims for which the statute of limitations will not be expiring in the near future.

Recent Recoveries and Activities

a) Since the last status conference, the Trustee has received approximately \$520,000.00, including \$257,221.77 from Duvera Billing Services, LLC on account of the Debtor’s receivables portfolio. The remainder is primarily payments on preference and fraudulent transfer settlements or demand letters, and the Trustee has filed or will be filing motions to compromise in connection with those settlements.

b) The Trustee has filed a Motion to Approve Compromise with the Lyons family which also seeks to modify the automatic stay.

c) The Trustee has sent subpoenas to numerous parties seeking information related to debts and avoidable transfers pursuant to Chapter 5 of the Bankruptcy Code.

d) The Trustee has filed Motions for Summary Judgment in the *McKibben* case.

Trustee's Focus in the Upcoming Weeks

- a) The Trustee's counsel will focus efforts on settling and/or filing the Trustee's remaining claims pursuant to an orderly litigation strategy for pursuing those claims.
- b) Continuing to litigate those claims that have been filed by the Trustee to date.
- c) Negotiating the potential sale of United Trailers, Obsidian's only operating subsidiary, on whose assets the Trustee holds a second lien.
- d) Marketing and selling real property owned by the Debtor in Akron.
- e) Investigating and responding to offers to purchase commercial real estate in Indianapolis, including an eminent domain proceeding relating to a portion of the property where a commercial medical building is located.
- f) Continuing to pursue discussions regarding potential settlement of (i) National Union's motion regarding advancement of proceeds under Fair's D&O insurance policy; and (ii) claims in the *McKibben* adversary proceeding.

Date: February 20, 2012

Respectfully submitted,

/s/ Brian A. Bash

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CERTIFICATE OF SERVICE

A copy of the foregoing has been served via ECF or regular, U.S. Mail, on February 20, 2012, on the attached service list.

/s/ Brian A. Bash

Brian A. Bash

SERVICE LIST

Electronic Mail Notice List

The following is the list of parties who are currently on the list to receive e-mail notice/service for this case.

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Manual Notice List

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