

Kasowitz Takes Center Stage In Borders Bankruptcy

By **Ian Thoms**

Law360, New York (February 16, 2011) -- With Borders Group Inc. filing for Chapter 11 protection Wednesday, Kasowitz Benson Torres & Friedman LLP — a boutique law firm with a big-time bankruptcy resume — has been thrust into the limelight, tasked with saving the country's second-largest brick-and-mortar bookseller.

Faced with mounting debts and dwindling sales, board members from the beleaguered company first approached Kasowitz for advice in fall, according to the firm. They hoped it could help refinance Borders' credit lines and spearhead a relatively quiet, out-of-court restructuring.

In January, the firm and Borders managed to secure a \$550 million senior credit facility from General Electric Capital Corp.'s restructuring division, which would have been enough to stave off Chapter 11, but the offer came with a steep condition — the retailer needed to secure an additional \$125 million in junior financing from its vendors.

"We weren't able to get that," David M. Friedman, a Kasowitz partner and chair of its bankruptcy group, told Law360 on Wednesday. "But as a result of that approach, we were able to achieve a fairly soft landing into Chapter 11. It wasn't a total loss."

Borders submitted its Chapter 11 petition in the U.S. Bankruptcy Court for the Southern District of New York on Wednesday morning and announced that it had already received \$505 million in debtor-in-possession financing led by GE Capital.

Borders listed between \$100 million and \$500 million in both assets and liabilities in its filing and listed



David M. Friedman

major publishers including Random House Inc. and Simon & Schuster Inc. among its 30 largest unsecured creditors.

Friedman, lead attorney in the Borders bankruptcy, said his firm had been prepping over the past month to move the case swiftly into and out of the Chapter 11 process.

Under changes made to the Bankruptcy Code in 2005, Borders needed to perform substantial advance work to prepare for Chapter 11, which, in part, led to weeks' worth of rumors preceding Wednesday's filing. For instance, the company had to determine which store leases it wanted to keep and which it wanted to jettison.

The retailer announced Wednesday that it would close roughly 200 of its more than 650 stores across the country.

But in order to avoid suffering the liquidated fate of fellow nationwide retailer Circuit City Stores Inc., the company will need to convince publishers who haven't been paid for the past several months that a revamped Borders can compete with the likes of online juggernaut Amazon.com Inc., according to analysts.

The firm and retailer must also show creditors that the company is a better bet than rival Barnes & Noble Inc., which has its own problems and has been up for sale since August. Barnes & Noble boasts superior purchasing power — the company operates 717 brick-and-mortar stores — and is widely credited with having a superior online strategy.

"It has to be a quick case," Friedman said. "We've not been kind to our vendors over the last couple months. And having not paid rents for a couple months is obviously not the best thing. We need to get those relationships back on track."

Friedman expects publishers will be willing to work with Borders.

"I don't think anyone wants to see this business shrink down to one," he said.

Friedman and the roughly 40 other attorneys in Kasowitz's bankruptcy practice have substantial experience handling high-profile cases similar to Borders', though in the past they have often been on the creditor side of the proceedings.

The firm was counsel to the committee of unsecured creditors of Adelphia Communications Corp., and in September, it hammered out a \$175 million settlement with a recovery trust for the defunct company. Former Adelphia creditors subject to the settlement included Bank of America NA, Bank of Montreal, Credit Suisse Securities (USA) LLC, Merrill Lynch & Co. Inc., and JPMorgan Chase Bank NA.

Kasowitz is currently involved in the Tribune Co.'s Chapter 11 case, as well. The firm represents an

indenture trustee for 18 percent of the total outstanding senior notes issued by the bankrupt media company.

And last year, it helped Donald Trump win approval of his preferred Chapter 11 restructuring plan for Trump Entertainment Resorts Inc.

Kasowitz has also had a hand in the massive Lehman Brothers Holdings Inc. Chapter 11 case. It is currently special counsel to Lehman and its affiliated debtors in connection with possible litigation against parties that allegedly interfered with the investment giant's business, according to the firm.

"If you looked at the biggest cases in recent years, we've been in just about all of them," Friedman said.

--Additional reporting by Evan Weinberger and Erin Fuchs. Editing by Chris Giganti.

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