

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

In re:)	
)	Chapter 11
Philadelphia Newspapers, LLC, <i>et al.</i> , ¹)	Case No. 09-11204 (SR)
)	
Debtors.)	Jointly Administered
)	

**MOTION OF DEBTORS FOR ENTRY OF AN ORDER
AUTHORIZING REJECTION OF CERTAIN EXECUTORY CONTRACTS**

PLEASE TAKE NOTICE THAT PARTIES AFFECTED BY THIS MOTION ARE IDENTIFIED ON EXHIBIT B TO THIS MOTION. PLEASE REFER TO ATTACHED EXHIBIT B TO THIS MOTION.

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) hereby move the Court (this “Motion”), pursuant to sections 105 and 365 of title 11 of the United States Code (11 U.S.C. §§ 101 *et seq.*, the “Bankruptcy Code”) and rule 6006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), for the entry of an order substantially in the form attached hereto as Exhibit A, authorizing the Debtors to reject the executory contracts listed on Exhibit B hereto (each an “Executory Contract” and, collectively, the “Executory Contracts”) effective as of the date hereof. In support of this Motion, the Debtors respectfully represent as follows:

Jurisdiction

1. This Bankruptcy Court has jurisdiction over these matters pursuant to 28 U.S.C. §§ 157 and 1334.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: PMH Acquisition, LLC (1299), Broad Street Video, LLC (4665), Philadelphia Newspapers, LLC (3870), Philadelphia Direct, LLC (4439), Philly Online, LLC (5185), PMH Holdings, LLC (1768), Broad Street Publishing, LLC (4574), Philadelphia Media, LLC (0657) and Philadelphia Media Holdings, LLC (4680).

2. This is a core proceeding within the meaning of 28 U.S.C. § 157(b).
3. Venue of these chapter 11 cases in this District is proper under 28 U.S.C. §§ 1408 and 1409.
4. The statutory and rule-based predicates for the relief sought herein are sections 105(a) and 365 of the Bankruptcy Code and Rule 6006 of the Bankruptcy Rules.

Background

5. On February 22, 2009 (the "Petition Date"), the Debtors, other than Debtor Philadelphia Media Holdings LLC ("PMH"), commenced these voluntary cases (the "Chapter 11 Cases") by the filing of petitions for relief under chapter 11 of the Bankruptcy Code. PMH filed its petition for relief under chapter 11 of the Bankruptcy Code on June 10, 2009 and its chapter 11 case has been procedurally consolidated with the Chapter 11 Cases. The Debtors continue in possession of their properties and continue to operate their respective businesses as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On March 2, 2009, the Office of the United States Trustee appointed the Official Committee of Unsecured Creditors (the "Committee") in the Chapter 11 Cases.

6. The factual background relating to the Debtors' commencement of these Chapter 11 Cases is set forth in detail in the *Declaration of Richard R. Thayer, the Debtors' Executive Vice President, Finance, in Support of First Day Motions* [Docket No. 23] (the "First Day Declaration") filed on February 23, 2009 and incorporated herein by reference.

Relief Requested

7. By this Motion, the Debtors seek authority to reject the Executory Contracts effective as of the date hereof.

Basis for Relief

Rejection of the Executory Contracts reflects the Debtors' sound business judgment.

8. Section 365(a) of the Bankruptcy Code provides that a debtor in possession “subject to the court’s approval, may . . . reject any executory contract . . . of the debtor.” 11 U.S.C. § 365(a); *see also Univ. Med. Ctr. v. Sullivan (In re Univ. Med. Ctr.)*, 973 F.2d 1065, 1075 (3rd Cir 1992). This provision allows a [debtor in possession] to relieve the bankruptcy estate of burdensome agreements which have not been completely performed.” *Stewart Title Guar. Co. v. Old Republic Nat’l Title Co.*, 83 F.3d 735, 741 (5th Cir. 1996) (*citing In re Muerexco Petroleum, Inc.*, 15 F.3d 60, 62 (5th Cir. 1994)).

9. The standard applied to determine whether the rejection of an executory contract should be authorized is the “business judgment” standard. *Sharon Steel Corp. v. Nat’l Fuel Gas Distrib. Corp.*, 872 F.2d 36, 39 (3d Cir. 1989); *NLRB v. Bildisco & Bildisco (In re Bildisco)*, 682 F.2d 72, 79 (3d Cir. 1982), *aff’d*, 465 U.S. 513 (1984); *see also NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 524 (1984); *In re Federated Dep’t Stores, Inc.*, 131 B.R. 808, 811 (S.D. Ohio 1991) (“Courts traditionally have applied the business judgment standard in determining whether to authorize the rejection of executory contracts”). Rejection of an unexpired contract is appropriate where such rejection would benefit the estate. *See Sharon Steel Corp.*, 872 F.2d at 39 (*citing Wheeling-Pittsburgh Steel Corp. v. West Penn Power Co. (In re Wheeling-Pittsburgh Steel Corp.)*, 72 B.R. 845, 846 (Bankr. W.D. Pa. 1987)). The business judgment standard requires that the Court approve the debtor’s business decision unless it is the product of bad faith, whim or caprice. *See In re Trans World Airlines, Inc.*, 261 B.R. 103, 121 (Bankr. D. Del. 2001); *see also Lubrizol Enter., Inc. v. Richmond Metal Finishers*, 756 F.2d 1043, 1047 (4th Cir. 1985), *cert. denied*, 475 U.S. 1057 (1986).

10. Upon finding that the Debtors have exercised their sound business judgment in determining that rejection of the Executory Contracts is in the best interests of the Debtors, their creditors and other parties in interest in the Chapter 11 Cases, the Court should approve rejection of the Executory Contracts under section 365(a) of the Bankruptcy Code. *See, e.g., In re Bradlees Stores, Inc.*, 194 B.R. 555, 558n.1 (Bankr. S.D.N.Y. 1996); *Summit Land Co. v. Allen (In re Summit Land Co.)*, 13 B.R. 310, 315 (Bankr. D. Utah 1981) (holding that, absent extraordinary circumstances, court approval of a debtor's decision to assume or reject an executory contract "should be granted as a matter of course"). If a debtor's business judgment has been reasonably exercised, a court should approve the assumption or rejection of an executory contract. *See, e.g., NLRB v. Bildisco & Bildisco*, 465 U.S. at 523; *In re Sharon Steel Corp.*, 872 F.2d at 39-40.

11. The Debtors have evaluated each of the Executory Contracts and, in the exercise of their business judgment, have determined that they are no longer useful or beneficial to the Debtors' ongoing operations. With respect to the Executory Contracts, such Executory Contracts are either unnecessary to the Debtors' operations or the Debtors have secured a less expensive alternative to the goods or services provided under the terms of the Executory Contract.

12. Consequently, the Executory Contracts provide no benefit to the Debtors or their estates. The Executory Contracts are not sources of potential value for the Debtors' estates, creditors or interest holders.

The Court should deem rejection of the Executory Contracts effective as of February 5, 2010.

13. The Debtors further request that this Court approve rejection of the Executory Contracts effective as of February 5, 2010. Bankruptcy courts are empowered to grant

retroactive rejection of a contract or lease under sections 105(a) and 365(a) of the Bankruptcy Code. *See e.g., In re Chi-Chi's, Inc.*, 305 B.R. 396, 399 (Bankr. D. Del. 2004) (acknowledging that a bankruptcy court may approve a rejection retroactive to the date the motion is filed balancing the equities in the particular case); *In re NAMCO Cybertainment, Inc.*, Case No. 98-173 (PJW) (Bankr. D. Del. Apr. 15, 1998); *Thinking Machines Corp. v. Mellon Fin. Serv. Corp. (In re Thinking Machines Corp.)*, 67 F.3d 1021, 1028 (1st Cir. 1995) (recognizing that bankruptcy courts are courts of equity that may enter orders authorizing retroactive rejection); *In re Amber's Stores, Inc.*, 193 B.R. 819, 827 (Bankr. N.D. Tex. 1996) (same).

14. The balance of the equities favors the relief requested herein. Without a retroactive date of rejection, the Debtors will be forced to incur unnecessary administrative expenses for the Executory Contracts – obligations that provide no corresponding benefits to the Debtors' estates. *See* 11 U.S.C. § 365(d)(3). The counterparties to the Executory Contracts, on the other hand, will be able to mitigate any damages they may suffer as a consequence of this rejection and will be relieved of their own obligations under the Executory Contracts.

15. The counterparties to the Executory Contracts will not be unduly prejudiced if the rejection is deemed effective as of February 5, 2010. The counterparties received a copy of this Motion and, therefore, are on notice of the Debtors' intent to reject the Executory Contracts. *See, e.g., In re FLYi, Inc.*, Case No. 05-20011 (MFW) (Bankr. D. Del. Aug. 21, 2006) (courts will permit rejection of an executory contract or unexpired lease to be effective as of the date on which the nondebtor party to the contract or lease was given definitive notice of the debtor's intent to reject). Further, the Debtors are able to immediately surrender to the counterparties to the Executory Contracts any property that may be the subject to the Executory Contracts that belongs to the counterparties.

16. The Debtors respectfully submit that it is fair and equitable for the Court to find that the Executory Contracts are rejected as of February 5, 2010.

17. The Debtors may have claims against counterparties to the Executory Contracts arising under, or independent of, the Executory Contracts. The Debtors do not waive such claims by the filing of this Motion or the rejection of the Executory Contracts. The Debtors reserve all of their rights with respect to the Executory Contracts, including, but not limited to, the right to contest any claims that arise out of their rejection. Nothing contained herein is intended or shall be construed as: (a) an admission as to the validity of any claim against the Debtors, (b) a waiver of the Debtors' rights to dispute any claim or (c) an approval or assumption of any agreement, contract, program, policy or lease under section 365 of the Bankruptcy Code.

Notice

18. In accordance with the Court's *Order Establishing Certain Notice, Case Management and Administrative Procedures* [Docket No. 194] (the "Case Management Order"), this Motion has been served upon: (a) the Core Group; (b) the 2002 List; and (c) the Affected Parties listed on Exhibit B hereto (each as defined in the Case Management Order).

19. The Debtors submit that good and sufficient notice of this Motion has been provided and no other or further notice need be provided.

WHEREFORE, for the reasons set forth herein, the Debtors respectfully request that this Court: (a) enter an order substantially in the form attached hereto as Exhibit A, granting the relief sought herein; and (b) grant to the Debtors such other and further relief as the Court may deem proper.

Dated: February 5, 2010
Philadelphia, Pennsylvania

/s/ Anne M. Aaronson

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Co-Counsel for the Debtors and Debtors in Possession

Exhibit A

[Proposed Order]

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

In re:)	
)	Chapter 11
Philadelphia Newspapers, LLC, <i>et al.</i> , ¹)	
)	Case No. 09-11204 (SR)
)	
Debtors.)	Jointly Administered

**ORDER AUTHORIZING REJECTION OF
CERTAIN OF CERTAIN EXECUTORY CONTRACTS**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order authorizing the Debtors to reject certain executory contracts and unexpired leases of nonresidential real property (collectively, the “Executory Contracts”) effective as of February 5, 2010; it appearing that the relief requested in the Motion is in the best interests of the Debtors’ estates, their creditors and other parties in interest; the Court having reviewed the Motion and having considered the statements of counsel and evidence adduced with respect to the Motion at a hearing before the Court (the “Hearing”); the Court finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), (c) it appearing that venue of this proceeding and this Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409 and (d) due and proper notice of this Motion having been provided; and it appearing that no other or further notice need be provided; and after due deliberation and sufficient cause appearing therefore, it is hereby **ORDERED**:

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: PMH Acquisition, LLC (1299), Broad Street Video, LLC (4665), Philadelphia Newspapers, LLC (3870), Philadelphia Direct, LLC (4439), Philly Online, LLC (5185), PMH Holdings, LLC (1768), Broad Street Publishing, LLC (4574), Philadelphia Media, LLC (0657) and Philadelphia Media Holdings, LLC (4680).

² Each capitalized term used but not otherwise defined herein shall have the meaning ascribed thereto in the Motion.

1. The Motion is granted in its entirety.
2. The Debtors are authorized and empowered to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.
3. Each Executory Contract listed on Exhibit B to the Motion is rejected effective as of February 5, 2010.
4. The Debtors do not waive any rights or claims that they have or may have against the counterparties to the Executory Contracts, or any other parties to the Executory Contracts, whether or not such rights or claims are related to the rejection of the Executory Contracts. Nothing in this Order shall impair the ability of the Debtors to contest any claim of any counterparty to an Executory Contract, or any creditor pursuant to applicable law or otherwise dispute, contest, setoff, or recoup any claim, or assert any rights, claims or defenses related thereto.
5. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and/or enforcement of this Order.

Dated: _____, 2010
Philadelphia, Pennsylvania

Entered: _____
United States Bankruptcy Judge

Exhibit B

[Contracts]

<u>Contract/Debtor Party</u>	<u>Counterparty</u>	<u>Date</u>	<u>Summary</u>
Services Agreement (Philly Online, LLC)	Aggregate Knowledge 1510 Fashion Island Blvd., Suite 201 San Mateo, CA 94404	March 11, 2008	The services agreement sets forth the terms and conditions under which Aggregate Knowledge provides software and related services to the Debtors.
Independent Consultant Agreement (Philadelphia Newspapers, LLC)	Earthcare 225 Fellowship Rd. P.O. Box 756 Eagle, PA 19480	May 2002	The independent consultant agreement sets forth the terms and conditions under which Earthcare provides wastewater removal and related services to the Debtors.
Lease Agreement (Broad Street Publishing, LLC)	LEAF P.O. Box 644006 Cincinnati, OH 45264-4006		Contract No. 015-1044316-001, which sets forth the terms and conditions under which LEAF leases to the Debtors certain mailing machines.
Master Agreement (Philly Online, LLC)	Net Ratings, LLC 890 HillView Court, Suite 300 Milpitas, CA 95035		The master agreement sets forth the terms and conditions under which NetRatings provides to the Debtors market research providing traffic metrics.
Rental Agreement (Broad Street Publishing, LLC)	Oak Systems, Inc. 460 D Veit Rd. Huntingdon Valley, PA 19006		The rental agreement sets forth the terms and conditions under which Oak Systems leases to the Debtors a certain mail system and scale.
Interactive Services and Content License Agreement (Philly Online, LLC)	eMinor Incorporated dba www.reverbNation.com 501 Washington St., Suite D Durham, NC 27701 Reverb Attn: Michael Doerberg 265 Canal St., Suite 10013 New York, NY 10013	October 14, 2008	The agreement sets forth the terms and conditions under which Reverb grants to the Debtors a license for certain music content and related services.

<u>Contract/Debtor Party</u>	<u>Counterparty</u>	<u>Date</u>	<u>Summary</u>
Master Agreement (Philadelphia Newspapers, LLC)	Sungard Availability Services LP 680 E. Swedesford Rd. Wayne, PA 19087	January 1, 2009	The master agreement sets forth the terms and conditions under which Sungard provides the Debtors with disaster recovery services for <u>mainframe computer environment</u> .
Color Comic Printing Agreement (as amended) (Philadelphia Newspapers, LLC)	Western Colorprint, Inc. 1600 Stout St., Suite 1520 Denver, CO 80202	June 15, 1991	The agreement sets forth the terms and conditions under which Western Colorprint provides the Debtors with color comics supplements.
Service Order Agreement (as amended) (Philadelphia Newspapers, LLC)	XO Communications 8851 Sandy Pkwy. Sandy, UT 84070	May 2006	The service order agreement sets forth the terms and conditions under which XO Communications provides local telephone services to the Debtors.