

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

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In re:	:	Chapter 11
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Philadelphia Newspapers, LLC, et al.,	:	Case No. 09-11204(JKF)
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Debtors.	:	Jointly Administered
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In re:	:	Chapter 11
	:	
Philadelphia Media Holdings, LLC	:	Case No. 09-14315(JKF)
	:	
Debtor.	:	
	:	

**RESPONSE OF VAHAN H. GUREGHIAN, DANIELLE GUREGHIAN AND
CHARTER SCHOOL MANAGEMENT, INC. IN OPPOSITION TO THE
DEBTORS’ MOTION FOR APPLICABILITY**

Vahan H. Gureghian (“Mr. Gureghian”), Danielle Gureghian (“Mrs. Gureghian”) and Charter School Management , Inc. (“CSMI”) (collectively, “Respondents”), by and through their undersigned counsel, hereby Respond in Opposition (“Response in Opposition”) to the Motion of the Debtors³ for the entry of an Order Pursuant to Section 105(a) of the Bankruptcy Code Making Certain Orders and Other Pleadings Entered or Filed in Chapter 11 Cases of Affiliated Debtors Applicable to Philadelphia Media Holdings, LLC (“Motion for Applicability”). In support of their Response in Opposition, the Respondents aver as follows.

RELEVANT BACKGROUND

1. On or about February 22, 2009, PMH Acquisition, LLC; Broad Street Video, LLC; Philadelphia Newspapers, LLC; Philadelphia Direct, LLC; Philly Online, LLC; PMH

³ The jointly-administered Debtors under case number 09-11024 consist of PMH Acquisition, LLC; Broad Street Video. LLC; Philadelphia Newspapers, LLC; Philadelphia Direct, LLC; Philly Online, LLC; PMH Holdings, LLC; Broad Street Publishing, LLC and Philadelphia Media, LLC.

Holdings, LLC; Broad Street Publishing, LLC and Philadelphia Media, LLC. (“Original Debtors”) filed separate voluntary petitions for relief with this Court under chapter 11 of title 11 of the United States Code which are presently jointly-administered, but not substantively-consolidated, under case number 09-11204 (JKF). The Original Debtors are operating their businesses and managing their properties as debtors in possession.

2. The Respondents are plaintiffs in a civil action filed on or about January 6, 2009 against Philadelphia Media Holdings, LLC (“PMH”), The Philadelphia Inquirer (the “Inquirer”), Brian Tierney (“Tierney”), Dan Hardy, Derrick Nunnally, Martha Woodall and Rose Ciotta in the Court of Common Pleas of Delaware County and docketed as 09-0091 (State Court Litigation”). The State Court Litigation seeks damages and other relief arising from a series of false and misleading newspaper and internet articles published by the Inquirer in December 2008 about Mr. and Mrs. Gureghian and CSMI, a charter school management company owned by Mr. Gureghian (“Articles”). The State Court Litigation Complaint asserts that PMH is the limited liability holding company formed to acquire the Inquirer, The Daily News and related media assets in 2006 in a highly-leveraged transaction. Tierney is the chief executive officer of PMH and is the chief executive officer and publisher of the Inquirer. Dan Hardy, Derrick Nunnally, and Martha Woodall are staff writers for the Inquirer who investigated and authored the false and misleading Articles. Rose Ciotta is the Education Editor for the Inquirer who reviewed, edited and authorized the false and misleading Articles.

3. Since the purchase of the Inquirer in 2006, Tierney and PMH have faced declining circulation, falling revenues, mounting debts, cost-cutting staff layoffs, and deferred debt payments. In an effort to protect against this underperforming investment in the ailing newspaper industry and with the hope of providing a much-needed equity infusion into his media

enterprise, Tierney and PMH began seeking diversification opportunities in other businesses. Attracted by the successes of Mr. Gureghian in managing charter schools (including CSMI in Chester, Pennsylvania⁴) and developing billboard locations, Tierney and PMH approached Mr. Gureghian about the possibility of joint ventures in both businesses. These business discussions began in or about May 2008. During the course of these discussions, Tierney became aware of the hostility of certain school district and state officials, including officials from the Pennsylvania Department of Education, arising from CCCS's dramatic success in comparison to the state-controlled Chester-Upland School District's schools. The relationship between Tierney and Mr. Gureghian, however, subsequently soured that summer when Tierney refused to agree to a provision in a written confidentiality agreement that the Inquirer or any other newspaper owned by PMH would not use or publish any of the financial or proprietary information learned, provided and/or disclosed during Tierney's business negotiations with Mr. Gureghian. Immediately following the failure of these business negotiations between Tierney, PMH and Mr. Gureghian, Inquirer staff writer Dan Hardy began inundating CCCS with requests for information about the charter schools. CCCS complied with these requests for information and permitted Dan Hardy and a photographer from the Inquirer to tour CCCS. The Inquirer subsequently published four inter-related Articles over a three-day period from December 28, 2008 to December 30, 2008. The Articles ignored the positive achievements of CCCS and purposefully focused on inaccurate sources hostile to charter schools in implying that CCCS's students were denied educational resources when objective metrics clearly demonstrated otherwise. The State Court Litigation alleges that PMH and Tierney were instrumental in

⁴ CSMI manages the Chester Community Charter School ("CCCS"), which maintains two charter elementary school campuses and one charter middle school campus in Chester, Pennsylvania within the Chester-Upland School District. The Chester-Upland School District has long been known for poor academic performance and management and is believed to have become threatened by comparative academic successes of CCCS.

orchestrating and/or facilitating the publication of the false and misleading Articles and that this was done in retaliation for the failed business negotiations and/or to further Tierney's own personal business interests. The State Court Litigation further alleges that Tierney was aware of and knew that the statements and contents of the Articles were false, misleading and juxtaposed facts in a manner to make it appear as if Mr. Gureghian and CSMI were conducting their operations in a manner similar to certain Philadelphia charter schools with whom Plaintiffs have no involvement or association.

4. On or about March 23, 2009, the Original Debtors filed Adversary Proceeding No. 09-00085 (JKF) seeking the extension of the automatic stay under 11 U.S.C. § 362(a) and for Injunctive Relief Pursuant to 11 U.S.C. § 105(a) ("Injunction Complaint") to enjoin certain pre-petition litigations claimants, including the Respondents, from asserting claims or otherwise attempting to exercise remedies in the various state court litigation cases against (i) PMH, the Debtors' holding company; (ii) Tierney; and (iii) certain reporters, editors or other employees of the Debtor Philadelphia Newspapers, LLC (collectively, "Non-Debtor Defendants"). In connection with the Injunction Complaint, the Original Debtors filed for a temporary restraining order and, after abbreviated notice and a hearing, by Order dated April 14, 2009, this Court issued a temporary restraining order ("TRO"), pursuant to which this Court extended the automatic stay to non-debtor defendants Tierney and Hardy for a limited sixty-day period. The TRO was converted to a Preliminary Injunction by Order and Opinion dated May 8, 2009.

5. PMH is not one of the Original Defendants.

6. On or about June 10, 2009, PMH filed a petition for relief with the court commencing a case under chapter 11 of title 11 of the Bankruptcy Code which was captioned as 09-13416(JKF).

THE ORIGINAL DEBTORS' MOTION FOR APPLIABILITY SHOULD BE DENIED

7. On or about June 10, 2009, the Original Debtors filed their Motion for Applicability wherein they seek the entry of an order providing that certain orders entered and pleadings filed in the jointly-administered chapter 11 cases of the Original Debtors apply to the newly-filed chapter 11 case of PMH.

8. By their own admission, the business nature of the PMH is dissimilar from that of the Original Debtors. PMH is the holding company that indirectly owns 100% of the equity of Philadelphia Newspapers, LLC and it has no operating business or employees and does not own any real estate, inventory, receivables, or other assets. See, Motion for Applicability, ¶7. PMH is not an obligor, according to the Original Debtors, on the senior or mezzanine debt. See, Motion for Applicability, ¶7. Most significantly, however, according to “[t]he vast majority of its [PMH] creditors are plaintiffs in lawsuits that [allegedly] incorrectly named PMH as a defendant in defamation actions based on articles published in the Inquirer and the Philadelphia Daily News.” See, Motion for Applicability, ¶7. As alleged by CMSI, this allegation ignores the claims of CSMI, arising out of failed efforts to enter into a business relationship.

9. The Consolidated List of Creditors Holding the 20 Largest Unsecured Claims filed by PMH (“Top 20 List”) lists 19 of the 20 creditors as having pending litigations claims for defamation against PHM. PMH does not ascribe any value to any of these listed claims, instead listing each as “unknown”. On information and belief, there were twenty civil actions seeking damages for defamation claims pending against the Original Debtors as of their petition dates. In what can only be described as a purposeful act, PMH omitted the Respondents from the Top 20 List despite knowledge of the seriousness of such claims as reflected by the inordinate amount of tactical newspaper coverage that the Inquirer has devoted to the Respondents.

10. The Original Debtors, in contrast, have a diverse body of creditors consisting, *inter alia*, of trade vendors, employees, unions and banks.

11. Despite the fundamental differences between PMH and the Original Debtors, the Original Debtors seek the entry of an order applying certain orders entered and pleadings filed in the jointly-administered chapter 11 cases of the Original Debtors apply to the newly-filed chapter 11 case of PMH, including folding PMH in as one of the jointly-administered debtors.

12. The Original Debtors profess to seek such an order to “experience a smooth transition into chapter 11 with minimal delay and expense” and to avoid “filing redundant individual motions seeking the same relief” as was obtained by the Original Debtors. See, Motion for Applicability, ¶10.

13. However, the request for such an order is inconsistent with the requirements and objectives of the Bankruptcy Code and would be highly-prejudicial to Respondents and similarly-situated creditors.

14. By the Original Debtors’ own admission, the creditor constituency of PMH is comprised almost exclusively of litigation claimants, and PMH has no ongoing business operations or employees nor does it have any senior or mezzanine debt obligations.

15. Nevertheless, the net effect of the Original Debtors’ request in the Motion for Applicability would be to fold PMH into the jointly-administered debtors where there is but one single Committee of Unsecured Creditors (“Committee”) comprised of a single vendor creditor and two unions, and where the interests of the litigation claimants are not represented. It is in fact not hard to see how the three member constituency of the Original Debtors’ Committee does not reflect a fair cross section of the Debtor’s respective claims. The cases of PMH are not substantively consolidated.

16. Contrary to the request made in the Motion for Applicability, PHM, as a newly-filed debtor, must subject itself to the examination of the United States Trustee for a determination of whether the formation of a separate creditors committee of litigation claimants would be appropriate. The existing Committee was formulated based on the respective creditor interests of the Original Debtors. The Top 20 List of PMH is almost exclusively comprised of creditors with litigation claims against PMH for defamation. As such, a separate committee for PMH should be formed in recognition of these overwhelming and distinct interests, and a mere reformulation of the existing Committee would be inadequate.

17. This court may not substitute, under or pursuant to Section 105 or otherwise, the Debtors' desires for efficiency in a manner which eviscerates the role and function of the Office of the United States Trustee, and its statutory obligation to poll creditors to determine if there is interest in participation on a Committee for PMH.

18. Further, the Original Debtors seek the application to PMH of the Order Establishing Bar Dates for Filing Proofs of Prepetition Unsecured and Secured and § 503(b)(9) Administrative Expense Claims with the modification of the bar date for the filing of such claims to July 10, 2009. Assuming, *arguendo*, that an expedited hearing is held on the Motion for Applicability and an order granting the motion is entered, creditors of PMH would likely have less than 20 days to timely file proofs of claim after receipt of the bar date notice. The Original Debtors have not presented any compelling circumstance warranting such an abbreviated notice period for the filing of claims against PMH.

19. The Original Debtors pin their extraordinary requests in the Motion for Applicability on the enabling provisions of 11 U.S.C. § 105. However, as this Court is no doubt aware, 11 U.S.C. § 105 is of limited utility and cannot, itself, be used to create rights that are

inconsistent with or otherwise non-existent in the Bankruptcy Code. While 11 U.S.C. § 105(a) provides that the bankruptcy court may issue any order, process or judgment necessary or appropriate to implement the Bankruptcy Code, a court may not disregard a specific Code section addressing an issue and instead employ its equitable powers to achieve a result not contemplated by the Code. See gen., In re Fesco Plastics Corp., 996 F.2d 152 (7th Cir. 1993); In re Myrvang, 232 F.3d 1116 (9th Cir. 2000). Accordingly, the Bankruptcy Code should not permit the Original Debtors utilize 11 U.S.C. § 105(a) in their Motion for Applicability to circumvent the requirements imposed under the Bankruptcy Code and Bankruptcy Rules, *inter alia*, governing the appointment of a creditors' committee (Fed. R. Bankr. P. 2007); the setting of deadlines to file claims against the estate (Fed. R. Bankr. P. 3003); and the joint administration of a bankruptcy case (Fed. R. Bankr. P. 1015). For example, in consideration of a request for joint administration of two or more debtors, the bankruptcy court is required to "give consideration to protecting creditors of different estates against potential conflicts of interest." Fed. R. Bankr. P. 1015(b). The Original Debtors' Motion for Applicability, however, seeks to bypass all of this and fold the admittedly-distinct PMH into the already jointly-administered cases of the Original Debtors, in effect, a defacto substantive consolidation.

20. The Bankruptcy Court should not permit PMH to by-pass the procedural requirements of the Bankruptcy Code and Rules and obtain application of the prior orders and pleadings entered for and filed by the Original Debtors. By their own admission, PMH is fundamentally different from the Original Debtors. PMH should be required to make separate application, subject to notice and hearing, for any relief that it desires from the Bankruptcy Court.

WHEREFORE, for the reasons, set forth above, the Respondents respectfully request this Honorable Court enter and order DENYING the relief requested by the Original Debtors in their Motion for Applicability

Respectfully Submitted,

Dated: June 15, 2009

By: /s/ Edmond M. George, Esquire
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Counsel to the Respondents, Vahan H. Gureghian, Danielle Gureghian and Charter School Management, Inc.

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

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In re:	:	Chapter 11
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Philadelphia Newspapers, LLC, et al.,	:	Case No. 09-11204(JKF)
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Debtors.	:	Jointly Administered
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In re:	:	Chapter 11
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Philadelphia Media Holdings, LLC	:	Case No. 09-14315(JKF)
	:	
Debtor.	:	
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ORDER DENYING THE MOTION OF THE DEBTORS¹ FOR THE ENTRY OF AN ORDER PURSUANT TO SECTION 105(A) OF THE BANKRUPTCY CODE MAKING CERTAIN ORDERS AND OTHER PLEADINGS ENTERED OR FILED IN CHAPTER 11 CASES OF AFFILIATED DEBTORS APPLICABLE TO PHILADELPHIA MEDIA HOLDINGS, LLC

AND NOW THIS _____ day of _____, 2009, upon consideration of the Motion of the Debtors² for the entry of an Order Pursuant to Section 105(a) of the Bankruptcy Code Making Certain Orders and Other Pleadings Entered or Filed in Chapter 11 Cases of Affiliated Debtors Applicable to Philadelphia Media Holdings, LLC and the response filed by Vahan H. Gureghian (“Mr. Gureghian”) and Danielle Gureghian (“Mrs. Gureghian”), and Charter School Management, Inc. (“CSMI”) and after notice and hearing, and upon consideration of the record in this case, and this Court having found no basis for much of the relief requested by the Debtors herein, and the Court having further found that the Debtor

¹ The jointly-administered Debtors under case number 09-11024 consist of PMH Acquisition, LLC; Broad Street Video. LLC; Philadelphia Newspapers, LLC; Philadelphia Direct, LLC; Philly Online, LLC; PMH Holdings, LLC; Broad Street Publishing, LLC and Philadelphia Media, LLC.

² The jointly-administered Debtors under case number 09-11024 consist of PMH Acquisition, LLC; Broad Street Video. LLC; Philadelphia Newspapers, LLC; Philadelphia Direct, LLC; Philly Online, LLC; PMH Holdings, LLC; Broad Street Publishing, LLC and Philadelphia Media, LLC.

Philadelphia Media Holdings must comply with the Bankruptcy Code, including Section 341, and that the United States Trustee is obligated to hold a first meeting of creditors, and if requested, appoint an Official Committee of Unsecured Creditors for PMH, and for the other reasons stated on the record,

IT IS ORDERED that the Motion is DENIED.

BY THE COURT:

Honorable Jean K. FitzSimon
United States Bankruptcy Judge

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

In re:	:	Chapter 11
	:	
Philadelphia Newspapers, LLC, et al.,	:	Case No. 09-11204(JKF)
	:	
Debtors.	:	Jointly Administered

In re:	:	Chapter 11
	:	
Philadelphia Media Holdings, LLC	:	Case No. 09-14315(JKF)
	:	
Debtor.	:	

CERTIFICATE OF SERVICE

I, Edmond M. George, a partner at the law firm of Obermayer Rebmann Maxwell & Hippel LLP, do hereby certify that on June 15, 2009, I caused a true and correct copy of the foregoing Response Of Vahan H. Gureghian, Danielle Gureghian And Charter School Management, Inc. In Opposition To The Debtors' Motion For Applicability and related Order to be served via First Class U.S. Mail, postage pre-paid upon the following parties.

s/ Edmond M. George
Edmond M. George, Esquire

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