

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

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

**CLAIMANTS ALEX PLOTKIN AND 401 RESTAURANT ASSOCIATES'
OBJECTION TO DEBTORS' SECOND AMENDED JOINT CHAPTER 11 PLAN**

Claimants Alex Plotkin and 401 Restaurant Associates, LLC, through the undersigned counsel, hereby objects to the Debtors' Second Amended Joint Chapter 11 Plan as follows:

1. Alex Plotkin and 401 Restaurant Associates are the plaintiffs in a civil action initiated against Debtor Philadelphia Media Holdings, t/a The Philadelphia Inquirer, and Debtor's employee Craig LaBan.
2. Claimants object to the Debtors' Second Amended Joint Chapter 11 Plan because it purports to release their claims against the Debtors, the Debtors' insurers and third parties as follows:

Releases by Holders of Claims and Interests. Except as otherwise specifically provided herein, on the Effective Date, the Confirmation Order shall constitute an injunction permanently enjoining any Person (excluding any of the Debtors) that has held, currently holds or may hold a Claim, demand, debt, right, Cause of Action or liability that is released pursuant to this Section 10.02 of the Plan from enforcing or attempting to enforce any such Claim, demand, debt, right, Cause of Action or liability against any Releasee or any of their respective Property, from any and all Claims, obligations, suits, judgments, damages, rights, Causes of Action and liabilities whatsoever (other than the right to enforce the performance of their respective obligations, if any, to the Debtors, the Purchaser, the Real Property LLC, the Distribution Agent, or the Liquidation Trustee under the

Plan, the Asset Purchase Agreement, the Liquidating Trust Agreement or the Liquidating Trust Documents, and the contracts, instruments releases and other agreements delivered under the Plan), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise that are based in whole or in part on any act or omission, transaction, event or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtors, the Chapter 11 Cases, the Plan, the Disclosure Statement or the Asset Purchase Agreement other than Claims or liabilities arising out of or relating to any act or omission that constitutes a failure to perform the duty to act in good faith and where such failure to perform constitutes willful misconduct, gross negligence, or fraud; *provided*, that this Section 10.02(b) shall not release any Person from any Claim or Cause of Action existing as of the Effective Date, based on (x) the Internal Revenue Code or any other domestic state, city or municipal tax code, (y) any liability that the Person may have as an owner or operator of real property after Confirmation under the environmental laws of the United States or any domestic state, city or municipality or (z) any criminal laws of the United States or any domestic state, city or municipality; *provided further, however*, that this Section 10.02(b) shall not release any Releasee from any Claim or Cause of Action if and to the extent that such Claim or Cause of Action is covered by insurance.

ECF 2090, pp. 77–78 (pp. 35–36 of Plan).

3. The proposed release is unauthorized by the bankruptcy code and prohibited by the bankruptcy code for multiple reasons, including a lack of adequate consideration for release of claims against the Debtors, the failure to properly preserve insurance coverage, and the attempt to release claims against non-Debtor third parties.

4. To the extent this Court arguably has jurisdiction and authority to release claims against non-Debtors, 11 U.S.C. § 524(e) bars Debtors from unilaterally

discharging Claimants' independent¹ claims against said non-Debtor third-party "Releasees" without consideration. See Gillman v. Continental Airlines, 203 F.3d 203 (3d Cir. 2000) (holding that a release of directors and officers from third-party claims without any recovery for the impacted third-parties is invalid under even the most flexible standards applied by other circuits).²

WHEREFORE, Claimant respectfully requests this Court reject confirmation of Debtors' Second Amended Joint Chapter 11 Plan.

Respectfully Submitted,

By: /s/ Maxwell S. Kennerly
THE BEASLEY FIRM, LLC
1125 Walnut Street
Philadelphia, PA 19107

**Attorney for Creditors Alex Plotkin and
401 Restaurant Associates**

Dated: June 18, 2010

¹ See RESTATEMENT OF THE LAW, THIRD, AGENCY § 7.01 ("[A]n actor remains subject to liability although the actor acts as an agent or an employee, with actual or apparent authority, or within the scope of employment.").

² The nebulous exception in the Plan for "failure to perform the duty to act in good faith and ... willful misconduct, gross negligence, or fraud" exception — little more than an attempt to confuse subsequent courts and juries that will hear these cases — does nothing to fix the aforementioned problem, since it also affects claimants' rights against non-Debtor third parties without providing any consideration.

CERTIFICATE OF SERVICE

The undersigned affirms that the foregoing was filed via the Court's ECF system, where it is automatically distributed to all parties in this case and is made available for viewing.

By: /s/ Maxwell S. Kennerly
THE BEASLEY FIRM, LLC
1125 Walnut Street
Philadelphia, PA 19107

**Attorney for Creditors Alex Plotkin and
401 Restaurant Associates**

Dated: June 18, 2010