

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

In re: : Chapter 11  
: :  
PHILADELPHIA NEWSPAPERS, LLC *et* : Case No. 09-11204-SR  
*al.*<sup>1</sup> : :  
: Jointly Administered  
Debtors. : :  
:

**MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO FILE  
DOCUMENT UNDER SEAL REGARDING ITS OBJECTION TO DEBTORS'  
MOTION FOR RECONSIDERATION OF THIS COURT'S APRIL 20, 2009  
ORDER DENYING DEBTORS' REQUEST FOR ITS SPECIAL  
COUNSEL TO CONDUCT AN INVESTIGATION**

The Official Unsecured Creditors' Committee (the "Committee"), by and through their undersigned counsel, files this motion (the "Seal Motion") pursuant to Local Rule 5003-1 to permit the Committee to file under seal that certain report of the taping incident (as described herein) in connection with the Committee's opposition to the Debtors' motion for reconsideration of this Court's April 20, 2009 Order which denied without prejudice the Debtors' Application to Employ the Law Firm of Elliott, Greenleaf and Siedzikowski P.C. (the "Reconsideration Motion").

**FACTUAL BACKGROUND**

1. A meeting occurred on November 17, 2008 attended by the Debtors, certain of the Debtors' pre-petition lenders known as the Steering Committee and a number of professionals. A portion of this meeting was improperly recorded by a representative of CIT.
2. This Court has authorized and directed undersigned counsel to investigate this incident and submit a report of its findings.

---

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

3. The Committee interviewed many parties in attendance during the incident and has reviewed thousands of pages of documents associated with the incident and the events that unfolded thereafter. The Committee has prepared a comprehensive report of the investigation.

4. The Committee has now completed its interim report (the "Report")<sup>2</sup>. As part of its response to the Motion for Reconsideration, the Committee wishes to attach the Report in an effort to demonstrate that the Debtors' request is unnecessary and that the Debtors' request for further investigation should be denied.

5. Importantly, among other sensitive topics contained in the Report, it provides confidential business information and detailed discussions of negotiations between the myriad of constituents associated with the Debtors' operations that ordinarily remain subject to non-disclosure under applicable discovery rules.

6. Furthermore, in order to secure cooperation for elements of the investigation (certain interviews and document production), the Committee executed confidentiality agreements with various parties involved. The Committee may be bound under the terms of those agreements from disclosing the information in a public forum.

7. Accordingly, the request to file the Report (along with the attachments) under seal is critical in order to avoid further disruption to the Debtors' operations.<sup>3</sup>

#### **LEGAL STANDARD**

8. Local Bankruptcy Rule 5003-1 concerns Documents Filed Under Seal. Specifically, pursuant to Local Bankruptcy Rule 5003-1(a), a document may be filed under seal

---

<sup>2</sup> A copy of the Report is being hand delivered to Chambers contemporaneously with the filing of this Seal Motion.

<sup>3</sup> The Committee does not seek to impose the protective seal vis a vis the Debtors as noted in the proposed order.

only if: (1) the action is brought pursuant to a federal statute that prescribes the sealing of the record or of certain specific documents; or (2) the Court orders the documents sealed.

9. Although Local Bankruptcy Rule 5003-1 provides no standards under which the court may order documents to be sealed, such relief is granted where “the interest in secrecy outweighs the presumption [of open records].” Leucadia, Inc. v. Applied Extrusion Technologies, Inc., 998 F.2d 157, 165 (3d Cir. 1993). Thus, while there is a presumption of a right of access to documents, “the right... is not absolute”. Id (quoting Bank of America Nat’l Trust & Savings Assn. v. Hotel Rittenhouse Assocs., 800 F.2d 339, 344 (3d Cir. 1986)).

10. In consideration thereof, the Third Circuit noted specifically that “[d]ocuments containing trade secrets or other confidential business information may be protected from disclosure”. Id.

11. “Courts have refused to permit their files to serve as ... sources of business information that might harm a litigant’s competitive standing.” Nixon v. Warner Communications, Inc., 435 U.S. 589, 598 (1978).

12. As set forth above, the Report details a substantial level of sensitive business information that if disclosed may otherwise harm the Debtors, their operations and their reorganization efforts. The balance of harms weights significantly in favor of sealing the Report at this juncture so that the Debtors and the Committee may evaluate the estates’ options as to future proceedings.

13. Accordingly, there is more than adequate cause to seal the Report at this time pending further order of the Court.

WHEREFORE, for the foregoing reasons, the Committee requests that this Court approve its Motion to File Documents Under Seal Regarding Its Objection to Debtors' Motion for Reconsideration of this Court's April 20, 2009 Order Denying Debtors' Request for its Special Counsel to Conduct an Investigation

Dated: August 17, 2009

ECKERT SEAMANS CHERIN & MELLOTT, LLC

By: 

Gary M. Schildhorn  
Ronald S. Gellert  
Brya M. Keilson  
Two Liberty Place  
50 South 16<sup>th</sup> Street, 22<sup>nd</sup> Floor  
Philadelphia, PA 19102  
Phone: 215-851-8400  
Fax: 215-851-8383

Co-Counsel for the Official  
Committee of Unsecured Creditors

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

**In re:** : **Chapter 11**  
:   
**PHILADELPHIA NEWSPAPERS, LLC et** : **Case No. 09-11204-SR**  
**al.,<sup>5</sup>** :   
: **Jointly Administered**  
**Debtors.** :   
:

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that on this 17<sup>th</sup> day of August, 2009, I caused a true and correct copy of the MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO FILE DOCUMENT UNDER SEAL REGARDING ITS OBJECTION TO DEBTORS' MOTION FOR RECONSIDERATION OF THIS COURT'S APRIL 20, 2009 ORDER DENYING DEBTORS' REQUEST FOR ITS SPECIAL COUNSEL TO CONDUCT AN INVESTIGATION to be served upon the parties listed below via electronic mail and to those requesting service via the Court's cm/ecf transmission.

lmcmichael@dilworthlaw.com  
mthomas@proskauer.com  
andrew.flame@dbr.com  
George.M.Conway@usdoj.gov



Ronald S. Gellert

<sup>5</sup> The Debtors in the Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number, are: Philadelphia Newspapers, LLC (3870), PMH Acquisition, LLC (1299), Broad Street Video, LLC (4665), Philadelphia Direct, LLC (4439), Philly Online, LLC (5185), PMH Holdings, LLC (1768), Broad Street Publishing, LLC (4574) and Philadelphia Media, LLC (0657).

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

**In re:** : **Chapter 11**  
: **PHILADELPHIA NEWSPAPERS, LLC et** : **Case No. 09-11204-SR**  
**al.,<sup>4</sup>** : **Jointly Administered**  
**Debtors.** :  
:

**ORDER APPROVING OF THE OFFICIAL COMMITTEE OF UNSECURED  
CREDITORS TO FILE DOCUMENT UNDER SEAL REGARDING ITS OBJECTION  
TO DEBTORS' MOTION FOR RECONSIDERATION OF THIS COURT'S APRIL 20,  
2009 ORDER DENYING DEBTORS' REQUEST FOR ITS SPECIAL  
COUNSEL TO CONDUCT AN INVESTIGATION**

Upon consideration of the Motion of the Official Committee of Unsecured Creditors to File Document Under Seal Regarding its Objection to Debtors' Motion for Reconsideration of this Court's April 20, 2009 Order Denying Debtors' Request for Its Special Counsel to Conduct an Investigation (the "Seal Motion") and any responses thereto;

IT IS ON THIS \_\_\_\_ DAY OF AUGUST, 2009, HEREBY;

ORDERED, that the Seal Motion is Granted; and it is further

ORDERED, that the Committee shall be entitled to file the Report (as defined in the Seal Motion) under seal; and it is further

ORDERED, that the Committee shall not be required to furnish a copy of the Report to parties other than the Debtors without further order of this Court.

---

The Honorable Stephen Raslavich

---

<sup>4</sup> The Debtors in the Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number, are: Philadelphia Newspapers, LLC (3870), PMH Acquisition, LLC (1299), Broad Street Video, LLC (4665), Philadelphia Direct, LLC (4439), Philly Online, LLC (5185), PMH Holdings, LLC (1768), Broad Street Publishing, LLC (4574) and Philadelphia Media, LLC (0657).