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Brisar: A Rare Happy Ending for Everyone In Ch. 11

Law360, New York (December 05, 2011, 2:30 PM ET) -- In this age of failing companies, tight capital markets and high-profile liquidations, the story of a small business that emerges from the bankruptcy process with its operations intact and its workers employed, without the need for high-interest financing or increased capitalization, is an increasingly rare one. In the case of Brisar Industries, the collective efforts of the debtor and its secured creditors demonstrated that where there is a will, there is still a way.

Brisar, a commercial packaging company, was incorporated in 1987 and operated out of a leased facility in Clifton, N.J. As Brisar's business and customer base expanded with the addition of numerous Fortune 500 companies in the 1990s, it sought to expand its manufacturing facility and corporate headquarters through the purchase of a 90,000 square-foot building in Paterson, N.J., in 1999. Brisar financed that purchase with a secured loan from the New Jersey Economic Development Authority, which subsequently sold the underlying note and mortgage to Woodlowe Realty Associates.

Additionally, in 2003, Brisar purchased a Philadelphia-based packaging business, including its manufacturing facility, with an eye toward expanding its operations into new packaging markets, including medical devices and Thermoform operations. That purchase was financed by Brisar's primary secured lender, Banco Popular.

Various circumstances, however, impeded Brisar's plans to grow its business. First, shortly after completing its purchase of the Philadelphia packaging company, Brisar learned that one of that company's major customers was terminating all contractual relations. Moreover, Brisar experienced a downturn in sales during the middle of the past decade, as many manufacturers of consumer products, in an effort to become more environmentally conscious, began to phase out the use of plastics (i.e., Thermoform) in their packaging materials.

Despite the pressure exerted on Brisar's finances by these circumstances, the company was able to survive under its existing business model until the onset of the global economic crisis in 2008. Faced with decreased revenues and an inability to pay its debts, Brisar filed for Chapter 11 protection in October 2009.

From the onset of the case, the secured creditors moved aggressively to preserve their interests, most prominently by objecting to the debtor's motion to use cash collateral. Woodlowe successfully argued that all rents received by Brisar from a tenant during the case were not property of the estate, and thus should be paid to Woodlowe. Banco Popular objected to the use of cash collateral and sought a turnover of certain receivables that were pledged to it. In the meantime, Brisar prepared for its eventual emergence from Chapter 11 by closing its Philadelphia business, selling the real and personal property, and consolidating certain operations at its Paterson location.

After several months in Chapter 11, and with its exclusivity periods on the verge of expiring, Brisar filed a plan of reorganization, through which it sought to compel Woodlowe and Banco Popular to accept the terms of a restructuring of their secured debts. Those creditors objected to the approval of Brisar's disclosure statement, and in the process foreshadowed their eventual objections to confirmation of the plan.

It appeared that the parties were headed for a contested confirmation hearing. Faced with an expensive and potentially protracted cramdown process, and with the jobs of Brisar's employees hanging in the balance, Brisar, Woodlowe and Banco Popular agreed to mediate their dispute with United States Bankruptcy Judge Morris Stern.

After several mediation sessions with Judge Stern and additional meetings without him, the parties reached a global settlement whereby Woodlowe and Banco Popular agreed to have their secured claims (including post-petition interest and fees) paid over time from Brisar's revenue stream. That agreement afforded Brisar an opportunity to restructure its debts in accordance with its scaled-down operations and confirm a revised plan of reorganization. As a result, Brisar remains in business and has preserved the jobs of approximately 100 blue-collar employees.

The successful reorganization of Brisar Industries holds an important lesson in these times of economic uncertainty. While not a complex case in the traditional sense, Brisar's Chapter 11 proceeding involved several different stakeholders with competing interests, including the founders and owners of a small business attempting to preserve their company's future. Rather than engaging in scorched-earth litigation, as many parties do today in Chapter 11 proceedings, Brisar's creditors and owners were able to focus their energy on a compromise that resulted in a successful reorganization.

Thus, while the bankruptcy headlines may continue to be dominated by failed enterprises and going out of business sales, there is still a place for bootstrap plans and outcomes that render everyone — creditors, equity holders and employees — a winner.

--By Kenneth L. Baum, Cole Schotz Meisel Forman & Leonard PA

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Baum represented Woodlowe Realty Associates in Brisar Industries Inc.'s Chapter 11 case. Jeffrey A. Cooper of Carella Byrne Cecchi Olstein Brody & Agnello PC represented the debtor. Charles A. Gruen represented Banco Popular.