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FTD Must Include Case Expense Forecast In Ch. 11 Plan Docs

By **Vince Sullivan**

Law360, Wilmington (October 23, 2019, 8:27 PM EDT) -- Bankrupt flower and gift retailer FTD Cos. Inc. received court approval Wednesday for its Chapter 11 plan disclosure statement after a Delaware judge told the debtor it had to include information about predicted administrative expenses in the documents being sent to creditors.

During a hearing in Wilmington, U.S. Bankruptcy Judge Laurie Selber Silverstein said that concerns raised by the official committee of unsecured creditors about the unknown amount of administrative and priority expenses incurred by the FTD estate raised a significant enough issue that it needed to be added to the plan disclosure statement.

“I think that should be in there. If in putting that together we find there’s not enough cash to cover what the debtor expects to be the administrative and priority claims, we need to rethink this,” Judge Silverstein said of the plan. “The debtor has to know that at confirmation it believes it has enough money to pay administrative and priority claims. Otherwise it’s a useless exercise.”

The committee had opposed the disclosure statement, which describes a proposed plan of liquidation for FTD, because it wasn’t clear if any distribution would be made to unsecured creditors without knowing how much money would need to go out to pay administrative expense claims and priority claims, including tax obligations.

The absence of that information would make any potential settlement among the committee and FTD’s secured lenders impossible to execute, as any amount set aside in exchange for the creditors giving up their lien challenge claims against the lenders could be swept away to pay administrative expenses, according to committee attorney Eric R. Wilson of Kelley Drye & Warren LLP.

The absolute priority rules of the bankruptcy code require claims to be paid in descending order, beginning with administrative claims, and a settlement that required payment to the unsecured creditors before the administrative claims would violate those priority rules, Wilson explained.

“The bottom line from our perspective is we stand here today because we have no settlement …” Wilson told the court. “We no longer have a prospect of recovery from avoidance actions or actions against the directors and officers, and no longer have the assurance that any negotiated funds will be available to us.”

Judge Silverstein said that a resolution between the committee and the lenders is still possible between now and a confirmation hearing scheduled for early December, and encouraged the parties to continue negotiations.

Debtor attorney Brad B. Erens of Jones Day said he believed there was plenty of money set aside in a wind-down budget to pay the claims in question, as long as the case is confirmed by the end of the year.

“If a settlement is reached before the voting deadline we’ll put that information into the plan,” Erens told the court. “Why don’t we wait? We think delaying this case will actually create a much greater risk of what people seem concerned about, which is that there isn’t enough in the wind-down fund to pay all administrative claims."

As a case drags on, the expenses pile up in the form of professional fees, fees owed to the United States trustee and costs associated with regulatory and tax filings for a public company like FTD, Erens said.

Judge Silverstein agreed, saying she didn't envision taking the case into 2020, whether a plan was confirmed or not. She left questions about third-party releases live for the confirmation hearing.

FTD and 14 affiliates sought Chapter 11 protection in Delaware bankruptcy court on June 3 with more than $220 million in debt and plans to break up and sell the enterprise.

The company, which traces its roots to the 1910 launch of a nonprofit "flowers-by-wire" telegraph network, blamed many of its troubles on failures to manage the business for the long haul. Heavy drag on the business resulted from what FTD described as the poorly managed integration of former competitor Provide Commerce Inc. and its affiliates following a $430 million acquisition in 2014.

FTD completed sales of three business lines in August that brought more than $130 million into the estate. Its floral unit sold for $111.9 million, its gourmet food line sold for $20.5 million and its Personal Creations assets sold for $18 million.

FTD and its affiliates are represented by Daniel J. DeFranceschi, Paul N. Heath, Brett M. Haywood and Megan E. Kenney of Richards Layton & Finger PA, and Heather Lennox, Thomas A. Wilson, Brad B. Erens, Timothy W. Hoffmann, Genna Ghaul and Caitlin K. Cahow of Jones Day.

The official committee of unsecured creditors is represented by Jennifer R. Hoover and Kevin M. Capuzzi of Benesch Friedlander Coplan & Aronoff, and Eric R. Wilson, Jason R. Adams, William S. Gyves, Lauren S. Schlussel and Maeghan J. McLoughlin of Kelley Drye & Warren LLP.

The case is In re: FTD Companies Inc. et al., case number 19-11240, in the U.S. Bankruptcy Court for the District of Delaware.

--Editing by John Campbell.
