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A Trap for the Unwary? Single Employer Liability for Related Entities Under the WARN Act

Ryan M. Murphy [FNa1]

I. Introduction

Equity sponsors or lenders involved with failing companies often are concerned with liability that may result from dealing with troubled employers stemming from the Worker Adjustment and Retraining Notification Act of 1988 (the WARN Act). [FN1] The WARN Act generally imposes liability on an employer that fails to provide sufficient written notice in advance of a mass employee termination event. [FN2] Since the direct employer may be insolvent at the time of a plant closing or mass layoff, terminated employees frequently assert WARN Act claims against entities related to the direct employer, including parent companies and lenders, on the theory that such entities are the actual responsible parties under the statute. [FN3]

A recent decision by the Delaware bankruptcy court in *D'Amico v. Tweeter Opco, LLC (In re Tweeter OPCO, LLC)*, [FN4] caught the attention of lenders and equity sponsors based on its potential to broaden the reach of WARN Act liability to investors who exercise significant control over a failing company. The decision in *Tweeter* can be read to impose WARN Act liability on distant parent companies, lenders and distressed investors who exercise de facto control over a debtor-employer. [FN5] This article examines the *Tweeter* decision and whether it could represent a seismic shift in the landscape of "single employer" liability under the WARN Act.

II. WARN Act Liability

A. Overview of the WARN Act

The WARN Act was enacted in response to widespread worker dislocation during the 1970s and 1980s as a result of companies being merged, acquired or closed without notice. [FN6] The purpose of the WARN Act is to protect laid off workers by providing advanced notice to allow for adjustment to lost employment and the opportunity to seek out alternatives. [FN7] The WARN Act reflects the realization that early intervention often facilitates successful reemployment of dislocated employees. [FN8]

Generally, the WARN Act requires that statutorily-covered employers provide a 60-day notice in advance of a qualified plant closing or mass layoff. [FN9] An "employer" under the WARN Act includes any "business enterprise" employing 100 or more individuals, excluding part-time employees. [FN10] A plant closing occurs with the temporary or permanent cessation of operations of a single employment site resulting in the loss of 50 or more employees during any 30-day period. [FN11] A mass layoff involves the loss of at least 50 employees and at least 33% of the total employees at a single employment site during any 30-day period. [FN12] The pre-termination notice must be provided to affected employees or their representative, the dislocated state worker unit, and the chief elected official of a unit of local government. [FN13]

Failure to comply with the WARN Act can result in substantial civil liability and penalties. An employer that violates the statute is liable to each aggrieved employee for back pay for each day in violation up to a maximum of 60 days. [FN14] In addition, a violating employer is responsible for any losses an employee incurs for prematurely terminated benefits, including medical expenses which would have been covered under an employee benefit plan during the relevant period. [FN15] These specific monetary recoveries are the exclusive remedies for violating the WARN Act. [FN16]

Three exceptions are provided under the WARN Act excusing compliance with the full 60-day notice requirement. [FN17] These statutory defenses apply where: (1) an employer is pursuing capital and maintains a reasonable belief that advance notice would inhibit the ability to secure this financing (the so-called "faltering company" exception); [FN18] (2) unforeseeable business circumstances exist; [FN19] or (3) a natural disaster has occurred. [FN20] Even if one of these exceptions applies, an employer remains obligated to provide a brief statement of the basis for reducing the notification period and to provide the required notice as soon as practicable. [FN21]

B. Single Employer Liability under the Warn Act

The WARN Act itself does not define a "business enterprise" or directly address the liability of a parent company controlling an employer's termination event. [FN22] Regulations issued by the DOL provide that two or more affiliated companies may be considered a single business enterprise for WARN Act purposes. [FN23] These regulations state that "independent contractors and subsidiaries which are wholly or partially owned by a parent company are treated as separate employers or as a part of the parent or contracting company depending upon the degree of their independence from the parent." [FN24] The DOL regulations enumerate five-factors to be considered in determining whether two or more entities qualify as a single employer: (i) common ownership, (ii) common directors and/or officers, (iii) de facto exercise of control, (iv) unity of personnel policies emanating from common source, and (v) the dependency of operations (the DOL Test). [FN25]

Several courts, including the Third Circuit Court of Appeals, have adopted the DOL Test to determine when an employer and its parent or lender may be considered a single employer that is jointly liable for WARN Act violations. [FN26] The DOL Test is not an exhaustive list and the factors are not balanced equally. [FN27] Common ownership and common directors and/or officers cannot themselves establish single employer liability under the WARN Act, whereas the de facto exercise of control is of particular significance. [FN28] The overarching inquiry is whether the circumstances tend to demonstrate a lack of an arm's-length relationship or excessive entanglement between the entities. [FN29]

III. The Decision in *Tweeter*

On November 5, 2008, Tweeter Opco, LLC (the "Debtor") filed a voluntary Chapter 11 petition. [FN30] The Debtor terminated more than 50 employees on October 31, 2008, and November 7, 2008. [FN31] After the bankruptcy filing, several terminated employees commenced a class action adversary proceeding pursuant to the WARN Act against the Debtor as well as Schultze Asset Management, LLC ("SAM"), the Debtor's ultimate parent entity and primary lender. [FN32] The plaintiffs alleged that SAM was jointly liable with the Debtor under a single employer theory for the asserted WARN Act violations. [FN33]

SAM was an indirect parent of the Debtor, four steps removed up the equity ownership chain, i.e., the Debtor's great-great-great grandparent. [FN34] George Schultze ("Schultze") owned and controlled SAM and other

related entities in the Debtor's ownership tree. [FN35] In addition to being an indirect owner, the plaintiffs alleged that SAM managed and instructed various entities to lend approximately $30 million to the Debtor and related Debtor entities. [FN36]

Subsequent to the Chapter 11 filing, the Debtor's bankruptcy case was converted to Chapter 7 and a court-approved stipulation was entered staying the class action as against the Debtor but continuing with respect to SAM. [FN37] Both the plaintiffs and SAM filed cross-motions for summary judgment concerning SAM's WARN Act liability.

Judge Walrath's decision applied the five-factor DOL Test in addressing the SAM's liability as a single employer. In first addressing "common ownership," the bankruptcy court noted that SAM's status as an indirect owner and the great-great-great-grandparent of the Debtor was undisputed. [FN38] The bankruptcy court rejected SAM's argument that grandparent entities cannot share common ownership with an indirect subsidiary as a matter of law. [FN39] Instead, the bankruptcy court determined that SAM's substantial indirect ownership interest in the Debtor warranted an additional inquiry into common ownership.

Focusing specifically on the lending relationship between the parties, the bankruptcy court concluded that because an affiliate of SAM had purchased the Debtor's senior-lien debt, by extension SAM was able to exert significant control over the Debtor's decision-making. [FN40] Thus, SAM's significant financial control, in conjunction with the substantial indirect ownership interest, was sufficient for the bankruptcy court to find that the common ownership prong was satisfied. [FN41]

The bankruptcy court next analyzed whether common directors and/or officers existed among SAM and the Debtor, specifically "whether any of the same individuals were a part of the formal management teams of each company." [FN42] The plaintiffs cited evidence that four of the Debtor's five directors were "connected" with SAM and that Schultze was a common director/officer of each company. [FN43] The bankruptcy court disagreed that the Debtor's other three directors could be considered formal, or even de facto, officers, but agreed that Schultze was an individual that qualified as a common director/officer. [FN44] Interestingly, Judge Walrath went even further and found that it was "clear that Schultze and SAM controlled the other three directors of the Debtor who were employees, or on the advisory board of SAM," in concluding that this prong was met. [FN45]

The bankruptcy court next focused on the "*de facto* exercise of control," by SAM over the Debtor. The "core inquiry" in this regard is "whether the parent [or lender] has specifically directed the allegedly illegal employment practice." [FN46] In analyzing this factor, the bankruptcy court relied heavily on the fact that one of the Debtor's directors, who also was a SAM-employed analyst, had a direct conversation with the Debtor's then-CEO informing him of Schultze's aspiration that half of the Debtor's workforce be terminated in the interest of increasing profitability. [FN47] The bankruptcy court observed that this same director sent a subsequent email upon termination of the Debtor's CEO expressing that "[SAM] felt [it] needed tighter control of Tweeter within [its] own organization." [FN48] Furthermore, Judge Walrath recounted that a SAM employee had been enlisted by Schultze to assist the Debtor's management with a previous round of employee layoffs, that Schultze had repeatedly called for reductions in payroll, and that SAM's general counsel supervised the Debtor's employment practices, to establish SAM's entanglement with the Debtor's operations. [FN49] Based on this evidence, the bankruptcy court found that sufficient evidence existed to demonstrate de facto control, and in fact noted that the degree of control exercised by SAM was "particularly egregious" under the circumstances. [FN50]

Turning next to the "unity of personnel policies" factor, the bankruptcy court identified the relevant inquiry

as “discerning whether the nominally separate corporations actually functioned as a single entity with respect to [personnel] policies on a regular, day-to-day basis.” [FN51] The plaintiffs provided no evidence in support of this factor, in particular with respect to centralized hiring, payroll management and benefits record keeping among the companies. [FN52] The bankruptcy court relied on SAM's evidence that the companies did not share labor policies, hired and fired employees separately, utilized separate payrolls, and negotiated independent labor contracts in finding that this prong of the DOL Test was not satisfied. [FN53]

Lastly, the bankruptcy court considered the “dependency of operations” factor and scrutinized whether the general administrative structure of the two entities were dependent upon one another to continue operations. [FN54] The bankruptcy court rejected the plaintiffs' argument that the limited involvement of SAM employees during the transition following termination of the Debtor's CEO was sufficient to satisfy this prong where no other evidence was presented to show that the daily functioning of the companies were interdependent. [FN55]

In reviewing application of the DOL Test, the bankruptcy court found in favor of the plaintiffs on the single employer liability issue on the basis that evidence of common ownership, common directors and officers, and de facto control established a single enterprise under the WARN Act. In reaching this conclusion, the bankruptcy court emphasized that the de facto control prong is to be afforded “special weight” and reiterated that SAM's exercise of control was “particularly egregious.” [FN56] Accordingly, Judge Walrath entered summary judgment against SAM on the issue of single-employer liability.

IV. Implications of *Tweeter*

At first blush, the *Tweeter* decision seemingly broadens the scope of single-employer liability to encapsulate lenders and equity sponsors. Two recent decisions from the Delaware bankruptcy court, [FN57] including one by Judge Walrath, however, indicate that the single-employer issue remains highly fact-dependent. Thus, *Tweeter* does not signal an open invitation to impose WARN Act liability on lenders, equity sponsors, and other parent entities under all circumstances.

An earlier WARN Act decision by Judge Walrath in *In re DHP Holdings II Corp.*, [FN58] reinforces that de facto control is the driving factor in the single-employer analysis and that this remains a fact-intensive inquiry. In *DHP Holdings II,* the plaintiffs sought to impose WARN Act liability on the debtors' indirect owner, who was not the debtors' lender. In fact, it was the debtors' senior lender that insisted upon the appointment of the chief restructuring officer who subsequently conducted the layoffs that formed the basis for the litigation. [FN59] The debtors' equity owner did not contest that common ownership and common directors and officers were present to satisfy the first two prongs of the DOL Test. [FN60] Conversely, the plaintiffs did not dispute that unity of personnel policies and dependency of operations favored the debtors' equity owner. [FN61] Thus, the critical issue was whether there was de facto exercise of control.

In addressing this factor, the bankruptcy court concluded that the debtors' equity sponsor had no knowledge “of which employees were being terminated, when the terminations were to occur, or the manner in which the employees were informed of the terminations.” [FN62] The only evidence presented showed that the equity sponsor and the debtors' CRO had communicated, but that the nature of these communications was merely for the CRO to provide an update of the status of the debtors' operations. [FN63] Importantly, the bankruptcy court cited the fact that the CRO never sought any prior authority from the equity sponsor before effectuating the layoffs. [FN64] Furthermore, the bankruptcy court rejected the plaintiffs' contention that because both the CRO and equity owner reached the same conclusion concerning cost cuts and facility closings that an inference was cre-

ated that the equity sponsor directed the termination of employees. [FN65] Thus, Judge Walrath concluded that the de facto control prong was not satisfied and refused to impose single-employer liability under the WARN Act. [FN66]

Another recent decision of the Delaware bankruptcy court *In re Consolidated Bedding, Inc.* [FN67] is instructive in discerning the import of the *Tweeter* decision. In *Consolidated Bedding*, Judge Shannon considered a motion to dismiss a WARN Act class action suit brought against a private equity fund that invested in the debtors. [FN68] The defendant in *Consolidated Bedding* was the debtors' lead financier and equity holder after investing approximately $160 million in the debtors through a senior loan and PIK notes. [FN69] The equity fund utilized an "operations team" as a liason with the debtors in an effort to reduce costs and enhance value, a process it employed with respect to its other portfolio companies. [FN70] In addition, the defendant's employees occupied four of the five seats on the debtors' boards of directors. [FN71]

Applying the same DOL Test as in *Tweeter*, the bankruptcy court held that the plaintiffs failed to establish that the defendant and the debtors constituted a single employer for purposes of the WARN Act. [FN72] Importantly, the bankruptcy court refused to infer that de facto control existed simply by virtue of the fact that the defendant's employees served on the debtors' board of directors. [FN73] Judge Shannon found that there was no evidence that that the board members were wearing their "hats" as the equity fund's employees when deciding to close the debtors' facilities. [FN74] Absent particularized evidence that the defendant exerted influence in the decision to terminate the debtors' employees, the bankruptcy court found that the required degree of integration between the debtors and their equity sponsor-lead financier could not be established. [FN75]

The rationale adopted in *Tweeter, DHP Holdings II*, and *Consolidated Bedding* reinforce that single-employer liability is fact-intensive and does not exist simply due to the apparent ability of a parent company, lender or equity sponsor to influence a debtor's decision-making. Juxtaposing the decisions in *Tweeter* and *DHP Holdings II* demonstrates that de facto control remains the critical factor in determining single-employer liability under the WARN Act, the outcome of which can turn sharply on a slight variation of facts. While the level of direct involvement in *Tweeter* may have been on the outer-end of the spectrum, it could not be characterized as radically unique in terms of the relationship between an equity sponsor and a portfolio company. Any entity maintaining an indirect ownership, lending or management role in a troubled company must be cognizant of the potential WARN Act liability that can exist when crossing the line into de facto control.

[FN1]. 29 U.S.C.A. §§ 2101 to 2109 (2006). The WARN Act was enacted on August 4, 1988, and became effective on February 4, 1989. The WARN Act is implemented through regulations promulgated by the Department of Labor (DOL).

[FN2]. 29 U.S.C.A. § 2101.

[FN3]. See generally In re Consolidated Bedding, Inc., 432 B.R. 115, 120 (Bankr. D. Del. 2010) ("[A] plant's closure is often the result of a corporation's insolvency or close of business, which may inhibit workers from recovering WARN Act damages against the insolvent or dissolving corporation.").

[FN4]. In re Tweeter OPCO, LLC., 453 B.R. 534, 55 Bankr. Ct. Dec. (CRR) 41 (Bankr. D. Del. 2011).

[FN5]. See generally Dale III, et al., Equity Sponsors Beware: Delaware Bankruptcy Court Issues a Warning: Part I, 30 Am. Bankr. Inst. J. 16, at *67 (Nov. 2011) (examining the *Tweeter* decision and noting that

"[p]rivate-equity sponsors are extremely vulnerable to claims of single-employer liability under the WARN Act and must exercise extraordinary care in respecting corporate formalities and the separateness of entities when evaluating and implementing plant closures and layoffs.").

[FN6]. See In re APA Transport Corp. Consol. Litigation, 541 F.3d 233, 239, 45 Employee Benefits Cas. (BNA) 2100, 28 I.E.R. Cas. (BNA) 97, 156 Lab. Cas. (CCH) P 11093 (3d Cir. 2008), as amended, (Oct. 27, 2008).

[FN7]. See APA Transport, 541 F.3d at 239 ("The purpose of the WARN Act is to protect workers by obligating employers to give their employees advanced notice of plant closings."); Hotel Employees and Restaurant Employees Intern. Union Local 54 v. Elsinore Shore Associates, 173 F.3d 175, 182, 14 I.E.R. Cas. (BNA) 1633 (3d Cir. 1999) (explaining that the notice provided by the WARN Act allows workers to "adjust to the prospective loss of employment, to seek and obtain alternative jobs and ... to enter skill training or retraining that will allow [them] to successfully compete in the job market.") (citation omitted).

[FN8]. SeeDale III, 30 Am. Bankr. Inst. J. 16, at *65 (citation omitted).

[FN9]. See generally 29 U.S.C.A. § 2102(a).

[FN10]. See 29 U.S.C.A. § 2101(a)(1).

[FN11]. See 29 U.S.C.A. § 2101(a)(2).

[FN12]. 29 U.S.C.A. § 2101(a)(3).

[FN13]. 29 U.S.C.A. § 2102(a).

[FN14]. See 29 U.S.C.A. § 2104; APA Transport, 541 F.3d at 239-40 (explaining that liability accrues for each day notice is not provided up a 60-day limit).

[FN15]. 29 U.S.C.A. § 2104(a)(1).

[FN16]. See 29 U.S.C.A. § 2104(b) ("The remedies provided for in this section shall be the exclusive remedies for any violation of this chapter.").

[FN17]. See 29 U.S.C.A. § 2102(b); 20 C.F.R. § 639.9 (2011).

[FN18]. The faltering company defenses requires a showing that: (1) the employer was actively seeking capital at the time the 60-day notice would have been required; (2) the employer had a realistic opportunity to obtain the financing sought; (3) the financing would have been sufficient, if obtained, to enable the employer to avoid or postpone the shutdown; and (4) the employer reasonably and in good faith believed the 60-day notice would have precluded it from obtaining the financing it needed. See 29 U.S.C.A. § 2102(b)(1); 20 C.F.R. § 639.9(a)(1). This exception applies to plant closings but not to mass layoffs and is to be narrowly construed under the given circumstances. See 20 C.F.R. § 639.9(a); In re Partsearch Technologies, Inc., 453 B.R. 84, 100 n. 10, 55 Bankr. Ct. Dec. (CRR) 17 (Bankr. S.D. N.Y. 2011).

[FN19]. This "unforeseen business circumstances" defense requires the employer to show that "the closing or mass layoff is caused by business circumstances that were not reasonably foreseeable as of the time that notice would have been required." 29 U.S.C.A. § 2102(b)(2)(A). This exception focuses on the employer's business

judgment and whether the termination was a commercially reasonable judgment for a similarly situated employer in predicting the demands of a particular market. See 20 C.F.R. § 639.9(b)(2); Partsearch, 453 B.R. at 110 n.9.

[FN20]. See 29 U.S.C.A. § 2102(b)(2)(B) ("No notice under this chapter shall be required if the plant closing or mass layoff is due to any form of natural disaster, such as a flood, earthquake, or the drought currently ravaging the farmlands of the United States.").

[FN21]. See 29 U.S.C.A. § 2102(b)(3)("An employer relying on this subsection shall give as much notice as is practicable and at that time shall give a brief statement of the basis for reducing the notification period.").

[FN22]. See Consolidated Bedding, 432 B.R. at 120 (observing that the WARN Act does not specifically address the situation where an employee pursues an entity related to the direct employer on the theory that the related entity actually controlled the employer and should be treated as the employer for WARN Act purposes).

[FN23]. See 20 C.F.R. § 639.3(a)(2).

[FN24]. 20 C.F.R. § 639.3(a)(2).

[FN25]. 20 C.F.R. § 639.3(a)(2).

[FN26]. See, e.g., Pearson v. Component Technology Corp., 247 F.3d 471, 478, 17 I.E.R. Cas. (BNA) 769, 143 Lab. Cas. (CCH) P 11005 (3d Cir. 2001); APA Transport, 541 F.3d at 242-43. A trend in the case law appears to favor application of the DOL Test. See Austen v. Catterton Partners V, LP, 709 F. Supp. 2d 168, 173, 30 I.E.R. Cas. (BNA) 1068, 159 Lab. Cas. (CCH) P 10197 (D. Conn. 2010) (observing trend in favor of the DOL Test); see, e.g., Administaff Companies, Inc. v. New York Joint Bd., Shirt & Leisurewear Div., 337 F.3d 454, 457-458, 20 I.E.R. Cas. (BNA) 297, 148 Lab. Cas. (CCH) P 10229 (5th Cir. 2003); Childress v. Darby Lumber, Inc., 357 F.3d 1000, 1005-06 , 20 I.E.R. Cas. (BNA) 1606, 149 Lab. Cas. (CCH) P 10304 (9th Cir. 2004). Other courts, however, have adhered to principles of lender liability in adjudicating WARN Act claims. See, e.g., Coppola v. Bear Stearns & Co., Inc., 499 F.3d 144, 149-50, 26 I.E.R. Cas. (BNA) 849, 154 Lab. Cas. (CCH) P 10902 (2d Cir. 2007) (recognizing the DOL Test is appropriate with respect to parent-subsidiary liability, but that the DOL factors other than the de facto control factor have "little direct bearing on the paradigmatic relationships between lenders and borrowers."); see generally Consolidated Bedding, 432 B.R. at 124 n.5.

[FN27]. See Pearson, 247 F.3d at 495; In re APA Transport, 541 F. 3d at 242-45.

[FN28]. See Pearson, 247 F.3d at 494-95; APA Transport, 541 F. 3d at 243; Austen, 709 F. Supp. 2d at 177 ("*De facto* control is perhaps the most important prong of the DOL test.").

[FN29]. See Pearson, 247 F.3d at 494-95.

[FN30]. Tweeter, 453 B.R. at 539.

[FN31]. Tweeter, 453 B.R. at 541.

[FN32]. Tweeter, 453 B.R. at 539.

[FN33]. Tweeter, 453 B.R. at 539.

[FN34]. Tweeter, 453 B.R. at 541-42.

[FN35]. Tweeter, 453 B.R. at 541-42.

[FN36]. Tweeter, 453 B.R. at 542.

[FN37]. Tweeter, 453 B.R. at 539.

[FN38]. Tweeter, 453 B.R. at 541-42. The bankruptcy court summarized the chain of ownership as follows: Schultze and his immediate family were 100% members of SAM; SAM was the general partner of Schultze Partners LP which owned approximately 37% of Schultze Master Fund Ltd; which owned 100% of Schultze Holding Corp.; which in turn owned 82% of the interests of Tweeter Newco, LLC; which finally owned 100% of the Debtor's equity. Tweeter, 453 B.R. at 541-42.

[FN39]. Tweeter, 453 B.R. at 542. The bankruptcy court specifically rejected the holding of Guippone v. BH S & B Holdings LLC, 159 Lab. Cas. (CCH) P 10258, 2010 WL 2077189 at *4 (S.D. N.Y. 2010) that "grandparent corporations are not common owners of the subsidiaries of their subsidiaries." Tweeter, 453 B.R. at 542.

[FN40]. Tweeter, 453 B.R. at 542-43. The bankruptcy court explained that financial control standing along can satisfy the common ownership factor. Tweeter, 453 B.R. at 542 (citing Pearson, 247 F.3d at 494) ("'financial control' will suffice to satisfy the 'common ownership' prong of the integrated enterprise test, and it is likely that the DOL factors should be interpreted similarly.").

[FN41]. Tweeter, 453 B.R. at 542-43.

[FN42]. Tweeter, 453 B.R. at 543 (citing Pearson, 247 F.3d at 494).

[FN43]. Tweeter, 453 B.R. at 543.

[FN44]. Tweeter, 453 B.R. at 543.

[FN45]. Tweeter, 453 B.R. at 543.

[FN46]. Tweeter, 453 B.R. at 543 (citing Pearson, 247 F.3d at 491); see also APA Transport, 541 F.3d at 245 (de facto exercise of control factor focuses on determining the decision-maker responsible for the employment practice that gave rise to the litigation).

[FN47]. Tweeter, 453 B.R. at 543-44.

[FN48]. Tweeter, 453 B.R. at 544.

[FN49]. Tweeter, 453 B.R. at 544-45.

[FN50]. Tweeter, 453 B.R. at 545.

[FN51]. Tweeter, 453 B.R. at 545 (citing Pearson, 247 F.3d at 490).

[FN52]. Tweeter, 453 B.R. at 545.

[FN53]. Tweeter, 453 B.R. at 545.

[FN54]. Tweeter, 453 B.R. at 546 (citing APA Transport, 541 F.3d at 244 n.9). Specifically, the bankruptcy

court concentrated on whether "shared administrative or purchasing services, interchanges of employees or equipment, and commingled finances" existed among SAM and the Debtor. Tweeter, 453 B.R. at 546.

[FN55]. Tweeter, 453 B.R. at 546 ("Looking at the daily functioning of the two companies, there is no evidence that they were dependent upon one another to continue operations.").

[FN56]. Tweeter, 453 B.R. at 546.

[FN57]. In re DHP Holdings II Corp., 447 B.R. 418, 54 Bankr. Ct. Dec. (CRR) 169 (Bankr. D. Del. 2010); Consolidated Bedding, 432 B.R. 115.

[FN58]. DHP Holdings II, 447 B.R. 418.

[FN59]. DHP Holdings II, 447 B.R. at 421-23.

[FN60]. DHP Holdings II, 447 B.R. at 423.

[FN61]. DHP Holdings II, 447 B.R. at 424-25.

[FN62]. DHP Holdings II, 447 B.R. at 424.

[FN63]. DHP Holdings II, 447 B.R. at 423-24.

[FN64]. DHP Holdings II, 447 B.R. at 423-24.

[FN65]. DHP Holdings II, 447 B.R. at 423-24.

[FN66]. DHP Holdings II, 447 B.R. at 423-24.

[FN67]. Consolidated Bedding, 432 B.R. 115.

[FN68]. Consolidated Bedding, 423 B.R. at 115-16.

[FN69]. Consolidated Bedding, 423 B.R. at 117-18.

[FN70]. Consolidated Bedding, 423 B.R. at 117-18.

[FN71]. Consolidated Bedding, 423 B.R. at 118..

[FN72]. Consolidated Bedding, 423 B.R. at 124-25.

[FN73]. Consolidated Bedding, 423 B.R. at 122-24.

[FN74]. Consolidated Bedding, 423 B.R. at 122-24.

[FN75]. Consolidated Bedding, 423 B.R. at 124.

[FNa1]. Ryan M. Murphy is an associate in the Bankruptcy & Restructuring Practice of Potter Anderson & Corroon. The opinions expressed herein are personal to the author and are not necessarily those of Potter Anderson & Corroon or its clients.

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