

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

Hearing Date:
Hearing Time:

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In re : Chapter 11

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STAR TRIBUNE HOLDINGS : Case No. 09-10244 (RED)

CORPORATION, *et al.*, :

:

Debtor. :

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**OBJECTION OF THE UNITED STATES TRUSTEE
TO DEBTORS' MOTION FOR AUTHORIZATION TO
(I) PAY PRE-PETITION WAGES, SALARIES, EMPLOYEE
BENEFITS AND OTHER COMPENSATION, (ii) MAINTAIN
EMPLOYEE BENEFITS PROGRAMS AND PAY RELATED
ADMINISTRATIVE OBLIGATIONS, (iii) ALLOW EMPLOYEES
TO PROCEED WITH OUTSTANDING WORKERS' COMPENSATION
CLAIMS AND (iv) AUTHORIZE APPLICABLE BANKS AND OTHER
FINANCIAL INSTITUTIONS TO RECEIVE, PROCESS, HONOR
AND PAY ALL CHECKS PRESENTED FOR PAYMENT AND
TO HONOR ALL FUND TRANSFER REQUESTS**

TO: THE HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE:

Diana G. Adams, the United States Trustee for Region 2 (the "United States Trustee"), hereby files her objection to the Debtors' Motion for Authorization to (i) pay pre-petition wages, salaries, employee benefits and other compensation, (ii) maintain employee benefits programs and pay related administrative obligations, (iii) allow employees to proceed with outstanding workers' compensation claims and (iv) authorize applicable banks and other financial institutions to receive, process, honor and pay all checks presented for payment and to honor all fund transfer requests (the "Motion," ECF. Doc. No. 15). The United States Trustee objects to the proposed payment of severance payment totaling \$436,478.03 to employees that would be in addition to the

maximum priority amount set forth in Section 507(a)(4)(A) of the Bankruptcy Code that has already been paid to these employees.

I. STATEMENT OF FACTS

1. On January 15, 2009, (the “Petition Date”), the Star Tribune Holdings Corporation (“Holdings”) and Star Tribune Company (“Star Tribune”) (together the “Debtors”) filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. Since the Petition Date, the Debtors have operated their business and managed their properties as debtors in possession pursuant to Bankruptcy Code sections 1107 and 1108.

2. The Debtors are a newspaper and media company that publishes in both print and on-line the Star Tribune newspaper, the newspaper with the highest daily circulation in the State of Minnesota. The Star Tribune is ranked nationally as the 10th largest Sunday newspaper and the 15th largest daily newspaper based on circulation.

3. On January 16, 2009, the Court conducted a hearing on various motions, including the instant Motion, filed by the Debtors (the “First Day Motions”).

4. The Court approved an interim order (the “Interim Order”) allowing severance payments up to the statutory limit in the amount of \$10,950.00 set forth in Section 507(a)(4).
ECF Doc. No. 20.

5. The Debtors now seek authorization to pay additional severance payments aggregating \$436,478.03 to 43 employees (15 non-union and 28 union) (the “Affected Employees”).

6. Pursuant to the Interim Order, the Affected Employees have received the maximum payments allowed up to the statutory limit of \$10,950.00 set forth in Section 507(a)(4)(A). *See* ECF Doc. No. 20.

7. Payments to union employees will aggregate \$388,899.16, ranging from \$0.00 to \$52,401.00, with 15 individuals receiving more than \$10,000.00.

8. Payments to non-union employees aggregate \$47,578.87, ranging from \$0.00 to 16,088.52, with 5 individuals receiving more than \$3,000.00.

9. The Debtors have not established whether or not the severance payments they seek to pay to the Affected Employees were earned within the 180 days before the Petition Date.

10. On January 28, 2009, the United States Trustee appointed an Official Committee of Unsecured Creditors (the “Committee”). ECF Doc. No.56.

11. The Committee is currently represented by Lowenstein Sandler PC, who will seek an order approving its retention.

II. DISCUSSION

A. The Statutory Framework.

12. Section 507(a)(4)(A) provides as follows:

(a) The following expenses and claims have priority in the following order:

* * * *

(4) Fourth, allowed unsecured claims, but only to the extent of \$10,950 for each individual or corporation, as the case may be, earned within 180 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first for —

(A) wages, salaries, or commissions,
including vacation, severance, and sick leave pay
earned by an individual; or

11U.S.C. § 507(a)(4)(A).

13. There appears to be no dispute over the interpretation, meaning or application of the statute. The statute unequivocally limits unsecured severance payments earned within 180 of the Petition Date to \$10,950.00. *See* 4 Collier on Bankruptcy, ¶ 507.05, pp. 507-30 – 31, (15th ed. rev 2008).

14. There is also no dispute that the Court has authorized payments pursuant to Section 507(a)(4)(A) to the Affected Employees. ECF Doc. No. 20. There is also no dispute that the employees have received the maximum allowable payments pursuant to Section 507(a)(4)(A) in amounts up to the statutory limit of \$10,950.00.

15. The only justification set forth in the Motion for the payment of severance payments in general (and not specifically for payments in excess of the statutory maximum) is that “[t]he Debtors must maintain the Severance Programs in order to retain, and provide security to, remaining Employees.” Motion. ¶ 20, pp. 9-10; ECF Doc. No. 15.

16. Limiting pre-petition severance payments owed to separated employees to the amount mandated by the Bankruptcy Code does not interfere with the continuation of the Severance Programs as applied to the remaining Employees.

17. While the statutory limit alone is sufficient to prohibit payments in excess thereof to the separated employees, the Debtors have also not established that the severance payments were

earned within 180 of the Petition Date, as required by Section 507(a)(4). See 4 Collier on Bankruptcy, ¶ 507.05[5][b], pp. 507-38 – 40 (15th ed. rev 2008).

CONCLUSION

The Debtors' request to make severance payments totaling \$436,478.03 would result in payments to the Affected Employees that would exceed the maximum allowed pursuant to Section 507(a)(4). The requested severance payments are not supported by Section 507(a)(4)(A). Accordingly, the proposed severance payments to the Affected Employees should be denied.

WHEREFORE the United States Trustee respectfully requests that this Court issue an order denying the Motion, and granting such other relief that this Court deems appropriate.

Dated: New York, New York
February 5, 2009

Respectfully submitted,

DIANA G. ADAMS
UNITED STATES TRUSTEE

By: /s/ *Brian S. Masumoto*
Trial Attorney
33 Whitehall Street, 21st Floor
New York, New York 10004
Tel. No. (212) 510-0500
Fax. No. (212) 668-2255