

Bankruptcy Update

Expert Analysis

Filings by Casual Restaurants As Consumer Spending Decreases

This article focuses on bankruptcy filings in the casual restaurant sector where restaurants struggle to operate as consumer spending decreases and labor costs rise. The column delves into the bankruptcy proceedings of Garden Fresh, Logan's Roadhouse, Cosi and Champps Kitchen operator Last Call Guarantor.

Garden Fresh Restaurant

On Oct. 3, 2016, Garden Fresh Restaurant Intermediate Holding LLC and its affiliates, owners of Souplantation and Sweet Tomatoes restaurant brands, filed petitions for relief under chapter 11 of the Bankruptcy Code in the U.S. Bankruptcy Court for the District of Delaware.

The restaurant chain, burdened by reduced consumer spending on casual dining and rising employment costs, arrived in bankruptcy court with a restructuring support agreement premised on a fast-paced sale process with a group of the debtors' term loan lenders led by affiliates of Beach Point Capital Management acting as a stalking horse bidder. The stalking horse bidder lender group would also provide a \$4.5 million DIP financing facility to fund operations in bankruptcy during the sale process.

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Nevertheless, the debtors faced immediate opposition from major creditor Apollo Investment which vehemently opposed the financing proposal and proposed sale process. Apollo argued that the debtors did not need immediate access to additional cash and access-

Cosi Inc., specializing in flatbread sandwiches, closed 29 of its 74 corporate-owned restaurant locations and laid off 450 employees just prior to the bankruptcy filing.

ing it via the debtor-in-possession (DIP) facility would prove overly costly. Upon its formation, the official committee of unsecured creditors echoed Apollo's concerns with both objectors arguing the sale milestones required by the DIP package would force the debtors to run a rushed sale process designed to discourage robust bidding.

With significant objections looming, the original proposed DIP lenders declined to proceed with the financing package. Nonetheless, the debtors

were able to secure alternative financing coupled with a replacement stalking horse bid. On Nov. 15, 2016, the debtors secured approval of a new \$4.5 million DIP loan to be provided by another group of term loan lenders led by affiliates of Cerberus and Ares Capital.

The new DIP and sale process proposal won the support of the official committee of unsecured creditors and Apollo with an extension of the auction and sale process timeline by over a week and an agreement to infuse \$3 million in new liquidity into the reorganized company. Under the new bid procedures, also approved on Nov. 15, 2016, an auction is scheduled for Dec. 8, 2016, and the sale of the company is expected to close by the end of the year.

Garden Fresh Restaurant Intermediate Holding LLC (Bankr. D. Del. Case No. 16-12174)

Roadhouse Holding

On Aug. 8, 2016, Roadhouse Holding Inc. and affiliates filed petitions for relief under chapter 11 in the U.S. Bankruptcy Court for the District of Delaware.

The company, operator of casual steakhouse chain Logan's Roadhouse, retreated to bankruptcy court after pre-filing cost-cutting measures failed to counter-balance depressed restaurant sales that put significant strain on the chain's liquidity. Unable to make payments on its \$30 million revolving credit facility with JP Morgan Chase Bank, the

company entered into a forbearance agreement in May 2016 and began in-depth negotiations with creditors as it explored restructuring options.

The negotiations culminated with entry into a restructuring support agreement with the company's revolver lenders and approximately 84 percent of their secured noteholders that would form the basis of the company's bankruptcy restructuring plan. The proposed restructuring was comprised of a debt-for-equity swap and repayment of the revolver via an exit facility backstopped by the noteholders. The restructuring support agreement also provided for a \$75 million DIP facility, with \$25 million in new funds provided by supporting noteholders and a roll-up facility funded by participating revolver lenders.

The debtors faced initial opposition from the official committee of unsecured creditors to their DIP financing package but were able to amicably resolve the issues by agreeing to inject an additional \$3.5 million into the company upon emergence from bankruptcy and provide a \$1 million fund to pay holders of general unsecured claims.

On Nov. 9, 2016, the debtors won confirmation of their chapter 11 plan with overwhelming creditor support—including 91 percent of general unsecured creditors.

Roadhouse Holding Inc. (Bankr. D. Del. Case No. 16-11819)

Cosi Inc.

On Sept. 28, 2016, Cosi Inc. and affiliates filed petitions for relief under chapter 11 in the United States Bankruptcy Court for the District of Massachusetts. The casual dining chain specializing in flatbread sandwiches closed 29 of its 74 corporate-owned restaurant locations and laid off 450 employees just prior to the bankruptcy filing.

The debtors are pursuing a sale of substantially all of their assets with their prepetition secured lenders, AB Opportunity Fund, AB Value Partners and Milfam II, providing a baseline stalking horse bid. The lender group also agreed to provide a \$4 million DIP

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financing facility to fund operations during the sale process.

The official committee of unsecured creditors raised objections to both the DIP financing and the sale process arguing that sale milestones tied to the financing package unfairly sway the likely auction outcome in favor of the stalking horse bid by the lender group. Specifically, the original sale timeline provided for a Nov. 14, 2016, deadline for submission of competing bids and a Nov. 18, 2016, auction date.

In light of the issues raised by the official committee of unsecured creditors, the entered bid procedures order extended the sale process by approximately two weeks, with competing bids now due on Nov. 28, 2016, and an auction scheduled for Nov. 30, 2016.

Cosi Inc. (Bankr. D. Mass. Case No. 16-13704)

Last Call Guarantor

On Aug. 10, 2016, Last Call Guarantor LLC and affiliates, owners of Champps Kitchen & Bar, Fox & Hound and Bailey's

Sports Grille restaurants, filed petitions for relief under chapter 11 in the U.S. Bankruptcy Court for the District of Delaware.

The filing came approximately two and a half years after Last Call's emergence from bankruptcy following a sale of the company to its then second lien creditors in a transaction valued at approximately \$125 million.

Immediately upon filing their second set of chapter 11 cases, the debtors faced opposition from their first lien lenders through first lien agent Antares Capital. Antares argued that the debtors had little chance of securing postpetition financing and suggested conversion to chapter 7 was prudent. The debtors won a reprieve, however, when a majority of first lien lenders soon sold their positions to Fun Eats and Drinks LLC, an affiliate of Kelly Investment Group.

Fun Eats and Drinks agreed to provide the debtors with a \$5.4 million DIP financing facility and act as a stalking horse bidder in connection with the sale of substantially all of the debtors' assets.

On Sept. 29, 2016, following an auction, the court approved the sale of the company to Fun Eats and Drinks for total consideration valued at \$28.6 million. The winning bid was deemed higher and better than an all cash offer submitted by equity holder DW Value Master Fund.

Last Call Guarantor LLC (Bankr. D. Del. Case No. 16-11844)