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Radio's Big 3 Reorganize

By Christopher Patalinghug

Three of the largest radio broadcasting companies in the U.S. are at different stages of debt restructuring as they look to survive in a changing landscape. iHeartMedia, Inc., which boasts more than 860 live broadcast stations in over 160 markets nationwide, has confirmed it is undergoing talks with a group of lenders ahead of debt payments in 2026. Cumulus Media, Inc., which has 401 owned-and-operated radio stations across 85 markets, just completed its own out-of-court restructuring that pushed back debt maturities to 2029. Audacy, Inc., with 230+ broadcast stations in 45 media markets, received bankruptcy court approval in late February of a consensual pre-packaged Plan of Reorganization that will reduce debt by 80% but has yet to emerge from Chapter 11 protection. On Aug. 15, Audacy entered into a forbearance agreement with its lenders over the delay.

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Hotel Creditors Recoup 100%

By Stephen Selbst and Janice Goldberg

The Chapter 11 case of Wythe Berry Fee Owner LLC (“Fee Owner”) began as a lease dispute and ended two and a half years later with a sale of the William Vale Hotel (the “WV Complex”) for \$177 million, resulting in a rare Chapter 11 case where all creditors were paid in full.

The William Vale Hotel, in the Williamsburg neighborhood of Brooklyn, calls itself “the only true luxury hotel in Brooklyn” and has 183 guest rooms, a rooftop bar and pool deck, and stunning views of Manhattan. The WV Complex also contains retail spaces, offices, and a parking garage.

When 2021 began, the WV Complex was being operated by Wythe Berry LLC (“WB LLC”) under a lease (the “Lease”) with Fee Owner. The Lease provided for two semi-annual rent payments of \$7.5 million, due on February 1 and August

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1. Fee Owner used the rent to fund its obligations under its \$166 million mortgage, which was first held by All Year Holdings Ltd. (“All Year”) and then assigned to Mishmeret Trust Co. Ltd., as trustee (the “Trustee”) for the Series C bonds issued by All Year. The mortgage secured All Year’s obligations under the Series C Bonds.

Fee Owner is owned by Wythe Berry Member LLC (“Member LLC”), which has two 50% owners, Zelig Weiss (“Weiss”) and YGWV LLC, a subsidiary of All Year. WB LLC has two 50% owners, Weiss and Yoel Goldman (“Goldman”), the former CEO and shareholder of All Year. Weiss is the managing member of WB LLC. Weiss and Goldman also guaranteed certain obligations under the Lease.

Rent Default and State Court Litigation

In February 2021, WB LLC failed to make the payment due under the Lease, claiming a right to a rent abatement based on the Covid-19 pandemic. When WB LLC failed to pay, Fee Owner lacked the funds to make its payment under its mortgage. When WB LLC defaulted, Fee Owner served a notice of default and demand for cure, then cancelled the Lease. WB LLC neither paid rent nor vacated the WV Complex. The Trustee also called an event of default under the mortgage based on Fee Owner’s failure to make its mortgage payment.

On June 11, 2021, Fee Owner sued

WB LLC, Weiss, and Goldman in New York state court, seeking, *inter alia*, unpaid rent and a determination that the Lease had been properly terminated. Fee Owner also sought financial information concerning the operation of the WV Complex, which WB LLC had improperly withheld. The New York state court directed WB LLC to make use and occupancy payments (the “Payment Order”) of \$15 million – mirroring the rent obligation – and to produce the required financial information. WB LLC paid the \$7.5 million use and occupancy payment due in February 2022, but did not make the payment due in August 2022 or provide financial information. WB LLC and Weiss appealed the Payment Order and the discovery order to the Appellate Division. The New York state court litigation was proceeding slowly.

Involuntary Bankruptcy Filing

On October 6, 2022, the Trustee and three bondholders filed an involuntary chapter 11 petition against Fee Owner in the United States Bankruptcy Court for the Southern District of New York. Weiss objected to the involuntary petition and moved to dismiss it. Fee Owner’s limited liability company agreement barred it from consenting to the bankruptcy filing without Weiss’s consent. It filed an answer, acknowledging that it could not consent, but advising the Court that it needed the protection of Chapter 11. After a trial, on February

6, 2023, Chief Judge Martin Glenn denied Weiss’s motion and entered an order for relief against Fee Owner.

Lease Litigation

On February 14, 2023, Fee Owner removed the state court litigation to bankruptcy court because it believed that Judge Glenn would handle the case more expeditiously. Weiss and WB LLC finally agreed to provide the financial information that was required under the Lease, giving Fee Owner its first visibility into the hotel’s operations. On August 23, 2023, Fee Owner moved for partial summary judgment, seeking a determination that it had properly terminated the Lease in 2021. On October 5, Judge Glenn granted Fee Owner’s motion for partial summary judgment.

Weiss and WB LLC Vacate the WV Complex

Weiss made multiple offers to buy either the mortgage or the WV Complex, and he continued his efforts during the first half of 2023. At the same time, Fee Owner told Judge Glenn that it would sell the WV Complex in a bankruptcy sale process if a deal with Weiss could not be reached. In late August 2023, negotiations with Weiss reached an apparent impasse when Weiss stopped communicating. On September 29, 2023, WB LLC notified Fee Owner that it would cease managing the WV Complex on October 31, 2023.

The unexpected decision required Fee Owner to launch an immediate

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effort to move from a landlord role into directly managing the WV Complex. Fee Owner worked around the clock to reach agreements with a hotel management company, the food and beverage provider, and the employees to ensure that all services would continue without interruption. Each of the new agreements required Court approval. The new arrangements also required a new cash collateral and operating budget.

Sale Process

On October 26, 2023, Fee Owner filed a motion to retain real estate brokers to sell the WV Complex. On November 16, 2023, Fee Owner filed a motion to approve bidding procedures for a sale of the WV Complex. The bid procedures contemplated a two-stage bidding process, with initial bids due on December 19, 2023 and final bids on February 13, 2024. Fee Owner received many bids in the first stage of the process and narrowed the field to two strong bidders. An affiliate of EOS Hospitality emerged as the winning bidder with an offer of \$177 million.

Chapter 11 Plan

On February 6, 2024, Fee Owner filed its initial Chapter 11 plan of reorganization (the “Plan”) and disclosure statement. When the Plan was filed, Fee Owner was still litigating claims against Weiss and Goldman arising from their Lease guaranties and was still negotiating with Weiss

over the true-up of funds due from the change in management of the WV Complex. The filing of the Plan began a period of intense negotiations with Weiss and the Trustee that resulted in a global settlement in April 2024, which provided Fee Owner with an additional \$8 million in cash. Fee Owner then sought Court approval of the settlement on April 19, 2024, and amended its Plan and disclosure statement to reflect its terms. Fee Owner contacted Goldman to determine whether Goldman would become party to the settlement agreement, but those efforts failed, and Goldman filed objections to the settlement and confirmation of the Plan.

Confirmation Hearing

The Court held a confirmation hearing on the Plan on May 15, 2024, at which Fee Owner’s chief restructuring officer, Assaf Ravid, testified as to the terms of the global settlement and Fee Owner’s bases for agreeing to its terms. Goldman argued that the Plan and the settlement were improper and proposed in bad faith. He also argued that Weiss had no authority to cause WB LLC and various related entities to enter into the settlement agreement. Judge Glenn rejected both of Weiss’s arguments and on May 29, 2024, issued orders approving both the settlement and the Plan.

Closing; Payments to Creditors

On June 18, 2024, Fee Owner

completed the sale of the WV Complex to William Vale Owner LLC, the purchaser entity created by EOS Hospitality, for \$177 million. With the purchase price and the funds from the global settlement, Fee Owner was able to pay all creditors in full.

About the Authors

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