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Case Study: Solomon V. Oneida

Law360, New York (February 11, 2010) -- Companies seeking to restructure their debts often enlist the services of investment bankers or financial advisers. The terms of engagement agreements between companies and investment bankers or financial advisers vary to fit the particular needs of the hiring company.

The typical engagement agreement provides for an exclusive engagement of an investment banker or financial adviser over either a specified period of time or for as long as the company requires the services, and specifies the amount and method of compensating the professionals.

In addition to flat monthly fees and fixed fees based on the consummation of a specified transaction, engagement letters often include "tail provisions."

These provide that the termination of the engagement does not automatically terminate the professional's entitlement to a fee if a transaction is consummated during a specified period of time after the termination (usually six to 18 months), even if a third-party assists the company in consummating a transaction.

Restructuring its debt outside of bankruptcy was the goal of Oneida Ltd. when it hired the investment banking firm of Peter J. Solomon LP in 2004. The parties executed an engagement letter memorializing the terms of Peter Solomon's engagement.

Among other terms, the engagement letter (1) required Oneida to pay Peter Solomon a monthly fee of $125,000, (2) reimburse Peter Solomon for expenses incurred during the engagement and (3) required Oneida to pay a transaction fee to Peter Solomon upon the completion of one of the transactions defined in the engagement letter.

The engagement letter also included a tail provision entitling Peter Solomon to a fee for any transaction consummated within one year following termination of the engagement.

On Aug. 9, 2004, Oneida successfully completed an out-of-court restructuring and paid Peter Solomon a fee of approximately $1.2 million. Peter Solomon provided no services to Oneida after August 2004, and in April 2005, Oneida provided Peter Solomon with written notice terminating its engagement.

The out-of-court restructuring ultimately failed to satisfy Oneida's long-term liquidity needs. In August 2005, Oneida retained Credit Suisse First Boston as its exclusive investment banker and, in May 2006, Oneida filed for Chapter 11 protection in the Southern District of New York.

On Aug. 30, 2006, the Bankruptcy Court confirmed Oneida's plan of reorganization and awarded Credit Suisse First Boston $1.45 million for its work as Oneida's financial adviser.

Based on Credit Suisse First Boston's efforts to negotiate the terms of the plan of reorganization with Oneida's lenders, Peter Solomon filed a $6.3 million proof of claim in the bankruptcy case[1]. Peter Solomon alleged that Oneida's plan of reorganization constituted one of the transactions defined in its engagement letter.

Oneida argued that Peter Solomon's services concluded on Aug. 6, 2004, more than two years prior to confirmation of Oneida's plan of reorganization and thus outside of the tail period. The Bankruptcy Court, and the district court on appeal, sided with Oneida and denied Peter Solomon's proof of claim.

Both courts found that Peter Solomon was retained by Oneida for a limited purpose (to consummate "a transaction or series or combination of transactions, whereby, directly, or indirectly, Oneida could restructure its debt or raise capital through financing or the sale of assets") and not "to provide ongoing general financial advisory services."

Construing the engagement letter as a whole, both courts concluded that Peter Solomon was not retained on an exclusive basis and that written termination of the engagement was only required prior to the consummation of the first transaction that was defined in the engagement letter.

Peter Solomon's services were discharged when the August 2004 transaction was consummated. This discharge then triggered the tail provision of the engagement letter.

In light of the automatic termination of the engagement letter in August 2004, the courts ruled that Oneida's plan of reorganization was consummated outside of the tail period.

In addition to construing Peter Solomon's engagement letter as a whole, and not the termination provision in isolation, both courts held that Peter Solomon's interpretation of the engagement letter (entitling it to $6.3 million in fees for services provided by Credit Suisse First Boston because termination notice was not given until until April 2005) would lead to the absurd result of rewarding Peter Solomon for services rendered by a third party after the applicable time period specified in the engagement letter expired and Peter Solomon received one transaction fee.

The district court's decision in Oneida does not break new ground in the area of compensation of investment bankers or financial advisers in Chapter 11.

However, the decision reinforces the notion that contracts must be clear and that they will be strictly construed to prevent certain inequities resulting from a debtor's double payment of fees stemming from a single transaction.

When preparing engagement letters, investment bankers and financial advisers would be wise to heed the lessons learned by Peter Solomon in the Oneida case.

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[1]Peter J. Solomon LP v. Oneida Ltd., Case No. 09-CIV-2229, 2010 WL 234827 (S.D.N.Y. JAN. 22, 2010)