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## Bankruptcy May Be Only Chapter Left For Borders

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By **Evan Weinberger**

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Law360, New York (February 1, 2011) -- After years of trying to avoid bankruptcy, [Borders Group Inc.](#) may have run out of options as the book seller's most recent efforts to restructure out of court seem to have fallen short, analysts say.

**“It would appear that the likelihood of a bankruptcy has increased,” said Van Conway, CEO of restructuring firm Conway MacKenzie Inc., as reports of a potential bankruptcy began swirling Tuesday.**

The news marks a whirlwind four days for Borders, which announced Sunday that it would delay payments to its publishers, landlords and vendors for a second consecutive month in a bid to “maintain liquidity while it seeks to complete a refinancing or restructuring of its existing credit facilities and other obligations.”

That announcement came just two days after Borders revealed that it had secured a new, \$550 million senior credit facility from GE Capital's restructuring division that many observers said would keep it out of bankruptcy.

“We are pleased that, after a thorough review of our business strategy and related long-term potential by GE Capital and outside experts, GE Capital is committing to put in place a new senior financing facility for the company,” Borders Group President Mike Edwards said Friday. “This is an important step for Borders toward implementation of its comprehensive plan to reposition itself as a vibrant national retailer of books and other related products to the consumer.”

But GE Capital put steep conditions on the financing package. The debt commitment from GE Capital is contingent upon Borders securing \$125 million in junior financing from its vendors as well as the completion of “supporting financing arrangements” with its vendors, landlords and other parties that would require GE Capital's seal of approval.

GE Capital also told Borders that it would have to close even more of its stores, which number more than 650 nationwide. The company has already shut down several outlets during the restructuring.

“Those conditions weren't just walking in the woods here,” Conway said. “Those were significant accomplishments that needed to get done. It would appear that they're having trouble achieving those conditions.”

In essence, Borders was forced to negotiate an out-of-court restructuring with its major creditors, in particular publishing houses, said Chad J. Sandler, a partner in accounting firm J.H. Cohn LLP's Business Investigation Services group.

He added that Borders had been undergoing such a process within the last three years by selling off divisions and other investments to gain necessary liquidity.

The company hired [Kasowitz Benson Torres & Friedman LLP](#) to aid it in its restructuring and keep it out of bankruptcy, the Wall Street Journal reported in January. The firm could not be reached for comment Tuesday.

The big hurdle that Borders appears to have hit, according to Sandler, is publishers' reluctance to engage the company in lowering its debt burden. The reason, he said, is that Borders' larger rival, [Barnes & Noble Inc.](#), is likely to ask for similar concessions.

“The publishers are in a situation where if they grant that to one retailer, other retailers are going to expect similar treatment,” he said.

Given Barnes & Noble's superior purchasing power — the company operates 717 brick and mortar stores and has a massive Internet presence — the company could ask for even more concessions than Borders, Conway said.

**In addition, Barnes & Noble, which has problems of its own and has been up for sale since August, appears to be more likely to survive than Borders, thus increasing its bargaining position, according to Conway.**

**Barnes & Noble could say, "I should get a greater accommodation not because I need it, but because I'm a better bet," he said.**

**As with any market that has steep competition but only a few major players, Barnes & Noble could come out a big winner if Borders does indeed file for bankruptcy protection, Conway said.**

Barnes & Noble could pick off valuable Borders locations through bankruptcy sales and make other opportunistic purchases, he said, and if Borders locations close, people looking for books could just go to the nearest Barnes & Noble and purchase books, DVDs and other items.

But while Barnes & Noble may be better positioned than Borders — its Web site is a money maker and its Nook e-book reader is its largest selling item — its in-store sales are still down, meaning it could face a similar problem going forward.

“Obviously Barnes & Noble has some of its own issues that it needs to deal with,” Sandler said.