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HOSTESS, INC. MEDIATES IN HOPES OF AVOIDING LIQUIDATION

Hostess Brands, Inc. filed for Chapter 11 Bankruptcy in January 2012. *In re: Hostess Brands, Inc.* 2012 WL 5983096. Struggling with large debts, Hostess needed to make extensive labor cuts in order to avoid liquidation. Stephen Greenhouse & Michael J. De. La Merced, *At Judge's Urging, Hostess and Union Agree to Mediation*, DEALBOOK (November 19, 2012), <http://dealbook.nytimes.com/2012/11/19/hostess-and-bakers-union-agree-to-mediation/>. Hostess thus attempted to renegotiate contracts with their unions, including their two main unions, Bakers Union and the International Brotherhood of Teamsters. Both unions blamed Hostess' poor financial situation on its years of mismanagement, and both unions struggled with accepting any contract changes. Nevertheless, following 8 months of negotiations, Teamsters agreed to settle on a new contract that cut pay and health contributions and suspended pension contributions until 2015. The Bakers Union and Hostess, however, were never able to agree on a new contract. Greenhouse, *supra*.

In October 2012, Hostess filed a motion in court to impose wage and benefit cuts to the Bakers Union contract, and the court granted the changes. *In re Hostess Brands, Inc.*, 2012 WL 5983096. The Bakers Union never objected to the changes in court. However, on November 9th they displayed their disapproval for the cuts by striking in 24 of 33 Hostess Bakeries. Nick Brown & Martinne Geller, *Twinkies Not Dead Yet, Judge Tries To Save Hostess Jobs*, REUTER (Nov. 19, 2012), <http://www.reuters.com/article/2012/11/20/us-hostess-bankruptcy-hearing-idUSBRE8AI0XS20121120> and Greenhouse, *supra*. Hostess was not in a financial position to weather this strike. They were forced to immediately close their plants and went to court seeking liquidation. Jaqueline Palank, Rachel Feintzeig & Mike Spector, *Hostess, Bakers Union Agree to Mediation*, THE WALL STREET JOURNAL (Nov. 19, 2012), <http://online.wsj.com/article/SB10001424127887324307204578129282170898870.html>.

Before Judge Robert Drain of the Federal Bankruptcy Court of the Southern District of New York would grant the liquidation, he wanted both sides to try one last time to attempt to reach some sort of compromise. Judge Drain found the Bakers Union decision to strike following their silence in court regarding the contract changes "illogical." Troy Bennett, *Mediation Fails in Negotiations Between Hostess and Union Workers*, BANGOR DAILY NEWS (Nov. 20, 2012), <http://bangordailynews.com/2012/11/20/business/mediation-fails-in-negotiations-between-hostess-and-union-workers/>. Concerned about the potential loss of over 18,000 jobs, Judge Drain believed it was "worthwhile for both the union and debtors to explore why this happened." Bennett, *supra*. Judge Drain also stated that mediation would allow the Bakers Union and Hostess to work out their differences in private avoiding a more public and expensive resolution. Brown, *supra*. Judge Drain believed a resolution was possible and served as the mediator himself. Brown, *supra*. & Rachel Feintzeig, *Hostess Plans to Liquidate After Mediation Fails*, THE WALL STREET JOURNAL (Nov. 20, 2012), <http://online.wsj.com/article/SB10001424127887323713104578131502378821868.html>.

Unfortunately, Hostess and the Bakers Union were unable to reach an agreement through this mediation, and Hostess was forced to proceed with liquidation. Feintzeig, *supra*.

Because of the confidentiality of the mediation process, it is unknown what exactly transpired during the mediation. Neither side has commented on why the mediation was unsuccessful, but a number of possible reasons could have contributed to the mediation's failure. The Bakers Union blamed mismanagement, large debt and big raises that Hostess executives got last year as the reasons why the company reached such financial failure, and they did not seem interested in making any concessions prior to the mediation. Michael Winter, *Hostess Mediation Fails, So Twinkies Company To Liquidate*, USA TODAY (Nov. 21, 2012), <http://www.usatoday.com/story/news/nation/2012/11/20/hostess-union-mediation-fail-liquidation/1718231/> and Susan Adams, *Why Hostess Had to Die*, Forbes (Nov. 21, 2012), <http://www.forbes.com/sites/susanadams/2012/11/21/why-hostess-had-to-die/>. They previously did not agree to any contractual changes because they were fearful that the debt of the company was already too deep and taking any additional concessions would only delay liquidation and not ultimately save Hostess. *Greenhouse, supra*. Also, when Teamsters agreed to new contract conditions, they agreed to work rules that the Bakers Union believed were inefficient for the company and would also lead to the company's downfall. Adams, *supra*. Though the Bakers Union remained "respectful of the judge's decision to mediate," the President of the Bakers Union also commented that he was not too optimistic about the mediation. Palank, *supra*. & Winter, *supra*. Hostess also might have seen no room for compromise. Heather Lennox, an attorney for Hostess, said that she thought that the financial damage from the Bakers Union strike was beyond repair. Palank, *supra*. Likewise, Hostess's CEO, Gregory Rayburn said the strike was their "death knell." Winter, *supra*. Others speculated that mediation or not, Hostess would still be liquidating, not because of poor administration, but because of their product and it's lack of change and innovation over the years. Hand Cardello, *Mediation Could Never Have Saved Hostess: Its Problems Ran Much Deeper*, FORBES (Nov. 21, 2012), <http://www.forbes.com/sites/forbesleadershipforum/2012/11/21/mediation-could-never-have-saved-hostess-its-problems-ran-much-deeper/>.

What exactly occurred during the mediation may never be known, but it is not unreasonable to conclude that in this case the effort to mediate was doomed before it began. Nevertheless, Judge Drain insisted on the mediation because to not do so "would have left a huge question mark in the case." Winter, *supra*. The use of mediation ensured that all avenues of resolution were explored before 18,500 jobs were put on the line with the liquidation of the company, showing the increasingly important role mediation plays in today's legal and business disputes.

Submitted by Monique Daley, 2nd year Law Student, LSU Paul M. Hebert Law Center, Civil Mediation Clinic, under the Supervision of Paul W. Breaux, Adjunct Clinical Professor, and Chair, LSBA Alternative Dispute Resolution Section, 16643 S. Fulwar Skipwith Road, Baton Rouge, LA 70810.