The Postal Service's Financial Crisis: What It Means for Nonprofit Mailers

November 16, 2012
1:00 p.m. – 2:30 p.m. EST

Venable LLP
575 7th Street, NW
Washington, DC 20004

Moderator:
Jeffrey S. Tenenbaum, Esq.

Panelists:
Jeffrey Post, Staff Director, House Subcommittee on Federal Workforce, U.S. Postal Service, and Labor Policy

Ann Fisher, Director of Public Affairs and Government Relations, Postal Regulatory Commission

Anthony W. Conway, Executive Director, Alliance of Nonprofit Mailers

David M. Levy, Esq., Partner, Venable LLP
Presentation
The Postal Service’s Financial Crisis: What It Means for Nonprofit Mailers

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Venable LLP
Nonprofit Organizations Practice
Washington, DC

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Upcoming Venable Nonprofit Legal Events

December 11, 2012 – Exchanges under Health Care Reform and “Private” Exchanges: What Does My Nonprofit Need to Know?

January 8, 2013 – Exempt or Non-Exempt? The Ten Most Common Employee Classification Pitfalls Faced by Nonprofits

March 12, 2013 - Preparing an Online Social Media Policy: The Top Ten Legal Considerations for Your Nonprofit (details coming soon)

The Postal Service's Financial Crisis: What It Means for Nonprofit Mailers

Anthony Conway
Executive Director, Alliance of Nonprofit Mailers
November 16, 2012
Postal Service Financial Crisis

- Postal Service lost $16 billion in Fiscal Year 2012
  - $5.1 billion in 2011
  - $8.5 billion in 2010
  - and $3.8 billion in 2009
- Postal Service reached $15 billion borrowing limit in Fiscal Year 2012

Postal Service Financial Crisis

- Total Mail Volume peaked at 213 billion pieces in 2006
- Total Mail Volume declined every year since 2006
- 2012 Total Mail Volume 160 billion pieces
Postal Service Revenue Decline Outpacing Cost Reductions

* 80% of Postal Service Costs labor related
* Costs have increased despite revenue declines

Postal Service Revenue Decline Outpacing Cost Reductions

* 461 Mail Processing Facilities in 2011—223 excess capacity (GAO)
* 154,325 employees in Mail Processing Facilities—35,000 excess employees (GAO)
* 8,000 pieces mail processing equipment—3,000 pieces excess (GAO)
* 31,509 Post Offices Nationally (USPS)
* 53 Post Offices on Cape Cod
Postal Service Plan to Address Crisis

- Eliminate Saturday mail delivery
- Close and consolidate excess mail processing facilities
- Expand retail access at non-traditional locations
- Modify current inflation-based price cap
- Expand products and services

Postal Service Plan to Address Crisis

- Reduce retiree health benefit prefunding requirement
- Return retirement system overpayment
- Provide incentives to increase employee retirement
Effectiveness of USPS Restructuring Efforts

- Controlling future costs
- Managing legacy costs
- Revenue enhancement
Controlling Future Costs

- Saturday mail delivery
- Mail processing facilities
- Retail post offices
- Employee head count
- Pay comparability

Managing Legacy Costs

- Retiree health benefit prefunding
- Retirement system overpayment
Effectiveness of USPS Revenue Enhancement Efforts

- New products and services
- Loosening CPI-based price cap

Risks of USPS Insolvency to Nonprofit Mailers

- Risks shared with all mailers
- Risks specific to nonprofit mail
The Postal Service’s Financial Crisis: What It Means for Nonprofit Mailers

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Questions

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Anthony Conway
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David M. Levy, Esq.
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Speaker Biographies
Jeffrey Tenenbaum chairs Venable’s Nonprofit Organizations Practice Group. He is one of the nation’s leading nonprofit attorneys, and also is an accomplished author, lecturer, and commentator on nonprofit legal matters. Based in the firm’s Washington, DC office, Mr. Tenenbaum counsels his clients on the broad array of legal issues affecting charities, foundations, trade and professional associations, think tanks, credit and housing counseling agencies, advocacy groups, and other nonprofit organizations, and regularly represents clients before Congress, federal and state regulatory agencies, and in connection with governmental investigations, enforcement actions, litigation, and in dealing with the media.

Mr. Tenenbaum was the 2006 recipient of the American Bar Association’s Outstanding Nonprofit Lawyer of the Year Award, and was the inaugural (2004) recipient of the Washington Business Journal’s Top Washington Lawyers Award. He was one of only seven “Leading Lawyers” in the Not-For-Profit category in the 2012 Legal 500 rankings, and was the 2004 recipient of The Center for Association Leadership’s Chairman’s Award, and the 1997 recipient of the Greater Washington Society of Association Executives’ Chairman’s Award. Mr. Tenenbaum was listed in The Best Lawyers in America 2012 and 2013 for Non-Profit/Charities Law, and was named as one of Washington, DC’s “Legal Elite” in 2011 by SmartCEO Magazine. He was a 2008-09 Fellow of the Bar Association of the District of Columbia and is AV Peer-Review Rated by Martindale-Hubbell. Mr. Tenenbaum started his career in the nonprofit community by serving as Legal Section manager at the American Society of Association Executives, following several years working on Capitol Hill as a legislative assistant.
EDUCATION

J.D., Catholic University of America, Columbus School of Law, 1996
B.A., Political Science, University of Pennsylvania, 1990

MEMBERSHIPS

American Society of Association Executives
California Society of Association Executives
New York Society of Association Executives

Association of Private Sector Colleges and Universities
Automotive Aftermarket Industry Association
Brookings Institution
The College Board
Council on Foundations
Cruise Lines International Association
Foundation for the Malcolm Baldrige National Quality Award
Goodwill Industries International
Homeownership Preservation Foundation
Independent Insurance Agents and Brokers of America
Institute of International Education
Jazz at Lincoln Center
The Joint Commission
LeadingAge
Lincoln Center for the Performing Arts
Lions Club International
Money Management International
National Association of Chain Drug Stores
National Athletic Trainers’ Association
National Coalition for Cancer Survivorship
National Defense Industrial Association
National Fallen Firefighters Foundation
National Hot Rod Association
National Propane Gas Association
National Quality Forum
National Retail Federation
National Student Clearinghouse
National Telecommunications Cooperative Association
The Nature Conservancy
NeighborWorks America
Peterson Institute for International Economics Professional Liability Underwriting Society
Project Management Institute
Public Health Accreditation Board
Public Relations Society of America
Recording Industry Association of America
Romance Writers of America
Texas Association of School Boards
Trust for Architectural Easements
United Nations High Commissioner for Refugees Volunteers of America

HONORS

Recognized as "Leading Lawyer" in the 2012 edition of Legal 500, Not-For-Profit Listed in The Best Lawyers in America 2012 and 2013 for Non-Profit/Charities Law, Washington, DC (Woodward/White, Inc.)
Washington DC’s Legal Elite, SmartCEO Magazine, 2011
Fellow, Bar Association of the District of Columbia, 2008-09
Recipient, American Bar Association Outstanding Nonprofit Lawyer of the Year Award, 2006
Recipient, Washington Business Journal Top Washington Lawyers Award, 2004
Recipient, The Center for Association Leadership Chairman’s Award, 2004
Recipient, Greater Washington Society of Association Executives Chairman’s Award, 1997
Legal Section Manager / Government Affairs Issues Analyst, American Society of Association Executives, 1993-95
AV® Peer-Review Rated by Martindale-Hubbell
Listed in Who’s Who in American Law and Who’s Who in America, 2005-present editions
ACTIVITIES

Mr. Tenenbaum is an active participant in the nonprofit community who currently serves on the Editorial Advisory Board of the American Society of Association Executives' Association Law & Policy legal journal, the Advisory Panel of Wiley/Jossey-Bass' Nonprofit Business Advisor newsletter, and the ASAE Public Policy Committee. He previously served as Chairman of the AL&P Editorial Advisory Board and has served on the ASAE Legal Section Council, the ASAE Association Management Company Accreditation Commission, the GWSAE Foundation Board of Trustees, the GWSAE Government and Public Affairs Advisory Council, the Federal City Club Foundation Board of Directors, and the Editorial Advisory Board of Aspen's Nonprofit Tax & Financial Strategies newsletter.

PUBLICATIONS

Mr. Tenenbaum is the author of the book, Association Tax Compliance Guide, published by the American Society of Association Executives, and is a contributor to numerous ASAE books, including Professional Practices in Association Management, Association Law Compendium, The Power of Partnership, Essentials of the Profession Learning System, Generating and Managing Nondues Revenue in Associations, and several Information Background Kits. He also is a contributor to Exposed: A Legal Field Guide for Nonprofit Executives, published by the Nonprofit Risk Management Center. In addition, he is a frequent author for ASAE and many of the other principal nonprofit industry organizations and publications, having written more than 400 articles on nonprofit legal topics.

SPEAKING ENGAGEMENTS

David Levy is a postal regulatory and appellate lawyer in Venable’s Washington office. He works with mailers – from Fortune 100 companies to small nonprofit organizations – to help them minimize their cost of postage and mailing and navigate the complex postal rate and eligibility rules.

Over the past 25 years, Mr. Levy has represented many of the nation’s largest mailers and their trade associations, including the Alliance of Nonprofit Mailers, the Magazine Publishers of America, and the Association for Postal Commerce. He has served as first-chair counsel for one or more association of mailers in every major postal rate case before the Postal Regulatory Commission since 1983. In 2010, he was lead counsel to an industry coalition of nonprofit and business mailers and trade associations that successfully opposed an above-inflation “exigent” rate increase proposed by the USPS.

Mr. Levy also has represented individual mailers, both nonprofit and for-profit, in USPS revenue deficiency proceedings and appeals and False Claims Act investigations involving rates, classifications, mailability, and organizational eligibility. These clients have included nonprofit organizations, credit card issuers, magazine publishers and catalog mailers.

He negotiated and won regulatory approval for three of the five largest rate contracts struck by the Postal Service with individual mailers.

He has testified before Congress and drafted amendments to the postal laws that preserved nonprofit rates.

He has been counsel of record in 26 reported cases in the federal courts, including seven cases that he argued in the U.S. Courts of Appeals.

Mr. Levy also has substantial experience in telecom, railroad and petroleum pipeline regulation.

HONORS

AV® Peer-Review Rated by Martindale-Hubbell

PUBLICATIONS

- July 2010, Neither Rain, Nor Sleet, Nor Gloom of Night Justify Irrational Solutions for Fixing USPS, Marketing AdVents
U.S. Court of Appeals for the D.C. Circuit
U.S. Supreme Court

EDUCATION
J.D., cum laude, University of Michigan Law School, 1979
B.A., Cornell University, 1975

MEMBERSHIPS
American Bar Association, Section of Administrative Law and Regulatory Practice, Postal Matters Committee: Chair, 1992-1995; Vice-Chair, 1991-1992

SPEAKING ENGAGEMENTS

Speaker at public educational conferences sponsored by Alliance of Nonprofit Mailers, American Bar Association Section of Taxation, Association for Continuing Legal Education ("ACLEA"), and the National Postal Forum.

- November 13, 2012, Legal Quick Hit: “Nonprofit Postal Rates: How to Get Them, How to Use Them” for the Association of Corporate Counsel’s Nonprofit Organizations Committee

- May 8, 2009, U.S. Postal Service Launches National Enforcement Initiative Against Business Mailers, Client Alerts
- 2004, "Selective Discounts to Preserve First-Class Mail Volume” in M.A. Crew and P.R. Kleindorfer, eds., Regulatory and Economic Challenges in the Postal and Delivery Sector, Kluwer
- Fall 1995, Scientific Evidence After Daubert, 22 Litigation 48
- December 1993, Living With The Third-Class Eligibility Rules, The NonProfit Times 16
- 1981, Recent Developments in Railroad Rate Regulation, 1981 Eastern Transportation Law Seminar 49-61