MERGERS & ACQUISITIONS REPORT

Vol. 3 No. 49, December 10, 1990 *America's M&A Weekly* Published by Investment Dealers' Digest Inc.

HOLDERS, TRADERS SCRAMBLE ON BROOKE GROUP RESTRUCTURING

In a swift reaction to Bennett S. LeBow's restructuring of **Brooke Group Ltd.** (*M&A, 12/3*), several shareholders have filed suit to undo the transaction, while market players — reportedly including Brooke Group itself — are rushing to make money on the deal by taking advantage of the stock's currently low price.

Brooke Group, a cigarette manufacturer, announced its merger with **Brooke Partners L.P.**, LeBow's leveraged buyout firm, on the Monday before Thanksgiving. As part of the restructuring, the tobacco company took on $300 million in debt from its former parent, as well as a 40% interest in **Western Union Corp.** and a 70% interest in **MAI Systems Corp.**, two troubled companies LeBow has been attempting to turn around.,

The three shareholder actions, filed in Delaware Chancery Court, allege, among other things, that the restructuring is a "self-dealing transaction" that permits "the parking of [LeBow's] less-successful ventures in BGL."

James Wilen, president of **Wilen Management Corp.** in Baltimore, and investment adviser to **Northridge Partners**, one of the plaintiffs, feels that Brooke Group's restructuring should be nullified. "If anything is fair in this world," he said, "it will not happen." Wilen controls approximately 2.5% of Brooke Group's publicly held shares, or about 0.4% of the total company. Other plaintiffs could not be reached before press time.

Wilen recognizes the tax advantages to LeBow of the new arrangement (the financier is now able to service the debt taken on from Brooke Partners out of pre-tax earnings instead of upstreamed dividends), but he complains that "the way to do it would be to buy up the minority shareholders at a fair price" before loading the company with debt from other ventures.

Wilen's suit might motivate LeBow to offer the shareholders some compensation, said Tony Russ, an analyst and arbitrageur at **Dominick & Dominick.** LeBow might "raise the guarantee to $19," he speculated. The "guarantee" takes the form of contingency value rights, through which shareholders are promised a 15% return for three years, theoretically equivalent to a stock price of $18.25 on Nov. 15, 1993.

Other shareholders have voted with their feet. Brooke Group's stock has traded at record volumes for the last couple of weeks, setting a new 52-week low of 6 1/8 on Nov. 30 when a "Heard on the Street" column in the Wall Street Journal drew attention to LeBow's maneuver. The stock gained last week, closing at 8 3/8 on Wednesday, in what Claude Carmichael, an analyst at **W.R. Lazard & Co.**, described as a "dead-cat bounce."

The word on the Street is that LeBow and Brooke Group have been in the market buying shares hand over fist. Calls to Brooke Partners and Brooke Group were not returned. However, the specialist covering Brooke Group on the floor of the New York Stock Exchange assumes that many of the transactions he's been executing are buy orders from the company. He pointed out that Brooke Group had earlier announced that it would buy back shares from time to time.

"LeBow can pay eight bucks now," explained Russ, "or $18.25 in three years." Russ himself has bought.

Others are not so sure. "To do arbitrage," said one analyst, "you have to read LeBow's mind." Carmichael concurred, saying that "you have a management that is willing to do things that nobody expects." He added, "Confidence is shaken, but if the credit is good, this could be a very good buy at this level."

With last Friday the last day to buy in order to be eligible for contingency value rights, volume can be expected to drop off this week. — *S.F.*