

Inside

Latest Reports:

- *Industry Professionals Discuss Value, Distressed, and Credit Investing*
- *Bankruptcies Complicated by Bitcoins*
- *Distressed Debt Outlook Good for 2014*

Research Report:

Who's Who in Tuscany International Drilling, Inc.

Special Report:

Regional and Local Bankruptcy Accounting Firms

Worth Reading:

Beyond the Hype: Rediscovering the Essence of Management

Special Report:

Outstanding Young Restructuring Lawyers – 2014

Gnome de Plume:

Free to Speak...At Last

turnarounds & workouts

News for People Tracking Distressed Businesses

APRIL 2014

VOLUME 28, NUMBER 4

Industry Update from Chicago Professionals Discuss Current State of Market

by Randall Reese

The University of Chicago Booth School of Business held its Ninth Annual Credit, Restructuring, Distressed Investing & Turnaround Group Conference earlier this month. The Conference, which drew a large number of industry professionals from across the country, featured discussions covering a wide variety of industry topics, with a particular emphasis on value, distressed, and credit investing.

High Yield & Distressed Investing Panel

The first panel discussion focused on the panelists' insights into the current factors influencing the distressed market, their view of the future, and opportunities that they

continued on page 2

Bitcoins in Bankruptcy Real Challenges Presented by Virtual Currency

by Julie Schaeffer

The very qualities that make bitcoin so attractive could present significant difficulties in a bankruptcy proceeding, say two professionals who have researched the topic.

Bitcoin is a digital currency powered only by its users. As of March 2014, there were roughly 12.5 million bitcoins in existence, but new coins can be created (up to 21 million) by "mining" them, which involves applying complex equations. Bitcoins began 2013 valued at \$13 a coin, only to ring in 2014 at around \$800 a coin.

Part of bitcoin's appeal is its anonymity. A transaction is a transfer of bitcoins from one user's digital address to another user's digital address. Each digital address has a private

continued on page 2

Distressed Debt 2014 Could Be a Bright Spot

by Julie Schaeffer

This year may be a bright spot for distressed investors and advisors, according to the *North American Distressed Debt Outlook for 2014*, released in a partnership between Bingham McCutchen and Debtwire.

"The prevailing assumption is that tapering will eventually lead to tougher lending standards, setting off a wave of defaults for at-risk borrowers unable to garner capital market support," states the report.

The report is based on a survey of 100 U.S.-based hedge fund managers, distressed debt investors, and private equity professionals, but the composition has changed over time.

continued on page 2

Industry, *from page 1*

believe may be presented in 2014 and beyond. The discussion began with the panelists' views of the current market.

Matthew Dundon, the portfolio manager for Pine River Capital Management, noted that good distressed traders trade on volatility rather than defaults and that he does not see volatility decreasing. Charles Asfour, a principal at Victory Park Capital, stated that, notwithstanding ample market liquidity, Victory Park has had success in deploying its capital by looking for what he termed "idiosyncratic opportunities." Nevertheless, he acknowledged that it has been difficult to locate opportunities that offer investment returns which are commensurate with their risk. Andy Taylor, a director at BlackRock, further expressed the view that the "good business, bad balance sheet" opportunities do not exist currently because there is simply too much money chasing those situations.

The conversation then turned to identifying trends and market factors that may drive future distressed situations. Dundon suggested that there were three key policy areas that should be focused upon by distressed investors. First, he identified the Affordable Care Act, noting that the financial impact of the employer mandate had not yet been fully priced into all affected companies. Second, Dundon expects that the Consumer Financial Protection Bureau and state attorneys general will take further action to regulate the manner in which credit is extended to individuals. Finally, he suggested a focus on minimum wage rates and the regulation of exempt versus non-exempt employees. As with the Affordable Care Act, Dundon does not believe that the potential impact is fully priced into stock prices and borrowing costs, particularly for companies that use a large number of low-paid employees.

Asfour identified two additional policy areas that he believes may offer opportunities – the increase in immigration audits over the past two years and new FAA regulations that require pilots to have 1,500 flight hours rather than the previous 250-hour requirement. As an example of the former's impact, he described Victory Park's involvement with a grocer in California that lost 80 percent of its employees in an ICE audit and the major operational issues that can result from these situations. With regard to the latter,

continued on page 4

Bitcoins, *from page 1*

key that allows a user to prove ownership. Although each transaction is logged in a public ledger, the digital addresses are random alphanumeric strings, so users can't be identified.

Although bitcoin is sometimes associated with shady business deals, it has recently gained legitimacy, to the point that it could present some interesting bankruptcy issues.

"There is little doubt that bankruptcy courts would consider bitcoins owned by a debtor to be property of the debtor's estate, and thus ultimately available for creditor distributions," says David E. Kronenberg, an attorney at Cadwalader, Wickersham & Taft LLP.

That's because Section 541 of the Bankruptcy Code provides that a debtor's estate consists of "all legal or equitable interests of the debtor in property as of the commencement of the case," and bitcoin has all the earmarks of property, as it can be possessed, used, sold, and profited from.

Bitcoins may also be property of a debtor's bankruptcy estate under state law, which is important because the determination of whether a debtor has any interests in property is a question of state law. In defining such interests, courts commonly look at whether one has the right to possess, use, dispose, and/or profit from the property in question – and in the case of bitcoins, the answer is clearly yes.

But, how do you account for a debtor's bitcoins and track its bitcoin transactions when there are few records subject to court subpoena?

Indeed, because bitcoin users value anonymity, many of the programs used for holding and transacting bitcoins don't even record past transactions.

"This limited and unorthodox record-keeping could be particularly problematic for bankruptcy professionals attempting to determine which of a debtor's prepetition transactions are potentially avoidable as preferences or fraudulent transfers, and the identity of the recipients of such transfers," says Kronenberg.

Thus, creditors and other parties involved in a bitcoin-related bankruptcy case might need to take additional steps to understand the debtor's bitcoin holdings and transactions.

"First, if the debtor has not disclosed all bitcoin addresses it has used to transact

continued on page 4

Distressed, *from page 1*

Interestingly, however, when the firm started doing the survey, 50 percent of respondents identified themselves as pure distressed players, but that number has declined steadily to a low of 15 percent in 2013. "The numbers are slightly higher for 2014 (19 percent), but what the survey results tell us is that fund managers are no longer looking to fit within a particular investment strategy," says Andrew Gallo, a partner at Bingham McCutchen. "They are willing to spice things up a bit in an attempt to chase returns."

Perhaps the most significant finding is the forecasted default rate. In the 2014 report, 21 percent of respondents suggested the default rate would rise about 4 percent, which is a departure from 2013 when all respondents thought defaults would fall between 2.1 percent and 4 percent.

The change, says the report, is the result of the Federal Reserve Board's December decision to begin tapering its quantitative easing program. This, says the report, could lead to distressed triggers getting pulled, setting off a wave of defaults for at-risk credits unable to garner capital market support.

That said, most respondents thought the default rate would be under 4 percent, which Michael Reilly, a partner at Bingham McCutchen, says is notable. "The fact that 21 percent expect the default rate to be above 4 percent marks a significant change from last year, and a bright spot for distressed investors and advisors," he explains. "However, the majority of distressed funds still expect 'more of the same' with default rates remaining below 4 percent."

Supporting that idea, it appears from the report that most respondents are keeping a significant percentage of assets under management liquid and ready to be deployed when defaults increase. Twenty-nine percent of respondents said they would keep more than 50 percent of assets under management on the sidelines, raising the question of what they're waiting for, noted the report. Jonathan Alter, a partner at Bingham McCutchen, says this suggests a lack of distressed opportunities. "This would certainly make sense given the low default rate in 2013," he notes. Once opportunities do arise, however, there should be plenty of dry powder waiting to be deployed."

As for sectors, the report found that

continued on page 4

Research Report

Who's Who in Tuscany International Drilling, Inc.

by Françoise C. Arsenault

Founded in 2008, Tuscany International Drilling, Inc. (Tuscany) is a Canadian-based oilfield services company offering onshore drilling, completion, and workover services to the oil and natural gas industry in support of the exploration, development, and production of oil and gas. Tuscany is presently focused on providing new state-of-the-art onshore drilling and workover equipment to customers operating in South America. The company currently operates in Colombia, Ecuador, and Brazil where Tuscany contracts its fleet of newer, technologically advanced, and efficient onshore drilling rigs to customers. The Colombian and Brazilian businesses are operated by non-debtor affiliates and the Ecuadoran business is operated by a branch of Tuscany.

As of its bankruptcy filing date, Tuscany owned 26 rigs, of which 12 are located in Columbia, 9 in Brazil, and 5 in Ecuador. Of the 26 rigs, 15 were contracted and operational as of the petition date and 5 were directly owned by the company. Tuscany, which is headquartered in Calgary, Alberta, Canada, has more than 1,200 employees. The company was formed through a predecessor in Alberta in 2004 and became Tuscany International Drilling in April 2010. Tuscany International Holdings (U.S.A.) was incorporated in Delaware in January 2011 and is headquartered in Houston, Texas.

On February 2, 2014, Tuscany International Holdings (U.S.A.) Ltd. and Tuscany International Drilling, Inc. each filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware. The company's foreign subsidiaries and affiliates were not included in the Chapter 11 proceedings. In its bankruptcy filing, Tuscany listed debts of approximately \$237 million and assets between \$100 million to \$500 million. On March 3, 2014, Tuscany filed its Joint Plan of Reorganization and Disclosure Statement.

Tuscany filed for Chapter 11 protection after experiencing significant revenue and

cash flow problems that began in late 2012, due in part to low rig utilization, nonpayment by certain customers on large overdue accounts, and underperforming acquisitions in Brazil and Africa. As of the bankruptcy filing date, the overall utilization of Tuscany rigs was less than 60 percent. Tuscany also suffered severe financial losses in connection with a series of recent, unprofitable acquisitions, including the purchases in 2011 of a Brazilian drilling and workover company and a French exploration and production company.

On February 28, 2014, Tuscany filed a motion with the bankruptcy court for an order to establish bidding procedures for the proposed sale of substantially all of its assets, including ownership interests in subsidiaries or affiliates, or for new capital stock of Tuscany, as reorganized pursuant to the Chapter 11 Plan. At a hearing on March 21, 2014, the court approved \$70 million in DIP financing for Tuscany and the restructuring support agreement reached with prepetition lenders holding approximately 95 percent of their prepetition loans. Under the proposed asset purchase agreement (Stalking Horse Agreement), which is still being negotiated, Tuscany's assets would be sold to some senior secured prepetition and DIP lenders. On March 26, the court approved the form of bidding and marketing procedures for the company's assets and set a deadline of April 25 for bids. If qualified bids are received that exceed those offered under the Stalking Horse Agreement, an auction will be held on May 2, 2014.

The hearing to consider final approval of the Disclosure Statement is scheduled for April 7, 2014, and the confirmation hearing on the Joint Plan of Reorganization is currently set for May 6, 2014.

The Debtor

Walter Dawson is the President, the Chief Executive Officer, and a Director of Tuscany International Drilling, Inc. **Matt Moorman** is the Chief Financial Officer. **Deryck Helkaa** is the Chief Restructuring Officer.

Latham & Watkins LLP is serving as

the bankruptcy counsel to Tuscany. The team includes **Mitchell A. Seider**, **Keith A. Simon**, and **Christopher Harris**, partners in the New York office, and **David A. Hammerman**, **Annemarie V. Reilly**, and **Paul Serritella**, associates with the firm.

Young Conaway Stargatt & Taylor, LLP is the local bankruptcy counsel. Working on the case are partners **Michael R. Nestor** and **Kara Hammond Coyle**.

McCarthy Tetrault LLP is serving as special Canadian counsel to Tuscany. **Sean F. Collins** and **Peter Birkness**, partners in the firm's Calgary office, direct the work.

FTI Consulting Canada, Inc. is providing Tuscany with restructuring advisory services. **Deryck Helkaa**, a senior managing director of the firm, leads the engagement and is serving as the Tuscany CRO. The team also includes **Dustin L Olver**, a director with the firm.

GMP Securities, LLC is serving as the investment banker to Tuscany. **David J. Abell**, a managing director, directs the work on the engagement.

Deloitte LLP is providing Tuscany with tax advisory services. The engagement is being led by **Olivier Labelle**, a partner in the firm's Calgary office.

The Committee of Equity Security Holders

The Committee includes **John Adler**, **Jason Pageau**, and **Nassos Kirykos**.

The law firm of **Landis Rath & Cobb LLP** is serving as the counsel to the Committee. The team includes **Adam G. Landis**, **Richard S. Cobb**, **Kerri K. Mumford**, and **Rebecca L. Butcher**, partners with the firm, and **James S. Green, Jr.**, **J. Landon Ellis**, and **Joseph D. Wright**, associates.

Gavin/Solmonese LLC is providing financial advisory services to the Committee. The engagement is led by **Wayne P. Weitz**, a managing director with the firm.

The Trustee

The U.S. Trustee is **Roberta A. DeAngelis**.

The Judge

The judge is the **Honorable Kevin Gross**. □

Industry, from page 2

Asfour stated that there is currently a pilot shortage and that the impact will likely be particularly felt by regional airlines.

Financial Restructuring & Advisory Panel

The day's second panel focused on the identification of key trends in restructuring and factors affecting the process and outlook for restructuring assignments in the near term. The panel again began with a discussion of the current state of the market. David Kurtz, Vice Chairman of U.S. Investment Banking and Global Head of Restructuring for Lazard, noted that corporate management has generally been more conservative and has avoided taking big risks over the past several years.

Kurtz stated that, where problems do exist, they are almost always sector-specific, such as the transition from print to digital in the publishing industry. Karn Chopra, a principal in Centerview Partners' Debt Advisory and Restructuring Practice, added that the ample liquidity available is allowing companies facing debt maturities and covenant defaults to avoid restructurings at present. Kurtz concurred, noting that covenant defaults used to be seen as a problem, but are now viewed by lenders as an opportunity to negotiate more favorable terms.

Looking to the future, Chopra offered the view that default rates will not return to 2008 levels, but could reach the six-to-seven percent range. Kurtz noted that

continued on page 6

Bitcoins, from page 2

bitcoins, it should be compelled to do so," says Kronenberg. "Because a ledger of all bitcoin transactions is publicly accessible, knowledge of the debtor's addresses will reveal the number of transactions and each transaction amount."

This is only the first step, however. While disclosing bitcoin addresses used to transact bitcoins will disclose the anonymous digital address of the counterparty, it would not link this address to a particular person or entity. This could potentially be done by subpoenaing all major bitcoin exchanges for information linking the relevant addresses to their owners, but that likely is not feasible. Bitcoin users don't need to interact with an exchange, and even if they did, most exchanges are based outside of the United States, which might make discovery difficult.

Accordingly, in a case in which the debtor's transactions are not readily apparent, discovery may need to focus on the

debtor, including all of its communications with counterparties that may have been used to confirm the transfer of bitcoins, says Kronenberg.

Based on this, Kronenberg believes that "in a bitcoin bankruptcy involving an uncooperative debtor, piecing together a basic understanding of the debtor's bitcoin holdings and pre-petition transactions could be a costly and time consuming undertaking."

Another possible challenge presented by bitcoins in bankruptcy is the currency's extreme volatility. For example, on December 4, 2013 bitcoin traded at \$1,147; three days later, it traded at \$694. How would that work in bankruptcy? "Virtually every issue in a Chapter 11 case involves determination of a dollar figure," says Stephanie Wickowski, a partner with Bryan Cave LLP. "Bitcoins' extreme volatility will render most ordinary bankruptcy determinations complex and controversial."

continued on page 8

Distressed, from page 2

financial services continues to top the sector allocation among distressed investors, with 53 percent of respondents including it among their top three sectors (which is little changed from 2012, when 54 percent of respondents included it).

Following financial services were consumer/retail (46 percent), energy/chemicals (44 percent) a big mover, up from 20 percent last year, and industrial manufacturing (40 percent). The lowest rankings were airlines (4 percent) and

shipping (3 percent).

Falling from 45 percent in last year's survey (a second-place showing) to 26 percent (a fifth-place showing) was the real estate sector. "A year ago, many distressed investors predicted that the real estate sector would be a primary focus for 2013," says Jared Clark, a partner at Bingham McCutchen. "As the real estate market recovered, investors looked to sectors like energy, financial services, and retail, all of which stayed active in 2013. With real estate

continued on page 8

Calendar

American Bankruptcy Institute

16th Annual New York City
Bankruptcy Conference
May 15, 2014
New York Hilton Midtown
New York, NY
Contact: www.abiworld.org

Association of Insolvency and Restructuring Advisors

30th Annual Bankruptcy &
Restructuring Conference
June 4 – 7, 2014
Westin Denver Downtown
Denver, CO
Contact: www.airacira.org

Turnaround Management Association

12th Annual Mid-Atlantic Regional
Symposium
June 11 – 12, 2014
Revel Resort & Casino
Atlantic City, NJ
Contact: www.turnaround.org

American Bankruptcy Institute

21st Annual Northeast Bankruptcy
Conference
July 17 – 19, 2014
Stowe Mountain Lodge
Stowe, VT
Contact: www.abiworld.org

National Association of Bankruptcy Trustees

2014 Annual Convention
September 11 – 14, 2014
The Grand America
Salt Lake City, UT
Contact: www.nabt.com

Turnaround Management Association

TMA 2014 Annual Conference
September 29 – October 1, 2014
Westin Harbour Castle
Toronto, ON
Contact: www.turnaround.org

National Conference of Bankruptcy Judges

2014 Annual Conference
October 8 – 11, 2014
Chicago Hyatt Regency
Chicago, IL
Contact: www.ncbj.org □

Special Report

Regional and Local Bankruptcy Accounting Firms

Firm	Senior Partners/Professionals	Representative Clients	
Bederson & Company West Orange, NJ Tel. (973) 736-3333 www.bederson.com	Edward P. Bond Hon. Francis G. Conrad Timothy J. King	Charles S. Lunden Charles N. Persing Sean Raquet Matthew Schwartz	Creditors' committees, debtors, trustees, as well as court-appointed examiners, mediators, fiscal agents, receivers, and fiduciaries. Client industries include automotive, banking and finance, construction, department stores, entertainment, food processors, healthcare, heavy equipment, hospitality, importing and exporting, intellectual property developers, law firms, leasing companies, manufacturing, oil and gas exploration, overseas corporations, publishing, real estate, retail, securities broker/dealers, surgical centers, textiles, trucking, warehousing.
CohnReznick LLP Edison, NJ www.cohnreznick.com Tel. (732) 549-0700	Kevin P. Clancy Sharon Bromberg Richard Hollowell Bernie A. Katz	Howard L. Konicov Lawrence Marziale Chad J. Shandler Clifford A. Zucker	AgFeed Industries, Inc. (UCC), Anchor BanCorp Wisconsin, Inc. (debtor) Christ Hospital (UCC), Fairmont General Hospital, Inc. (UCC), Hudson Healthcare, Inc. (UCC), Interfaith Medical Center (debtor), Oak Rock Financial LLC (CRO), PFF Bancorp. (UCC), Pitt-Penn Holding Co., Inc. (financial advisor for the Chapter 11 Trustee), Restora Healthcare Holdings (UCC), Soundview Elite Ltd. (debtor), St. Francis Hospital, Poughkeepsie, New York (debtor), TOUSA, Inc., et al. (UCC), Zacky Farms, LLC (UCC).
Compton & Wendler Houston, TX Tel. (713) 351-7110 www.cw-cpa.com	Jeff Compton Allen Wendler	Courtney Chlebus	Debtors, creditors, and trustees.
EisnerAmper LLP New York, NY Tel. (212) 949-8700 www.eisneramper.com	Allen Wilen Edward A. Phillips Anthony Calascibetta David Ringer Thomas Buck Dion Oglesby	Joseph Myers M. Jay Lindenberg Ira Spiegel Linda Aron William Pedersen Georgiana Nertea	KidsPeace, New York City Opera, Couples Cruises, HAAS Environmental, 710 Long Ridge Road Operating Company II, LC Addington, Saint Catherine Hospital of Pennsylvania, Richmond Wholesalers, Shoe Mania, USA United Holdings, Inc. et al, M Slavin and Sons, United Gilsonite, Liberty State Insurance, Russ Berrie, Burns & Roe Future Claimants Representative, Bayonne Med. Ctr., Designline Construction, Michael Vick, Dunmore Homes Liquidation Trust, Pali Capital.
Ellin & Tucker Baltimore, MD Tel: (410) 727-5735 www.etnet.com	Edwin R. Brake		Industries: automotive, construction, employee benefit plans, health care, hi-tech/biotech, law firms, manufacturing, professional services, printing, real estate, retail, wholesale distribution.
Ercolini & Company Boston, MA www.recpa.com Tel. (617) 482-5511	Michael Tucci William Crane	Michael Bruno	Clients include real estate, professional services, educational institutions, start-up and closely-held businesses, hospitality, retail.
Kapila & Company Fort Lauderdale, FL www.kapilaco.com Tel. (954) 761-1011	Soneet R. Kapila Lesley J. Johnson Melissa Davis	Mary M. McMickle Sherry M. Bennett	Levitt Homes, SMF Energy, Universal Health Care Group, Florida Extruders, Inc., Spear & Jackson, Pan American Hospital, SunCruz Casinos, Southeast Banking Corporation, Aerosonic Corporation, Bell South, Atlas Environmental, Bray & Gillespie, Piccadilly Cafeterias, Planet Hollywood International, Tel-One, Inc., Banco Latino International, Bobby Allison Wireless, Securities & Exchange Commission, Conti Financial Corporation, Southern Pacific Funding Corporation.
Lain, Faulkner & Co. Dallas, TX Tel. (214) 720-1929 www.lainfaulkner.com	Dan B. Lain Dennis S. Faulkner Marla C. Reynolds Paul C. French, III	D. Keith Enger Stephen H. Thomas Lori B. Lowderman Jason A. Rae	Chapter 11 and Chapter 7 trustees, debtors-in-possession, unsecured creditors' committees, debtors, creditors' committees, chief restructuring officers, examiners, settlement and post-confirmation trustees, special claims analysts, secured creditors.
Marcum LLP New York, NY; Los Angeles, CA; West Palm Beach, FL Tel. (212) 485-5500 www.marcumllp.com	Peter Buell Diane Giordano Paul Pershes	Alan Griffith Shaun Blogg	Automotive, healthcare, media & entertainment, hedge funds & investment partnerships, high technology, real estate, construction, insurance, retail & consumer products, talent & literary agencies, manufacturing, retail & distribution, governmental entities, maritime.
Morrison, Brown, Argiz & Farra www.mbfcpa.com Tel. (305) 373-5500 Miami, FL and New York, NY	Marta Alfonso	Viresh Dayal	Automotive dealerships, banking and financial institutions, government agencies, healthcare, hospitality, manufacturing, non-profit organizations, professional service firms, professional sports franchises and athletes, real estate and construction, retail, securities, technology, telecommunications, transportation, wholesale and distribution.

Worth Reading

Beyond the Hype: Rediscovering the Essence of Management

Author: Robert G. Eccles and Nitin Nohria

Publisher: Beard Books

Softcover: 292 pages

List price: \$34.95

Beyond the Hype grew out of the authors' research into "knowledge-intensive organizations" emerging and being touted in the 1980s and early 1990s. As they studied businesses in the fields of biotechnology, consulting, advertising, computers, and entertainment, among others, Eccles and Nohria began to question the assumption held in the business world that a new kind of business organization was emerging.

Businesspersons, writers, and the media were using terms such as "information technology," "total quality," "micromarketing," "time-based competition," "restructuring," "concurrent engineering," "empowerment," "intrapreneurs," "core competence," and the "learning organization," creating a belief that a new way of doing business was evolving. But the authors came to realize that ever-proliferating business buzzwords and models were no substitute for the basics of effective management.

The authors do not argue that businesspersons who succumb to contemporary hype are going in the wrong direction. But in *Beyond the Hype*, the authors urge business leaders to look past the verbiage and focus on how things actually get done in organizations. Good management, maintain the authors, comes from targeting appropriate action; communicating it through effective and inspiring rhetoric, rather than jargon; and ensuring that what is communicated is then accomplished.

Words are important, however, especially those used by managers because, in most cases, they influence the collective actions of employees and define the business's operations, image, and direction. The authors urge the use of clear, relevant, and reliable language having an "action perspective which recognizes that the purpose of management is fostering action and then making that action meaningful to people both collectively and individually." The authors further argue that "without the right words, used in the right way, it is unlikely that the right actions will occur."

"Words may come and go, but *action* is always the managerial imperative," conclude the authors. The final sentence of this work is, "By accepting this responsibility [the long-term health and relevance of a company], you can move beyond contemporary hyperbole and rediscover the essence of what management is all about: the effective use of language to get things done."

Beyond the Hype is a unique business book for executives, managers, and anyone else in a leadership position. Its bottom line is this: golden words are no substitute for executive leadership. For business leaders, *Beyond the Hype* offers a wealth of insights that will liberate them from "new" ideas and allow them to focus on their real job of managing. □

The authors are from the Harvard Business School. Robert Eccles, founder of Advisory Capital Partners, is a professor of management practice at Harvard Business School. Nitin Nohria is dean of Harvard Business School.

This book may be ordered by calling 888-563-4573 or by visiting www.beardbooks.com.

Industry, from page 4

a key difference from the last cycle is a "fear factor," which is causing companies to refinance their debt earlier. Dustin Mondell, a director in the Restructuring Group of Rothschild Inc., added that, when the interest rate environment does change, there will be a delay in companies needing to restructure because many companies have borrowed using fixed rate debt.

Legal Restructuring Panel

The final panel of the day focused on a discussion of several recent bankruptcy law developments that are influencing the market. The first such development was the increasing use of mediation within the context of Chapter 11 cases. Damian Schaible, a partner at Davis Polk & Wardwell LLP, described how the use of mediation has grown as a result of cases being more litigious and there being more parties to the negotiation of a consensual exit. Schaible noted that mediation offers real benefits – particularly, faster resolutions at lower cost – but is not a panacea. The case basically stops while the mediation is ongoing, which can result in longer timelines if mediation is unsuccessful. Moreover, Schaible emphasized the need for careful consideration of issues such as the selection of an appropriate mediator, the identification of the right issues to be mediated, and the timing of the mediation.

The second issue addressed by the panel was the evolving case law around the ability of secured creditors to credit bid their claims. George Mesires, a partner at Faegre Baker Daniels LLP, described two recent situations where bankruptcy judges limited secured creditors' credit bidding rights. In discussing the opinion in *Fisker Automotive*, Mesires emphasized that the surprising aspect of the decision is that Judge Kevin Gross capped the amount of the credit bid at the price paid by the purchaser of the claim. He also noted the uncertainty surrounding the precedential impact that the *Fisker* decision may have in future cases.

Mesires also described the more recent decision in the bankruptcy of *The Free Lance-Star Publishing Co. of Fredericksburg, Va.* In that case, Judge Kevin Huennekens capped a credit bid at \$14 million for a claim with a face amount of \$38 million following allegations of "bad acts" by the secured creditor. However, the basis for capping the claim at that amount was not known, nor was the amount that the creditor paid to acquire

continued on page 8

Special Report

Outstanding Young Restructuring Lawyers – 2014

Lawyer	Firm	Outstanding Achievements
Scott L. Alberino	Akin Gump Strauss Hauer & Feld Washington, DC salberino@akingump.com	Heads team advising \$1.7 billion class of unsecured noteholders of Energy Future Intermediate Holdings. Other creditor representations include steering committee of secured lenders of LifeCare Holdings and Wayzata Investment Partners, and affiliates in Ormet Corporation Chapter 11. Debtor representations include Atlantic Express Transportation Corp, Atari, Inc., and its affiliated debtors, and Inner City Media Corporation.
Luke A. Barefoot	Cleary Gottlieb Steen & Hamilton New York, NY lbarefoot@cgsh.com	Led multi-office, multi-discipline team advising Overseas Shipholding Group. OSG is now poised to confirm a plan of reorg. that will pay all creditors in full and provide meaningful distribution to existing shareholders. Also advised Nortel on ongoing issues related to its Chapter 11 filing. Representing Cascade Investment, controlled by Bill Gates, in recently filed Chapter 11 of its portfolio company, Optim Energy.
Joshua Brody	Kramer Levin Naftalis & Frankel New York, NY jbrody@kramerlevin.com	Leads representation of First Mariner Bancorp. Representing certain second lien bondholders in Energy Futures Intermediate Holding Company. Lead lawyer for holders of certain “lot option” claims in TOUSA Homes Chapter 11. Played critical role in representing unsecured creditors committee in Hostess Brands, Capmark, and WP Steel Venture bankruptcies. Represented ad hoc bondholders committee in Sea Containers.
Jason G. Cohen	Bracewell & Giuliani Houston, TX Jason.Cohen@bgllp.com	Representing PPL Corp., largest unsecured creditor in Southern Montana Electric Generation and Transmission Cooperative bankruptcy, and Tide Natural Gas Storage as creditor in Falcon/Arcapita Chapter 11. Counsel for agent in ongoing Chapter 11 of Cano Petroleum. Represented Athens-based Omega Navigation in its Chapter 11. Lead counsel for Deep Marine Technologies and creditors’ committee in Harold’s Stores.
Garrett Fail	Weil, Gotshal & Manges New York, NY garrett.fail@weil.com	Instrumental in negotiating and structuring major sales, global settlements, and complex plan for Lehman Brothers Holdings, which included innovative sale of certain of Lehman’s \$14 billion intercompany claims in first ever “Dutch” auction of bankruptcy claim and subsequent series of private placement sales of \$7 billion of affiliate claims. Played pivotal role in representing Southern Air Holdings and Galvex Holdings.
Jill Frizzley	Shearman & Sterling New York, NY jfrizzley@shearman.com	Representations include Textron in acquisition of Beech Holdings, parent of Beechcraft Corporation; Deutsche Bank, Morgan Stanley, and other arrangers in over \$4 billion in DIP and exit financings for American Airlines; agent in restructuring/refinancing of first lien debt of Physiotherapy Associates; Cinram Intl. in its Chapter 15 cases; Media General in its sale of newspaper assets to and financing agreements with Berkshire Hathaway.
Jayne T. Goldstein	Stroock & Stroock & Lavan New York, NY jgoldstein@stroock.com	Represented Fortress, a plan sponsor for LightSquared’s contemplated \$2.65 billion restructuring plan; China Medical, a bondholder group in involuntary liquidation and Chapter 15 proceedings to recover \$396 million; OnCure, Chapter 11 bondholder group and DIP lenders; Wilmington Trust, as trustee for \$775 million senior secured notes, in litigation against US Oncology; and steering committee of secured lenders to ATI.
Brian D. Glueckstein	Sullivan & Cromwell New York, NY gluecksteinb@sullcrom.com	Represented Eastman Kodak in restructuring involving reorg. of 15 different business lines in over three dozen countries, novel questions of IP law, and resolution of legacy liabilities. Other representations include Dish Network and EchoStar in litigation with LightSquared LP and creditors asserting billions of dollars in claims, Chrysler Group with respect to post-closing litigation, and JPMorgan Chase in WaMu Chapter 11.
James J. Mazza, Jr.	Skadden, Arps, Slate, Meagher & Flom Chicago, IL james.mazza@skadden.com	Advising Exide Technologies in its ongoing restructuring. Also advised Dynegy in acquisition of Ameren’s merchant energy business, and represented Barclays Bank PLC and Deutsche Bank Securities in connection with approval of aggregate \$545 million in senior secured exit facilities for Patriot Coal. Won appeals court reversal of two lower court judgments in <i>In the Matter of UAL Corporation (Pilots’ Pension Plan Termination)</i> .
Dan B. Prieto	Jones Day Dallas, TX dbprieto@jonesday.com	Currently represents Specialty Products and Bondex, subsidiaries of a public company with annual sales of \$3.4 billion, in Chapter 11 case raising issues critical to restructuring of asbestos liabilities. Advising two subsidiaries in connection with a pre-packaged section 524(g) Chapter 11 case, and a company on strategy for addressing mass tort liabilities. Lead partner representing senior secured lenders in ASR Chapter 11 cases.
Dustin P. Smith	Hughes Hubbard & Reed New York, NY smithd@hugheshubbard.com	Led trustee’s investigation into MF Global relationship with former exchanges and financial institutions in \$40 billion liquidation. Negotiated settlement with JPMorgan, returning \$546 million to MFGI estate. Among lead attorneys reconciling complex financial transactions and untangling ownership disputes between Lehman Brothers and administrators of European affiliate and then negotiating tens of billions of dollars of claims.
Joshua A. Sussberg	Kirkland & Ellis New York, NY joshua.sussberg@kirkland.com	One of the lead partners representing: Edison Mission Energy in its Chapter 11 restructuring of approximately \$3.7 billion of senior unsecured notes and other obligations; AMF Bowling, resulting in highly successful and fully consensual Chapter 11 plan of reorganization that raised \$310 million in new financing; and Conexant Systems in successful and fully consensual Chapter 11 case completed in 96 days.

Industry, from page 6

the claim. Therefore, this case too presents areas of uncertainty for the distressed investing community. However, Mesires noted the view that it does signal that the *Fisker* opinion is already having an impact.

David Seligman, a Partner at Kirkland & Ellis LLP, then discussed the treatment of claims for make whole premiums in bankruptcy. According to Seligman, bankruptcy courts will generally evaluate the appropriate treatment of a claim based upon a make whole provision by considering two issues. First, the court will look at the agreements upon which the claim is based to determine whether the make whole premium has been triggered. Surprisingly, Seligman

noted that the lending community has not yet adopted standard language for make whole premium provisions. The second issue the court will consider is the overlay of Bankruptcy Code provisions to the claim. Generally, courts will find that make whole premiums are in the nature of reasonable charges that are allowable under section 506(b) of the Bankruptcy Code if the make whole provision in the agreement is properly drafted. Conversely, Seligman explained that no call provisions in loan agreements are generally not enforceable in bankruptcy.

The final topic of the day was the impact of a recent decision in the *Residential Capital* bankruptcy regarding claims for post-petition interest on secured claims. In that case, while the

total amount of the lenders' collateral exceeded the amount of their claim, the collateral was spread across separate legal entities. The debtor asserted that because each legal entity was obligated for the full amount of the lenders' claim, the lenders were undersecured and not entitled to approximately \$300 million in post-petition interest. Brad Erens, a Partner at Jones Day, noted that, while the court sided with the lenders, the decision was results-driven and arguably hard to support by the Bankruptcy Code. Therefore, Erens argued that it would not be a surprise to see a court come to the opposite conclusion in another case. He also suggested that a secured creditor could possibly address such a situation by consensually capping its claim at each legal entity so as to be fully secured. □

Bitcoins, from page 4

Kronenberg notes that bitcoins likely fit within the category of "cash equivalents" under the Bankruptcy Code, but they may be too volatile to be treated like cash in bankruptcy, especially if they are subject to a secured creditor's lien, and thus constitute cash collateral.

Because bitcoins can plummet in value overnight, the debtor's ability to meet estate expenses and reduce the amount of collateral available to protect secured creditors could be impaired.

Faced with this prospect, a creditor may request an order compelling the debtor to convert all of its bitcoins into cash, but Kronenberg advises looking at how the debtor uses its bitcoins first. "If the debtor's use of bitcoins is necessary to the continuation of its business, then forcing it to convert its bitcoins to cash could

jeopardize its prospects for reorganization or its ability to orderly wind-down its operations," he says. "However, if a debtor is using bitcoins merely as a payment system, and bitcoins are not fundamental to the debtor's business, the prudent course of action would be for such bitcoins to be converted to cash."

Kronenberg thinks this is consistent with U.S. Trustee guidelines that seek to protect the cash of bankrupt debtors. Namely, debtors filing for bankruptcy must close their existing bank accounts and open new debtor-in-possession bank accounts, often with an approved financial institution. This ensures that the debtor's cash is safe and all transactions are well documented. Although debtors often ask for and are granted exemptions from such guidelines, such requests should be carefully scrutinized in bitcoin bankruptcies, says Kronenberg. "When it

comes to a bitcoin debtor that uses bitcoins as its payment system, the maintenance of this system could seriously threaten creditor recoveries, necessitating full compliance with U.S. Trustee guidelines, even if they may not technically apply to bitcoins yet."

Wickowski says she doesn't even know how a bitcoin claim would be determined. Under the Bankruptcy Code, claims must be made in U.S. dollars; when an obligation is in a foreign currency, the exchange rate on the date of the petition is typically used. But currency exchange rates are based on widely accepted methodologies and sources, including governmental agencies. With bitcoins, exchange rates can be gathered only from multiple bitcoin markets. "Very likely this will lead to controversy, challenges, and litigation over asset valuation and claims determination," Wickowski predicts. □

Distressed, from page 4

continuing to show a positive outlook, this trend should continue in 2014."

Investors were also asked which regions and countries will offer the most distressed opportunities in 2014. "Remarkably, two-thirds predicted North America will offer significant distressed opportunities in 2014, and it will be interesting to see which industries will be key in 2014," says Tim DeSieno, a partner at Bingham McCutchen.

That was followed by Latin America (42 percent). "There has already been a flurry of activity in Brazil, with the fall

of OSX and OGX among other names, and in the Mexican homebuilder cases," says DeSieno.

Forty-two percent of respondents are targeting DIP financing as an investment opportunity in 2014, up from 29 percent. According to the report, the high return of the investment drives 17 percent of respondents, while only 5 percent invest in DIP financing to influence the outcome of a reorganization.

"Investors do like the relatively short maturities offered by DIP lending, as well as fees and interest, priming liens, and the super-priority status of claims that are just some of the many protections granted

by the bankruptcy code as incentives to lend," says Julia Frost-Davies, a partner at Bingham McCutchen.

Of those respondents who were not interested in DIP financing, 52 percent say it is because the investments are not worth the risk, 45 percent believe the trading market is too illiquid, 29 percent are not looking to own a company in a 363 sale, and 29 percent say secured lenders already have deals pre-wired.

The report cites the ATP Oil & Gas DIP loan as a warning that the super-priority status of DIP lenders does not guarantee

continued on page 9

Gnome de Plume

Free to Speak...At Last

by Andy Rahl

It's a great honor to follow Chris Beard as Gnome de Plume. I always wanted to comment on our financial scene, but that was impossible until I retired as a practicing lawyer. The risk of offending clients or having my words put back to me in court was too great.

Chris was most effective in writing about events and circumstances in our economic and political life that affect the world of turnarounds and workouts, and I hope to continue that.

Why Take Reserves When Rates Are So Low?

It's no secret that the Fed's low interest rate policy (a.k.a. "accommodation") is a major factor holding back restructuring activity. Unfortunately, "amend and extend," "carry at cost," and related status quo approaches to holding poorly performing assets preserve recovery option value for those who own and manage them. As long as low rates make them feasible, "amend and extend" strategies should continue as a preferred alternative to restructuring.

The problem is that this approach stifles the liquidation and restructuring of bad assets and investments into more productive ones. PE and VC folks refer to such companies as the "living dead" and with good reason. The living dead can't expand or invest, not to mention hire, without recapitalizing – which in turn they can't do without reserves, write-offs, haircuts, etc.

No one can quantify how big a price in lost growth opportunity we are paying for keeping our living dead alive, but certainly the "amend and extend" syndrome has been a major factor in the painfully slow pace of the economic recovery. But until rates go up...status quo.

When Will Rates Go Up?

Apart from its importance to corporate turnarounds and workouts, handicapping future rates is great fun. Every little thing the Fed does moves the markets, and who wouldn't like to know when and how rates are going to change?

One reason monetary policy is such good sport is because so much information is out there to work with; it is almost entirely the province of the Fed and its Open Markets Committee (FOMC). And the Fed puts out huge amounts of material about what it's up to.

The 2008 FOMC meeting transcripts are fascinating for providing insights into the Fed's current approach. Many have already focused on how the Fed was obsessed with inflation and clueless about the extent of the financial crisis. Thus, at its September 29, 2008 meeting, even after Fannie/Freddie, Lehman, AIG, Merrill Lynch, Wachovia, and WaMu all had been seized, sold, or taken down, the FOMC still voted not to cut the fed funds rate, which had been unchanged at 2 percent

since April 2008. (It was 4.25 percent until January 21, 2008 – imagine doing "amend and extend" today with that rate floor.)

The FOMC finally did cut rates on October 7, 2008 in a move it negotiated jointly with other central banks to be announced at 7:00 a.m. the next morning. But the FOMC meeting to approve the cut didn't start until 5:30 p.m. the evening before. It also seems clear that a number of the FOMC members had not heard about the rate cut beforehand. One genius even tried to speak against the cut, but got nowhere.

It is a truism that the Fed Chair has a great deal of influence over the Fed; this and many other examples from the transcripts and elsewhere suggest that to be a significant understatement. And there is no question that Chair Janet Yellen continues to be very much in favor of accommodation.

When will rates go up? Don't hold your breath. □

Editor's Note: It is with great pleasure and gratitude that we welcome J. Andrew Rahl, Jr. aboard as the new scribe of Gnome de Plume. Mr. Rahl recently retired after 40 years of law practice. He was a partner at Reed Smith from 2008 to 2013, and Anderson Kill & Olick from 1990 to 2008. At various times, he led the restructuring practice of each firm.

Distressed, from page 8

a stable return. "After the company failed to ramp up production at its flagship projects and generate sufficient revenues last year, its DIP lenders ended up owning the company in a 363 sale after credit bidding," the report states. It does, however, note that, on the flip side, Patriot Coal's \$375 million DIP loan was refinanced before the debtor's emergence.

"While DIP loans have been lacking in prevalence over the past year given the lull in distressed markets, 2014 might be a game changer given the expected bankruptcy of the biggest leveraged buyout in history, Energy Future Holdings, formerly known as TXU," states the report. "The company could contemplate raising two DIPs, one at its merchant subsidiary TCEH, which is expected to be oversubscribed, and one at its subsidiary EFIH." □

In the Next Issue...

- *Special Report: Major Trade Claim Purchasers*
- *Special Report: Top Internet Bankruptcy Resources*
- *Research Report: Who's Who in QCE Finance LLC*

BEARD GROUP

 LAW & BUSINESS PUBLISHERS

Turnarounds & Workouts is published monthly by Beard Group, Inc., P.O. Box 40915, Washington, D.C. 20016 Telephone: (240) 629-3300. Copyright 2014 by Beard Group, Inc. ISSN 0889-1699. All rights reserved; unauthorized reproduction strictly prohibited. Editor: Nina Novak (nina@beard.com). Assistant Editors: Dave Buzzell, Julie Schaeffer, Françoise C. Arsenault, Randall Reese, and Eric Van Horn. Subscription Rate: \$447 per year per firm for one recipient plus \$25 per year for each additional recipient. Send comments and coverage suggestions to above address or david@beard.com.