turnarounds & workouts
News for People Tracking Distressed Businesses

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Inside

The Year Ahead

Restructuring Pros Weigh in on What's in Store in 2012

by Julie Schaeffer

Most turnaround firms have found themselves in the midst of a business slow down that began somewhere between early 2010 and 2011. What everyone wants to know, however, is when the cycle will shift again. Perhaps sooner than you think, according to several restructuring professionals.

William H. Henrich, co-chairman of Getzler Henrich & Associates, is confident that residual economic pressures, combined with the return of highly undisciplined lending, will create new opportunities for turnaround professionals.

He notes that, as the recession abated and credit markets rebounded, banks that had used the so-called "extend-and-pretend" strategy loosened the reins. As a result, by last

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Reception Unclear

Media Company Restructurings Present Unique Issues

by Dave Buzzell

Buffeted by economic and technological forces, broadcast media companies are struggling to stay afloat. Advertising revenue has been hard hit by both a faltering economy and a transformational shift to online media. The last few years have seen Chapter 11 filings by Citadel Broadcasting, NextMedia Group, Inner City Media, the Tribune Company, Young Broadcasting, ION Media, Equity Media Holdings, Media General, and Pappas Broadcasting, to name but a few. Many local stations are likewise succumbing to competition from the Internet or digital channels.

Despite their struggles, broadcast media companies have an invaluable asset – their

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The Mega Case Rises Again?

One Pro Says Yes; Another Says No

by Julie Schaeffer

Mega cases fell by the wayside with the waning of the financial crisis, but they may be set to rise again, says Schuyler Carroll, a partner with Perkins Coie's business practice.

"A lot of people have been talking about when we will see the next wave of bankruptcies," says Carroll. "But I get the sense we'll see more mega cases."

Mega cases are large bankruptcies that typically includes companies with more than $100 million in assets and liabilities and potentially thousands of creditors – General Motors, Chrysler Group, and Enron, to name just a few from recent years.

In the wake of the financial crisis, a number of mega cases surfaced, including Lehman Brothers and Washington Mutual, but since the middle of 2009, there have been few,

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year, banks had addressed most distressed loans in their portfolios. The absence of distressed loans, along with few new loans, eliminated a focus of turnaround firms.

Holly Etlin, managing director at AlixPartners, says the banking community continues to have a substantial quantity of corporate debt outstanding that is unlikely to be paid in full. "At some point, in order for the banks to free up capital to make new loans, they will need to clean up their balance sheets, which will produce an increase in restructuring activity," she says.

Henrich, however, thinks the issue is more that the economy remains on a precipice. "A closer look at recent economic trends suggests a return to recession and fissures in banks and private equity portfolios are looming as real probabilities."

Henrich acknowledges that some economists think the risk of recession is lower today than it was in 2008 because the U.S. financial system is in better health. However, European banks' exposure to sovereign debt is concerning, in part because it's more global than subprime mortgage problems were. Henrich says it's difficult to predict whether we're in danger of another funding crisis akin to 2008, but one thing is certainly similar between 2008 and 2011: faltering consumer confidence. He points out that, according to Moody's Analytics, the five percent of Americans with the highest incomes now account for 37 percent of all consumer purchases. "When income is so top-heavy, the middle class doesn't possess enough purchasing power to keep the economy humming without incurring more debt. The middle class is being hit by job losses, sagging incomes, and declining home values, making it difficult to exercise their purchasing power."

With the possibility of another recession looming, Henrich says restructuring practitioners can expect companies' financial health to suffer from top-line deterioration or further stagnation combined with intensified cost pressures. "Those with restructured credit agreements predicated on having achieved some level of financial stability, but not desirable financial performance, may no longer meet the criteria for extend and pretend treatment," he says. "Financially impacted companies with recently acquired

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broadcast license issued by the Federal Communications Commission (FCC). According to Adam Harris, partner at Schulte Roth & Zabel and head of the firm's business reorganization group, it is for this reason that most troubled media companies end up being restructured. "Very few media companies shut their doors and cease operating," he says. "If they have decent viewership or listenership, they continue to operate, but with a new capital structure and perhaps new owners. They are either consolidated into a bigger enterprise with a larger overhead and more revenue-generating assets, or they end up in the hands of a new owner with a better or less leveraged capital structure."

Restructuring a broadcast media company presents unique issues, however, for creditors and investors. "I would compare the challenges involved in a broadcast media company restructuring to those of a gaming company," says James Bentley, special counsel at Schulte Roth & Zabel. "There are some very specific issues that must be successfully navigated in restructuring a media company because of the FCC overlay. Licensing and tax issues, what you can and cannot get liens on – these all can potentially limit a creditor's ability to exercise rights. There's a whole series of very nuanced aspects to a broadcast company restructuring."

For example, the sale of a broadcast media company is never a simple transaction between the buyer and seller because transfer of the broadcast license requires FCC approval. Thus, what is normally a straightforward transaction can take months or even years to accomplish. If the sale is uncontested, the approval process generally takes one to three months. If, the sale is contested, it can be years before approval is granted or denied.

To keep the company from languishing while waiting for the FCC's imprimatur, one option for purchasers is to enter into a local marketing agreement, or LMA, with the seller/licensee, says David Hillman, a partner at Schulte Roth & Zabel. An LMA allows blocks of broadcast time to be sold to the prospective purchaser, who can then turn around and supply the station's programming and sell commercials, thereby generating revenue while awaiting FCC approval. Once approval is received, the LMA is terminated.

In a paper authored by Hillman and

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with the exception of LyondellBasell, says Carroll.

All that changed over the past few months, however, when a number of large companies filed: MF Global, which filed on October 31; Dynegy, which filed on November 7, and General Maritime, which filed 10 days later; and AMR, which filed on November 29. The New York Bankruptcy Court for the Southern District of New York is currently hearing 94 mega cases, 10 of which were filed in 2011, according to the court web site as of January 10, 2012.

"The latest mega case filings are consistent with what I hear in the marketplace," says Carroll. "People seem to be working on a lot more of the bigger cases, as well as smaller cases – but not much in the middle these days."

Carroll says it's hard to explain the rise in mega cases, but he thinks it has something to do with more bondholders chasing returns – and seeing lower returns for an extended period of time. "For the last couple of years, people didn't see a lot of assets to chase and assets were not getting bid up," he says. "People are looking for returns and are not willing to wait any longer, so you've reached a sort of boiling point. Whether the next wave happens today, tomorrow, or several years from now is not clear, but it is clear that distressed investors are no longer willing to sit and wait and hope for a return down the road."

The current economic situation is also setting a backdrop for mega cases, says Carroll, who thinks the possibility of a double-dip recession is on the minds of many bondholders. "If you're a bondholder, you're sitting down at the negotiating table with a company. You want them to pay you, renegotiate with you, or discuss other alternatives, such as an asset sale, and you might think to yourself, 'People are talking about a double dip; I can sit and wait this out for another year, in which case I might be in trouble, so I may be better off doing something today.'"

The fact that some mega cases have been filed is frequently an indicator of more cases to come. "It's almost an 'open the floodgates' type of thing," Carroll explains. No one wants to be the first one there, but once someone does file, other folks aren't as concerned about pushing the envelope in negotiations, and are

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Research Report

Who's Who in AMR Corporation

by Francoise C. Arsenault

AMR Corporation, headquartered in Forth Worth, Texas, owns American Airlines, Inc., the third largest airline in the United States, American Eagle, and the AmericanConnection. The three subsidiaries have a combined fleet of more than 900 aircraft and serve 260 airports in more than 50 countries and territories. In the U.S., AMR carriers serve 180 cities with an average of 3,000 daily departures.

American Airlines, which was founded in 1930 and began operations in 1938 as American Airways, provides approximately 1,800 scheduled daily departures to about 160 destinations throughout North America, the Caribbean, Latin America, Europe, and Asia. AMR Eagle Holding Corporation, owns two regional airlines doing business as "American Eagle": American Eagle Airlines, Inc. and Executive Airlines, Inc.

AMR employs more than 88,000 people domestically and abroad. As of September 30, 2011, AMR reported consolidated assets of $24.7 billion and liabilities of $29.5 billion.

According to company officials, AMR has lagged behind its major competitors, the majority of which restructured their costs and emerged from bankruptcy before 2009. Unlike those carriers, AMR was able to avoid bankruptcy by implementing hundreds of initiatives resulting, by the end of 2004, in annual cost reductions of more than $4 billion. As a result of their Chapter 11 restructurings, however, AMR's major competitors were able to return to profitability. AMR now has the highest operating costs among the four surviving major U.S. network air carriers. AMR also has not been able to reach a new labor deal with its pilots.

AMR Corporation and 18 U.S. affiliates filed for Chapter 11 reorganization on November 29, 2011 with the United States Bankruptcy Court for the Southern District of New York. With its bankruptcy filing, the company announced that it has sufficient cash on hand ($4.1 billion) to fund operations and would not require DIP financing. Several airlines, including US Airways and Delta Air Lines, have indicated an interest in a possible buyout of American Airlines.

The Debtor

Thomas W. Horton is Chairman of the Board, Chief Executive Officer, and President of AMR Corporation. **Isabella D. Goren** is Chief Financial Officer and a Senior Vice President. **Beverly Goulet** is Chief Restructuring Officer, Vice President for Corporate Development, and Treasurer. **Maya Leibman** is Senior Vice President and Chief Information Officer. **James B. Ream** is Senior Vice President for Operations. **Gary Kennedy** is General Counsel and Chief Compliance Officer.

Weil, Gotshal & Manges LLP is bankruptcy counsel. **Stephen Karotkin**, **Harvey R. Miller**, and **Alfredo R. Perez**, all partners in the firm's New York office, and **Stephen A. Youngman**, a partner in the Dallas office, direct the work on the case.

Morgan, Lewis & Bockius LLP is special counsel for employee-related issues. **Thomas E. Reinert, Jr.**, a partner in the firm's Employment and Labor Practice in Washington, D.C., heads up the team.

Paul Hastings LLP is special labor counsel for certain bankruptcy-specific matters. **Marc J. Carmel**, a partner in the firm's Chicago office, directs the work.

Debevoise & Plimpton LLP is special counsel to AMR for aircraft and aviation issues. The team includes **Richard F. Hahn**, **Jasmine Ball**, and **Michael E. Wiles**, all partners in the New York office.

Groom Law Group is acting as special employee benefits counsel to AMR. **Gary M. Ford**, a partner in the Washington, D.C. office, directs the work.

Rothschild, Inc. is providing AMR with financial advisory and investment banking services. **David L. Resnick**, a managing director and chairman of Rothschild's Global Financing Advisory, leads the engagement.

Perella Weinberg Partners LLP is serving as financial advisor to AMR for issues related to pension plans and labor agreements. The team includes **Michael A. Kramer** and **Adam Verost**, partners.

McKinsey Recovery & Transformation Services USA, LLC and its affiliates are providing AMR with management consulting services. **Seth Goldstrum**, a Practice Leader and member of the Board of Directors, leads the engagement.

SkyWorks Capital, LLC is aircraft restructuring advisor. The engagement is led by **Matthew Landess**, managing director.

Deloitte Financial Advisory Consultants LLP is providing AMR with management and vendor-related advisory services. The Deloitte team is led by **John Little** and **Anthony J. Jackson**, principals.

Ernst & Young LLP is serving as the independent auditor to AMR. **James Bradow**, **David A. Northcut**, and **Debra J. Bennett**, partners, direct the work.

KPMG LLP is providing AMR with tax compliance and advisory services. **Howard B. Steinberg**, a partner with the firm, leads the engagement.

The Official Committee of Unsecured Creditors

The Committee includes the **Allied Pilots Association**; **Transport Workers Union of America – AFL-CIO**; **Association of Professional Flight Attendants**; **Manufacturers and Traders Trust Company**; **Wilmington Trust Company**; **The Bank of New York Mellon**; **Pension Benefit Guaranty Corporation**; **Hewlett-Packard Enterprise Services, LLC**; and **Boeing Capital Corporation**.

Skadden, Arps, Slate, Meagher & Flom LLP is serving as counsel to the Committee. The team includes **John (Jack) William Butler, Jr.**, **Felicia Gerber Perlman**, and **John K. Lyons**, partners in the Chicago office, and **Jay M. Goffman**, a partner in the New York office.

Togut Segal & Segal LLP is co-counsel for conflicts to the Committee.

Mesirow Financial Consulting LLC is providing the Committee with financial advisory services.

Moelis & Company is the investment banker to the Committee.

The Trustee

The U.S. Trustee is **Tracy Hope Davis**.

The Judge

The judge is the **Honorable Sean H. Lane**. ¤

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inexpensive and lightly structured loans will quickly earn the attention of their lenders. "

The bottom line, says Henrich, is that banks will likely begin to see renewed stress in their portfolios, which will bring more opportunities to restructuring professionals. "The slowness experienced in the industry during the first half of last year has already improved somewhat as more opportunities have surfaced."

Etlin agrees. "Most credit-default models predict a modest increase in default rates in 2012, and Chapter 11 filings typically cycle consistently with credit defaults," she says.

According to Etlin, in 2012 we will continue to see pressure in consumer goods-oriented industries and retail, and may see an increase in transportation, energy, and chemical sectors. Jeff Beard, a managing director at Huron Consulting Group, is also keeping his eye on the automotive industry. "It will be interesting to see how willing [surviving suppliers] are to add costs and whether or not they are willing to make significant investments in capital equipment without a materially higher level of support from their customers than they received in the past," he says.

Where do restructuring professionals turn in the meantime? According to Henrich, strong liquidity exists in the private-equity market, and acquisition activity is returning, giving turnaround firms a new opportunity while waiting for more restructuring work. "During the restructuring industry's leaner months, transactional advisory work provides opportunity and offers valuable support to parties-in-interest," he says.

Sellers, Henrich says, may engage operationally adept turnaround firms to "dress the company up for sale," thereby driving up their value to a degree that is much greater than consulting costs.

Buyers, meanwhile, can use assistance verifying the credibility of the information they receive. Operating results, he continues, may be skewed by the company's distress and actions of interested parties. In many cases, the employees who understand the numbers may no longer be with the company being purchased, in which case the turnaround firm can share an objective account of events and minimize diligence risk and costs. Even if management is still present, it may have

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Bentley on media restructurings, they note a caveat to this strategy. Courts have generally held that secured creditors cannot obtain a lien on a broadcast license. However, courts are divided on whether secured creditors can obtain a lien on the proceeds of the sale of that license. Protecting a secured lender's security interest in the proceeds of a broadcast license sale is something to be taken in account when documenting prepetition loan agreements and working with borrowers in a restructuring.

They also note that broadcast media companies in bankruptcy often seek to de-leverage the balance sheet by converting debt to equity under a reorganization plan. "Many broadcast companies took on a substantial amount of leverage pre-2008 and continue

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willing to move forward with a bankruptcy. Dynegy, for example, is a strategic-driven filing, so people say, 'OK, so far it hasn't been a disaster, maybe I'll go down that road as well.'"

"Last year, the rumblings in the hallway were that nothing was happening," says Carroll. "This year, a lot of people are expecting a lot of mega cases, and for some very good reasons."

For his part, Peter Partee, a partner at Hunton & Williams LLP, doesn't think the recent mega cases represent a trend. "For a long time there were mega cases focused on the collapse of the mortgage-backed securities industry, but I don't think we're in that phase anymore," he explains. "I think the mega cases we're seeing are episodic."

As one example, Partee points to MF Global. "The company made some bad European bets, and that came back to haunt them," he says. "There is a shortfall of customer funds, and if they can't find the missing money, they'll have to decide how to deal with the shortfall. That is, do customers get priority or are they pari passu with general creditors? The etiology of the case and the issues involved don't give us any reason to believe it's indicative of a trend."

Bankruptcy and restructuring professionals may find some consolation in Partee's

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Calendar

Association of Insolvency and Restructuring Advisors
VALCON 2012
February 22-25, 2012
Four Seasons Hotel
Las Vegas, NV
Contact: www.aira.org

National Association of Bankruptcy Trustees
2012 Spring Seminar
March 30-31, 2012
The Venetian/Palazzo
Las Vegas, NV
Contact: www.nabt.com

Turnaround Management Association
TMA 2012 Spring Conference
April 3-5, 2012
Grand Hyatt Atlanta
Atlanta, GA
Contact: www.turnaround.org

American Bankruptcy Institute
30th Annual Spring Meeting
April 19–22, 2012
Gaylord Resort & Conference Center
National Harbor, MD
Contact: www.abiworld.org

American Bankruptcy Institute
14th Annual New York City Bankruptcy Conference
May 9, 2012
Marriott Marquis New York
New York, NY
Contact: www.abiworld.org

International Association of Restructuring, Insolvency & Bankruptcy Professionals
Annual Americas Conference
May 20-22, 2012
Turnberry Isle Hotel & Resort
Miami, FL
Contact: www.insol.org

Beard Group
19th Annual Conference on Distressed Investing
November 26, 2012
The Helmsley Park Lane Hotel
New York, NY
Contact: (240) 629-3300 ¤

Special Report

Nation's Largest Industrial Auctioneers

Firm	Contact	Representative Clients/Industries
Asset Sales Auctioneers Charlotte, NC Tel. (888) 800-4442 www.asset-sales.com	Mike Stewart Lance Mannion	Mamco, West Coast Saws, Hoerbiger, RJW, Siemens Energy, Inc., Meikle Automation, Phoenix Fabrication, Doranco, Aigis Mechtronics, Rymac Industries, Bell Industries, Hachey Construction and Fabricating, Vaman Enterprises, Southern Structures, Shrum Steel, CDS Distributing, Irotas Manufacturing.
Biditup Auctions and Appraisals Studio City, CA Tel. (818) 508-7034 www.biditup.com	Steven Mattes, President Vince Presto, General Manager	BSC Steel, Stirling Energy Systems, ARC Fastener Supply, Nidec Motor, Columbia Wire & Iron Works, Conex International, Alfa Tec, O'Connor Tanks, United Launch Alliance, ASAP Enterprise, Dodd Equipment, Triad Construction, Windsor Machine & Stamping, Northstar Aerospace, Satisfied Brake Products, Delta Temp Products, Scott Brass, Great Dane Trailers, Pierre Foods, Federal Mogul, Southern Steel.
Branford Group Branford, CT Tel. (203) 488-7020 www.TheBranfordGroup.com	Bill Gardner, President James Gardner, Senior Vice President	Global auctioneers of manufacturing-related equipment specializing in the electronics, circuit board, plastics, pharmaceutical, semiconductor, metalworking, printing, solar and construction industries. Clients include: Toyota, Jabil Circuits, Fortis Plastics, Panasonic, MFlex, Rubbermaid, Pfizer, Chrysler, Neurogen, TTM Technologies, Merix, Sanofi, Solyndra, Mahle, Cannondale, Sumitomo, Duraco, Cadence, Via Systems, Stryker Labs.
Global Partners Woodland Hills, CA 818-340-3134 www.cagp.com	Adam Alexander, President	Gateway, Cold Stone Creamery, Berkeley Communciations, Asempra, Sequoia Communications, Novafora, Orqis Medical, SVTech, Bio-Quan Life Sciences, BioFuelBox, Pavad Medical, Tranax, XertoCoat, myfit, City Center.
GoIndustry DoveBid Owings Mills (Baltimore), MD Tel. (410) 654-7500 www.go-dove.com	Romie Castelli, Sr. Vice President, North America Sales David Fox, Managing Director, Principal Business	BAE Systems, Amway, JDS Uniphase, United Technologies Corporation, Reckitt Benckiser, QinetiQ, Renault, Intel, PNC, AstraZeneca, LaFarge, GlaxoSmithKline, Pfizer, Honeywell, Eaton, Alcoa, Procter & Gamble, Pepsi, Parker Hannifin, Hewlett-Packard, Transnet, USPS.
Heritage Global Partners 877-303-8040 San Diego, CA www.hgpauction.com	Ross Dove, Managing Partner Kirk Dove, Managing Partner	Ansaris, Ray Cook, Amway Arena, McConnell Cabinets, RJ Reynolds, Celestica, Thomasville, BP Solar, Northstar Aerospace, LNR Property, Sony, Cargill, Aureon Biosciences, Calisolar, Cylene Pharmaceuticals, Solyndra, Western Digital, Aptera, SES, Swift Engineering, OpenRange.
Hilco Industrial Farmington Hills, MI Tel. (248) 254-9999 www.hilcoind.com	Robert Levy, Managing Partner Stephan Wolf, Managing Partner	Machining Specialists, General Motors, Harsco Rail, Mid-America Bag, Ameribrands Corporation, Chrysler, Berkline Benchcraft Holdings, Emivest Aerospace, Monarch Industries, Solo Cup, Pratt & Whitney, Motorola, WestBank Timber Limited, Seagate Technologies, Kimball Electronics Group, Smart Papers, Mercury Marine, Yakima, True North Woodcraft, Evergreen Solar, Levi's, Chicago Sun-Times, Gamesa.
Investment Recovery Services Fort Worth, TX Tel. (817) 222-9848 www.irsauction.com	Gregg Trenor, President John Henry, VP Acquisitions Britton New, Real Estate Executive Adviser	IBM, United Rentals, FMC, Hertz Equipment Rental, Sprint, T-Mobile, Terex, Zurn, Nation's Rent, General Dynamics, Sunbelt Rentals, Thomas Equipment, Rental Service Corp.
James G. Murphy Co. Kenmore (Seattle), WA Tel. (425) 486-1246 www.murphyauction.com	Tim Murphy, President Andy Taylor, Oregon Division Todd Myers, Sales	Specializing in machine shops, forest products, construction, and transportation. Clients include: U.S. Marshals Service, U.S. bankruptcy court trustees, major forest product companies, financial institutions, utility companies, cities, and counties.
Maynards Industrial Southfield, MI Tel. 248.569.9781 www.maynards.com	Taso Sofikitis, President, USA Division	Nidec Motor, Chrysler, Pace American Enterprises, Wesco Cabinets, General Motors, SpecPrint, Fortis Plastics, Mercury Marine.
Plant & Machinery, Inc. Houston, TX Tel. (800) 282-8466 www.pmi-auction.com	Bob Braman, President Ron Moore, Vice President	Caterpillar, G.E. Aircraft, Curtiss-Wright Corp., TECT, U.S.N.R., CBI, Trinity Industries, Chart Industries, Fadal, Ampex, Flextronics, Exxon, Shell, Texaco, Electro-Motive Div. of GM, Bethlehem Steel, USX Corp., Armco, Figgie International, Lufkin Industries, ARA Automotive, Cooper Industries, Combustion Engineering, Superior Industries, Sandvik, National Oilwell, plus many financial institutions and trustees.
PPL Group, LLC Northbrook, IL Tel. (224) 927-5300 www.pplgroupllc.com	David Muslin, CEO/President Joel Bersh, Executive Vice President	J.T. Ryerson & Son; Delphi, Raytheon; Federal-Mogul, G.E. Aircraft, Rolls Royce,Timken, Owens-Illinois, Oasis Corp, Water Pik, Abbott Laboratories, Vice Grip, a division of Newell-Rubbermaid. Specialties are metalworking, plastics, wood working, printing, hospitals, transportation, construction, and aircraft.

Worth Reading

The Rise and Fall of the Conglomerate Kings

Author: Robert Sobel
Publisher: Beard Books
Softcover: 240 pages
List Price: $34.95

The marvelous thing about capitalism is that you, too, can be a Master of the Universe. If you are a certain age, you will recall that is the name commandeered by the Wall Street bond traders in their glory days of the 1980s. Being one is a lot like surfing: you have to catch the crest of the wave just right or you get slammed into the drink, and even then the ride never lasts forever. There are no endless summers in the market.

This book is the behind-the-scenes story of the financial wizards and bare-knuckled businessmen who created the conglomerates, the glamorous multi-form companies that marked the high noon of post-World War II American capitalism. Covering the period from the end of the war to 1983, the author explains why and how the conglomerate movement originated, how it mushroomed, and what caused its startling and rapid decline. Business historian Robert Sobel chronicles the rise and fall of the first Masters of the Universe in the U.S. and describes how the era gave rise to a cadre of imaginative, bold, and often ruthless entrepreneurs who took advantage of a buoyant stock market to create giant enterprises, often through the exchange of overvalued paper for real assets. He covers the likes of Royal Little (Textron), Tex Thornton (Litton Industries), James Ling (Ling-Temco-Vought), Charles Bludhorn (Gulf & Western), and Harold Geneen (ITT). This is a good read to put historic booms and busts in perspective.

While these men had vastly different personalities and processes, they had a few things in common: ambition, the ability to seize opportunities that others were too risk averse to take, willing bankers, and the expansive markets of the 1960s. There is something about an expansive market that attracts and creates Masters of the Universe. The Greeks called it hubris.

The author tells a good joke to illustrate the successes and failures of the period. It seems the young son of a conglomerateur brings home a stray mongrel dog. His father asks, "How much do you think he's worth?" To which the boy replies, "At least $30,000." The father gently tries to explain the market for mongrel dogs, but the boy is undeterred and the next afternoon proudly announces that he has sold the dog for $50,000. The father is proud but flabbergasted. "You mean you found some fool with that much money who paid you that much for that dog?" "Not exactly," the son replies. "I traded him for two $25,000 cats."

While it lasted, the conglomerate struggles were a great slugfest to watch: the heads of giant corporations battling each other for control of other corporations, and all of it free from the rubric of "synergy." Nobody could pretend there was any synergy between U.S. Steel and Marathon Oil. This was raw capitalist power at work.

Because so few people study history, history repeats itself, endlessly, like waves coming to shore. The stagflation of the 1970s devalued the stock of conglomerates and made it useless as currency to keep the schemes afloat. The wave crashed, but waiting on the horizon was another wave – the LBO Masters of the 1980s – and behind that dot.com Masters of the 1990s and the MBS Masters of the 2000s. ¤

Robert Sobel died in 1999. He was a prolific chronicler of American business life, writing or editing more than 50 books and hundreds of articles and corporate profiles.

This book may be ordered by calling 888-563-4573 or by visiting www.beardbooks.com. This book and other Beard books are also now available in digital format at a discounted price from Google Books at books.google.com.

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a self-interested agenda, in which case the turnaround firm can help ensure management's cooperation.

Although private equity groups generally have experience performing due diligence, the turnaround consultant, who is usually an executive with industry expertise, can provide substantial cost-savings insight, notes Henrich. "For firms without operating partners on staff to add operational knowledge, the usefulness of adding qualified support is self-evident," he says. "However, it's of equal value for firms with operating partners whose years of experience are limited to a small handful of companies and whose focus may be spread thin."

According to several restructuring professionals, the industry will need to look outside of the United States for opportunities in the year ahead.

Western Europe will be affected in 2012, according to a survey of restructuring experts recently conducted by AlixPartners. "The survey asked debt experts in the United States, many of whom also work globally, about debt and distressed-debt issues elsewhere in the world," says Etlin. "Perhaps not surprisingly in light of the very challenging recent economic crises in Greece, Portugal, and Ireland, a majority said Western Europe would be the global region most likely to see business restructurings in the year ahead."

Jay Goffman, global head of corporate restructuring for Skadden, Arps, Slate, Meagher & Flom, says the acceleration of bankruptcies all over the world is broader than Europe, and stems from other countries learning how to use accelerated bankruptcy strategies that have long been popular in the United States, such as pre-packs. "So many companies do business all over world, what's going to be fun for the next five or 10 years are the large multinational transactions where someone needs to understand restructuring laws in 20 different countries," says Goffman.

According to Goffman, a proliferation of global restructuring work will require a new kind of restructuring professional. "You'll need firms like Skadden that have people located all over world, but you'll also need one or two people to quarterback the situation and pull it together in one global strategy," he says. That's the trend. That's the fun stuff." ¤

Special Report

Outstanding Bankruptcy Judges – 2012

Judge	District	Comments
Hon. Kevin J. Carey	District of Delaware Wilmington, DE	A frequent outstanding bankruptcy judge selection for his adroit handling of major bankruptcy cases, including, in 2011, the Advanta Bank Corp.'s Chapter 11 filing, requiring resolution of protracted litigation between the debtors and the FDIC over tax refunds. Also presided over Open Range Communications and AES Thames cases.
Hon. Shelley C. Chapman	Southern District of New York New York, NY	Deftly handled twists and turns of Sbarro's restructuring in under 8 months, allowing emergence as a financially and operationally sounder company in advance of the holiday shopping season. Simultaneously presided over other notable large 11 cases including Ambac Financial Group, Innkeepers USA Trust, and Boston Generating.
Hon. Robert Drain	Southern District of New York New York, NY	Polite and fair, but runs a tight courtroom and lawyers know what is expected of them. Moves cases along, handling a contentious case with difficult wrinkles, but ensuring case didn't die from procedure, saving a business and jobs. Recent major cases include Great Atlantic & Pacific Tea Company and Global General and Reinsurance Company.
Hon. Robert E. Gerber	Southern District of New York New York, NY	Presided over the GM bankruptcy to its successful resolution, earning high praise for work ethic and ability to handle matters expeditiously in a case that demanded it. Commended by attorneys for being "all business" and "very meticulous, very considered in all his opinions." Other major cases included Lyondell.
Hon. Martin Glenn	Southern District of New York New York, NY	Presiding over the largest Chapter 11 case of 2011 and one of the largest in history – MF Global Holdings, with $41 billion in reported assets. Other major bankruptcy cases appearing before him include General Maritime (sixth largest last year), Borders Group, RHI Entertainment, and Mesa Air Group.
Hon. Kevin Gross	District of Delaware Wilmington, DE	Case management skills and flexibility created framework for The Majestic Star Casino and stakeholders to resolve multiple contested positions on valuation of gaming licenses, encumbered status of proceeds of those licenses, and enterprise value of the company. Also presided over L.A. Dodgers and Perkins & Marie Callender's cases.
Hon. Sean H. Lane	Southern District of New York New York, NY	Presiding over the second largest bankruptcy of 2011, AMR Corporation, owners of American Airlines. Deftly handled the Travelport Limited and Travelport Holdings Limited case, a complex, cross-border financial restructuring hailed as one of the largest successful international restructurings of the year.
Hon. Burton Lifland	Southern District of New York New York, NY	A veteran of the bench with a reputation for efficiently and fairly presiding over the most complex chapter 11 cases. Continues to handle mega cases, including last year's resolution of the Blockbuster bankruptcy, culminating in Dish Network's $320 million offer for the movie rental chain, and the FairPoint Communications bankruptcy.
Hon. James M. Peck	Southern District of New York New York, NY	In approving Lehman Brothers plan of reorganization in 2011, brought to conclusion the largest Chapter 11 filing in U.S. history with observation that it was the "most impossibly challenging bankruptcy ever." Praised for ability to reconcile complex positions that at times seemed irreconcilable. Also presided over PetroRig bankruptcy.
Hon. Christopher Sontchi	District of Delaware Wilmington, DE	Handled with sensitivity and aplomb the high-profile Catholic Diocese of Wilmington, Inc., case. Presented with many novel legal issues not previously tested in civil courts and with extremely challenging competing equities, he sensitively balanced interests of non-profit entities with rights of sexual abuse survivors to recover for their injuries.
Hon. Donald H. Steckroth	District of New Jersey Newark, NJ	Instrumental in brokering a resolution of substantial competing debtor, creditor, and community interests in Hudson Healthcare Chapter 11 case. Achieved ongoing operation of vital hospital and retention of more than 1,000 jobs in an emotional and politically charged case requiring global resolution of hundreds of leases and contracts.
Hon. Mary F. Walrath	District of Delaware Wilmington, DE	Continues to preside over some of the most largest and most prominent Chapter 11 cases in the nation. Cases in 2011 include Harry & David Holdings, involving contentious pension issues; Solyndra LCC, with political and fraud considerations; and Jackson Hewitt, requiring expeditious handling of class action litigation.

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to struggle because of declining advertising revenue," Harris adds. "Companies that are pretty significantly leveraged up either try to consolidate, do acquisitions, or strike deals with equity holders."

Debt-to-equity conversions again entail FCC involvement, as the agency must approve any change in the direct or indirect equity ownership of the licensee. Thus, efforts to restructure a broadcast media company via a debt-to-equity conversion can become entangled in the same regulatory delays as an outright sale.

Hillman and Bentley offer that licensing approval delays can be overcome by using a liquidating trust – that is, the license is transferred to a liquidating trust pending FCC approval of the change in the equity ownership of the FCC licensee. A broadcast license can be temporarily transferred to a liquidating trust using a "short form" application that sidesteps what can be a lengthy public review period. Upon approval of the short form application by the FCC, the reorganized debtor issues beneficial interests in the liquidating trust to creditors who have agreed to take equity under the reorganization plan. The debtor can close the bankruptcy case once the broadcast license is transferred to the liquidating trust.

Final transfer of control of the broadcast license from the trust to the proposed purchaser requires the trust to file a "long-form" application with the FCC. The public has 30 days to comment on the license transfer, after which time the FCC may or may not approve the transfer. Again, however, the FCC is not bound by a limit on how long is has to grant or deny approval.

Transferring a broadcast license to a liquidating trust under a reorganization plan allows the debtor to confirm its plan without being held up by the FCC approval process. "The FCC and bankruptcy court have separate responsibilities," Hillman says. "The bankruptcy court is responsible for the plan of reorganization, to evaluate whether the company emerging from bankruptcy is a viable business. The FCC also considers the viability of a company that is going to take on a license, but that is only one of its considerations. Its primary concerns are things like concentration limits and foreign ownership restrictions."

Bentley and Hillman caution that transferring a broadcast license to a liquidating trust requires a well-drafted trust agreement and authorizations from not only the FCC and the bankruptcy court, but the IRS as well. For tax purposes, an IRS ruling on whether the trust qualifies as a liquidating trust must be sought.

Lastly, as mentioned above, the FCC is preoccupied with broadcast media ownership eligibility and concentration considerations. Failing to understand the agency's rules in this regard can undermine a restructuring. The FCC's ownership rules encourage market diversity and discourage foreign ownership: "The FCC really prefers to have local owners," says Hillman.

Thus, FCC rules limit the number of radio and television stations a single entity, or group of entities under common control, can own. Ownership limitations apply to both markets and across media platforms – for example, a entity that owns a newspaper may not also hold a broadcast license in the same market. Foreign ownership restrictions also apply. The FCC prohibits foreign entities from holding more than 20 percent of the equity of a licensee directly, and 25 percent of the equity of a corporation that controls the licensee.

"A broadcast license is very valuable," says Harris. "In some cases, it is the entire value of the company. It provides the licensee with the opportunity to generate revenue by virtue of having the ability to operate."

"Because licenses are so valuable, transfers can take a long time to work through in a restructuring," adds Hillman. "FCC approval is needed, and a contested sale adds to the complexity. We were involved in the restructuring of a media company in the Midwest where the existing owner raised every conceivable argument in an effort to derail the approval of the transfer. It takes time, even when objections are frivolous. In our experience, the long-form application can take years to get approved."

"There are some very specific issues attorneys need to be aware of in advising their clients in a media company restructuring," says Bentley. "Having the expertise and experience of having gone through it before is essential to a successful outcome. The cost of missteps can be much greater than in a traditional restructuring of a retailer, for example." ¤

Mega Cases, *from page 4*

view that we're on the brink of a rise in middle-market bankruptcies, however. According to Partee, when it comes to companies with liabilities of $400 million or less, financial institutions have been extending and pretending, but that's all going to change. "Financial institutions did not want to exercise remedies in a market in which the economics of exercising those remedies would possibly be unfavorable to them," Partee says. "Now, however, the economy is improving, and the economic value of foreclosing on a company vs. selling or liquidating it is a lot better than it was two or three years ago. As a result, secured creditors are not as scared of the consequences of exercising remedies as they were two or three years ago." ¤

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- *Special Report: People to Watch – 2012*
- *Research Report: Who's Who in Syms Corporation/Filene's Basement*

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