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FEBRUARY 2013

VOLUME 27, NUMBER 2

Border Dispute

Major Decision in Vitro SAB Chapter 15 Case

by Julie Schaeffer

Vitro SAB has lost its Fifth Circuit appeals court bid to enforce its bankruptcy plan in the United States. “The case puts a stake in the ground as to what will and will not pass muster when a company seeks to use Chapter 15 to obtain ancillary relief for a case pending in another jurisdiction,” says Madlyn Gleich Primoff, a partner in Kaye Scholer LLP’s bankruptcy and restructuring practice. It’s a decision that Marc Abrams, a partner at Willkie Farr & Gallagher LLP, says “may have far-reaching implications for distressed companies seeking to ensure a United States bankruptcy court’s enforcement of foreign court orders.”

During the last U.S. recession, Vitro, a Mexican glass manufacturer, saw construction and auto-glass sales plunge. The company also incurred \$340 million of derivative

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Bankruptcy Inaction

Chapter 11 Filings Lowest Since 2007

by Dave Buzzell

What a difference a few years and an economic rebound make. In 2008, when the nation was in the midst of Great Recession, 134 of the largest U.S. companies (those with assets of \$100 million or more) filed for Chapter 11. As the recession continued (it officially began in December of 2007 and ended mid-year 2009), that number climbed even higher, with 169 major U.S. companies going under during 2009. Since then, the drop has been sharp and steady: 105 in 2010, 82 in 2011, and, last year, just 64 (see Exhibit 1 on page 4). The decline extends to smaller companies as well, with a drop from the year before of about 20 percent in Chapter 11 filings. Several factors have been credited for the turn

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Revitalizing San Juan

Complicated Transaction Saves Puerto Rican Company

by Julie Schaeffer

When Zachary Smith of Cadwalader, Wickersham & Taft LLP began representing a U.S.-based hedge fund that was interested in acquiring Puerto Rico’s Ciudadela development, the project was in Chapter 7 and on the verge of liquidation – but not for long. Smith quickly negotiated a multi-party deal that restored the case to Chapter 11, structured a private sale of the project and related securities, and obtained all necessary government approvals.

“It was a transaction that from the outset looked to be very complicated, with many barriers to entry, but it was actually done in four and a half months from start to finish,” recalls Smith.

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losses from bad bets on natural gas prices and currencies. In 2009, the company defaulted on \$1.5 billion of debt, which included \$1.2 billion of bonds purchased by vulture investors. Those bonds were guaranteed by claims against non-debtor subsidiaries of the holding company.

Vitro went into bankruptcy in Mexico (although its non-debtor subsidiaries did not) and, in February 2012, a Mexican court approved a plan of reorganization, called a “Concurso” after the 2000 law that reformed the commercial bankruptcy process in Mexico.

That plan, says Primoff, who isn’t involved in the case, released the obligations of the non-debtor subsidiaries and denied payments to creditors who refuse to sign off on the plan. “The effect of the Concurso as approved in Mexico was that noteholders wouldn’t be able to go after the non-debtor subsidiaries on the guarantee claims,” says Primoff.

To make its plan against U.S. creditors, who were largely the aforementioned noteholders, Vitro filed in the United States for Chapter 15 bankruptcy, which offers ancillary relief for a case pending in another jurisdiction. According to Primoff, “Vitro wanted injunctive relief from the U.S. courts saying the provisions of the plan approved in Mexico should likewise be approved here.”

That, says Primoff, set the stage for the first stage of this process, which took place in the U.S. Bankruptcy Court for the Northern District of Texas, located in Dallas. “There were a lot of other issues swirling around, including lawsuits filed in New York that got stayed, but they weren’t material to the issues the Fifth Circuit later addressed. The best way to look at this is that the Mexican court approved a plan of reorganization that said noteholders couldn’t sue the non-debtor subsidiaries that issued guarantees, and in order to make that effective against U.S. noteholders, Vitro asked the bankruptcy court in Texas for an injunction.”

When Vitro filed for Chapter 15 bankruptcy in the United States, seeking to enforce the Concurso under U.S. law, the noteholders sued to block that action.

Vitro – in asking U.S. Bankruptcy Judge Harlin DeWayne Hale to enforce the Concurso in the United States and grant Chapter 15 – argued that comity, or

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of events, including capital that has been available at historically low rates.

The number of Chapter 11 filings by the largest of the mega bankruptcies – those with assets of more than \$1 billion – has remained approximately the same the last several years, ranging from 8 to 12 annually, but is far short far of the astounding 42 companies of this asset size that went bankrupt in 2009.

The largest company of 2012 to declare bankruptcy was Residential Capital, which disclosed assets of \$15.7 billion and liabilities of \$15.3 billion when it filed on March 31. Nonetheless, the ResCap bankruptcy does not even crack the list of the top thirty bankruptcies of all time. The largest bankruptcy in U.S. history – Lehman Brothers Holdings, which reported assets of nearly \$700 billion at filing – was liquidated in 2012 after several years in court, as was Washington Mutual, the second largest bankruptcy ever.

In addition to ResCap, the top bankruptcies of 2012 included Dynege, Edison Mission Energy, Eastman Kodak, Lightsquared, ATP Oil and Gas, Patriot Coal, and Hawker Beechcraft. Whereas 2012 opened and closed with a bang with the Chapter 11 filings of Kodak and Edison Mission Energy, respectively – both companies with assets of more than \$5 billion, 2013 has been relatively quiet through January, with no \$1 billion+ filings and only five by companies reporting assets of more than \$100 million. The largest of those is School Specialty, which listed assets of \$494 million when it filed.

Thirteen of the 64 major bankruptcies in 2012 involved a prepackaged Chapter 11 plan, accounting for about 16 percent of the cases. In 2010, roughly one in three cases were pre-packs. Manufacturing companies accounted for 16 percent of the bankruptcy filing in 2012, the most by any sector, as has been the case for the past several years. The information industry continues to flounder, accounting for 8 percent of the major failures in 2012.

One growth area in the bankruptcy arena is Chapter 9 filings, with three municipalities filing for bankruptcy, including the largest U.S. city to file for Chapter 9 protection, Stockton, California.

The Bankruptcy Court for the Southern District of New York was the preferred venue for mega filers with 21. The Bankruptcy Court for the District of

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Revitalizing, *from page 1*

Located in the up-and-coming neighborhood of Santurce in San Juan, Ciudadela is a mixed-used residential and commercial development with a number of public spaces – “part of an urban revitalization effort,” says Smith.

“Phase one and phase two had approximately 320 apartments, plus 1,000 parking lots and approximately 80,000 square feet of retail space,” says Roberto Abesada-Agüet of Correa -Acevedo Law Offices, P.S.C., Smith’s local counsel in Puerto Rico. “And there are 206 more units planned for phase three.”

Dreams of changing the neighborhood, however, would ultimately be put on hold: The project was partially completed when the development company managing the project – Miramar Real Estate Management – filed for Chapter 11 in March of 2011.

That was a problem not just for the developer but for San Juan. “The local government had been trying to revitalize Santurce since the 1990s, and if it weren’t for this transaction, we would have had a big property in the middle of Santurce abandoned with one or two commercial tenants already serving the area and suffering as a result of the slow sales,” says Abesada-Agüet.

That spring, Cadwalader, Wickersham & Taft was retained by a hedge fund that was interested in acquiring Ciudadela. Ultimately, the situation presented numerous challenges. “The case had been ongoing for nearly a full year, and no material progress had been made toward a resolution,” says Smith, who notes there were disputes between the debtor and the lender, Banco Popular, as well as occasional litigation occurring. Second, the Ciudadela project wasn’t actually owned by Miramar, but by a subsidiary of the company, La Ciudadela de Santurce, Inc.

Smith began working with Miramar and Banco Popular, which had a \$200 million credit facility on the property, to reach a global agreement. When the parties came close to reaching a deal, they collectively asked the court to restore the case to a Chapter 11.

“The purchaser wanted to acquire the project through a 363 process in Chapter 11 in order to secure all of the protections a purchaser can obtain by doing so, and to do so on an expedited basis,” says Smith.

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Research Report

Who's Who in Edison Mission Energy

by Françoise C. Arsenault

Edison Mission Energy (Edison), an indirect subsidiary of the California utility Edison International, is a leading independent power producing enterprise specializing in acquiring, developing, owning or leasing, operating, and selling energy and capacity from independent power production facilities in 12 states and the Republic of Turkey (the Doga project). Edison projects primarily consist of coal-fired generating facilities, natural gas-fired generating facilities, and renewable energy facilities, including one of the largest portfolios of wind energy projects in the United States. As of December 31, 2012, the company's subsidiaries and affiliates owned or leased interests in more than 40 operating facilities with an aggregate net physical capacity of more than 8,200 megawatts. Edison sells power through its contracts with regional distributors, large utilities, and other energy companies. The company also engages in hedging and energy trading activities in the open power markets through its Boston-based subsidiary Edison Mission Marketing and Trading (EMMT). Edison, which was founded in 1986 and is headquartered in Santa Ana, California, is a subsidiary of Mission Energy Holding Company and has approximately 1,000 employees.

On December 17, 2012, Edison Mission Energy and 16 of its subsidiaries filed for Chapter 11 reorganization in the United States Bankruptcy Court for the Northern District of Illinois. In its bankruptcy filing, the company listed \$5.13 billion in assets and \$5.1 billion in debts. According to company officials, Edison's financial troubles have stemmed from depressed energy and capacity prices, high fuel costs, pending debt maturities, and the need to retrofit coal-fired power plants with pollution-control equipment to meet current environmental regulations. Edison had skipped a \$97 million interest payment on bonds in mid-November. The company's wind farms and energy trading group EMMT were not included in the filing.

Under a restructuring plan filed with the court, Edison International has proposed

to consensually transfer its 100 percent equity interest in Edison Mission Energy to unsecured creditors holding about \$3.7 billion of the company's outstanding debt. A large portion of the debt is held by hedge funds, including York Capital Management. Company officials have stated that Edison hopes to emerge from its bankruptcy by the end of 2014 as a recapitalized company separate from its parent.

Edison is being sued in bankruptcy court by affiliates of Chevron Corporation, which are alleging that Edison unfairly rejected an \$82.5 million buyout offer in June 2012 from the affiliates for a joint oil field project in California. Under the proposed plan of reorganization, Edison would turn over its share of the venture to creditors. The Chevron affiliates are asking the judge to issue an order allowing them to expel the defaulting partner, Edison, and buy out its interests.

The Debtor

Theodore F. Craver, Jr. is the Chairman and the Chief Executive Officer of parent company Edison International. **Pedro J. Pizarro** is Principal Executive Officer and President of Edison Mission Energy. **Daniel D. McDevitt** is the General Counsel and a Senior Vice President. **Maria Rigatti** is Chief Financial Officer, Treasurer, and a Senior Vice President. **JP Aaron** is a Vice President and the Chief Information Officer.

Kirkland & Ellis LLP is serving as the bankruptcy counsel to the Edison debtors other than Camino Energy Company. The team includes **James H.M. Sprayregen**, **Sarah Hiltz Seewer**, **David R. Seligman**, **Stephen C. Hackney**, **Scott M. Edenfield**, and **Richard U.S. Howell**, partners in the firm's Chicago office, **Joshua A. Sussberg**, a partner in the New York office, **Shay-Ann Heiser Singh**, **Brad Weiland**, **Gregory F. Pesce**, **Neil E. Walther**, **Daniel Hodgman**, **Benjamin W. Winger**, and **Adam N. Schupack**, associates in the Chicago office, and **Jamie Freedman**, **Kristen Schuck**, and **Mathew Kapitanian**, associates in the New York office.

McDonald Hopkins LLC is acting

as counsel to the debtor Camino Energy Company and as conflicts counsel to the other debtors in the case. **David A. Agay**, a partner, and **Joshua A. Gadharf**, an associate, are working on the case.

McKinsey Recovery & Transformation Services U.S., LLC is providing restructuring advisory services to Edison. The engagement is being led by **Jared D. Yerian**, a practice leader and executive vice president.

The financial advisor and investment banker to Edison is **Perella Weinberg Partners LP**. **Michael A. Kramer**, a partner, and **Kevin M. Cofsky**, a managing director, head up the team.

The public relations advisor to Edison is **Joele Frank, Wilkinson Brimmer Katcher**. The team includes **Meaghan Repko**, a partner, **Jed Repko**, a managing director, and **Daniel Moore**, a director.

The Official Committee of Unsecured Creditors

The Committee includes **Wells Fargo Bank, National Association**, as Trustee; **Commonwealth Edison Co./Exelon Corporation**; **Clennon Electric**; **The Bank of New York Mellon**, as Trustee; **Peabody Coalsales, LLC**; **Nesbitt Asset Recovery, LLC**; **Geo J. Beemsterboer, Inc.**; **Rowell Chemical Corp.**; and the **International Brotherhood of Boilermakers Local One**.

Akin Gump Strauss Hauer & Feld LLP is acting as counsel to the Committee. The team includes **Ira S. Dizengoff**, **Arik Preis**, **Sean E. O'Donnell**, and **Stephen M. Baldini**, partners in the firm's New York office, **James Savin**, a partner in the Washington, D.C. office, and **Jason P. Rubin**, of counsel in the New York office.

Perkins Coie LLP is serving as co-counsel to the Committee. **David M. Neff** and **Brian A. Audette**, partners in the Chicago office, and **David J. Gold**, an associate in the Chicago office, are working on the case.

The Trustee

The U.S. Trustee is **Patrick S. Layng**.

The Judge

The judge is the **Honorable Jacqueline P. Cox**. ☐

Border, from page 2

the practice of honoring another country's legal proceedings, requires U.S. courts to respect the decisions of Mexican courts.

The noteholders, meanwhile, argued that the Mexican plan stands U.S. bankruptcy law on its head.

Ultimately, the noteholders won: In June 2012, Hale ruled that the Mexican plan of reorganization was "manifestly contrary" to U.S. policy, faulting it for extinguishing the claims of noteholders against Vitro units that guaranteed the debt, even though the units weren't in bankruptcy. Enforcing the plan in the United States "would create precedent without any seeming bounds," Hale said.

Vitro appealed Hale's ruling to the U.S. Court of Appeals for the Fifth Circuit, located in New Orleans, and the appeals court agreed with Hale. "It ultimately concluded that the bankruptcy court did not abuse its discretion in finding that the Mexican plan of reorganization should not be enforced in the United States," says Primoff.

According to Primoff, the way the appeals court arrived at its decision was interesting. "The Fifth Circuit set up a three-part framework for evaluating whether decisions issued by non-U.S. courts should be granted comity here in the United States. First, you look at Section 1521 of the Bankruptcy Code to determine whether

the relief being sought by the company (in this case Vitro) is something that would be allowed in Chapter 15 on its face. If not, you ask if the relief would have been allowed under the predecessor to Chapter 15, which was Section 304. If not, you ask if the relief can be allowed under principles of comity under Section 1507."

"Vitro is a seminal development, as it creates an exacting framework for analyzing the enforceability of orders of foreign courts," says Abrams, who also wasn't involved in the case.

In Vitro, says Primoff, the Fifth Circuit considered, at great length, whether the releases of the non-debtor guarantor subsidiaries would have been permitted under U.S. law. "The court determined that the relief wouldn't have been permitted in Texas or in the Fifth Circuit, but it also looked beyond those jurisdictions and determined that the relief wouldn't have been permitted under U.S. law at all. Even for those jurisdictions that allow non-debtor releases, the way the releases were structured in Vitro didn't pass muster. So the court decided not to approve the releases and grant the relief requested by Vitro."

"We hold that Vitro has not met its burden of showing that the relief requested under the plan—a non-consensual discharge

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Calendar

American Bankruptcy Institute

31st Annual Spring Meeting
April 18–21, 2013

Gaylord National Resort and
Convention Center
National Harbor, MD

Contact: www.abiworld.org

Turnaround Management Association

2013 TMA Spring Conference
May 14–16, 2013

JW Marriott Chicago
Chicago, IL

Contact: www.turnaround.org

American Bankruptcy Institute

2013 New York City Bankruptcy
Conference

May 16, 2013

Hilton New York
New York, NY

Contact: www.abiworld.org

International Association of Restructuring, Insolvency & Bankruptcy Professionals

Ninth World Congress of INSOL
International

May 19–22, 2013

The Hague, The Netherlands

Contact: www.insol.org

Association of Insolvency and Restructuring Advisors

29th Annual Bankruptcy &
Restructuring Conference

June 5–8, 2013

Westin Chicago River North
Chicago, IL

Contact: www.airacira.org

National Association of Bankruptcy Trustees

2013 Annual Convention

August 8–1, 2013

The Greenbrier
White Sulphur Springs, WV

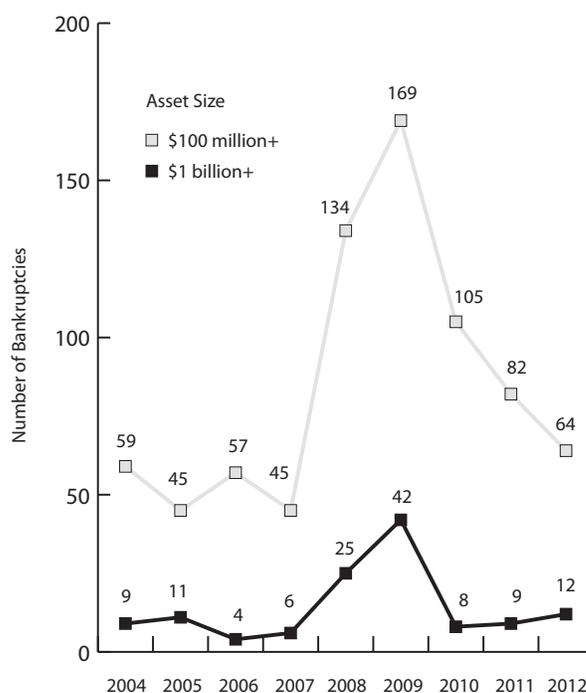
Contact: www.nabt.com

Inaction, from page 2

Delaware was next, receiving 19 mega filings. This was a reversal from 2011 when the Delaware bankruptcy court was most favored for bankruptcy mega cases, with 38 filings, or 46 percent of the mega cases, followed by the Southern District of New York with 16 filings, or 19 percent of the mega cases.

Young Conaway Stargatt & Taylor was tops in debtor representations in 2012, serving as lead or co-counsel in five major cases: Journal Register Company, Southern Air Holdings, Contract Research Solutions, Arctic Glacier, and Buffets. DLA Piper landed three major representations in 2012: Starlight Investments, Reddy Ice, and Trident Microsystems. □

Exhibit 1
Large Chapter 11's 2004-2012



Special Report

Nation's Largest Industrial Auctioneers

Firm	Contact	Representative Clients/Industries
Asset Sales Auctioneers Indian Trail, NC Tel. (888) 800-4442 www.asset-sales.com	Gerald Mannion Lance Mannion Mike Stewart	Chesapeake Engineering Corporation, KMS Industries, NSA Industries, Fabriteel Corporation, Endotec, Inc., Terex USA, Chase Machine and Mfg. Co., JD Norman Industries, Marquardt Engineering, Tri-America Steel Navus Automation, Werner Industries, Muller Martini Manufacturing Corp., Olson & Olson, CFX Dynamics.
Biditup Auctions and Appraisals Studio City, CA Tel. (818) 508-7034 www.biditup.com	Steven Mattes, CEO	Nucon Steel, L&M Machine, Murray, AdvancePierre, Tana Corporation, World Marketing, Vallejo Marine Terminal, AFA Foods, Caparo Vehicle Components, Sol-Aire, Miller Drilling Company, Navco, Pinnacle Ingredients and Flavors, Rich's, Precision Die Cutting & Embossing, Revstone, Maricopa Solar, Royal Outdoor Products, American Welding & Engineering, Calisolar, BSC Steel, Conex.
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 Tel. (818) 340-3134 www.cagp.com	Adam Alexander, CEO	Innovative Sign & Display, LG Philips Displays, Nissan Mexico, Caldwell Development, Skandik, Nu Vacuum Systems, S&J Construction, Eddie Bauer Bay Meadows Racetrack, Cold Stone Creamery, Nevada Landing Hotel & Casino, New Frontier Hotel & Casino, Stardust Hotel & Casino, Golds Gym.
Liquidity Services Marketplace Scottsdale, AZ Tel. (888) 832-7384 www.liquidityservicesinc.com www.go-dove.com	Michael Livatino, SVP, Sales Nick Taylor, Managing Director, Europe	L-3 Communications, BAE Systems, Covance, Archer Daniels Midland, Reckitt Benckiser, QinetiQ, Renault, Intel, Bristol-Myers Squibb, AstraZeneca, LaFarge, GlaxoSmithKline, Pfizer, Honeywell, Eaton, Alcoa, Procter & Gamble, Pepsi, Parker Hannifin, Hewlett-Packard, Vestas, First Solar, ConocoPhillips, Merck, Pentair, TE Connectivity, Motorola, Celestica.
Heritage Global Partners San Diego, CA Tel. (877) 303-8040 www.hgpauction.com	Ross Dove, Managing Partner Kirk Dove, Managing Partner	Amonix, Simclar, AA Truck Renting Corp., Schuco, ThyssenKrupp, Solyndra, Murray, Aveos, Conair, Adidas, Azure Dynamics, Global Solar, Bumble Bee Foods, Silex Solar, Folgers, BPSolar, Uni-Solar, Global Energy Services, Hills Science Diet, Entech Solar, Georgia Pacific, Sierra Pine, Exelon, Isaacs Structural Steel.
Hilco Industrial Farmington Hills, MI Tel. (248) 254-9999 www.hilcoind.com	Robert Levy, Managing Partner Stephan Wolf, Managing Partner	Kodak, Saturn Industries, Inc. Armacel Armor Corporation, NestleSparrows Point Steel Mill, Northrop Grumman, John Deere, Kodak de México S.A. de C.V., Western Digital, Lancaster Preferred Partners, State Line Energy, Ranger Metal Products Limited, Solyndra #5, Midland Coachworks, Isaacson Structural Steel, Hershey's, Racer f/k/a General Motors Indianapolis, Chicago Sun-Times.
Investment Recovery Services Fort Worth, TX Tel. (817) 222-9848 www.irsauuction.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, VP, Oregon Div. Todd Meyers, VP, Kenmore Operations	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	Saturn Industries, Modern Wood Fabricators, Thyssenkrupp Access, Aveos, GM, Schuco, Rogers Corporation, Kontron America, Genie Company, Salem Preferred Partners.
Plant & Machinery, Inc. Houston, TX Tel. (800) 282-8466 www.pmi-auction.com	Bob Braman, President Ron Moore, Vice President	Cameron, Harley Davidson, Northrop Grumman, 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	Aveos Fleet Performance, Terex Corporation-Reggiane Cranes & Plants S.P.A., Aveos Fleet Performance, BAE Systems, Emlyn Coal, Kingsbury Corporation, The Pierce Company, American Welding & Engineering, Carriage, Inc.

Worth Reading

Bankruptcy and Distressed Restructurings – Analytical Issues and Investment Opportunities

Author: Edward I. Altman

Publisher: Beard Books

Softcover: 430 pages

List Price: \$34.95

Bankruptcy and Distressed Restructurings compiles the astute observations of over 30 experts from leading Wall Street financial firms of the day and some of the nation's top business schools, including the London Business School, Harvard Business School, and the Stern School of Business at New York University (NYU). The book's content comes from collected papers from a March 1991 conference at NYU that was devoted to studying the relationships between bankruptcy and distressed restructurings. The topics the book addresses, which still have relevance today, are made eminently readable under the capable editing of Edward Altman. Altman divides the subject matter into four main sections – restructuring, bankruptcy costs and company valuations, investing and trading in distressed firms, and strategic issues for both the firms and investors. Altman is also coauthor of the chapter “Firm Valuation and Corporate Leveraged Restructurings,” and he writes the closing chapter on trends in the field.

Most of the chapters offer a combination of introductory and advanced material, and apply the material to resolving hypothetical and actual cases. For example, there is a chapter on highly-leveraged loans that reviews the rationale for this emerging market for both fixed-income and equity investors, compares the structure of highly-leveraged loans to that of other high-yield instruments, and suggests a valuation convention to compare yields and relative value. Highly-leveraged loans trade at near par with little price differentiation for fundamental credit variables. The authors of this chapter, from Salomon Brothers, the powerhouse investment banking firm of the 1980s and 1990s, take an introductory approach to this subject, but also presuppose a fairly developed knowledge of this financial area. The introductory approach is not so basic as to define or explain fixed-income, equity, high-yield instruments, and valuation, for instance.

Many of the chapters employ studies and statistics and sometimes refer to individual companies in applying the material toward actual conditions or cases. Two of the chapters present results of a survey of firms that underwent reorganization. The results show the differences and commonalities of such firms. Other chapters offer an empirical study and investigation of troubled companies and provide a context for the prospective investor who is weighing whether to become involved in a distressed situation. Other chapters deal with the valuation of distressed companies and regulatory matters that should be considered before investing in one.

Management, which is essential to the recovery of a distressed firm and a favorable return on investment, is another topic given full treatment in this book. The financial risks with regard to managing bankruptcies of or investments in distressed corporations are so high, the issues are so complex and often cloudy, and the opportunities so inviting yet uncertain that the field attracts the best minds and top performers. With these collected papers, readers have access to the thinking of many experts on a range of central matters in this fascinating field. □

Edward I. Altman is internationally recognized in the field of corporate bankruptcy and credit risk analysis. He is the Max L. Heine Professor of Finance at the Stern School of Business, New York University and Director of Research in Credit and Debt Markets at the NYU Salomon Center for the Study of Financial Institutions.

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

Revitalizing, from page 2

“If the case had remained in Chapter 7, it would have been even more difficult to do that with the added presence of a Chapter 7 trustee.”

The court granted the motion to restore the case to a Chapter 11 in what Smith says was an atypical move. “It’s unusual to have the major constituents in a case – the debtor, the secured creditor, and purchaser – jointly ask the court to put the case back into a Chapter 11 so a 363 transaction can be effectuated,” he says.

Once the case was back in Chapter 11, Smith negotiated two simultaneous 363 transactions. “The first was for Miramar to acquire the Ciudadela project from its non-debtor subsidiary, and the second was for Miramar to sell the assets to the purchaser under section 363,” he says.

Achieving court permission for those transactions, says Smith, required the debtor to make a number of convincing arguments, which it did. “The deal was part of a global settlement that resolved some controversies between the debtor Miramar, the non-debtor subsidiary, and Banco Popular. In addition, we believed that the importance of the Ciudadela project to the public interest represented a sound argument in support of the 363 transactions.”

Once the court granted permission for the 363 transactions, Smith got to work finishing the deal, though it wasn’t easy. “The deal had to be structured in a way that ensured all the pieces worked together seamlessly,” he says.

Ultimately, the deal benefited everyone, as stated in the sale motion: “The debtor, working in close concert with [Banco Popular] and the purchaser, has brought this case from the uncertain and bleak prospect of Chapter 7 to a fully consensual resolution in Chapter 11 that serves the interests of all constituencies – including general unsecured creditors of the debtor’s estate, who otherwise would not be entitled to any recovery.”

The result, said the motion, would “avoid the value destruction attendant to Chapter 7 or a foreclosure, provide finality and closure to the myriad disputes related to the Ciudadela project, dispense with the need for otherwise costly and uncertain potential litigation, and benefit in a truly meaningful way both the Puerto Rico economy and the public interest.”

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Special Report

Outstanding Bankruptcy Judges – 2012

Judge	District	Comments
Hon. Stuart M. Bernstein	Southern Dist. of New York New York, NY	Had one of the busiest dockets in 2012, presiding over the Hawker Beechcraft, Journal Register Company, United Retail Group, and Ampal-American Israel Corp. Chapter 11 cases. Admired for strict and fair application of bankruptcy law, helping preserve assets for the benefit of all parties.
Hon. Kevin J. Carey	Delaware Wilmington, Delaware	A thoughtful jurist, carefully tailoring decisions and guidance to the circumstances of each case. Encourages cooperation among case constituents, as evidenced by decision to order mediation of the plan of reorganization in the Syms/Filene's Chapter 11 cases. The mediation order served as the keystone of the cases' ultimate success.
Hon. Shelley C. Chapman	Southern Dist. of New York New York, NY	Cuts to the chase on most issues, yet listens to everyone respectfully. Is not afraid to provide guidance to assist parties in consensually resolving issues. Uses chamber conferences very well to deal with thorny issues and move cases along. 2012 docket included Lightsquared, Patriot Coal, Humpuss Sea Transport, Broadview Networks.
Hon. Robert D. Drain	Southern Dist. of New York New York, NY	Widely praised for courtroom intellect. Diligent and respectful, and accommodates a seemingly impossible case load. Respects the constitutional rights of all parties, helping them receive the relief they deserve in bankruptcy court. Recent major Chapter 11 cases in 2012 include Hostess and Lancaster Maritime.
Hon. Robert E. Gerber	Southern Dist. of New York New York, NY	Presides over cases in a fair and careful manner, and recognizes good lawyering and the good faith efforts put forth by counsel. For example, in the Chemtura matter oversaw a claims resolution process involving over 4,000 disputed claims that led to a fair distribution of reserves to creditors, and a substantial distribution to equity holders.
Hon. Martin Glenn	Southern Dist. of New York New York, NY	Presided over many major cases in 2012, including Residential Capital, General Maritime, Dewey & LeBoeuf, and Borders Group, but treats every case the same in terms of dedication and accessibility. Decades of past experience as commercial litigator shows in high caliber of rulings, especially on evidentiary and procedural issues.
Hon. Kevin Gross	Southern Dist. of New York New York, NY	Docket in 2012 included Homer City Funding, Newpage Corp., Lee Enterprises, Lifecare Holdings, Coach America, Contract Research Solutions, and Arctic Glacier. Ensures all parties in the bankruptcy process are treated fairly. Many tough cases have been resolved through his case management skills and flexibility.
Hon. Sean H. Lane	Southern Dist. of New York New York, NY	Praised for handling of the ongoing bankruptcy of AMR Corporation, parent of American Airlines, involving the resolution of challenging labor contractual disputes as well as merger issues. Also presiding over bankruptcy of Arcapita Bank, one of the largest of 2012, and Jopson Medical Information.
Hon. Christopher S. Sontchi	Delaware Wilmington, Delaware	Busy court docket in 2012 included Southern Air Holdings, Trident Microsystems, Vertis Holdings, Allied Systems, Monitor Company Group, and Elpida Memory, a case involving difficult patent infringement issues. Recognized for ability to run a fair courtroom and balance extremely challenging competing equities.
Hon. James M. Peck	Delaware Wilmington, Delaware	Gives consideration to practical business realities in reaching decisions. Exemplary qualities exhibited on the bench were equally evident in role as mediator in successful mediation of plan of reorganization in Syms/Filene's Chapter 11 cases and certain labor disputes in the AMR/American Airlines Chapter 11 cases.

Border, from page 4

of non-debtor guarantors – is substantially in accordance with the circumstances that would warrant such relief in the United States,” wrote Judge Carolyn King. “Vitro cannot propose a plan that fails to substantially comply with our order of distribution and then defend such a plan by arguing that it would suffer were it not enforced. Vitro’s two-wrongs-make-a-right reasoning is unpersuasive.”

The stakes in the Vitro appeal were high: If Vitro succeeded, it would emerge from bankruptcy cleansed of its debt, with its shareholder value largely intact.

The bondholders, on the other hand, raged at that prospect, blasting the company’s plan of reorganization as “a remarkable document, a testament to audacity, brazen manipulation and greed.”

A victory for Vitro, the noteholders said, would set a dangerous precedent, allowing any company to strip foreign creditors of their ability to recover on bonds, which would raise the price of capital for everyone and reduce the attractiveness of the United States as a place to raise money. “It would establish a blueprint for future abuse, particularly in connection with jurisdictions such as Mexico with ongoing and well-documented problems of corruption and lack of transparency,” the noteholders said in a filing.

As for the actual implications of the ruling, Abrams says the Fifth Circuit’s parsing of Chapter 15 is logically appealing for practitioners seeking a systematic approach for evaluating whether foreign orders and decrees will gain recognition in such cases.

“Conversely, by declining to adopt a more holistic approach to Chapter 15 and the

accommodative goals that animate it, the Fifth Circuit’s mechanical application of Chapter 15 – at least in the unusual factual context of Vitro – may undermine cross-border restructurings, as the Fifth Circuit’s opinion’s interpretive rules tend to limit the ability of U.S. courts to recognize and enforce orders of foreign courts,” says Abrams. “If the Fifth Circuit’s ruling commands support across sister-circuits, the ultimate utility of Chapter 15 may be curtailed.”

Finally, Abrams notes that a broad U.S. adoption of the Vitro rationale may limit the ability of a foreign representative of a Chapter 11 case to obtain relief abroad. “However, it remains to be seen how bankruptcy courts will apply the Fifth Circuit’s holding to cases involving facts and orders more in line with the expectations of U.S. creditors,” he says.

As a side note, Primoff notes that a number of issues were not resolved in the Fifth Circuit’s ruling. “There were a variety of issues presented that the court did not need to address in view of its decision that the relief requested was not appropriate under Bankruptcy Code Section 1507.”

For example, allegations arose that the Mexican plan of reorganization was essentially approved with votes cast by insiders, which would not pass muster in the United States. Fintech, a debt fund, paid

\$75 million for options to buy 24 percent of Vitro stock, then bought \$200 million in outside claims and settled them by obtaining a guarantee of repayment from Vitro. That allowed Vitro to essentially vote for its own reorganization plan, the bondholders claimed, by combining the intercompany debts with Fintech, technically an insider as a result of its potential 24 percent stake.

Primoff offers another example: The Mexican plan allowed equity holders to keep about \$500 million worth of stock, but forced the outside creditors to take a 36 percent haircut. “Assuming those numbers were correct, if there were a trial on those issues with evidence, allowing equityholders to retain \$500 million while bond holders recovered less than 40 cents on the dollar wouldn’t pass muster in the United States due to the absolute priority rule.”

“Essentially, the Fifth Circuit said, ‘Vitro failed to show that these releases would be acceptable under U.S. law, so we aren’t going to approve the Concurso under Chapter 15, which means we don’t need to address the other issues,’” says Primoff. □

Revitalizing, from page 6

In addition to converting a Chapter 7 to a Chapter 11 and getting two simultaneous 363 transactions approved, Smith says the case was significant in how cooperatively it was achieved. “Given the importance of the Ciudadela project to the San Juan

community, the transaction attracted significant government attention, and our team worked cooperatively with senior government officials to obtain the critical support necessary for the transaction to succeed.”

“There were a lot of pieces of the puzzle that needed to be worked out before the transaction was completed, and all of it was subject to bankruptcy court approval, so this whole transaction was intense for all of us,” says Abesada-Agüet. “Ultimately, it was a team effort between Cadwalader, Wickersham & Taft and our team of attorneys in Puerto Rico, which included Correa-Acevedo together with tax, bankruptcy, and government affairs local attorneys working together with the seller, lender, and the local government.” □

In the Next Issue...

- *Special Report: Restructuring Depts. of European Accounting Firms*
- *Special Report: People to Watch – 2012*
- *Research Report: Who’s Who in Zacky Farms*

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