

Inside

Latest Reports:

- *Restructuring Professionals Predict What Lies Ahead in 2014*
- *Will U.S. Trustee's New Fee Guidelines Lower Bankruptcy Costs?*
- *Puerto Rico's Economic Woes Could Trigger Defaults*

Research Report:

Who's Who in Groeb Farms, Inc.

Special Report:

Largest Bankruptcy Filings – 2013

Worth Reading:

Business and Capitalism: An Introduction to Business History

Special Report:

Successful Restructurings – 2013

turnarounds & workouts

News for People Tracking Distressed Businesses

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Looking Ahead

Predictions for the Restructuring Industry in 2014

by Julie Schaeffer

Last month, we published a review of 2013. In keeping with that theme, this month we've asked restructuring professionals to weigh in about what they think will happen in 2014.

"Restructurings will continue to be slow until there is an uptick in interest rates," says James H. Millar, a partner in the bankruptcy and financial restructuring practice group at WilmerHale. His reasoning: While there are certainly companies that need a balance sheet restructuring, an operational restructuring, or both, they won't undertake those efforts as long as they can still finance their way out of problems with easy credit and low rates.

At issue are the monetary actions of the Federal Reserve Board (Fed), which may begin tapering its quantitative easing program this year in the wake of improving economic data.

continued on page 2

Focus on Fees

U.S. Trustee's New Fee Guidelines Take Effect

by Randall Reese

The issue of professional fees has been a focus for the U.S. Trustee Program (USTP) and new fee guidelines recently went into effect. They have been applied by the USTP in Chapter 11 cases filed on or after November 1, 2013, by debtors with at least \$50 million in both assets and liabilities, excluding single asset real estate cases. While the guidelines do not have the force of law and are not binding on the courts, the USTP is encouraging courts to adopt them as part of their local rules or administrative orders. The bankruptcy court for at least one jurisdiction – Vermont – has already done so through a

continued on page 2

Puerto Rico: The Next Detroit?

U.S. Territory Struggles With Enormous Debt Burden

by Julie Schaeffer

While America was muddling through Detroit's bankruptcy filing, a little-known crisis in Puerto began accelerating.

"Puerto Rico has been borrowing money not to pay for infrastructure improvements, but rather to pay for day-to-day operations," says Ira Herman, a partner at Thompson & Knight LLP. "Also, much like in Detroit, basic services aren't getting paid for. For example, they've cut back on school guards, so there have been several break-ins and the theft of indispensable school supplies and equipment."

The Puerto Rican economy has been struggling since 2006, and the island nation, considered a U.S. commonwealth, is now heading into its eighth year of recession. It has

continued on page 2

Ahead, from page 1

The likely impact is a rise in interest rates.

These are important considerations for restructuring professionals, says Jay Goffman, a partner at Skadden, Arps, Slate, Meagher & Flom, because “the economy generally dictates the type of work we are doing as an industry.”

Goffman notes that the restructuring industry will continue to respond to the economy’s signals with out-of-court workouts, opportunistic investing options, managed in-court restructurings, and, as needed, traditional bankruptcy filings.

“By way of example, in the past year sequestration and government budget issues were important economic drivers,” he says. “Sequestration led to cutbacks in defense spending, which impacted companies that do defense-related work, causing some of them to explore restructuring options. Municipalities were also impacted by the budget issues, the effect of which I believe we will continue to see into 2014.”

Regardless of when the Fed acts, low interest rates will come to an end one day, says Millar. “It’s just a question of when. Until then, restructurings will remain relatively slow.”

Scott Lepene, a partner in the Cleveland office of Thompson Hine, thinks we’ll see improvement sooner rather than later. “The good news is that banks are lending again, which is a prime indicator that activity in the industry is increasing,” he says. “In fact, I would surmise that 2014 will be a better year than 2013, and 2015 could be the year that the industry is really busy again and will serve as a catalyst for the remainder of the decade.”

Ted Gavin, managing director of Gavin/Solmonese, takes the opposite view. He hasn’t seen lenders change much about their wait-and-see approach, even with the improvement in the economy over the last several quarters. “If the economic recovery slows, lenders are going to have to more aggressively deal with portfolio malaise, particularly in preparation for the new regulatory environment that starts to roll into place over the next several years. This should result in more work in our industry. Past practices by some more aggressive lenders over the last few years, particularly in chasing opportunities, will probably start to come home to roost in the next 24 months, regardless of economic indicators.”

continued on page 6

Fees, from page 1

standing order (No. 13-06).

The guidelines will have an impact in other jurisdictions as well. “The USTP can object to fee applications that do not comply with the guidelines, but only the courts can adjudicate those objections,” says Clifford White III, the Director of the Executive Office for U.S. Trustees. “The USTP will prudently, but vigorously, litigate these issues as necessary, including through the appellate process.”

Recent statements by several prominent members of the restructuring community demonstrate that professional fees are widely viewed as one of the most significant problems with large corporate restructurings. “The biggest public criticism of Chapter 11 today is the perception, right or wrong, that professional fees are out of control and too high,” said Daniel Dooley, the Principal and CEO of MorrisAnderson, in remarks prepared for the American Bankruptcy Institute’s 2013 spring meeting. “For what it’s worth, I agree with the public perception. There is little or no fee control and discipline in mega cases. It simply costs what it costs.”

Veteran distressed investor Wilbur Ross expressed similar views. “The most persistent investor complaint about the Chapter 11 process is the level of professional fees,” noted Ross. After highlighting several possible reasons for high fees – including his view that “the real flaw is that the compensation system is essentially time based rather than results based” – Ross opined that “a solution is needed because billing rate increases have greatly outpaced inflation over the years, thereby creating a need for a better way to control costs.”

While the new USTP guidelines do not address Ross’s views regarding hourly billing, the guidelines are intended to address what White describes as “widespread concern about the bankruptcy professional fee practices” that currently exists. “What we are trying to do, in essence, is to ensure statutory standards for professional compensation are met and to do that through a more transparent, market-based, and client-driven process than currently exists,” says White.

The guidelines are driven by “eight core principles” according to the analysis included in the *Federal Register* and propose several changes to common mega case practice to further those principles.

continued on page 4

Puerto Rico, from page 1

a 13.9 percent unemployment rate as of August 2013, which is higher than that of any U.S. state. Government employment accounts for a quarter of all jobs, and transfer payments make up 40 percent of income. As a result, the poverty rate is high, with more than a quarter of Puerto Rico’s residents reportedly receiving food stamps.

Now, the island of 3.7 million residents has \$53 billion of tax-supported debt outstanding from more than 12 issuers, according to Moody’s Investors Service, and nearly \$70 billion of total debt, according to Puerto Rico itself. Even using the lower figure, an August 2013 article in *Barron’s* noted that Puerto Rico’s debt load would rank third among the states, behind only California and New York.

Moreover, Puerto Rico’s debt burden relative to key financial measures, such as gross domestic product, is sky-high. Its \$14,000 debt per capita, for example, is 10 times the average of the 50 U.S. states. Moody’s places Puerto Rico’s tax-supported debt as a percentage of personal income at 89 percent vs. 3.4 percent for the average in the United States.

In addition to its debt, Puerto Rico has more than \$30 billion of unfunded pension liabilities. “The *Barron’s* article really spooked people,” says Herman.

Also spooking people: Puerto Rico’s woes have led credit-rating agencies to downgrade Puerto Rican bonds to near-junk status. Moody’s Investor Services, for example, rates Puerto Rico at Baa3 with a negative outlook. From May to October, yields on bonds issued by Puerto Rico shot up to between 8 percent and 10 percent despite their still investment-grade rating and tax-exempt interest. Those bonds are held primarily by mutual funds and individuals, although in recent months many have been sold to distressed debt specialists.

The concern, of course, is that Puerto Rico won’t be able to make timely interest or principal payments on its bonds – and the United States is under no obligation to bail out the commonwealth. Politically, Puerto Rico is an unincorporated territory of the United States, which according to the U.S. Supreme Court’s insular cases, is “a territory appurtenant and belonging to the United States, but not a part of the United States. Indeed, the U.S.

continued on page 4

Research Report

Who's Who in Groeb Farms, Inc.

by Françoise C. Arsenault

Groeb Farms, Inc., headquartered in Onsted, Michigan, is one of the leading processors and packagers of honey and industrial sweeteners in the United States for food manufacturers, food service companies, and retail customers. The company's products include liquid and dried honey, peanut butter, mustard, molasses, and vinegar. Groeb Farms was formed in 1981 and has approximately 80 employees at its manufacturing facility in Onsted, Michigan, at a second processing plant in San Bernardino, California, and at its testing facility in Belleview, Florida. For the fiscal year ending December 31, 2012, the company had approximately \$137.8 million in net sales. Groeb Farms is privately held by a number of individual investors.

Before its Chapter 11 filing, Groeb Farms faced numerous financial and legal problems related to its involvement in the honey import scandal of 2001. A federal investigation resulted in charges that the company had illegally purchased more than 1,500 container loads of Chinese honey from February 2008 to April 2012. According to investigators, the Chinese honey was purchased through other countries, including Vietnam, Malaysia, Thailand, Mongolia, and Indonesia, to avoid almost \$80 million in anti-dumping tariffs imposed by the U.S. International Trade Commission. A \$2 million settlement with U.S. Department of Justice regulators required Groeb Farms to dispose of all of the Chinese honey in its possession, and to acknowledge that Groeb Farms, through the actions of its executives, had misled its customers and the public by fraudulently disguising the Chinese origin of the honey it had purchased from other countries.

The Chapter 11 filing by Groeb Farms halted a number of lawsuits by honey producers and distributors, including a class action lawsuit filed in 2013 against the company by three domestic honey producers. The consequences of the "Honeygate" scandal also coincided with the rise in honey prices resulting from supply shortages. Although Groeb Farm

had supplier contracts with fixed prices, some of its suppliers did not deliver, forcing the company to buy new honey at higher prices.

On October 1, 2013, Groeb Farms, Inc. filed for Chapter 11 reorganization in the United States Bankruptcy Court for the Eastern District of Michigan, Southern Division. With its bankruptcy petition, Groeb Farms filed a proposed Plan of Reorganization under which Peak Rock Capital, a Texas private equity firm, would acquire the company in exchange for \$30 million in DIP financing. As approved by the bankruptcy court, the financing is intended to pay off the outstanding balance on a loan by Wells Fargo Bank to Groeb Farms in 2012 that an affiliate of Peak Rock Capital had purchased. The Plan also would allow three private equity firms (Argosy Investment Partners III L.P., Horizon Capital Partners III L.P., and Marquette Capital Fund I LP.) that provided an additional \$7 million to Groeb Farms to remain as lenders of the company. Approximately 10 percent of the amount owed to unsecured creditors also will be repaid under the approved Plan of Reorganization. In its bankruptcy filing, Groeb Farms listed both assets and liabilities of \$50 million to \$100 million.

On December 19, 2013, the bankruptcy judge confirmed the second amended plan of reorganization. It is expected that Groeb Farms, under the ownership of Peak Rock Capital, will emerge from bankruptcy early in 2014.

The Debtor

Rolf Richter is the President and the Chief Executive Officer of Groeb Farms, Inc. **Jack Irvin, Jr.** is the Chief Financial Officer. **Joyce Schlachter** is the Vice President for Technical Services. **Alison Tringale** is the Chief Procurement Officer.

The law firm of **Foley & Lardner LLP** is serving as the bankruptcy counsel to Groeb Farms. The team includes **Judy A. O'Neil** and **John A. Simon**, partners in the firm's Detroit office, and **Tamar N. Dolcourt**, an associate.

Houlihan Lokey Capital, Inc. is acting

as the financial advisor and investment banker to Groeb Farms. The engagement is led by **Andrew Turnbull**, a managing director and head of the firm's Midwest Financial Restructuring Group. Also working on the engagement are **Timothy Larsen** and **Ryan Sandalh**, senior vice presidents with the firm, and **Matthew Eaves**, **Dan Martin**, and **Jeddy Lee**, analysts.

Conway MacKenzie Inc. is also serving as a financial advisor to Groeb Farms. The engagement team is being led by **Donald S. MacKenzie**, a founder of the firm and senior managing director, and includes **Timothy B. Stallkamp**, a managing director in the firm's Chicago office.

The Official Committee of Unsecured Creditors

The committee includes **Bees Brothers, LLC**; **Little Bee Impex**; **Delta Food International, Inc.**; **Buoye Honey**; and **Citrofrut SA de CV**.

The law firm of **Pachulski Stang Ziehl & Jones LLP** is serving as the counsel to the committee. **Bradford J. Sandler**, **Shirley S. Cho**, and **Robert J. Feinstein**, partners with the firm, and **Peter J. Keane**, an associate, are working on the case.

Dykema Gossett PLLC is acting as the local co-counsel to the committee. The team includes **Sherrie L. Ferrell** and **Sheryl L. Toby**, partners with the firm, and **Jong-Ju Chang**, an associate.

GlassRatner Advisory & Capital Group, LLC is serving as the financial advisor to the committee. **James W. Fox**, a principal with the firm in the New York office, directs the work.

Deloitte Tax LLP is providing Groeb Farms with tax advisory and auditing services. **John M. Jarvis**, a director in the firm's Milwaukee office, is leading the engagement.

The Trustee

The U.S. trustee is **Daniel M. McDermott**.

The Judge

The judge is the **Honorable Walter Shapero**. ☐

Fees, from page 2

The “cornerstone” of the guidelines, according to White, is a requirement that attorneys demonstrate that the rates being charged to the estate reflect the “market rate outside of bankruptcy because that is what the Code requires.” The guidelines propose that this be accomplished through the disclosure of blended rates charged to non-bankruptcy clients by the firm.

“I think, with some justification, there has been a growing view that bankruptcy lawyers were not demonstrating that what they were charging was the same as what they were charging outside of bankruptcy,” says White. “I think it is pretty well accepted that in the legal industry clients outside of bankruptcy often ask for discounts and other cost saving measures that corporate clients impose on their lawyers, but those kinds of cost saving measures are not the norm in the bankruptcy practice.”

The disclosure of blended rates has, however, been described by some critics as controversial because of the view that this data is sensitive and could be used by a firm’s other clients to negotiate lower rates. Scott Hazan, a partner of Otterbourg, P.C., agrees that this is one of the more controversial elements of the guidelines, but questions the idea that firms’ billing rates

are closely guarded secrets. He also notes that these disclosures may impact large firms with diversified practices differently than boutique firms. “I wonder whether it provides any value other than causing the occasional controversy,” says Hazan.

A second area of emphasis under the guidelines is to “bring discipline, predictability, and client involvement and accountability to the compensation process.” The guidelines propose to achieve these goals by requiring attorneys to provide clients with budgets and staffing plans. “We think they are important because they can serve as a benchmark,” says White. “Our offices will ask for a special showing if the budgets are significantly exceeded as the case goes forward.” White also justifies the requirement by noting that “budgets are common throughout the legal practice, except in bankruptcy.”

A further goal of the guidelines is to enhance meaningful disclosure by professionals and transparency in billing practices. One specific aspect of the guidelines directed toward these ends is a requirement that attorneys disclose rate increases during the bankruptcy, a practice which Hazan notes is already common for firms retained in large Chapter 11 cases. The guidelines do not

continued on page 9

Puerto Rico, from page 2

Treasury Department has stated that the only assistance planned is helpful advice, and Moody’s says it is not rating Puerto Rico’s debt as if there will be any assistance from the U.S. government.

There has been much speculation about Puerto Rico filing for bankruptcy protection in some way, shape, or form. For example, there were rumors that the island’s power company could file for bankruptcy because it operates as a mostly autonomous entity. But Jose Coleman, executive vice president of the Government Development Bank, has said bankruptcy is completely out of the question, and Herman seconds that. “Unlike Detroit, Puerto Rico is legally unable to file for bankruptcy relief under Chapter 9,” says Herman.

During an October conference call with investors, the Puerto Rican government tried to alleviate concerns about the island’s continuing financial crisis. Governor Alejandro García Padilla said that the U.S. territory would not default on its debts,

emphatically stating that “we will do everything and, I repeat, everything, that is necessary for Puerto Rico to honor all its commitments” because “it’s not only a constitutional, but also a moral obligation.”

Indeed, the current administration has increased taxes by \$1.1 billion (about 1 percent of GDP), raised the retirement age for government employees, raised the share of salary government employees contribute to their pensions, and promised to wipe out its projected 2013 \$820 million budget deficit by 2016.

That said, the situation is not really analogous to Detroit, according to William A. Brandt, Jr., president and CEO of Development Specialists, Inc. “If you were talking about a specific city like Ponce or San Juan, I’d say sure, it’s similar to Detroit, but you’re not, you’re talking about the debt of a commonwealth, so it would be more like Michigan than Detroit, and that’s a big difference,” he says.

According to Brandt, the last time

continued on page 9

Calendar

Turnaround Management Association

2014 TMA Distressed Investing Conference
February 5–7, 2014
Bellagio
Las Vegas, NV
Contact: www.turnaround.org

American Bankruptcy Institute

VALCON 2014
February 26–28, 2014
Four Seasons Las Vegas
Las Vegas, NV
Contact: www.abiworld.org

International Association of Restructuring, Insolvency & Bankruptcy Professionals

INSOL Hong Kong
Annual Regional Conference
March 23–25, 2013
Kowloon Shangri La
Kowloon, Hong Kong
Contact: www.insol.org

National Association of Bankruptcy Trustees

2014 Spring Seminar
April 4–5, 2014
The Biltmore
Coral Gables-Miami, FL
Contact: www.nabt.com

American Bankruptcy Institute

32nd Annual Spring Meeting
April 24–27, 2014
JW Marriott Hotel
Washington, DC
Contact: www.abiworld.org

Turnaround Management Association

16th Annual Symposium
April 23, 2014
Concert Hall, Fairmont Royal York Hotel
Toronto, ON
Contact: www.turnaround.org

Special Report

Largest Bankruptcy Filings – 2013

Company Name	Industry	Filing Information	Assets	Debtor's Counsel
Maxcom Telecomunicaciones, S.A.B. de C.V.	Information	Filed: July 23 Delaware Judge Peter Walsh	\$11,113,564,000	Marc Keiselstein Kirkland & Ellis Chicago, IL
STX Pan Ocean Company Inc. (Chapter 15)	Transportation & Warehousing	Filed: June 20 New York, Southern District Judge Shelley Chapman	\$6,000,000,000	Jeremy Harwood Blank Rome New York, NY
Cengage Learning Acquisitions, Inc.	Information	Filed: July 2 New York, Eastern District Judge Elizabeth Stong	\$4,129,622,000	Jonathan Henes Kirkland & Ellis New York, NY
Dex One Corp.	Information	Filed: Mar. 17 Delaware Judge Kevin Gross	\$2,835,418,000	James H.M. Sprayregen Kirkland & Ellis New York, NY
Excel Maritime Carriers Ltd.	Transportation & Warehousing	Filed: July 1 New York, Southern District Judge Robert Drain	\$2,720,000,000	Jay Goffman Skadden Arps Slate Meagher & Flom New York, NY
Central European Distribution Corp.	Manufacturing	Filed: Apr. 7 Delaware Judge Christopher Sontchi	\$1,980,166,000	Jay Goffman Skadden Arps Slate Meagher & Flom New York, NY
Exide Technologies	Manufacturing	Filed: June 10 Delaware Judge Kevin Carey	\$1,894,866,000	Anthony Clark Skadden Arps Slate Meagher & Flom Chicago, IL
Longview Power LLC	Utilities	Filed: Aug. 30 Delaware Judge Brendan Linehan Shannon	\$1,717,906,000	Richard Cieri Kirkland & Ellis Chicago, IL
TMT USA Ship Management	Transportation & Warehousing	Filed: June 20 Texas, Southern District Judge Marvin Isgur	\$1,520,000,000	William Wood Bracewell & Giuliani Houston, TX
Super Media Inc.	Information	Filed: Mar. 18 Delaware Judge Kevin Gross	\$1,400,000,000	Sean O'Neal Cleary Gottlieb Steen & Hamilton New York, NY
Reader's Digest Association Inc.	Information	Filed: Feb. 17 New York, Southern District Judge Robert Drain	\$1,118,400,000	Joseph Smolinsky Weil Gotshal & Manges New York, NY
Revel AC LLC	Arts, Entertainment & Recreation	Filed: Mar. 25 New Jersey Judge Judith Wizmur	\$1,100,000,000	Marc Keiselstein Kirkland & Ellis New York, NY
City of Detroit, Michigan (Chapter 9)	Government	Filed: July 8 Michigan, Eastern District Judge Steven Rhodes	More than \$1 Billion	David Heiman Jones Day Cleveland, OH
Sino-Forest Corporation (Chapter 15)	Agriculture	Filed: Feb. 14 New York, Southern District Judge Judith Wizmur	More than \$1 Billion	Jeremy Hollembeak Millbank Tweed Hadley & McCloy New York, NY
Irish Bank Resolution Corporation Ltd. (Chapter 15)	Finance & Insurance	Filed: Aug. 26 Delaware Judge Christopher Sontchi	More than \$1 Billion	Mark Collins Richards Layton & Finger Wilmington, DE

Worth Reading

Business and Capitalism: An Introduction to Business History

Author: N.S.B. Gras

Publisher: Beard Books

Softcover: 425 pages

List price: \$34.95

This classic book, written by the foremost authority of business history for the first half of the twentieth century, is as relevant and enlightening to the fundamentals, practices, and trends of today's business world as it was when it was first published in 1939. The 1930s were a time when the value of capitalism was being challenged from without by communism and other ideologies and from within by the Great Depression. Obviously, capitalism survived, but such is the soundness of Gras's study that he was able to say that the basics of business and capitalism would remain unaffected. "One group of capitalists may win over another and the victory may be progressive or retrogressive, but some form of capitalism will remain triumphant."

According to Gras, business and capitalism cannot be shoved aside by political change or superseded by utopian societies because they are inextricably rooted in history, human nature, and social needs and aspirations. Rudiments of business can be found in primitive and ancient societies.

The "business man" is differentiated from the primitive shepherd only in that the shepherd raises sheep mainly to feed himself and a small number of others, only occasionally trading them outside this small circle, whereas the business man, while not directly involved in production, nonetheless administers labor and resources to produce something that can be exchanged. In other words, says Gras, "business is administration that looks toward exchange."

"Petty capitalism," the first stage of business and capitalism, can be found in early towns all over the world. Gras visits Babylon, Athens, Rome, London, Paris, and Amsterdam to illustrate their significant roles in history.

Peddlers, shopkeepers, and tradesmen represented this petty capitalism. As this first stage of capitalist business became more highly organized, it was followed by mercantile capitalism, represented by merchants who entered into partnerships with other merchants, issued stock in their businesses, and developed sophisticated bookkeeping practices. Later came industrial capitalism with its large factories, complex production processes, and widespread markets that, in some cases, spread overseas. Industrial capitalism spawned financial capitalism, involving operations and services of stock markets and banks to meet the big and sometimes unexpected financial requirements that sustained capitalism and allowed it to grow.

Today's diversified, vibrant, and global U.S. economy can be seen as the high point of Gras's industrial capitalism mixed with his financial capitalism. He ends his economic history with a chapter on the national capitalism practiced by fascism which, at the time, challenged the centuries of business progress based on private capitalism. But these challenges were turned back in World War II. □

Economic historian N.S.B. Gras was a professor of business history at Harvard's Graduate School of Business. In 1926, he founded the Business History Society along with its Journal of Business History.

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

Ahead, from page 2

Despite the lending situation, Goffman thinks companies will continue to explore strategic options for both their balance sheets and their operations, some of which may include restructurings, either in court or out of court, and we could continue to see the expansion of U.S.-style restructurings on a global basis.

Assuming no major changes in federal monetary policy, Lisa Donahue, global leader of turnaround and restructuring services at AlixPartners, anticipates the most restructuring activity will take place in the middle market and in sectors that were affected in 2013, such as health care, energy, retail, restaurants, shipping, and gaming. She also expects some municipalities to struggle. "We also will likely see a continuation of larger companies requiring an operational fix in conjunction with a capital raise," she says.

If current patterns from the last six months hold, Gavin anticipates continued growth in out-of-court workouts and restructuring activity and a resurgence in middle-market CRO-type engagements and traditional turnarounds. Further, as more parties seek deals rather than litigation, he expects that there will be a decrease in expert witness/litigation consulting engagements in favor of more economic deal-brokering engagements. As for sectors, "if I knew that, I'd play poker for a living," he says. "I think it's fair to estimate that activity will continue across the board. Expect a lot of travel-oriented Chapter 11s as several high-profile hotel and hotel/casino cases flirt with a return to bankruptcy. Health care will also continue to be strong for restructuring activity as outliers finally reach the end of their ropes."

For his part, Goffman expects restructurings to continue to be active in the shipping, transportation, media, and retail sectors, as well as internationally as Europe recovers slowly and foreign countries increasingly embrace U.S.-style restructuring options.

Gavin also notes that a few notable bankruptcies might resolve. "I expect eligibility will be granted in the Detroit Chapter 9 case, and a plan in place in March or April of 2014, but with significant contention over how the city will reverse its current operating losses so that the creditors might one day be paid."

He also notes that "General Aviation filed in early November, perhaps the first casualty of the October federal government shutdown because when your job is moving troops from place to place, it hurts cash flow when the government stops paying its bills." □

Special Report

Successful Restructurings – 2013, page 1

Ahern Rentals, Inc.

Restructuring Firms: Oppenheimer & Co., New York, NY (Jonathan Brownstein); The Seaport Group, Manhattan Beach, CA (Nicholas Tell and Douglas McDonald)

Lead Counsels: DLA Piper, New York, NY (Gregg Galardi); Gordon Silver, Las Vegas, NV (Gerald Gordon, Thomas H. Fell)

Nature of the Success: The country's largest privately-held construction equipment rental company, with over 70 branches in 22 states, Ahern filed for bankruptcy on December 22, 2011, listing assets of \$485.8 million and liabilities of \$649.9 million. Despite failed mediations, an appeal related to Ahern's exclusive right to file a plan of reorganization, and a discovery dispute with certain noteholders, Ahern's second amended plan of reorganization was confirmed. The plan provides for equity holders to retain 100 percent of the capital stock in the reorganized entity and pays all creditors the full principal amount of their allowed claims, with \$740 million in exit funding. The company will remain under the ownership of the same family that founded it in 1953. Ahern is now well-positioned from an operational standpoint and capital structure to continue its strong growth into the future. The company's EBIDTA improved during the bankruptcy proceeding.

Ally Financial Inc.

Restructuring Firm: Kirkland & Ellis, New York, NY and Chicago, IL (Rick Cieri, Ray Schrock, Noah Ornstein, Jeff Powell, Dan Donovan, Mark McKane, Judson Brown, Greg Skidmore, Leonard Klingbaum, Todd Maynes, Thad Davis)

Nature of the Success: A global financial services firm and U.S. bank holding company with assets in excess of \$160 billion, Ally achieved historic debtor and third party releases of liability in connection with the bankruptcy of its indirect subsidiary Residential Capital (ResCap). Ally provided the debtors unprecedented support that allowed ResCap to become the first mortgage servicing company to continue as a going concern in bankruptcy. Without such support, which generated billions of dollars in value, ResCap's creditors would have received little to no recovery from ResCap's bankruptcy estates. Ally's support included acting as the stalking horse bidder for the debtors' held-for-sale mortgage portfolio, providing \$220 million in DIP financing, and facilitating the debtors' continued origination and servicing of mortgage loans. Ally also reached a historic settlement with ResCap, its official committee of unsecured creditors, and representatives of its largest creditor constituencies.

American Roads

Restructuring Firm: N/A

Lead Counsel: Cleary Gottlieb Steen & Hamilton, New York, NY (Sean O'Neal)

Nature of the Success: Highly leveraged, American Roads had total outstanding financial debt of approximately \$830 million relating to swaps and bonds insured by monoline insurer, Syncora Guarantee Inc. Prior to filing the Chapter 11 cases, a restructuring support agreement and proposed Chapter 11 plan providing for release and discharge of debt and transfer of ownership of American Roads to Syncora (insurer, back-to-back swap counterparty and bondholder) were negotiated. In the Chapter 11 cases, Cleary Gottlieb obtained a landmark ruling denying standing of the bondholders to participate in the bankruptcy on the basis that they had delegated and waived their enforcement rights to no-action clauses in the prepetition financing documents. This decision, representing the first time a bankruptcy court has ruled on issues of standing in the context of an "insured unitranche" debt financing, paved the way for plan confirmation only 40 days after the Chapter 11 filing.

AMF Bowling Worldwide, Inc.

Restructuring Firms: McKinsey & Company, Chicago, IL (Kevin Carmody, Kyle Braden); Moelis & Company, New York, NY (Robert Flachs, Barak Klein)

Lead Counsel: Kirkland & Ellis, Chicago, IL (Patrick Nash, Joshua Sussberg, Jeffrey Pawlitz)

Nature of the Success: The largest operator of bowling centers in the world at the time of filing, AMF secured a prearranged deal regarding a comprehensive restructuring with an ad hoc group of prepetition first lien lenders and iStar Financial, the lessor of approximately 70 percent of AMF's more than 250 bowling centers. Ultimately, AMF efforts resulted in an alternative plan proposal by an ad hoc group of second lien lenders pursuant to which AMF combined with Bowlmor Lanes, a leading independent operator of bowling centers. The proposal provided for a full payment of prepetition first lien obligations and bridged an impasse with the official committee of unsecured creditors, clearing the way for a consensual confirmation process. Funding to implement the deal consisted of a first lien facility, as well as a fully backstopped rights offering to provide second lien financing. Significantly, the complex structure was designed to preserve valuable AMF tax attributes.

AMR Corporation

Restructuring Firms: Moelis & Company, New York, NY (William Derrough, Zul Jamal, Greg Polle); Rothschild, New York, NY (Christopher Lawrence, Homer Parkhill)

Lead Counsel to Debtor: Weil Gotshal & Manges, New York, NY (Stephen Karotkin, Alfredo Perez Thomas Roberts, Glenn West)

Lead Counsel to Official Committee of Unsecured Creditors: Skadden, Arps, Slate, Meagher & Flom, Chicago, IL, New York, NY (Jack Butler, Jr., Jay Goffman)

Special Aircraft Finance Counsel: Debevoise & Plimpton, New York, NY (Richard Hahn, Jasmine Ball, John Curry)

Nature of the Success: American's \$18 billion merger with US Airways Group marked the successful conclusion of one of the highest-profile corporate restructurings in the country. Weil assisted American while it achieved the highest revenues in company history, approximately \$24.8 billion in 2012, added new and expanded routes in international markets, took delivery of 75 new aircraft, evaluated and/or negotiated more than 700 facility leases and over 9,000 vendor and supplier agreements and achieved balance sheet improvements of approximately \$2.5 billion. Debevoise renegotiated or coordinated the debtors' rejection of leases or mortgages relating to over 400 aircraft, generating savings in excess of \$1.8 billion, and assisted the debtors in raising approximately \$9 billion through capital market and syndicated lending transactions. Skadden represented the official committee of unsecured creditors for AMR Corporation. The \$17 billion deal was the first time a debtor emerged from Chapter 11 by completing a major merger driven by its unsecured creditors committee. AMR's unsecured creditors will receive full recovery on their claims, and even shareholders will see a recovery. The unions will end up with labor agreements with which they are happy, and the pension plans will not be terminated.

Conexant Systems, Inc.

Restructuring Firm: Alvarez & Marsal, New York, NY (Shawn Hassel)

Lead Counsel: Kirkland & Ellis, New York, NY (Paul Basta, Joshua Sussberg, Christopher Greco)

Nature of the Success: A market leader in the microchip industry, Conexant emerged from bankruptcy within 100 days of commencing its Chapter 11 cases. Backed by secured lender QP SFM Capital Holdings, the prearranged plan allowed Conexant to deleverage its capital structure, streamline operations, and shed above-market real estate leases. Immediately after commencing the Chapter 11 cases, a complete restructuring was negotiated with the secured lender and existing equity sponsors, and then a deal brokered with unsecured creditors that resulted in the prearranged case staying on track. Under terms of the plan, the secured lender, in exchange for equity in the reorganized Conexant, deleveraged the company's balance sheet by more than \$100 million and provided the working capital to emerge from Chapter 11 as a competitive business and continue as a market leader in the semi-conductor industry. General unsecured creditors will share pro rata in a cash distribution of \$2.9 million.



Special Report

Successful Restructurings – 2013, page 2

Eastman Kodak Company

Restructuring Firm AlixPartners, New York, NY (James Mesterharm, Becky Roof, Al Koch, Jay Marshall, Carrienne Basler, Lisa Ashe)

Investment Bank Lazard, New York, NY (David Kurtz, Matthew Hart, Christian Tempke)

Lead Counsel Sullivan & Cromwell, New York, NY (Andrew Dietderich, Neal McKnight, Michael Torkin, John Jerome, Marc Trevino)

Nature of the Success Restructuring of Eastman Kodak was one of the most complex and challenging industrial reorganizations of the past decade. Kodak had to exit all historical consumer businesses, resolve retiree and environmental liabilities, downsize massively, divest numerous non-strategic IP and businesses, and invest in new capital-intensive businesses. Kodak also operated in 100+ countries, most of which do not have reorganization regimes like Chapter 11, but instead simply liquidate insolvent businesses. The ultimate result was resounding success: a giant global restructuring done consensually and without substantial litigation by any stakeholders. The reorganization preserved at least 10,000 jobs. A leaner organization, focused on its high-growth commercial imaging businesses, EBITDA projections increased \$305 million, and total debt and legacy liabilities were reduced by more than \$5.4 billion. Kodak relisted on the New York Stock Exchange on November 1, 2013 with an opening share price of \$26.50 per share, more than double the value of its equity upon emergence from bankruptcy on September 3, 2013.

Groeb Farms, Inc.

Restructuring Firm Conway MacKenzie, Inc., New York, NY (Donald S. MacKenzie, Timothy B. Stallkamp, Abhimanyu (Abhi) Gupta)

Investment Banker Houlihan Lokey, Chicago, IL (Andrew Turnbull, Ryan Sandahl)

Lead Counsel Foley and Lardner, Detroit, MI (Judy O'Neill, John Simon, Tamar Dolcourt)

Nature of the Success One of largest distributors of natural honey and other food ingredients to the retail and industrial food supply industries, Groeb Farms faced numerous legal issues stemming from past purchasing practices, including a Department of Justice deferred prosecution agreement that left the company with limited liquidity, without access to outside credit, and limited inventory. Suppliers were significantly stretched and the company continuously faced decreasing supply availability. A restructuring plan was quickly put together to save the company from liquidation. Negotiations with the senior capital lender resulted in forbearance until a \$30 million bridge financing facility could provide the necessary liquidity for Groeb to operate and restructure and prepare for a bankruptcy filing within fifteen days. Within 90 days, a plan of reorganization was approved by each creditor class. Groeb emerged with a deleveraged balance sheet and is now operating as Natural American Foods.

Hawker Beechcraft

Restructuring Firm Alvarez & Marsal, New York, NY (Jeffrey Stegenga)

Investment Bank Perella Weinberg Partners, New York, NY (Michael Kramer, Agnes Tang)

Lead Counsel Kirkland & Ellis, Chicago, IL (James Sprayregen, Paul Basta, Patrick Nash, Ross Kwastenieta)

Nature of the Success A world-leading manufacturer of business, special mission, light attack and trainer aircraft, Hawker Beechcraft underwent a comprehensive restructuring effectuated through a pre-arranged Chapter 11 that resulted in a de-leveraging of all of the company's prepetition funded debt and an overhaul of its operations. A consensual debt-to-equity conversion was negotiated with holders of a majority of the company's approximately \$1.7 billion secured bank debt and \$800 million unsecured bond debt. The company's underfunded pension liabilities were restructured. Ultimately, the company implemented a stand-alone debt-to-equity transaction and secured a \$600 million exit facility. The plan eliminated \$2.6 billion in debt and hundreds of millions of dollars of pension underfunding, streamlined the company's business operation, maximized value for each of the company's creditor constituencies, and provided ongoing employment for 5,100 employees.

KV Pharmaceutical

Restructuring Firm Jefferies, New York, NY (Leon Szlezinger, Alex Rohan, John D'Amico)

Lead Counsel Willkie Farr & Gallagher, New York, NY (Matthew Feldman, Robin Spiegel)

Nature of the Success KV's inability to realize the full value of its primary drug, Makena®, due to FDA failure to enforce its orphan drug marketing exclusivity, and restrictions on reimbursement imposed by state Medicaid agencies caused the company's revenue and EBITDA to decline substantially. No plan of reorganization was in place when the debtors filed, and debt of almost \$700 million made reorganization extremely challenging. DIP financing was required to repay an existing secured creditor and end a foreclosure action that had required a valuation battle at an early stage in the case. This was followed by more valuation litigation by senior and junior creditors and, to complicate matters, the unsecured creditors committee litigated to clarify the security structure. Ultimately, a plan was negotiated that incorporated a rights offering sponsored by junior creditors in order to pay off senior creditors in full. The rights offering allowed participating creditors to become owners of reorganized KV and served as a vehicle to settle ongoing litigation issues that had threatened to extend the case and drain the estate of significant value and cash.

Patriot Coal Corporation

Lead Counsel Davis Polk & Wardwell, New York, NY (Marshall S. Huebner, Damian S. Schaible, Brian M. Resnick, Elliot Moskowitz, Benjamin S. Kaminetzky)

Conflicts Counsel to the Debtors Curtis, Mallet-Prevost, Colt & Mosle, New York, NY (Steven J. Reisman)

Nature of the Success A leading U.S. coal producer, Patriot fundamentally transformed its businesses in 18 months. Accomplishments included obtaining \$802 million DIP financing; a litigation victory against the United Mine Workers and subsequent consensual restructuring of its legacy union labor liabilities; a settlement relating to the modification and termination of non-union retiree benefits; a settlement with environmental groups that conserved millions of dollars of liquidity; defeating a motion to appoint a Chapter 11 trustee and a motion to appoint an equity committee; rejecting nearly 300 executory contracts; successfully prosecuting adversary proceedings relating to royalty agreements and negotiating settlements to resolve other such proceedings, resulting in cost savings to Patriot of tens of millions of dollars; and global settlements with Peabody Energy, the UMWA, and Arch Coal, which provided the union retiree VEBA trust and Patriot with hundreds of millions of dollars in financing.

Revel AC, Inc.

Restructuring Firm Alvarez & Marsal, New York, NY (Dennis Stogsdill)

Investment Bank Moelis & Company, New York, NY (Steve Panagos, Barak Klein)

Lead Counsel Kirkland & Ellis, Chicago, IL (Marc Kieselstein, Christopher Greco)

Nature of the Success Revel, a large beachfront resort in Atlantic City, NJ, exited bankruptcy in less than 60 days. Revel deleveraged its balance sheet by more than 82 percent by converting \$1.2 billion of outstanding debt into equity, leaving the company with a manageable \$285 million in debt. The deleveraging took place pursuant to a fast-paced prepackaged reorganization plan, which was supported by a majority of lenders and provided for full payment of all general unsecured claims. The plan was unanimously supported by holders of more than \$1.26 billion in funded debt claims that voted on the plan. Revel also obtained approval of \$250 million in DIP financing and secured \$350 million in exit financing. Regulatory approvals necessary to consummate the restructuring were also obtained from the State of New Jersey, including the New Jersey Division of Gaming Enforcement, the New Jersey Economic Development Authority, and the New Jersey Casino Control Commission.

Fees, from page 4

require disclosure of annual “step increases” due to advancing seniority and promotion if the firm distinguishes between “step increases” and other types of rate increases.

White notes that the impact of fee increases can be significant. “As we have looked more carefully at this, we saw that in some large cases, you could have ten percent of the total fees being charged during the life of the case attributable to escalating rates that exceeded inflation or exceeded increases that were being charged outside of bankruptcy.”

A fourth proposal embedded in the guidelines is for the increased use of fee examiners and fee review committees. “The fee examiners should be bankruptcy experts who can delve not only into the technical side of things such as duplication and overstaffing, but also can make the more sophisticated judgments on overall reasonableness of fees,” notes White. He cites the General Motors bankruptcy case

as an example where the fee examiner’s review “raised important and sophisticated issues for resolution.”

Many in the restructuring industry, however, question the value of fee examiners. Notably, a 2007 Chapter 11 Professional Fee Study conducted by the American Bankruptcy Institute and Professor Stephen Lubben of the Seton Hall University School of Law found “no effect on overall cost from the participation of a fee examiner or auditor in a case.” That study concluded that “[t]he benefits of fee examiners, if any, come from administrative assistance they offer the bankruptcy court and not from any direct cost savings in the case.”

These are only a few of the most significant changes to current practice proposed in the new guidelines. Additional changes include the increased use of lower-cost “efficiency counsel” for commoditized tasks and the submission of billing records in a standardized electronic format, among others.

Overall, Hazan believes that most firms are prepared to be able to comply with most

aspects of the guidelines. He notes that firms may find creating blended rate charts “challenging” at first. “Preparing budgets, however, will be difficult,” says Hazan. He echoes the concerns expressed by several comments received by the U.S. Trustee that the uncertainty inherent in the bankruptcy process makes it exceptionally hard for a professional to anticipate the twists and turns that the case may take. Several newly-filed cases may provide insights into this particular issue. At least three cases filed after November 1 have incorporated budget and staffing plan requirements into their interim compensation procedures. Those cases are *In re C & K Market, Inc.* (Bankr. D. Ore., Case No. 13-64561); *In re EWGS Intermediary, LLC* (Bankr. D. Del., Case No. 13-12876); and *In re Global Aviation Holdings Inc.* (Bankr. D. Del., Case No. 13-12945). □

Puerto Rico, from page 4

something akin to a state defaulting was during the Great Depression era, with the Arkansas default of 1933. Specifically, Arkansas assumed a large volume of road bonds issued by local governments, which, combined with decreased property-tax collections, rendered the state insolvent. “Those bonds were covered and paid within a year. That said, I still don’t expect a default in this instance,” says Brandt.

The reason, says Brandt, is that a default would limit Puerto Rico’s access to the U.S. and international credit markets, which the

commonwealth needs. “That’s not to say Puerto Rico doesn’t have to get its house in order; it does. In fact, it’s in for a rough period. There will necessarily have to be some austerity measures,” says Brandt who, as chairman of Illinois Finance Authority, has a very good sense of the bond markets. “But I suspect it will prevail, because the debt is issued under the full faith and credit of the commonwealth.”

According to Herman, the situation in Puerto Rico may be more like the situation in Argentina than the situation in Detroit, because Puerto Rico, like Argentina, is a sovereign. Brandt, however, says, “I think if

there’s any comparison to Argentina, it’s that what’s happening in Argentina, as a result of a recent series of U.S. court decisions, demonstrates to all that struggling through the process after a default is a messy business, and thereafter getting and keeping access to international credit markets as well as settling with creditors can be very problematical and so, as I see it, Argentina’s post-default travails are an instructive lesson for other governments. But Puerto Rico is not Argentina in the sense that Puerto Rico, although an affiliated commonwealth, is not a sovereign in the nation-state sense. The debt issued for Puerto Rico is far more akin to the sovereign debt of Illinois.”

Still, there is one inescapable similarity to Detroit, says Herman. “Puerto Rico will have to figure out how to generate enough cash-flow to pay its operating expenses and work out a plan to repay its existing debts, while at the same delivering basic services to its people.” □

In the Next Issue...

- *Special Report: Nation’s Largest Industrial Auctioneers*
- *Special Report: Major Financial Advisors*
- *Research Report: Who’s Who in Cengage Learning, Inc.*

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