turnarounds & workouts

News for People Tracking Distressed Businesses

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State of the Industry

Restructuring Pros Review a Year Unlike Any Other

by Dave Buzzell

The tsunami of bankruptcies that was widely predicted at the start of 2009 came to pass and, when the wave receded, the landscape was littered with fallen companies. For restructuring professionals, it was a year of furious paddling to keep their charges afloat.

No one in the industry is complaining, though. For Peter Fitzsimmons, AlixPartners' President of North America, it was an opportunity to work on "many of the largest – and in some cases, historic – cases of the year. We were involved in the restructurings of General Motors, Lyondell Chemical, General Growth Properties, SemGroup, Freedom Communications, BearingPoint, and Tribune Company, among others. Overall, we had a strong year in terms of growth and making a difference for our stakeholders."

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Mass Media Restructurings

Four Concepts Worth Reviewing

by Julie Schaeffer

Ion Media Networks. NV Broadcasting. Sun-Times Media Group. Tribune Company. Young Broadcasting. All of them are mass media companies, and all of them filed for bankruptcy in the latter part of 2009, due in part to a troubled economic climate – which could continue. And that, says Dylan G. Trache, of counsel in the bankruptcy & financial restructuring group at Wiley Rein LLP, means restructuring professionals should be aware of certain basic principles applicable to mass media bankruptcies – because these bankruptcies "present unique challenges for the various stakeholders due to the special regulatory requirements involved." This article looks at four fundamental bankruptcy concepts as they apply to mass media restructurings: automatic stays, cramdowns, FCC

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Credit Bid Denied

Encumbered Assets Sale Allowed Without Lender's Bid

by Julie Schaeffer

A court has ruled that, in some circumstances, a debtor may sell encumbered assets free and clear of liens without allowing a secured lender to credit bid – a decision that may affect the rights of secured lenders in bankruptcy sales

In February 2009, Philadelphia Newspapers, LLC – which operates several publications, including the *Philadelphia Inquirer* and the *Philadelphia Daily News* – filed for Chapter 11 bankruptcy protection after negotiations with secured lenders broke down.

In August 2009, Philadelphia Newspapers filed a plan of reorganization which would sell substantially all of its assets. That plan of reorganization called for the distribution of approximately $66 million to secured lenders in full satisfaction of their claims – even

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In a classic understatement, Jeffery Stegenga, Managing Director with Alvarez & Marsal's North American Commercial Restructuring Group, says that "the results reflected that it's been a good year." A&M's assignments included the Lehman Brothers and Washington Mutual dismantlings. On the auto side – Stegenga's focus – A&M was involved in the Lear and Cooper-Standards Chapter 11s; and, on the media side, A&M picked up work from the likes of Chicago Tribune and, most recently, Citadel Broadcasting.

"We had our share of marquee names," Stegenga continues, "but it was a good year for restructuring firms overall."

One of those firms was Huron Consulting Group. Dalton Edgecomb, Managing Director at Huron, singled out Forum Health, a $400 million health system, as a company that Huron is helping to restructure. In the past year, Huron has also served as CRO for Aurora Oil & Gas and financial advisor to Autocam, Chicago Sun Times, and Nortel Networks, among others.

Edgecomb notes, however, that, "Our business is very competitive…very cyclical. As economic activity picks up and the credit markets open up, our business slows down. As credit markets close down, our business becomes very busy and we see a lot of new entrants. At all times, though, it is a competitive industry."

Stegenga concurs, "We saw some smaller competitors from the regional level come in because there was enough work. You have that in any cycle that you go through. They come in and pick up some of the lower stuff, some of the smaller stuff. That's just the way these cycles progress."

For Fitzsimmons, "The competition was, as always, very keen in the turnaround industry."

All agree that, for those in the restructuring industry, the biggest story of 2009 was working in an environment where financing was nearly impossible to come by. "From one extreme to the other," notes Edgecomb. "We went from a situation where credit markets were more open and money was lent on easier terms than ever before to a situation where it was just completely closed and lenders wouldn't lend money to companies with the best credentials. What we're seeing today is a little bit of easing, but not back to what I would call normal by any stretch."

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licenses, and contracts and leases.

First, when a bankruptcy case begins, Section 362 of the U.S. Bankruptcy Code issues an automatic stay against the commencement or continuance of any action against the debtor or its property.

There are exceptions, however. For example, Trache notes that actions before the FCC are not stayed to the extent that the agency is operating solely under its regulatory powers.

Additionally, an automatic stay does not prevent a creditor from taking actions against non-debtor entities absent a further order of the court – meaning that a creditor may proceed with litigation against a guarantor, letter of credit, or a surety for payment of amounts owed (unless the bankruptcy court orders that the automatic stay be extended to non-debtor entities).

Second, due to the decline in value of many media enterprises, Chapter 11's cramdown provisions may help viable mass media companies restructure debt obligations and reduce interest rates.

To achieve a cramdown, which is allowed under Section 1129(b) of the U.S. Bankruptcy Code, a debtor must convince the bankruptcy court that the proposed plan is fair and equitable despite the dissenting creditor's objections.

"As long as the plan provides that a secured lender will retain its lien and receive deferred cash payments equal to the present value of the collateral securing the loan, as opposed to the face amount of the loan, the judge may find the plan fair and equitable," says Trache. "Thus, a successful cramdown can reduce the loan balance secured by the collateral as well as the interest rate, because payments must be made at a market rate of interest, which may be substantially less than is required under the loan documents."

Third, in mass media bankruptcies, the debtor's operation often depends upon the continued use of FCC licenses.

Filing for bankruptcy does not prevent a debtor from operating under its FCC license, per Section 525 of the Bankruptcy Code.

Additionally, the FCC may not cancel a debtor's license as a result of the debtor's failure to pay the FCC money that may later be discharged in bankruptcy, according to the Supreme Court.

However, asset sales or transfers under a plan of reorganization often require FCC approval in addition to the authorization

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though the secured lenders had claims of more than $300 million.

Philadelphia Newspapers then sought approval of bid procedures that would prevent the secured lenders from "credit bidding" – a process that would have allowed the secured lenders to bid up to the amount of their outstanding claim at an auction for the sale of the Philadelphia Newspapers' property, as if the claim were cash. Had the secured lenders won the credit bid, they would have taken possession of the collateral, and their claim would have been reduced by the amount of the bid – thereby "protecting against the sale of collateral for less than the amount that the secured lender would agree to sell the collateral," says Glenn E. Siegel, a partner with law firm Dechert LLP.

In seeking approval of bid procedures that would prevent the credit bid, Philadelphia Newspapers argued that the plan sale was conducted under Section 1129 of the Bankruptcy Code, and credit bidding was only permitted under Section 363(k).

In *In re Philadelphia Newspapers, LLC*, the secured lenders objected on the grounds that Philadelphia Newspapers' bid procedures were not fair and equitable to each class of creditors that was impaired and did not vote to accept the plan (which Section 1129 of the Bankruptcy Code requires), because the procedures denied the secured lenders the right to protect the value of their collateral through a credit bid. "Section 1129 does not require that a plan provide the secured lender with a right to credit bid, but the weight of legal authority prior to Philadelphia Newspapers held that section 1129 protects the rights of secured lenders to credit bid," says Siegel.

The bankruptcy court agreed, and issued an order denying the Philadelphia Newspapers' bid procedures. But on November 10, 2009, the district court overruled the bankruptcy court, and on November 18, 2009, the secured lenders won a stay from the Third Circuit Court of Appeals pending its appeal of the district court's decision.

Both courts' decisions centered around interpretations of the Section 1129's requirement that a plan of reorganization be "fair and equitable."

With respect to secured creditors, the bankruptcy code specifies three ways in which this standard can be met – (1) by

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Research Report

Who's Who in FairPoint Communications, Inc.

by Francoise C. Arsenault

FairPoint Communications, Inc. (FairPoint) is a leading provider of communications services to residential and business customers in rural and small urban communities located in 18 states. FairPoint operates the seventh largest local telephone company in the U.S., based on the number of access lines, with approximately 1.7 million access line equivalents in service as of June 30, 2009. As of December 31, 2008, approximately 65 percent of the company's access lines served residential customers, 27 percent served business customers, and 8 percent served wholesale customers. The company currently owns and operates 33 local exchange carriers (LECs) throughout the U.S. Through its LECs, FairPoint offers its customers a broad array of Internet and telephone services.

Headquartered in Charlotte, North Carolina, FairPoint is the direct or indirect parent company of its affiliates. FairPoint was founded as MJD Communications Inc. in 1991. From its inception, FairPoint was established for the purpose of acquiring and operating local telephone companies in rural markets. As of June 30, 2009, FairPoint's unaudited consolidated financial statements reflected assets with a book value totaling $3.236 billion and liabilities totaling $3.234 billion. FairPoint had revenues of approximately $1.3 billion in 2008. The company has approximately 4,140 employees.

In March 2008, FairPoint purchased Verizon Communication's northern New England land lines and Internet services business in New Hampshire, Maine, and Vermont for approximately $2.72 billion. Since the conversion from Verizon's systems, FairPoint has been plagued with skyrocketing customer complaints over billing issues, delays in new service installation, poor customer service, and other quality issues. FairPoint also has had difficulty keeping up with its debt payments and has been losing customers to mobile phones and digital-voice services. The company has been losing about 7,700 land-line customers each month and has posted four consecutive quarterly losses.

FairPoint and more than 70 of its affiliates filed voluntary bankruptcy petitions for Chapter 11 reorganization on October 26, 2009, in the United States Bankruptcy Court for the Southern District of New York. With its bankruptcy filing, FairPoint announced that it had reached an agreement on a comprehensive financial restructuring plan with lenders holding more than 50 percent of the outstanding debt under its secured credit facility. The restructuring plan would reduce the company's debt by approximately $1.7 billion and would transfer 98 percent to 100 percent of FairPoint's equity ownership to its secured lenders. FairPoint has requested bankruptcy court approval of $75 million in DIP financing from Bank of America, N.A., as administrative agent, and other lenders. A final DIP hearing has been scheduled for January 13, 2010.

Company officials have stated that the proposed plan of reorganization, which was originally scheduled to be filed with the bankruptcy court on December 10, 2009, will be filed on January 15, 2010, in order to finalize the settlements with lenders, unions, and other parties involved in the reorganization.

Windstream Communications, which recently acquired NuVox Communications and has announced that it is acquiring Iowa Telecom, is rumored to be interested in purchasing the assets of FairPoint.

The Debtor

David L. Hauser is the Chairman and Chief Executive Officer of FairPoint Communications, Inc. **Peter G. Nixon** is the President. **Alfred C. Giammarino** is Executive Vice President and the Chief Financial Officer. **Shirley J. Linn** is Executive Vice President, General Counsel, and Secretary. **Lisa R. Hood** is Senior Vice President and the Corporate Controller.

Paul, Hastings, Janofsky & Walker LLP is serving as the bankruptcy counsel to FairPoint. **Luc A. Despins**, a partner in the New York office, **Laura L. Flippin**, a partner in the Washington, DC, office, and **James T. Grogan III** and **Sung Ho (Danny) Choi**, associates with the firm, are working on the case.

Quinn Emmanuel Urquhart Oliver & Hedges, LLP is acting as conflicts counsel to FairPoint. **Susheel Kirpalani**, Chair of the firm's Bankruptcy and Restructuring Group, heads the team.

Rothschild Inc. is the financial advisor and investment banker to FairPoint. **Christopher Lawrence**, Co-Head of Investment Banking, directs the work. Also working on the engagement are managing directors **Neil A. Augustine**, **William R. Shaw**, and **Francois Teissonniere**.

AlixPartners, LLP is serving as the restructuring advisor to FairPoint. **Meade A. Monger** and **Todd B. Brents**, both managing directors in the firm's Dallas office, are working on the engagement.

Ernst & Young is serving as the tax advisor and independent auditor to FairPoint. **Bryan Yokley**, a partner, directs the work.

The Official Committee of Unsecured Creditors

The Committee includes the **U.S. National Bank Association**, as Indenture Trustee; the **International Brotherhood of Electrical Workers**; the **National Exchange Carrier Association, Inc.**; **Occam Networks, Inc.**; and **J.C. Zampell Construction, Inc**.

Andrews Kurth LLP is acting as counsel to the Committee. The Andrews Kurth team includes **Paul N. Silverstein** and **Jonathan I. Levine**, partners, and **Jeremy Reckmeyer**, an associate.

Verrill Dana, LLP is serving as special counsel to the Committee for matters involving the regulation of public utilities. **William S. Harwood**, a partner in the Portland, Maine, office and Chair of the firm's Utilities and Energy Group, directs the work.

Jefferies & Company, Inc. is providing the Committee with financial advisory services. **Richard Morgner**, a managing director with the firm, directs the work on the engagement.

Altman Vilandrie & Co. is acting as an operational consultant to the Committee to guide it through the reorganization process. **Edward J. Vilandrie, Jr.**, a director of the firm, heads up the team.

The Trustee

The U.S. Trustee is **Diana G. Adams**.

The Judge

The judge is the **Honorable Burton R. Lifland**. ¤

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"Some called it a contraction," says Stegenga, "but the reality was that the markets virtually shut down."

The challenges were unprecedented, as Edgecomb sums up well: "The credit markets have been closed for the past 18 months in a way we haven't seen in a very long time, if we've ever seen anything like it. It has created a real challenge in restructuring companies because there is just no ability to raise additional capital."

"The general unavailability of credit in 2009, even for DIP financing, changed the playing field dramatically," adds Fitzsimmons. "It led, in some cases, to quick liquidations of companies that in the past might have been saved and, in other cases, to companies that probably should have gone bankrupt continuing to be propped up to limp along a little longer."

Stegenga also notes how traditional sources of financing all but vanished last year. "It had been routine to get a DIP loan at the start of any Chapter 11 process. That became challenging and, at one point in 2009, virtually impossible." Things were so bad that financial institutions, such as Lehman, that were once a source of DIP loans were filing themselves.

Keeping companies from being swamped in this environment has required a deft degree of maneuvering. "Probably the biggest difference these days is the almost breakneck speed at which one must operate to get things done and retain value," says Fitzsimmons "Whereas in the past you might have had weeks to set a plan in action, today you have just days – or even just hours in some cases."

"Tight credit markets affect restructuring firms in two ways," says Edgecomb. "One, it increases the volume of companies that need to restructure. Two, the tighter the credit markets are, the fewer options you have in a restructuring situation. In a lot of restructuring situations, there is the need to raise additional capital. In a lot of restructuring situations, there is the need to raise additional capital, or should I say, if the ability to raise additional capital existed, it would open up additional restructuring initiatives."

"We saw ourselves going down a couple of paths in 2009," says Stegenga. "Prenegotiated Chapter 11s became much more the trend. People saw the need for speed and efficiency in working their way through the process, so whether it was a prepackaged deal or a prenegotiated deal, the focus was on exiting a Chapter 11 in 3-6

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from the bankruptcy court, says Trache.

Fourth, mass media companies will have a number of contracts, such as advertising and talent contracts. They may also have contracts that include authorization to use intellectual property, such as trademarks and copyrights.

During a bankruptcy case, a mass media company may assume or reject contracts using a business judgment standard, and the bankruptcy court will typically yield to the debtor's wishes.

However, Trache notes that "the debtor may be prohibited from assuming and assigning certain intellectual property licenses where the court finds that applicable non-bankruptcy law (such as federal patent, copyright, or trademark law) excuses the non-debtor party from accepting performance from a party other than the debtor or debtor-in-possession." ¤

Denied, *from page 2*

allowing such a creditor to retain its liens and receive deferred cash payments in satisfaction of its claim, (2) by allowing such a creditor to sell the collateral free and clear subject to the creditor's credit bid up to the amount of its claim, or (3) by allowing such a creditor to receive the "indubitable equivalent" of its claim.

In reaching its decision, the bankruptcy court rejected Philadelphia Newspapers' argument that the secured lenders had received an "indubitable equivalent" of their claim. The court's reasoning was that the "indubitable equivalent" prong of the standard could not be used when the exact means of the proposed plan has been set forth in option two (payment in cash). The court argued that, under option two, a plan sale is "fair and equitable" if it is free and clear of a creditor's liens and the creditor has the opportunity to credit bid.

In reaching its decision, the district court ruled the opposite – that a sale for cash could provide the "indubitable equivalent" of a secured lender's claim despite not affording the secured lender to

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Calendar

Turnaround Management Association
TMA 2010 Distressed Investing Conference
January 27-29, 2010
Bellagio
Las Vegas, NV
Contact: www.turnaround.org

National Association of Bankruptcy Trustees
2010 Spring Seminar
April 7-10, 2010
Westin Hotel
Savannah, GA
Contact: www.nabt.com

Turnaround Management Association
TMA 2010 Spring Conference
April 20-22, 2010
Sheraton New York Hotel and Towers
New York, NY
Contact: www.turnaround.org

American Bankruptcy Institute
28th Annual Spring Meeting
April 29-May 2, 2010
Gaylord National Resort and Convention Center
National Harbor, MD
Contact: www.abiworld.org

Third Annual Southwest Healthcare Transactions Conference
May 6, 2010
Adolphus Hotel
Dallas, TX
Contact: www.renaissanceamerican.com

National Association of Bankruptcy Trustees
2010 Annual Conference
September 29-October 3, 2010
The Fairmont
San Francisco, CA
Contact: www.nabt.com

Renaissance American Management, Inc. and the Beard Group
17th Annual Conference on Distressed Investing
November 29, 2010
The Helmsley Park Lane Hotel
New York, NY
Contact: www.renaissanceamerican.com

Special Report

Largest Chapter 11s – 2009

Company Name	Industry	Filing Information	Assets	Debtor's Counsel
General Motors Corp.	Manufacturing	Filed: June 1, 2009 New York, Southern District Judge: Robert Gerber	$82.3 billion	Harvey Miller Weil Gotshal & Manges
CIT Group	Finance & Insurance	Filed: November 1, 2009 Delaware Judge: Allan Gropper	$71.0 billion	Gregg Galardi Skadden Arps Slate Meagher & Flom
Chrysler LLC	Manufacturing	Filed: April 30, 2009 New York, Southern District Judge: Arthur Gonzalez	$39.3 billion	Corinne Ball Jones Day
General Growth Properties Inc.	Real Estate	Filed: April 16, 2009 New York, Southern District Judge: Alan Gropper	$29.6 billion	Marcia Goldstein Weil Gotshal & Manges
Lyondell Chemical Company	Manufacturing	Filed: January 6, 2009 New York, Southern District Judge: Robert Gerber	$27.1 billion	Deryck Palmer Cadwalader Wickersham & Taft
Thornburg Mortgage Inc.	Finance & Insurance	Filed: May 1, 2009 Maryland Judge: Duncan Keir	$24.4 billion	Gregory Cross Venable
Capmark Financial Group Inc.	Finance & Insurance	Filed: October 25, 2009 Delaware Judge: Christopher Sontchi	$20.1 billion	Martin Bienenstock Dewey & LeBoeuf
Charter Communications Inc.	Information	Filed: March 27, 2009 New York, Southern District Judge: James Peck	$13.9 billion	Richard Cieri Kirkland & Ellis
Nortel Networks Inc.	Manufacturing	Filed: January 14, 2009 Delaware Judge: Kevin Gross	$11.6 billion	James Bromley Cleary Gottlieb Steen & Hamilton
Abitibowater Inc.	Manufacturing	Filed: April 16, 2009 Delaware Judge: Kevin Carey	$9.9 billion	Alan Kornberg Paul Weiss Rifkind Wharton & Garrison
Smurfit-Stone Container Corp.	Manufacturing	Filed: January 26, 2009 Delaware Judge: Brendan Shannon	$7.4 billion	James Conlan Sidley Austin
Extended Stay Inc.	Accommodation & Food Services	Filed: June 15, 2009 New York, Southern District Judge: James Peck	$7.1 billion	Marcia Goldstein Weil Gotshal & Manges
Station Casinos Inc.	Arts, Entertainment & Recreation	Filed: July 28, 2009 Nevada Judge: Gregg Zive	$5.7 billion	Paul Aronzon Milbank Tweed Hadley & McCloy
Visteon Corp.	Manufacturing	Filed: May 28, 2009 Delaware Judge: Christopher Sontchi	$4.6 billion	James Sprayregen Kirkland & Ellis
Aleris International Inc.	Manufacturing	Filed: February 12, 2009 Delaware Judge: Brendan Shannon	$4.2 billion	Stephen Karotkin Weil Gotshal & Manges

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Worth Reading

Corporate Venturing – Creating New Businesses Within the Firm

Authors: Zenas Block and Ian C. MacMillan
Publisher: Beard Books
Softcover: 381 pages
List Price: $34.95

by Henry Berry

Creating a new business within a firm allows a company to tap its potential while minimizing risk. It is similar to an entrepreneurial venture in that it offers an opportunity to pursue profits outside the confines of the normal corporate structure and decision-making processes. Creating a new business within a company is different from a true entrepreneurial venture, however, in that the business has corporate resources at its disposal and has to answer to company management.

An entrepreneurial enterprise differs in other ways from corporate venturing – to use the authors' term. "When a new entrepreneurial venture is created outside an existing organization, a wide variety of environmental factors determine the fledgling business's survival. Inside an organization...senior management is the most critical environmental factor." This is both the major strength and limitation of a corporate venture, and Block and MacMillan explain how senior management, working with the leadership of a corporate venture, can use this to give the venture the best chance for success.

If the venture succeeds beyond the goals set at its formation, it can always be integrated into the parent company as a new division or subsidiary modeled after the other parts of the company, with the same open-ended commitment, regular hiring practices, reporting and coordination, and so forth. As explained by the authors, done properly with a sense of realism and practicality and preliminary research and ongoing analysis, corporate venturing offers a new path for a company to reach new markets, engage in fruitful business research, and adapt to changing market and industry conditions.

The principle of corporate venturing is the familiar adage, "nothing ventured, nothing gained." While improbable that a corporate venture can save a dying firm, a characteristic of every dying firm is a blindness to venturing. Just thinking about corporate ventures can bring to a company a vibrancy and imagination needed for business longevity.

While ideas, insights, and vision are the essence of corporate venturing, they are not enough. Corporate venturing is based as much on the right personnel, especially the top leaders. The authors recommend, whenever feasible, that employees of the firm be selected to lead a corporate venture because they already have relationships with senior management, who are the ultimate overseers of a venture, and they understand the corporate culture. Only half jokingly do the authors suggest that the most promising employees to lead a corporate venture are the "troublemakers." These are the employees who, if given freedom and a high level of empowerment, can make the venture workable. They are also the employees who are most suited to adapt rapidly to new information.

Corporate venturing is a melding of the standard corporate structure and operations model with the independent business model that emphasizes entrepreneurial flexibility and a focus on one product or service or, at most, a few interrelated ones, along with simplified operations and streamlined decision-making. From identifying opportunities and getting started, through the business plan and corporate politics, Block and MacMillan provide readers with a blueprint for corporate venturing success. ¤

Zenas Block is a former adjunct professor with the Executive MBA Program at the NYU Stern School of Business. Ian C. MacMillan is associated with Wharton as a professor and a director of a center for entrepreneurial studies.

This book may be ordered by calling 888-563-4573 or by visiting www.beardbooks.com or through your favorite Internet or local bookseller.

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months. General Motors was in and out in virtually a day, but aside from those cases assisted by 1600 Pennsylvania Avenue, there were the Lears and Masonites. Those cases became more the norm in 2009 because people were simply more thoughtful in the process, doing a lot of negotiation up front. It also alleviated a lot of extra costs and disruption in the business."

Looking at 2010 and beyond, no one sees smooth sailing. "The U.S. economy was, and is, clearly challenged," says Fitzsimmons. He predicts that the recovery could very well turn out to be "L-shaped" which, if that happens, "could mean continued corporate deleveraging that reduces investment in expansion, reduced capital availability, phased asset recovery and unclear workout timelines, increased government regulation, and highly leveraged governments." Consequently Fitzsimmons anticipates that the restructuring market will remain quite active in 2010, with perhaps a shifting from large companies towards middle-market companies.

In Edgecomb's view, the current restructuring environment will likely continue for the foreseeable future. "Most of us believe this is going to continue beyond 2010 and into 2011. It is not so much the existing credit markets, it is the repercussions of those open credit markets back in 2005-2007 when a lot of money was lent under very easy terms. In 2010-2011, those credit facilities will be maturing or expiring. Corporations are going to have a very, very hard time finding comparable financing in this market. They are going to be forced to do some form of restructuring in order to replace their financing."

Stegenga also sees past practices posing problems for the future. "Interest rates at some point have to go up. When they do, 'amend and extend' loans will come home to roost. There is a lot of debt that is scheduled to come due over the next two to three years, and it is going to be a challenge for the market to absorb all that refinancing. The next two to three years could very well be up and down as it struggles for some trend or direction. Some think it's the eye of the storm; others think it's going to bob and weave a little bit for the next three years. I subscribe to that." ¤

Special Report

Successful Restructurings – 2009

Debtor	Restruct. Firm	Lead Counsel	Comments
Centro Properties Group	David Kurtz, Eric Mendelsohn, Barry Ridings Lazard Freres & Co. New York, NY	Jay Goffman, Harvey Uris, Chris Mallon, Rick Madden Skadden, Arps, Slate, Meagher & Flom New York, NY	Second largest commercial property owner in Australia and fifth largest in U.S., with hundreds of interrelated companies. Over $20 billion in debt and an Australian bankruptcy system that only allowed liquidation. The only chance for survival was an out-of-court consensual reorganization requiring unanimous agreement by hundreds of U.S. and Australian lenders.
Charter Commuications	Pilar Terry, Barry Folse AlixPartners New York, NY	Richard Cieri, Paul Basta, Ray Schrock, Stephen Hessler Kirkland & Ellis New York, NY	The fourth largest cable operator in the U.S. emerged from bankruptcy protection after what was described by Judge James Peck as the "largest and most complex prearranged bankruptcy ever attempted" and "one of the most hotly contested confirmation battles ever conducted." Through the restructuring process, Charter was able to reduce debt by approximately 40 percent, or approximately $8 billion.
CIT Group Inc.	David Ying Evercore Partners New York, NY Robert Duffy FTI Consulting Boston, MA	Gregg Galardi Skadden, Arps, Slate, Meagher & Flom Wilmington, DE	CIT emerged from bankruptcy protection only 40 days after filing. The filing was the largest prepackaged bankruptcy solicitation ever; ranks as one of the largest by a financial institution; and is the fifth largest bankruptcy, by assets, ever. The reorganization plan reduces CIT's total debt by approximately $10.5 billion. The plan enhances capital ratios that exceed regulatory requirements. CIT's common stock is now trading on the NYSE.
Delphi Corporation	David Resnick, William Shaw Rothschild Inc. New York, NY Randall Eisenberg, Adrian Frankum FTI Consulting New York, NY	Jack Butler, Eric Cochran, Al Hogan, John K. Lyons, Kayalyn Marafioti, Ron Meisler Skadden, Arps, Slate, Meagher & Flom New York, NY	Largest global automotive supplier reorganization and essential element in the Chrysler and GM reorganizations. The go-forward business retains all of Delphi's core businesses, has more than 100,000 employees, and operates in 270 locations in 32 countries. Delphi's non-core businesses, which employ tens of thousands of additional employees, were divested successfully as going concerns.
General Motors	Al Koch AlixPartners Detroit, MI	Harvey Miller, Stephen Karotkin, Joseph Smolinsky, Dominic McCahill Weil, Gotshal & Manges New York, NY	Unique restructuring of one of the most venerable U.S. manufacturing institutions with total assets of approximately $82.3 billion and liabilities of approximately $172.8 billion. Achieved by: 1) obtaining "first day" relief from the bankruptcy court, which ensured operations would continue uninterrupted, provided assurance to a chain of 11,000+ suppliers, and provided for an expedited schedule for the 363 sale process; 2) approval of a DIP facility in the unprecedented amount of $33 billion; 3) successfully prosecuting the 363 sale and overcoming 800+ objections.
Hayes Lemmerz International	Barry Ridings, Eric Mendelsohn Lazard Freres & Co. New York, NY Kevin Carmody AlixPartners Chicago, IL	J. Eric Ivester, Robert Pincus, Anthony Clark, N. Lynn Hiestand, Chris Mallon, Thomas Gowan Skadden, Arps, Slate, Meagher & Flom New York, NY	Leading global manufacturer of wheels for passenger cars and light trucks, emerged from bankruptcy just over 7 months after commencing voluntary reorganization. Hayes eliminated over $750 million of funded debt and legacy retiree medical and pension liabilities affecting both domestic and foreign subsidiaries and affiliates. In conjunction with its emergence, Hayes entered into a $200 million exit financing facility, and is now a stronger competitor well positioned to extend its leadership in the global wheel market.
Pilgrim's Pride	William Snyder CRG Partners Group Dallas, TX	Gary Holtzer, Stephen Youngman Weil, Gotshal & Manges New York, NY	The largest U.S. poultry producer, with pre-filing sales of $7.6 billion, successfully exited from bankruptcy in little over a year by selling 64% of its stock to JBS U.S.A. and securing a $1.75 billion credit facility. A significant victory was obtained in litigation, with court overruling objections, including impermissible discrimination under the Packers and Stockyards Act, by growers' to company's motion to reject contracts.
Quebecor World, Inc./Quebecor World USA		Richard Levy, Peter Knight Latham & Watkins Chicago, IL	Involved more than 18 months of intense negotiation with representatives of 5 different series of bondholders and a committee representing trade creditors from 29 different debtor entities. Case settled fraudulent conveyance avoidance actions, restructured approximately $2.5 billion, and involved a last-minute effort to acquire the company.
Sportsman's Warehouse	Mark Weinstein FTI Consulting Boston, MA	Gregg Galardi Skadden, Arps, Slate, Meagher & Flom New York, NY	One of the first retailers to successfully reorganize in Chapter 11 in many years. Once an $800 million, overleveraged, underperforming sporting goods retailer, it is now one half its size with a reconfigured geographic footprint and lower overhead base. Its capital structure is improved through a reduction of debt and injection of new capital.
Syncora Guarantee	David Prager, Gary Polkowitz Goldin Associates New York, NY	Gary Holtzer, Joseph Verdeska Weil, Gotshal & Manges New York, NY	The first major monoline insurer to successfully complete a comprehensive restructuring. The company was relieved of $6 billion of expected losses, restructured $100 billion of guarantee obligations, remediated a policyholder deficit of $4 billion, and restored surplus to levels exceeding statutory requirements.

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Gnome de Plume

Another Cycle

by Christopher Beard

The consensus among economists is that the high unemployment rate will continue for some time. I have no idea why they think that, but I'm sure it's based on current statistics compared to past experience by mainframe computers.

I don't have a mainframe, but, if I did, I wouldn't know how to talk to it. Nevertheless, I agree for more mundane reasons. What productive work can the average American high school or college graduate do that will provide them the life style they think they are entitled to?

This is not a new problem, but the politicians don't want to talk about it because telling voters to suck it up is not what they want to hear. But the financial crisis seems to have squeezed the bloat out of employers, and politicians now have to deal with the problem because, as James Carville said, the economy drives elections. But all the talk is about riding out a tough period, not systemic change.

Then, a few days ago, I read a piece in the *Financial Times* reporting that "Infosys Technologies [India's second largest IT group] has warned that India's information technology outsourcing industry will begin to face staffing constraints and rising costs again as the sector stages a rapid recovery from the global financial crisis." Scary. There's work, but the Americans are not getting it. It seems the time has come when we can't keep kicking the can down the road.

Businesses cut costs hard at the onset of the financial crisis, increasing margins and earnings, and they continue to be very cautious and careful. Price is important, and foreign competitors are getting the business.

We need growth. We need jobs. We can't afford a dramatic expansion of benefits with chronic unemployment north of ten percent.

Obama is on the cusp of a failed presidency. He has ramped up Afghanistan with many hopes but no better prospects than we had going into Iraq. He's got a faltering economy, and blaming the Bushies doesn't do it. He's totally invested in a healthcare plan that has many warts and generates little enthusiasm, even among the liberal wing of the Democratic Party. The blue dogs are badly wounded, and now the Democrats have lost Ted Kennedy's seat in Massachusetts. He needs to throw the left-wing whack jobs under the bus. They have proven conclusively they can't govern on a national level, and are not serving him well. The problem is Michelle is not going to like that idea one bit.

For us, it's more of the same. The Bushies spent a ton of money and resources in Iraq with little to show for it. W let the financial system get out of control, and then delegated the financial crisis to his lieutenants. He never got out in front, notwithstanding Woody Allen's admonition that showing up is eighty percent of success.

We're the ones in trouble. Obama and Bush are leaving us with reduced competitiveness and massive burdens. Lots of debt. High unemployment. Expensive new domestic programs. Disintegrating international clout. Huge global commitments.

The stimulus will make the economy less bad for a few quarters. Interest rates under one percent and CNBC talking heads have given the stock market a lift. But I don't see how it's going to work.

The restructuring business is about to cycle up again. ¤

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credit bid for its collateral. The court's reasoning was that the disjunctive language of Section 1129 says debtors can either provide for the opportunity to credit bid or can realize an indubitable equivalent of the claims. "The court emphasized that the "indubitable equivalent" is a vague term that affords a debtor wide latitude to craft an appropriate treatment of the secured lenders' claim," says Siegel. "A sale for cash, the court found, falls within the broad meaning of indubitable equivalent."

Siegel says that to date, the weight of legal authority has held that a secured lender is guaranteed the right to credit bid in a sale of its collateral pursuant to a plan of reorganization.

He notes, however, that secured lenders should keep the district court's decision in mind, as a similar ruling was made by the Fifth Circuit Court of Appeals in *In re Pacific Lumber*.

"In *Pacific Lumber*, the secured creditors unsuccessfully challenged a private judicial sale pursuant to a plan of reorganization on the basis that Section 1129 granted secured lenders the right to credit bid," says Siegel. "Although the facts were dramatically different in this case, both the district court decision in *Philadelphia Newspapers* and the Fifth Circuit decision in *Pacific Lumber* set an unfriendly precedent for secured lenders seeking to participate in plan sales and should be carefully reviewed by secured lenders before developing strategies for dealing with their distressed borrowers."

The secured lenders have appealed the district court's decision to the Third Circuit Court of Appeals, which has stayed the sale pending the appeal. ¤

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