

BANKRUPTCY INSIDER

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Bankruptcy Database

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To file or not to file

Secured lenders may force homebuilders' hands

Tousa Inc.'s Jan. 29 Chapter 11 filing was a stark reminder that the problems homebuilders experienced in 2007 were just the tip of the iceberg.

The perfect storm of plummeting home prices, continued subprime delinquencies and tight credit markets will likely continue in 2008 and beyond, crippling more and more builders along the way. The ultimate question for the homebuilding sector, therefore, is no longer which builders can avoid restructuring their massive debt loads but what avenue builders will ultimately take to get there: a Chapter 11 filing or out-of-court negotiations with lenders.

Each company's situation is unique, restructuring professionals stress. Builders today must juggle pressure from creditor constituencies such as secured lenders, trade vendors and subcontractors while deciding what to do with unsold houses and massive lots of purchased, undeveloped land.

"It's all about cash flow and how your vendors and trade people are reacting," says veteran restructuring adviser Perry Mandarino of **Traxi LLC**, who served as chief restructuring officer at **Kara Homes Inc.**, one of the first builders to seek protection when the housing bubble burst.

"Most of these real estate deals are so incredibly high-leveraged, so [secured lenders] usually have more power" to decide the fate of a company, he says.

Banks are generally loath to cut a homebuilder off because they would be stuck with unwanted, undeveloped land and partially sold housing developments to liquidate.

Consider **WCI Communities Inc.**, which in mid-January secured amendments to its senior revolver and term loan after defaulting on covenants in the revolver. The luxury builder in Florida and the mid-Atlantic had warned that without concessions from its lenders, it would have had a solvency problem.

And **Pulte Homes Inc.** and **Centex Corp.** are success cases in the short term, says **Donlin, Recano & Co.** managing director Scott Y. Stuart. Both builders have slashed home prices, downsized project projections and cut jobs to avoid Chapter 11.

But as the losses for builders increase, so will the impatience of their lenders.

On the heels of the notable bankruptcies for builders in 2007—**Levitt and Sons LLC**, **Neumann Homes Inc.** and **Dunmore Homes Inc.**, among others—several builders are in desperate need of a restructuring and are at the mercy of their banks.

For example, **Lennar Corp.**, one of the country's largest homebuilders, reported a loss of \$1.9 billion for the year ended Nov. 30, and Pulte posted a \$787 million loss in the third quarter of 2007 alone.

Beazer Homes USA Inc. saw home closings decline 24% in the

Steven Panagos will depart **Kroll Zolfo Cooper** to start a distressed-investment firm with **Jonathan Katz**, the founding partner in **J.P. Morgan Chase & Co.**'s Special Situations Investing, a vehicle that trades distressed and high-yield debt.

Kohlberg Capital Corp. owns a minority interest in **Panagos Katz Situational Investing** and will make investments in its funds. Kohlberg says PKSI management will also source opportunities for direct investment by Kohlberg in distressed debt.

PKSI and its funds will invest in the debt and equity of restructuring companies. PKSI will also selectively extend loans to troubled companies.

Panagos has been national head of the corporate advisory and restructuring practice at KZC as well as a managing director. He joined the firm in 1988, led its engagement as custodian for **Le-Nature's Inc.** before a trustee took over the case, was president and chief operating officer for **Krispy Kreme Doughnut Co.** and was chief restructuring officer for **Millcreek Broadcasting LLC.**

A KZC representative confirmed his pending departure but could not supply a final work day.

Deirdre Martini left **CIT Group Inc.** on Jan. 17 for **Wachovia Capital Finance.**

Martini, U.S. trustee for the region encompassing Connecticut, New York and Vermont from November 2003 to April 2006, had been a senior restructuring adviser and managing director in CIT's commercial finance and national restructuring groups.

As a Wachovia managing director based in New York, she will focus on business development in restructuring in the Northeast. Wachovia Capital Finance provides debtor-in-possession and exit financing. It also funds debt restructurings, buyouts and dividend recapitalizations.

In other firm news, Wachovia Securities hired **Jeremiah Keefe** as head of distressed debt in its fixed-income division. In the newly created role, New York-based Keefe will supervise a team managing Wachovia's positions in distressed debt.

Keefe formerly was director of distressed research in the global distressed trading group of **Deutsche Bank AG.**

AlixPartners has added two new managing directors.

Carl Lane joins the turnaround and restructuring services practice in Chicago. He has 16 years' experience as a financial consultant, advising distressed companies, creditors and shareholders. He has helped management develop restructuring plans, analyzed capital restructurings and prepared financial projections and business plans.

Lane previously was a principal at **Deloitte Financial Advisory Services LLP**, where he advised **Bally Total Fitness Corp.** and **Federal-Mogul Corp.**, among others.

Jeffrey Johnston comes to the financial advisory services practice in Southfield, Mich., from **Conway MacKenzie & Dunleavy**, where he specialized in insolvency and reorga-

nization, forensic accounting and litigation support.

Johnston has served as crisis manager, chief restructuring officer, receiver and expert witness and provided financial advice to debtors, senior lenders and creditors' committees both in and out of bankruptcy court.

Consulting firm **Conway MacKenzie & Dunleavy**, meanwhile, has opened a New York office. Newly hired **Michael S. Corraera** and **Christopher C. Alberta** will run the branch.

Corraera formerly was a financial adviser and interim manager at **Glass & Associates Inc.** He represented creditors and worked in commercial banking during an earlier stint at **CIT Group/Business Credit Inc.**

Alberta's work as a turnaround manager and restructuring adviser includes stops at **Huron Consulting Group Inc.**, where he helped found its restructuring practice, and **Arthur Andersen.** He has aided management, secured lenders and unsecured creditors in the development and implementation of operational and financial restructuring strategies.

Neal L. Wolf has shifted to **Katten Muchin Rosenman LLP** from **Dewey & LeBoeuf LLP.**

The Chicago-based bankruptcy and creditors' rights attorney has represented debtors including **Ha-lo Industries Inc.**, unsecured creditors' committees for **Stone & Webster Inc.** and **Mego Financial Corp.** and secured creditors **Bank of America Corp.**, **Citicorp North America Inc.** and **GE Capital Corp.**

Mark Jacobs rejoined **Pryor Cashman LLP** on Jan. 1.

The attorney previously worked at **Jacobs Partners LLC**, which he founded in 1995, and is a principal at alternative investment manager **Arrowhead Capital Management LLC.** His first stint at what was then **Pryor, Cashman, Sherman & Flynn** lasted from 1987 to 1991.

Montgomery, McCracken, Walker & Rhoads LLP announced **Joseph O'Neil Jr.** is now of counsel and a member of the bankruptcy and reorganization practice.

He previously was a partner at **Reed Smith LLP**, where he represented creditors in the **Allied Systems Holdings Inc.**, **Enron Corp.** and **Worldcom Inc.** cases and was debtor counsel for greeting card distributor **VWE Group Inc.**

Alvarez & Marsal Holdings LLC has turned its attention to the next problem area in real estate.

In December the consulting firm launched an interdisciplinary group to aid homebuilders. Now A&M affiliate **Alvarez & Marsal Real Estate Advisory Services LLC** has formed a team to advise commercial real estate developers, owners of office, retail and apartment buildings and their lenders.

Managing directors **Jerry Pietforte**, **Bruce Gamble** and **Greg Gotthardt** lead the group, which also has restructuring, dispute analysis, performance improvement, transactional and forensic experience.

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The bankruptcy of U.S. Virgin Islands businessman Jeffrey Prosser and **Innovative Communication Corp.** has been a contentious affair. The depth of the acrimony was revealed during a Jan. 25 examination in St. Croix when Prosser pleaded the Fifth Amendment more than 750 times in refusing to answer questions, a transcript shows.

The debtor's counsel said at the outset that Prosser would not answer any questions, some as seemingly benign as the age of his children and whether he or his wife had ever played pool on the \$15,000 table in one of his homes. Rather than repeatedly explain that he would decline to answer pursuant to his Constitutionally guaranteed rights, Prosser responded "same" to each question.

A word count turned up 773 hits, although some matches appeared in questions or in the normal course of speech.

—Chris Nolter

Administrators for a London sports bar chain threw in everything but the kitchen sink when they cited reasons why **Sports Café Holdings plc** went into administration on Jan. 11.

Case administrators Bruce Mackay and Alan Lovett of **Baker Tilly Restructuring and Recovery LLP** in London cited bad weather, a gloomy financial forecast, London's recent smoking ban and even England and Scotland's inability to qualify for the European soccer championships.

But in reality, the chain was put into administration after banks refused to provide rescue funds following a bad Christmas season. British sports fans need not worry, however. Several Sports Café locations have closed, but **Agilo**, a London firm specializing in distressed companies, acquired five others. Sports fans won't have to travel to Dublin for a pint and soccer shenanigans.

—Mike Schoeck

One of the novel issues surrounding the contentious bankruptcy of liquidating **Mayco Plastics Inc.** involves customer **TRW Automotive US LLC's** attempt to set off its participation in the Sterling Heights, Mich., auto parts maker's debtor-in-possession financing against the debt TRW owes the company for prepetition services.

One source with knowledge of the proceedings says that "there's really no case law out there" that specifies whether or not a customer can "build up a big fund of obligations" to a debtor, fund the Chapter 11 case and then "set one [claim] off against the other."

The issue will be heard at a key status conference on

Feb. 22 in the U.S. Bankruptcy Court for the Eastern District of Michigan. "It was a nice strategy," the source says. "We'll see if it works."

—Ben Fidler

The Chapter 7 liquidation filing of the Austin Wranglers franchise of the **Arena Football League** is sure to bring out an interesting crowd come auction day.

Assets listed in the Texas team's petition include two mascot costumes with eyes that light up, a hand-held super cannon and a sports sumo wrestling kit, in addition to more common football equipment such as practice pads, cameras used for scouting and goalposts.

Former NFL great Deion Sanders, a part-owner of the Austin franchise, will no doubt be following the liquidation closely. The petition, filed on Jan. 23 in the U.S. Bankruptcy Court for the Western District of Texas in Austin, listed Sanders, whose nickname is "Prime Time," as an unsecured creditor, owed a \$5,000 retainer.

—John Blakeley

Deirdre Martini created waves when she initiated a rare public spat in 2006 with a judge in the U.S. Bankruptcy Court for the Southern District of New York in Manhattan while she was an U.S. trustee. Shortly after that confrontation, Martini opted for a career change and became a senior restructuring adviser at **CIT Group Inc.** in July 2006. Eighteen months later, Martini jumped ship again to become a managing director at **Wachovia Capital Finance.**

Martini was the trustee in such big Chapter 11 petitions as **Delta Air Lines Inc.** and **Dana Corp.** but is best known for challenging Judge Robert Drain's authority in the bankruptcy filing of **Refco Inc.**

In that case, Martini refused to drop her aggressive push for a Chapter 11 trustee even after Drain denied her initial motion.

She later accused Drain of overstepping his legal authority and thus undercutting hers. Drain won the tussle, however, and Refco settled for an examiner.

—Terry Brennan

ZOMBIE WATCH: It has been four years since **Tekni-Plex Inc.** last appeared in this space, and its troubles don't seem to have improved much.

In December, the Somerville, N.J.-based packaging products maker defaulted on 12.75% senior subordinated notes when it failed to make a \$20.5 million interest payment. Tekni-Plex has entered a forbearance agreement with its lenders that runs through Feb. 14. ■

—Shanon D. Murray

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New plan for Congoleum

Congoleum Corp. may once again be moving toward an exit from Chapter 11 after more than four years.

On Jan. 25 the legal representative for the flooring maker's future asbestos claimants filed a revised reorganization plan and disclosure statement. If Judge Kathryn C. Ferguson of the U.S. Bankruptcy Court for the District of New Jersey in Trenton confirmed the plan, it would permit Congoleum to exit Chapter 11 free of liability for existing or future asbestos claims as early as this year, the debtor says.

A disclosure statement hearing is set for Feb. 14.

Under the terms of the amended plan, a trust would be created to assume Congoleum's asbestos liabilities. The trust would receive the proceeds of various settlements Congoleum has reached with a number of insurance carriers and would be assigned Congoleum's rights under its remaining policies covering asbestos product liability. The trust would also receive 50.1% of the new common stock in reorganized Congoleum when the plan takes effect.

Meanwhile, holders of Congoleum's \$100 million in 8.625% senior notes due in August would receive \$80 million in new 9.75% senior secured notes that would mature five years from issuance. In addition, the noteholders, which are also owed accrued interest amounting to about \$44.6 million, would receive the remainder of new shares.

Existing shareholders, including 55% owner **American Biltrite Inc.**, would see their stock canceled and wouldn't receive a recovery.

The Mercerville, N.J., debtor says it expects American Biltrite to continue providing management services to reorganized Congoleum.

"While I am disappointed that the current plan does not provide the recoveries for bondholders and shareholders that we had sought in earlier plans, it reflects the economic reality of what can be done and the hierarchy of recoveries under the bankruptcy code," Congoleum chairman Roger S. Marcus said in a statement.

"The reorganization, with all its attendant litigation, has been tremendously expensive, and we look forward to Congoleum emerging from bankruptcy a healthy entity," continued Marcus, also president and chief operating officer of American Biltrite.

Congoleum said it believes the plan will receive the support of the bondholders' committee and the asbestos claimants' committee.

The revised plan comes eight months after Judge Nicholas J. Stroumtsos Jr. of the Superior Court of New Jersey threw out a crucial agreement included in the flooring maker's prepackaged reorganization plan. He ruled in May that Congoleum's insurers aren't liable to pay certain asbestos claimants about \$465.6 million.

Stroumtsos' decision followed a February 2007 ruling from Ferguson that reorganization plans from both the debtor and insurance group **CNA Financial Corp.** were unconfirmable in parts. ■

—Shanon D. Murray



BANKRUPTCY CALENDAR

(Upcoming hearings of note)

2/4/08

Pascack Valley Hospital Association Inc.

U.S. Bankruptcy Court for the District of New Jersey, Newark

Auction of assets

Debtor counsel: *Sills Cummis Epstein & Gross PC*

Asarco LLC

U.S. Bankruptcy Court for the Southern District of Texas, Corpus Christi

Hearing to consider appointment of examiner

Debtor counsel: *Baker Botts LLP*

USA Investors VI LLC

U.S. Bankruptcy Court for the District of Nevada, Las Vegas

Confirmation hearing

Trustee counsel: *Gordon & Silver Ltd.*

2/5/08

Movie Gallery Inc.

U.S. Bankruptcy Court for the Eastern District of Virginia, Richmond

Disclosure statement hearing

Debtor counsel: *Kirkland & Ellis LLP*

Pope & Talbot Inc.

U.S. Bankruptcy Court for the District of Delaware, Wilmington

Auction of pulp business

Debtor counsel: *Pachulski Stang Ziehl & Jones LLP*

2/7/08

Fedders Corp.

U.S. Bankruptcy Court for the District of Delaware, Wilmington

Sale hearing for Fedders Addison Co. unit

Debtor counsel: *Saul Ewing LLP*

New York Racing Association Inc.

U.S. Bankruptcy Court for the Southern District of New York, Manhattan

Confirmation hearing

Debtor counsel: *Weil, Gotshal & Manges LLP*

First Magnus Financial Corp.

U.S. Bankruptcy Court for the District of Arizona, Tucson

Confirmation hearing

Debtor counsel: *Greenberg Traurig LLP*

MORE CALENDAR ENTRIES ARE AVAILABLE ON
WWW.BANKRUPTCYINSIDER.COM. DATES ARE SUBJECT TO CHANGE.

Tousa topples into bankruptcy

Tousa Inc. on Jan. 29 became the largest homebuilder to seek Chapter 11 protection amid the recent housing downturn. It's unclear, however, whether that size will ultimately prove to be a disadvantage in a planned deleveraging.

Hollywood, Fla.-based Tousa already has filed a term sheet for a proposed debt-for-equity swap with the U.S. Bankruptcy Court for the Southern District of Florida in Fort Lauderdale. In exchange for their claims, holders of \$550 million in senior bonds who voted in favor of the plan would receive "substantially all" of reorganized Tousa's common stock. More than half the group already has approved the swap.

Tousa would refinance \$515.43 million in first-lien bank debt with a debtor-in-possession loan expanded from a present \$134.57 million to as much as \$650 million.

Meanwhile, about \$317.1 million in second-lien bank debt would remain in place, while unsecured creditors would receive a pro-rata share of the company's new common stock.

The unsecureds, along with subordinated noteholders, would also be eligible to receive proceeds from a litigation trust to be established under the plan.

All Tousa preferred and common stock would be wiped out.

The homebuilder would fund its reorganization through the DIP as well as a potential capital infusion of up to \$200 million and an exit loan large enough to take out the DIP, pay administrative and priority claims and supply working capital.

Senior noteholders would have the first opportunity to backstop the \$200 million investment, the term sheet says.

Tousa on Jan. 30 sought interim approval of the DIP from Judge John K. Olson of the Fort Lauderdale court. Olson entered an interim order a day later.

The loan from **Citigroup Global Markets Inc.** is priced at a base rate plus 425 basis points or the Eurodollar rate plus 525 basis points, documents show.

Several roadblocks could lie ahead

for Tousa, including the syndication of the larger Citigroup DIP.

"The company has a bunch of collateral value, so it's doable. We've seen big DIPs get syndicated depending on collateral, and Tousa has some primo real estate," says a credit market source who is not involved in Tousa's bankruptcy.

dent Tommy L. McAden warns in an affidavit that if conditions in the "deeply distressed" homebuilding industry further deteriorate, senior noteholders or other creditor constituencies could back out of the plan.

Tousa, which operates primarily in the Florida, Texas, mid-Atlantic and West Coast markets, has \$2.28 billion in assets, making it by far the largest home-

Summit targets \$56.7M asset sale

Summit Global Logistics Inc., until December chaired by onetime presidential candidate and former NATO commander Wesley K. Clark, filed for Chapter 11 on Jan. 30 to complete a planned sale.

The East Rutherford, N.J., provider of logistics services has agreed to sell most of its business to **TriDec Acquisition Co.** for \$56.7 million in debt plus assumed liabilities.

TriDec has agreed to pay off \$51.7 million in prepetition debt and a \$5 million debtor-in-possession loan from a lending group led by an affiliate of prepetition lender **Fortress Credit Corp.** The transaction does not include the stock or assets of debtor affiliates AmeRussia Shipping Co. and AMR Investments Inc.

TriDec would be owned by Summit founders, senior management and senior secured lenders. A statement from the company indicated that the managers would provide new capital.

In addition, court documents reveal that **Ableco Finance LLC** and **Plainfield Direct LLC**, which are both participating in the DIP, would be granted warrants worth a penny per share. If all of the warrants were exercised, Ableco and Plainfield would own 30% of the purchaser.

Drawbridge Special Opportunities Fund LP also is involved in the DIP loan, which is priced at LIBOR plus 675 basis points.

The TriDec offer is subject to an auction to be carried out under Section 363 of the Bankruptcy Code.

Bidding procedures filed with the U.S. Bankruptcy Court for the District of New Jersey in Newark call for competing bids to start at \$2.05 million over the TriDec offer. Summit has targeted an auction sometime in March.

Summit said in a Securities and Exchange Commission filing it had failed to comply with covenants on its senior loan and convertible notes. Court filings show it has marketed its assets for several months but found that no one was willing to pay enough to erase the company's secured debt. Fortress then agreed to finance the TriDec buyout. ■

—Ben Fidler

"I haven't seen what their financials look like, but it could be done," the source says.

Still, the term sheet also requires Tousa to meet deadlines including filing a plan acceptable to its senior noteholders by March 29. The plan's disclosure statement must be approved by May 28 and confirmed by July 27.

Finally, Tousa executive vice presi-

builder to seek court protection amid the recent housing downturn, according to www.BankruptcyInsider.com.

Levitt and Sons LLC (\$411 million in assets), **Neumann Homes Inc.** (\$291.8 million) and **Dunmore Homes Inc.** (\$280.6 million) all entered Chapter 11 in November. **Kara Homes Inc.** (\$350.2 million) filed in October 2006. ■

—John Blakeley

American LaFrance sounds alarm

The aftermath of a 2005 sale, litigation, a depressed emergency vehicle industry and new fuel-emission standards have combined to send **American LaFrance LLC** into bankruptcy court.

The Summerville, S.C., maker of rescue vehicles filed for Chapter 11 on Jan. 28 in the U.S. Bankruptcy Court for the District of Delaware in Wilmington.

On Jan. 30, a day after the hearing on first-day motions, Judge Brendan Linehan Shannon entered an order approving interim access to cash collateral and \$10 million of a debtor-in-possession loan. A final hearing on cash collateral and the \$50 million DIP from prepetition lender Patriarch Partners Agency Services LLC is set for Feb. 21.

Patriarch Partners, an affiliate of ALF owner **Patriarch Partners LLC** owed more than \$150 million, is providing the DIP with pricing at LIBOR plus 800 basis points. If the debtor defaulted on the loan, the price would increase another 200 basis points.

Patriarch Partners is the only se-

cured lender, says debtor counsel Christopher Ward of **Klehr, Harrison, Harvey, Branzburg & Ellers LLP**.

ALF will most likely try to sell itself through a Section 363 auction, Ward says.

But in a Jan. 29 statement, ALF said it planned to file a reorganization plan and disclosure statement in the next few days, with a targeted exit by late March. ALF called a sale a backup plan.

In 2005, Patriarch Partners formed ALF to buy the American LaFrance unit of DaimlerChrysler AG's Freightliner LLC, meaning it could no longer stay on the Freightliner accounting and other systems.

ALF created its own enterprise resource planning, or ERP, system to handle functions such as accounting, inventory, payroll and manufacturing process services.

But the changeover profoundly hurt ALF, which makes customized firefighting and fire rescue vehicles, ambulances

and heavy-duty work refuse vehicles.

"ALF recognized serious deficiencies with the [new ERP] system that had a crippling impact on ALF's operations," court papers say.

As a result of the problems, ALF was unable to complete the assembly of preordered vehicles.

ALF also had to move its headquarters from Ladson, S.C., to Summerville, even though construction of the new facility wasn't complete, meaning that production had to be stopped temporarily.

ALF, which was founded in 1832, is one of the oldest fire apparatus manufacturers in the U.S.

Its customers are cities and municipalities, including Houston, Los Angeles, New York, Phoenix and San Francisco. ALF has vehicle dealerships in Los Angeles and Portland, Ore., as well as a distribution network of more than 150 third-party dealers in the U.S., Australia, Canada and Mexico.

ALF had \$195 million in sales and posted a net loss of \$56 million in 2007, court papers show. ■ —*Jamie Mason*

Crescent returns to Ch. 11

A year and a half after emerging from bankruptcy, Crescent Jewelers Inc. is back, courtesy of its new owners.

Crescent, which jewelry retailer **Friedman's Inc.** and **Harbinger Capital Partners Master Fund I Ltd.** acquired out of bankruptcy in July 2006, submitted a Chapter 11 petition on Jan. 28 in the U.S. Bankruptcy Court for the District of Delaware in Wilmington.

The petition was filed the same day Friedman's received approval to convert its proceedings from an involuntary Chapter 7 to a voluntary Chapter 11 case. The chain, in its second bankruptcy since 2005—it emerged that December under the control of Harbinger—scrambled to approve two debtor-in-possession loans.

Even though it had been only six days since a group of creditors owed roughly \$9 million pushed Friedman's into bankruptcy on Jan. 22, its liquidity problems have had it searching for DIP financing since December, resulting in a unique "dual-tier" DIP package with senior and junior facilities, filings show.

The senior DIP is a \$75 million revolver from prepetition senior lender (and former exit lender) **CIT Group/Business Credit Inc.** priced at either prime plus 175 basis points or LIBOR plus 375 basis points. The loan matures on the earlier of 180 days and the effective date of a reor-

ganization plan.

The junior DIP is a \$17.2 million "multiple-draw term loan" from majority equity holder and second-lien lender Harbinger and is priced at a fixed 11%. The DIP puts Friedman's on the fast track for what could be a sale, as the loan matures on the earlier of Feb. 29 and the closing of a Section 363 sale. Harbinger reportedly may bid for the chain.

Judge Christopher S. Sontchi approved interim access to both DIPs on Jan. 29. A final hearing is set for Feb. 13.

The senior DIP will help Friedman's pay off the \$57.97 million in prepetition senior debt owed to CIT, thus "partially refinancing and replacing" the loan. Both DIPs will finance the purchase of inventory, advertising expenses and other general purposes.

Friedman's says it needs the DIP because without the new money it would not be able to fund operations or buy new inventory for the important Valentine's Day period.

Upon exiting bankruptcy in 2006, Crescent became a subsidiary of Friedman's. The parent operates 388 Friedman's stores in 19 states and 85 Crescent outlets in another three states. Court papers show that after Friedman's emerged, Harbinger sold 29.4% of its stake to six buyers.

Things changed dramatically for Friedman's and Crescent in the past year, with sales falling short of expectations, causing the debtor's infrastructure and expenses to become disproportionate to its revenue. ■ —*Ben Fidler*

Dura can tap new DIP funding

Dura Automotive Systems Inc. has made another move to remedy its finances, securing a \$170 million replacement debtor-in-possession term loan from **Cerberus Capital Management LP** affiliate Ableco Finance LLC.

Even after a one-month extension, Dura's existing \$300 million DIP

with **GE Capital Corp.**, **Goldman Sachs Credit Partners LP** and **Barclays Capital** had been set to mature on Jan. 31, and the debtor had been bound to find a replacement loan. But according to papers filed with the U.S. Bankruptcy Court for the District of Delaware in Wilmington, the lenders

and Dura have agreed to push back the maturity on the DIP's revolver to July 31.

Dura will use about \$104.5 million of the Ableco term loan to take out the original term loan of \$150 million. The debtor will use another \$45 million to pay down a portion of the old DIP's \$130 million revolver and pay the fees associated with both the replacement DIP and amendments to the revolver. The remaining \$20 million in new funding will be in the form of a synthetic letter of credit facility, filings show.

The existing revolver, with a new credit limit of \$90 million, carries altered pricing and financial covenants.

Judge Kevin Carey of the Delaware court on Jan. 29 approved the replacement DIP on an interim basis. A final hearing is set for Feb. 21.

Dura says in documents that it needed the maturity of its original DIP to be pushed back until at least the end of June so that it could develop, negotiate and confirm a new Chapter 11 plan. If the revolver had not been paid down immediately, Dura would have exhausted its revolver's borrowing capacity "as early as" the first week of February.

Dura has been scrambling for cash ever since it ran into trouble syndicating its \$425 million exit loan in a constricted credit market. The syndication problems repeatedly delayed a planned confirmation hearing.

The Ableco DIP includes a \$1.27 million commitment fee and a \$1.27 million closing fee. The loan is priced at either reference rate plus 700 basis points or at the 30, 60 or 90-day LIBOR plus 1,000 basis points. In either case, 300 basis points per annum will be paid-in-kind.

The interest rates on the original loan were far cheaper, with the revolver priced at either a base rate plus 75 basis points or reserve-adjusted LIBOR plus 175 basis points. The rates on the term loan, meanwhile, carried an additional 75 basis points.

Rochester Hills, Mich.-based Dura filed for Chapter 11 on Oct. 30, 2006. ■

—Ben Fidler

IBC moves toward confirmation

Interstate Bakeries Corp. is finally close to resolving its case after more than three years.

Judge Jerry W. Venters of the U.S. Bankruptcy Court for the Western District of Missouri in Kansas City on Jan. 29 approved the disclosure statement for the maker of Twinkies and Wonder Bread. IBC had filed an amended reorganization plan on Jan. 25.

The lone stumbling block that remains is the need to reach a new contract with the International Brotherhood of Teamsters. IBC's \$400 million in exit financing from **Silver Point Finance LLC**, approved by Venters on Nov. 7, is contingent on an agreement with the IBT.

Both the union and **Yucaipa Cos. LLC**, which considered filing a plan together, objected to IBC's reorganization proposal. The parties alleged in separate objections that the lack of an agreement with the IBT rendered IBC's plan unconfirmable.

Under the proposal, administrative, secured tax, secured, priority, workers' compensation and general unsecured claims would be paid in full.

Prepetition lenders, owed more than \$450 million, would also be paid in full through a pro-rata share of junior secured notes, new convertible notes and Class A common stock.

Through a rights offering, shares would be offered at \$10.50 per share. The first \$17.5 million in proceeds from the rights offering would be distributed to prepetition lenders, reducing the amount of stock they otherwise would receive.

IBC plans to consolidate its case with those of its subsidiaries, enabling the debtor to pay all claims out of one estate.

Consolidated claims for the benefit pension plan, which total \$18.77 million, would receive a recovery of 29.1% to 70.5%, based on whether the cases are consolidated.

Old convertible note claims of \$100.9 million similarly would receive a 29.1% to 54% recovery, and **First Union Commercial Corp.** (\$78,380) and **GE Commercial Finance Business Property Corp.** claims (\$6.13 million) would receive between a 29.1% to 31.5% recovery. **3V Capital Master Fund Ltd.** now holds both the GE and First Union claims.

Other unsecured claims of \$193.87 million would get a 12% to 29.1% recovery.

All the creditor classes where the recovery would depend on consolidation would get a pro-rata share of Class B common stock, the option to purchase shares in the rights offering and a pro-rata share of any recoveries from a creditors' trust.

Shareholders would be wiped out.

A confirmation hearing is set for March 12. Kansas City, Mo.-based IBC filed for Chapter 11 on Sept. 22, 2004. ■

—Jamie Mason

Battle nears for Palco

The bankruptcy judge for **Pacific Lumber Co.** had better start reading.

The Scotia, Calif., timber company filed a second reorganization plan on Jan. 30, the deadline for plan submission in the case. In addition, indenture trustee **Bank of New York Trust Co. NA** and postpetition lender **Marathon Structured Finance Fund LP** each filed a plan.

The official committee of unsecured creditors had the right to file a plan but did not do so. In a statement filed with the U.S. Bankruptcy Court for the Southern District of Texas in Corpus Christi, the committee reserved the right to "support, join or become co-proponent" of any of the three plans.

Judge Richard S. Schmidt on Jan. 4 had terminated Palco's exclusive right to file a plan solely for BNY, Marathon and the committee. He is slated to consider the disclosure statements for the plans on Feb. 28.

Palco's plan calls for the sale of the company's redwood groves, which the debtor values at roughly \$300 million, and the creation of a 22,000-acre forest preservation project that would net the company about \$250 million. Palco would retain more than 180,000 acres of commercial timberlands with an estimated value of \$850 million.

Affiliate Scotia Pacific Co. LLC would become a separate reorganized company.

Scopac secured noteholders, owed some \$713.8 million plus \$36.2 million for a line of credit, would receive new Scopac preferred stock valued at up to \$375 million, 49% of Scopac common stock and \$225 million in 10-year notes.

Marathon, among other consideration, would receive the title to the Palco-owned town of Scotia, Calif., certain mill sites and a share of the new common Palco stock.

Unsecured creditors would be paid in full over 11 years.

Under Marathon's plan, proposed with **Mendocino Redwood Co. LLC**, Marathon would inject \$225 million in cash and convert \$135 million in debt into equity. The noteholders would receive \$175 million in cash plus \$325 million in new secured notes, and trade creditors would recover 75% in cash.

Finally, BNY, the trustee for the \$713 million in notes, contemplates selling all of Scopac's assets through one or more bankruptcy auctions. Scopac owns an interest in about 210,000 acres of Palco timberlands, which serve as collateral for the notes. ■

—John Blakeley

USAIP cases progress

Two companies tied to **USA Investment Partners LP** continue their push toward giving creditors a recovery.

USAIP unit USA Investors VI LLC is set for a Feb. 4 confirmation hearing in the U.S. Bankruptcy Court for the District of Nevada in Las Vegas.

Chapter 11 trustee Lisa Poulin filed the plan; Poulin is also the trustee for real estate holding company USAIP and affiliate Tree Moss Partners LLC. On Jan. 28, Judge Linda B. Riegler of the Las Vegas court cleared her to be trustee of yet another affiliate, Capital Land Investors LLC. Riegler oversees all the Chapter 11 proceedings.

USA Investors would distribute the funds from the liquidation of its assets. The Las Vegas company sold its most valuable asset, the Hotel Zoso in Palm Springs, Calif., to an affiliate of **American Property Hospitality Management LLC** in October for \$25.12 million.

Under the plan, a \$19.14 million secured claim owed to the USA Commercial Mortgage Trust would be paid in full. USA Commercial Mortgage Co., a commercial real estate mortgage lender, filed for Chapter 11 on April 13, 2006, and had its liquidation plan confirmed in March

New DIP pushes Denver Radio to sale

With a commitment for a new debtor-in-possession loan in hand, **Denver Radio Co. LLC** has changed tactics in its Chapter 11 case.

The Aurora, Colo., owner of two Colorado radio stations originally planned to prime prepetition lender **Guggenheim Corporate Funding LLC** with a \$5 million DIP from **Full Circle Funding LP**. With the loan, DRC had argued it would be able to eventually propose a reorganization plan that would pay all creditors in full.

Guggenheim, however, asserted in court papers that such a strategy was a "pipe dream" and that it had been rebuffed in its attempts to provide financing.

Judge Michael E. Romero of the U.S. Bankruptcy Court for the District of Colorado in Denver on Jan. 28 approved interim access to \$335,000 of the Full Circle DIP. But court documents show Guggenheim and majority shareholder **Nogales Investors Management LLC** have agreed to replace the DIP with a \$27.6 million postpetition loan.

The new DIP consists of a \$27.1 million term loan from Guggenheim and a \$500,000 cash equity contribution that must be made by Nogales by April 30. Under the financing, slated to be considered on Feb. 25, DRC must close a sale that repays the loan by April 30, 2009. The DIP is priced at LIBOR plus 775 basis points. ■

—B.F.

2007. It had common ownership with USAIP.

General unsecured creditors, due an estimated \$27.1 million, would receive a pro-rata share of the funds remaining after all higher-priority creditors were paid in full. The disclosure statement estimates that unsecureds would recover between 1% and 30% on their claims.

Equity holders would be wiped out.

Capital Land, meanwhile, is scrambling to sell its sole asset, 695 acres of undeveloped land in Perris, Calif., by March 4, when a stipulation would give creditor **Compass FP Corp.** the right to foreclose on the land. ■

—Ben Fidler and Terry Brennan

Wound tight

Propex must stick to a timetable or a planned reorganization could unravel

Pressure and debtor-in-possession lending are inextricably linked. A company seeking a DIP loan is under pressure to pay it off and not default, and often that loan will in effect push a debtor along—or, in a worst-case scenario, crush it under the weight of expectation.

Struggling textiles maker **Propex Inc.** would certainly be classified as feeling the heat of a postpetition financing package, if only because it is already on the clock to reorganize through a series of milestones that uncommonly map out the eventual filing of a reorganization plan.

Propex is one of a multitude of companies in the textiles industry to go bust in the past year, following the likes of **Joan Fabrics Corp.**, **Hancock Fabrics Inc.** and **Quaker Fabric Corp.**, to name a few.

But there is a key difference between the likes of Joan and Quaker and Propex, which filed its Chapter 11 petition on Jan. 18 with the U.S. Bankruptcy Court for the Eastern District of Tennessee in Chattanooga—Propex plans on propelling itself out of court protection as a reorganized entity. Quaker and Joan, meanwhile, have all sold their assets to nationally recognized liquidators such as **Gordon Brothers Group LLC**.

Indeed, as Propex spokesman Mac Bridger said in mid-January, the restructuring is planned to be purely financial and is intended “to right-size the balance sheet.” The bankruptcy was triggered not only as a result of difficult market conditions that made refinancing Propex’s debt a trying affair, but a capital structure that was laden with debt because of acquisitions Propex made over the years.

Perhaps that’s why Propex has locked itself into a \$60 million DIP led by senior lender **BNP Securities Corp.** and including hedge fund **Black Diamond Commercial Finance LLC** that contains an interesting milestone scheme linked to a reorganization.

That a DIP would have some kind of milestone track to it is not uncommon, but what makes this case somewhat unique is that the strategy usually is geared toward a sale.

In the same week as Propex filed, for example, furniture maker **Domain Inc.** submitted a Chapter 11 petition with a \$6 million DIP. That DIP has a milestone scheme

Company name: Propex Inc.

Commitment: \$60 million revolver

Lender: BNP Securities Corp., BNP Paribas SA, Black Diamond Commercial Finance LLC

Pricing: Either base rate—the higher of prime and 50 basis points over the federal funds effective rate—plus 400 basis points or reserve-adjusted LIBOR plus 400 basis points

Term: Matures in one year or on confirmation of a reorganization plan, whichever comes first

Fees:

- 2% closing fee
- 2% prepayment fee upon voluntarily termination
- 0.75% unused commitment fee on unused portion of DIP

by which Domain must have a stalking-horse bid by Feb. 6 that pays off its senior lender in full and must have a sale approved and closed three days later.

Avado Brands Inc. boasted one of the most expensive DIPs of 2007, and its lender, **DDJ Capital Management LLC**, provided a commitment of just 90 days.

Such scenarios leave a debtor with little wiggle room and amp up the pressure to pay off debt quickly—not just because of the high fees but because of the looming cutoff of funding.

Propex’s situation, however, is an interesting twist on the milestone strategy. The DIP motion stipulates an event of default would be triggered unless Propex delivers a five-year business plan and accompanying projections within six months; a proposed reorganization plan within eight months; and a reorganization plan within nine months.

The pressurized track could perhaps be attributed to the presence of Black Diamond, a DIP lender to bankrupt companies in the past such as ladder maker **Werner Co.** and most recently car hauler **Performance Transportation Services Inc.**, according to www.bankruptcyinsider.com.

In the first objection lodged to the DIP, a group of Propex noteholders revealed that Black Diamond now holds a “significant portion” of Propex’s prepetition secured debt and “likely” has a “degree of influence” over the company’s workout discussions because of its recent purchases of that debt.

The noteholder group—which holds about \$80 million of Propex’s 10% senior notes—was wary of certain “burdensome terms” in the original interim order that the group felt shouldn’t be considered binding until reviewed at a final hearing.

Further, the group believes that \$20 million of the DIP is earmarked simply toward paying off the interest outstanding on Propex’s \$230 million in senior secured debt.

Indeed, since the DIP doesn’t refinance Propex’s prepetition debt, it’s going to have to be bullish on a reorganization—perhaps why it was so agreeable to institute a timetable for filing a plan. ■

—Ben Fidler

Okun battles 'indentured servitude'

The founder of **1031 Tax Group LLC** says he has gotten a raw deal.

In court papers filed Jan. 30 with the U.S. Bankruptcy Court for the Southern District of New York in Manhattan, Edward H. Okun contends Chapter 11 trustee Gerard A. McHale Jr. "so materially breached" an agreement that handed over most of Okun's assets that he's now in danger of living in what he calls "indentured servitude."

Okun argues he therefore should be relieved from having to turn over additional assets.

According to the agreement that Judge Martin Glenn approved in October, Okun and his wife, Simone Bolani, were to turn over essentially all of their current and future assets until \$150 million had been paid to creditors with interest. The surrendered assets include a Lear jet and a 132-foot yacht.

Okun says, however, that he and his wife were allowed to retain two homes, one in Florida and the other in New Hampshire, as well as two cars. A living expenses budget was also to be provided for them and their child after negotiations.

Additionally, Okun says McHale and the creditors of real estate investment firm 1031 TG agreed to enjoin a separate creditor, **Newton Bayard LP**, which wanted the two homes and two cars.

Okun contends that without an in-

junction against Newton, which itself has a Massachusetts injunction blocking him from disposing of his assets, he essentially would be prevented from defending himself, because he would not have the financial resources to do so.

Without access to any sale proceeds, necessary for legal fees, he would have to turn over his family's housing and transportation and "effectively [enter] indentured servitude for the rest of our lives with no house or living budget."

Okun also says the agreement was to provide him with a channeling injunction in which any creditor would be limited to the assets he had agreed to turn over to 1031 TG's creditors and would be barred from seeking additionally repayment from Okun personally.

Okun, however, accuses 1031 TG of not making a good-faith attempt to enjoin the Massachusetts court action and says the debtor never presented a plan for the channelling injunction.

McHale, meanwhile, has already begun soliciting bids for various surrendered assets. ■ —*Shanon D. Murray*

Class action targets Levitt Corp.

A bankrupt unit isn't the only problem for **Levitt Corp.** A class action seeks damages for certain shareholders.

According to securities litigation firm **Coughlin Stoia Geller Rudman & Robbins LLP**, which filed the suit on Jan. 25 in the U.S. District Court for the Southern District of Florida, bankrupt Levitt and Sons LLC was "in much worse financial condition than publicly represented" by Levitt between last Jan. 31 and Aug. 14—the period between the announcement of a planned merger with **BFC Financial Corp.** and the abrupt termination of the deal.

Homebuilding unit "Levitt and Sons was saddled with excessive amounts of unneeded and overpriced land which would not be feasible to develop for some time," Coughlin Stoia said in a statement. "Furthermore, Levitt and Sons was struggling to complete projects it had already begun and in many instances was failing to complete construction of [already sold] homes."

The lawsuit acknowledges that Levitt Corp. publicly commented on the difficulties of the U.S. housing market during that time but the statements "failed to advise investors of the true financial condition of the company."

The law firm said the suit will seek to recover damages on behalf of those who purchased Levitt Corp. common stock during the merger period. ■

—*John Blakeley*

Castleton needs more time

The Chapter 7 case of **Castleton Group Inc.** remains hazy, more than a month after the fraud-riddled supplier of office services filed its petition.

Castleton on Jan. 28 sought a second extension to file its schedules with the U.S. Bankruptcy Court for the Eastern District of North Carolina in Raleigh. Liquidating trustee Richard Sparkman says he "won't really know a whole lot about this case until I see what the assets and the debts are. I don't really know yet how we'll dispose of the company's assets because it was a service company with mainly intangible assets. ... I still have so little information."

Sparkman adds that debtor counsel William Brewer Jr. "needs more time to help him segregate claims tied to taxes, payrolls, health benefits and 401(k)s, and that means he

needs more time to separate them."

Castleton is a "very, very, very strange bankruptcy," Sparkman says, in part because there will not be a pool of unsecured creditors' claims.

The Raleigh-based company had outsourced traditional office services and collected payments that were to be passed on to either giant insurer **Cigna Corp.** or the Internal Revenue Service but allegedly failed to properly do so, according to the North Carolina Department of Insurance.

After Castleton lost its state license and an appeal of the decision, it filed for Chapter 7 on Dec. 22 rather than attempt an out-of-court liquidation.

Castleton also faces probes by federal and state agencies.

Some clarity could come on Feb. 21, the first scheduled court date, when president and CEO Suzanne Clifton is due to answer questions about the debtor. ■ —*Terry Brennan*

Bayonne Medical nears sale closing

Bayonne Medical Center appeared to be close to finally sealing a deal with a buyer last week, nearly three months after an initial sale effort fell through.

The final stumbling block was \$41 million in prepetition claims. The U.S. Department of Justice alleged that the Bayonne, N.J., hospital overbilled by that amount in Medicare payments. The two separate 2002 whistle-blower lawsuits that the Justice Department joined on Jan. 24 also named bankrupt **Barnert Hospital** and nonbankrupt **Robert Wood Johnson University Hospital** as defendants for overbilling.

Bayonne Medical and proposed buyer **IJKG LLC** had asserted in court motions that the other party was responsible for the claims, allegedly incurred between Jan. 1, 2000, and Aug. 7, 2003.

The dispute threatened a \$41.6 million sale to IJKG, initially approved on Nov. 8 by Judge Morris Stern of the U.S. Bankruptcy Court for the District of New Jersey in Newark. Judge Thomas Olivieri of the Chancery Division of the New Jersey Superior Court approved the sale Jan. 19.

According to sole practitioner Ed Cienki, M&A counsel for IJKG, a last-ditch settlement among Bayonne, IJKG and the Justice Department would see \$2.5 million in claims plus interest paid off according to a payment schedule.

"We're in the process of filing a

motion to approve the settlement that will spell out all the details," Cienki said Jan. 31.

Stern on Jan. 28 had given the parties until the Jan. 31 scheduled sale closing to work out a deal or the hospital could have been shuttered, debtor counsel Adam Rogoff of **Cooley Goddard Kronish LLP** said Jan. 29.

Cienki declined to comment on the projected additional cost for IJKG because of the payments to the government. The buyer's offer consists of \$100,000 in cash with the balance in assumed debt.

IJKG also relented on an extension to Bayonne's use of cash collateral, and Stern approved the extension Jan. 31.

Urban Suburban Associates LLC, a bid vehicle of **Fortis Property Group**, had bested IJKG in an auction on Oct. 24 and 31 for BMC, agreeing to pay \$22.5 million in cash plus at least \$10.5 million in debt, records show.

Stern approved the deal Nov. 1, but it faltered within days when Fortis failed to make a \$2.25 million deposit.

IJKG then won Bayonne with a revised bid. Stern had rejected IJKG's first offer of \$18.8 million in cash and assumed debt on Sept. 24. ■

—Terry Brennan

TrueStar looks to March 14 sale

Five months into its Chapter 11 case, TrueStar Barnett LLC wants to sell certain oil and gas assets in Texas' Tarrant and Denton counties.

The bankrupt affiliate of Denver oil and gas exploration company **TrueStar Petroleum Corp.** says the assets, which include 34 oil producing wells, have a market value of about \$20 million.

Under the proposed bidding procedures, bids would be due March 10, when TrueStar would select a lead bidder for auction. The company is requesting that competing bids at the auction be \$500,000 greater than the lead bid and that bids increase by at least \$250,000 thereafter.

Judge Stacey G. Jernigan of the U.S. Bankruptcy Court for the Northern District of Texas in Dallas approved the bidding procedures on Jan. 28 with certain modifications, but no order had been entered as of Jan. 31. A sale hearing is set for March 14.

TrueStar Barnett, also known as Trinity Barnett, acquired the oil and gas assets from **Eagle Oil & Gas Co.** in August 2004 for about \$20.6 million, according to the company's Web site.

Meagher Oil & Gas Properties Inc. is brokering the sale, and TrueStar has targeted an April 15 closing date, court records show.

TrueStar Barnett was involuntarily placed in Chapter 11 protection on Aug. 31, 2007, by **Optima Services International Ltd.**, which took the action to stall a planned foreclosure sale.

Later that same day, according to court records, TrueStar Barnett voluntarily filed a petition in the U.S. Bankruptcy Court for the District of Colorado in Denver.

Optima Services said in court documents it filed the bankruptcy in Texas because "the vast majority" of the debtor's assets are based in and served by the district.

A settlement between the debtor and Optima kept the bankruptcy case in the Texas court. ■

—John Blakeley

MAXjet outlines sale of airline

MAXjet Airways Inc. is preparing to fly into the great beyond.

The Dulles, Va.-based all-business-class airline was set Feb. 1 to ask Judge Peter J. Walsh of the U.S. Bankruptcy Court for the District of Delaware in Wilmington to approve bidding procedures for its sale.

MAXjet has not named a stalking-horse bidder but has been meeting with interested parties, it says in court papers. Up for sale are customer lists, operating systems, manuals, aircraft leases, facilities and its certificate of authority.

The airline, which has retained **AirCapital Aviation Services LLC** to market its assets, is hoping to set a Feb. 11 deadline for bids and to hold an auction on Feb. 15.

MAXjet once operated five Boeing 767s. It filed for Chapter 11 on Dec. 24 due to escalating fuel prices, increased competition and macro-economic uncertainty. ■

—Jamie Mason

BANKRUPTCY WARNINGS

- Atlantis Plastics Inc. is the subject of a ratings action by Moody's Investors Service as of Jan. 28
- Jed Oil Inc. is the subject of a going concern warning by Ernst & Young LLP as of Jan. 28
- DataMetrics Corp. is the subject of a going concern warning by Davis Monk & Co. as of Jan. 25
- Fonix Corp. is the subject of a going concern warning by Hansen, Barnett & Maxwell PC as of Jan. 25
- Kimball Hill Inc. is the subject of a going concern warning by Deloitte & Touche LLP as of Jan. 24
- Liberator Medical Supply Inc. is the subject of a going concern warning by Berenfeld Spritzer Shechter & Sheer LLP as of Jan. 24
- Irvine Sensors Corp. is the subject of a going concern warning by Grant Thornton LLP as of Jan. 24
- Acheron Inc. is the subject of a going concern warning by Pritchett Siler & Hardy PC as of Jan. 24
- Ampex Corp. is the subject of a bankruptcy warning by Ampex Corp. as of Jan. 23
- Stargold Mines Inc. is the subject of a going concern warning by SF Partnership LLP as of Jan. 23

SECOND-LIEN DEBT

- Evergreen Tank Solutions Inc. had a second-lien term loan rated B3 by Moody's on Jan. 25
- RadNet Management Inc. had a second-lien term loan rated CCC+ by S&P on Jan. 25
- Securus Technologies Inc. had second-lien senior secured debt rated B- by S&P on Jan. 25
- RadNet Management Inc. had a second-lien term loan rated Caal by Moody's on Jan. 23
- Boston Generating Co. LLC had a second-lien term loan rated B- by S&P on Jan. 9
- Boise Paper Holdings LLC had a second-lien term loan rated B by S&P on Dec. 28
- FirstLight Power Resources Inc. had a second-lien term loan rated B- by S&P on Dec. 28
- Tekni-Plex Inc. had second-lien secured notes rated Caa3 by Moody's on Dec. 21
- Plastech Engineered Products Inc. had a second-lien term loan rated Caa2 by Moody's on Dec. 20
- EaglePicher Corp. had a second-lien term loan rated CCC+ by S&P on Dec. 18

—This data will be updated weekly. For more complete information, please see our database at www.BankruptcyInsider.com.

- Auto parts giant Delphi Corp. announced Jan. 25 that Judge Robert Drain of the U.S. Bankruptcy Court for the Southern District of New York had confirmed its reorganization plan. —Ben Fidler
- Fellow auto parts company Dana Corp. announced Feb. 1 it has emerged from bankruptcy after 23 months. The exit comes a day after energy giant Calpine Corp. completed its own case after 25 months. The new stock of the companies was to begin trading on Feb. 1 and Feb. 5, respectively. —David Elman
- Judge Brendan L. Shannon of the U.S. Bankruptcy Court for the District of Delaware on Jan. 28 approved RG Adding LLC as the stalking-horse bidder for Fedders Addison

Co. RG Adding has offered \$14.4 million for the commercial heating and cooling systems unit and would receive a \$250,000 breakup fee and up to \$100,000 in expense reimbursement if it lost an auction slated for Feb. 6. —John Blakeley

- Judge Martin Glenn of the U.S. Bankruptcy Court for the Southern District of New York on Jan. 24 cleared outsourced sales and consumer management services provider PRC LLC to tap \$10 million of a \$30 million DIP from a group led by affiliates of Royal Bank of Scotland Group plc. —B.F.
- Medical supplies distributor Pharmed Group Holdings Inc. will sell its warehouse and corporate office in Miami to Allplus Computer

Systems Corp. for \$10.82 million. The sale is expected to close by Feb. 8. —Jamie Mason

- Auto parts maker Blackhawk Automotive Plastics Inc. on Jan. 31 received clearance to increase its debtor-in-possession financing from customers International Automotive Components Group North America LLC and General Motors Corp. by \$3.37 million. The increased loan of \$9.49 million allows Blackhawk to cover Section 503(b)(9) claims filed by creditors. —B.F.
- Auto parts maker Champion Parts Inc. is set to liquidate under Chapter 7 after Judge James G. Mixon of the U.S. Bankruptcy Court for the Western District of Arkansas converted the case Jan. 24. —B.F.

Bankruptcy M&A

The average size of breakup fees declined in 2007

Breakup fees: Annual trend*

	'04	'05	'06	'07
No. of deals with breakup fees	25	49	62	40
Volume of deals with breakup fees (\$mill.)	\$6,235.2	20,858.5	2,877.4	3,064.9
Breakup fee volume (\$mill.)	\$168.6	504.9	58.8	57.9
Average breakup fee as % of deal	2.70%	2.42	2.05	1.89

*Stalking-horse deals

Source: www.BankruptcyInsider.com

Inside the numbers

Courting failure

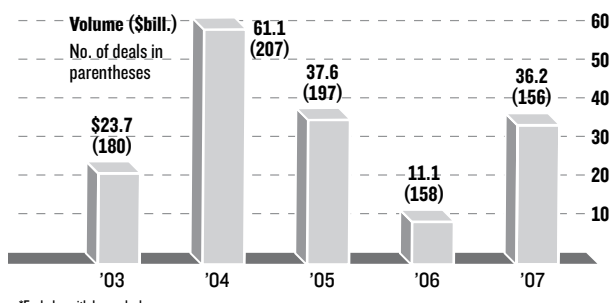
Buyers went bar hopping last year. As a result, the volume of corporate marriages under a bankruptcy court of law shot up 225% to \$36.2 billion compared with 2006.

OAO Rosneft's acquisition of 9.44% of its own shares from insolvent OAO NK Yukos for \$7.6 billion qualified as largest bankruptcy-related M&A deal last year. The pair consummated a second marriage and give birth to the year's second largest deal: Rosneft acquired various assets from Yukos, including East Siberian Oil and Gas Co., OAO Tomskneft VNK, Samaraneftgaz and Arcticgaz, for \$6.82 billion.

Suitors looking to match up with insolvent company assets might be perceived as courting failure, but for many acquirers on the prowl, bankruptcy court was the court of appeals.

—Neil Malcolm

Bar scene Bankruptcy-related M&A volume increased in 2007*



*Excludes withdrawn deals

Source: www.BankruptcyInsider.com

LEAGUE TABLES

Top bankruptcy M&A law firms

By active cases, as of Jan. 31, 2008

Law firm	No. of active cases
1 Skadden, Arps, Slate, Meagher & Flom LLP	21
2 Latham & Watkins LLP	18
3 Jones Day	13
4 Gibson, Dunn & Crutcher LLP	11
Morgan, Lewis & Bockius LLP	11
5 Cooley Godward Kronish LLP	9
Arent Fox PLLC	8
Cleary Gottlieb Steen & Hamilton LLP	8
6 Greenberg Traurig LLP	8
Wilmer Cutler Pickering Hale and Dorr LLP	8

Includes cases in which law firm was hired as M&A counsel to debtor or acquirer

Source: www.BankruptcyInsider.com

Top bankruptcy M&A lawyers

By active assignments, as of Jan. 31, 2008

Lawyer	Law firm	No. of active assignments
1 Timothy R. Pohl	Skadden, Arps, Slate, Meagher & Flom LLP	7
Robert Klyman	Latham & Watkins LLP	7
2 Lindsee P. Granfield	Cleary Gottlieb Steen & Hamilton LLP	6
Neil E. Herman	Morgan, Lewis & Bockius LLP	6
Peter Gilhuly	Latham & Watkins LLP	5
3 Jay R. Indyke	Cooley Godward Kronish LLP	5
Corinne Ball	Jones Day	4
J. Gregory Milmoe	Skadden, Arps, Slate, Meagher & Flom LLP	4
4 Matthew J. Botica	Winston & Strawn LLP	4
Schuyler G. Carroll	Arent Fox PLLC	4

Includes cases in which lawyer was hired as M&A counsel to debtor or acquirer

Source: www.BankruptcyInsider.com

continued from cover

fourth quarter from a year earlier.

Meanwhile, both WCI and **Standard Pacific Corp.** saw ratings agencies downgrade their debt over the past few months.

When the hammer inevitably drops on some of these builders in 2008, they must be ready for bankruptcy.

Troubled builders “need to sit down before going to the bankruptcy process and make some hard decisions,” Stuart says. “But ... time is of the essence because houses need to be completed, and if you don’t have support financing and a potential exit strategy [lined up already] like Tousea,” the bankruptcy might not work.

Hollywood, Fla.-based Tousea not only secured \$150 million in debtor-in-possession financing before filing; it locked up support from a majority of its senior noteholders on a proposed debt-for-equity swap. The company has also begun the arduous process of lining up commitments for an exit loan in a tight credit market.

“Tousea seems to be the one that worked for several months to go in with support from a majority of bondholders,” Stuart says. “From the outside, that looks more sound than Neumann, who went under the radar, had no one answering their phones, and then—

poof—filed for Chapter 11.”

Unprepared builders could see their court cases languish and their building projects stall, damaging chances of a successful reorganization.

“In Kara there was no agreement in place before the filing, so it was a mess,” Stuart says.

Mandarino, who was appointed CRO about 6 months after Kara’s Oct. 5, 2006, bankruptcy filing, acknowledged that a lack of preparation made the reorganization more difficult.

Then there was Kara’s structure, which fit the homebuilder norm. “There’s usually a bunch of LLCs and a lot of banks, each with a little piece of the pie,” Stuart says.

In Kara’s case, 54 bankrupt operating LLCs made the case complex and expensive, Mandarino says.

And although it wasn’t a factor for Kara, that structure provides another wrinkle for homebuilders. Operating LLCs could be found by the bankruptcy court to be single-asset real estate companies under the Bankruptcy Code.

SARE debtors have until the later of 90 days after filing or 30 days after the court determines that they are a SARE company to file a reorganization plan or begin making monthly interest payments to secured creditors. If the debtor does neither, the creditors are freed

from the automatic Chapter 11 stay and can move against their collateral.

By the time the New Jersey bankruptcy court ruled that Kara’s units, each in control of its own real estate project, fit the SARE definition, Mandarino says he was well on his way to filing a plan. East Brunswick, N.J.-based Kara exited from its stay in Chapter 11 on Oct. 1, substantially trimmed down with a commitment of \$115 million in exit financing from hedge fund **Plainfield Specialty Holdings II Inc.**

Other large single-asset homebuilders, however, would have a hard time filing a plan in three months, especially if they have multiple bankrupt LLCs.

“If your bank’s willing to fund, I think the uniqueness of the single-asset real estate provisions of the [Bankruptcy] Code just make you want to stay out of court,” Mandarino says.

And if that doesn’t complicate Chapter 11 proceedings for homebuilders enough, consider Mandarino’s prediction that “this is the time for vulture buyers in real estate.”

Asked if he’s noticed that hedge funds—who, as holders of first-, second- and even third-lien debt, are notorious for complicating cases—are buying up homebuilder debt, Mandarino replies: “I see a lot of them trying.” ■

—John Blakeley

continued from page 2

Brown Rudnick Berlack Israels LLP, on the other hand, has formed a structured resolution group to aid parties on the buy and sell sides of the crisis in subprime lending, including those involved in collateralized debt obligations and structured investment vehicles.

The team draws from the structured finance, bankruptcy and corporate restructuring, and distressed debt practices and will help underwriters and structuring agents, trading desks, private investment funds and hedge funds.

Services include analyzing deal structures, identi-

fying levers for various debtholders, and designing and executing repackagings.

Ballard Spahr Andrews & Ingersoll LLP truly is the dominant player in advising landlords or lessors in bankruptcy cases. The firm appears in 18 cases with **Katten Muchin Rosenman LLP**, the highest total for any combination of law firms. But Ballard Spahr also is part of the next three combinations.

Katten and **Morgan, Lewis & Bockius LLP**, meanwhile, appear twice, signaling the firms’ own strength in landlord representation. ■

—David Elman

TOP LANDLORD COUNSEL COMBINATIONS

Most frequent pairings among bankruptcy cases active on Jan. 30, 2008

Rank	Law firm	Law firm	No. of cases together
1	Ballard Spahr Andrews & Ingersoll LLP	Katten Muchin Rosenman LLP	18
2	Ballard Spahr Andrews & Ingersoll LLP	Morgan, Lewis & Bockius LLP	13
3	Ballard Spahr Andrews & Ingersoll LLP	Holland & Knight LLP	6
4	Ballard Spahr Andrews & Ingersoll LLP	Reed Smith LLP	5
5	Katten Muchin Rosenman LLP	Morgan, Lewis & Bockius LLP	4

Includes cases in which both firms are counsel to landlords or lessors in any combination.

Source: www.BankruptcyInsider.com