

Bankruptcy Law

History of the Absolute Priority Rule

Contributed by

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Plan

Joseph J. DiPasquale and Jennifer D. Talley of Trenk, DiPasquale, Webster, Della Fera & Sodono, P.C. discuss the history of the absolute priority rule and the current legal environment regarding the gifting doctrine. Specifically, the article analyzes recent court decisions, as well as the policy implications in favor of “gifting” as a tool for confirming chapter 11 plans. [p3](#)

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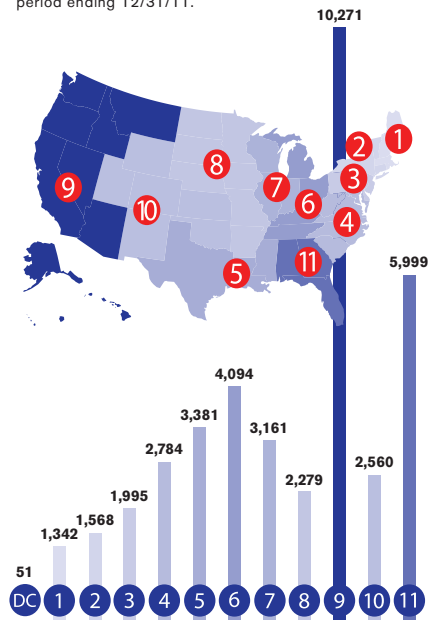
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History of the Absolute Priority Rule

Contributed by Joseph J. DiPasquale and Jennifer D. Talley of Trenk, DiPasquale, Webster, Della Fera & Sodono, P.C.

It is well settled for over a century that a shareholder or equity holder must not receive any payment or other form of profits until a business's debts are paid.¹ This theory came in response to the actions taken by senior creditors and shareholders looking to reorganize a failed business.² Senior creditors would entice shareholders to supply new capital to a floundering business by providing the shareholders with a stake in the newly formed business.³ However, subordinated debt holders would often be left with nothing, despite the fact that their debt was clearly superior to any equity position held by the shareholders.⁴

Almost one hundred years ago, the Supreme Court quashed this practice by holding that creditors must be paid before any stockholder should be compensated monetarily in a reorganization of a failed business.⁵

Eventually, the Bankruptcy Code codified this theory as the absolute priority rule, which is a prerequisite to confirmation of a chapter 11 plan of reorganization.⁶ In its most basic form, the absolute priority rule mandates that a contested chapter 11 plan must not be confirmed over the objection of a dissenting class unless the dissenting class receives the full value of its claim, or a junior creditor to the dissenting class receives no property under the plan on account of its interest.⁷

History of Gifting

The effect of the absolute priority rule has significant implications for a debtor attempting to reorganize pursuant to chapter 11. Practitioners and professionals working in a chapter 11 reorganization must contend with the strict confines of the absolute priority rule while also remaining true to the goal of a chapter 11 reorganization: restoring the debtor's business and maximizing the value of the estate for all stakeholders.⁸ In order to craft efficient ways to adhere to the Code while maximizing the value of the debtor's estate, professionals have evaded the absolute priority rule by "gifting" property to a class of unsecured creditors or equity holders over a senior lien holder under the premise that the property is not part of the debtor's estate and is being provided by the secured creditor consensually.⁹

In 2005, the Third Circuit held in *In re Armstrong World Industries, Inc.* that "gifting" to shareholders pursuant to a chapter 11 plan

violated the absolute priority rule when other debt holders objected and were not paid in full.¹⁰ The *Armstrong* court also relied upon the precise language of the Bankruptcy Code, stating, “The plain language of the statute makes it clear that a plan cannot give property to junior claimants over the objection of a more senior class that is impaired.”¹¹

Recently, in *In re DBSD North American*, the Second Circuit joined the Third Circuit’s stance on the absolute priority rule. Despite this holding, the *DBSD* decision seems to indicate that there may be other ways to “gift” property to unsecured classes and equity holders.

In re DBSD North America Decision

The holding of *DBSD* is unequivocal: gifting to equity shareholders when subordinated debt holders have not been paid in full and object to the plan, as written in a chapter 11 plan, violates the absolute priority rule.¹² However, a variety of other issues remain unclear despite the court’s clear holding.

In *DBSD*, Sprint, who held a claim based on a lawsuit against one of *DBSD*’s subsidiaries, objected to the plan, arguing that the majority shareholder should not receive any of the debtor’s property because junior subordinated debt holders would not receive the full value of their claim pursuant to the plan.¹³ Sprint relied on 11 U.S.C. § 1129(b)(2)(B), stating that “if a class of senior claim-holders will not receive the full value of their claims under the plan and the class does not accept the plan, no junior claim or interest-holder may receive ‘any property’ ‘under the plan on account of such junior claim or interest.’”¹⁴

The *DBSD* court agreed with Sprint’s position and simply concluded, “We hold that the existing shareholder did receive property under the plan on account of its interest, and that the bankruptcy court therefore should not have confirmed the plan.”¹⁵ The *DBSD* court found so for three reasons: (1) the shareholder received “property” pursuant to § 1129(b)(2)(B) because it received shares and warrants; (2) the shareholder received property “under the plan” because the plan clearly stated that the shareholder would receive such shares and warrants; and (3) the shareholder received the property “on account of” its subordinated interest.¹⁶

The decision went on to elucidate point three, delineating the test to determine if property is received “on account of” a junior interest. The court first supplied the framework for this analysis expounded in *Bank of Am. Nat’l Trust & Sav. Ass’n v. 203 N. LaSalle St. P’ship*.¹⁷

The first test explains that so long as a subordinate debt holder obtained new property “in exchange for” old property, the property was obtained “on account of” its junior interest.¹⁸ The second test states that “on account of” means “because of.”¹⁹ In sum, the *LaSalle* decision essentially held that previous equity owners could not be “gifted” property pursuant to a plan even if the equity holders provided new value in exchange for such property, unless all other parties had an equal opportunity to obtain such value as well.²⁰

Importantly, the *DBSD* court noted that the *LaSalle* decision was not factually identical to the situation at bar. In essence, *LaSalle* stands for the proposition that a shareholder cannot attempt to evade the absolute priority rule by arguing that “gifted” property is received in exchange for new value contributed by the shareholder.²¹ In the case at bar, the shareholder did not even contribute any new value. Thus, in holding that the existing shareholder’s receipt of property pursuant to the plan violated the absolute priority rule, the *DBSD* court relied on the inference that the Supreme Court would certainly not allow gifting in return for no value, if it would not allow gifting in exchange for new value.²²

The shareholders attempted to argue that the secured creditors could share their property with any entities they saw fit because they were the true owners of the shares and warrants.²³ However, the *DBSD* court found that the type of property to be conveyed to a subordinated class was irrelevant; the plain text of the Bankruptcy Code applies the absolute priority rule to all property, even if the property “gifted” to a subordinated class was not subsumed in a senior debt holder’s lien.²⁴ The focus of the inquiry, as the plain language of the Code dictates, must solely be who receives and retains the property under the plan.²⁵

In essence, *LaSalle* stands for the proposition that a shareholder cannot attempt to evade the absolute priority rule by arguing that “gifted” property is received in exchange for new value contributed by the shareholder.

Gifting Shares Outside of the Plan

However, despite the plain language of the Code, certain courts have held that “gifting” is permissible in other contexts.²⁶ In particular, the First Circuit in *In re SPM Manufacturing Corp.* held that secured creditors could gift property to undersecured creditors, even if superior lien holders did not receive any value.²⁷ Specifically, the secured creditor agreed “to share whatever proceeds they received as a result of the reorganization or liquidation of the Debtor” with the general unsecured creditors.²⁸ The *SPM* court reasoned that the secured creditors were merely giving away their own assets, which did not violate the absolute priority rule.²⁹ The heart of the court’s reasoning centered on the premise that “creditors are generally free to do whatever they wish with the bankruptcy dividends they receive, including to share them with other creditors.”³⁰

Significantly, *SPM* was a chapter 7 liquidation and did not take place in the context of a reorganization. Therefore, while setting the framework for asset redistribution and reallocation, *SPM* is

not instructive as to the confines of “gifting” to subordinate classes or undersecured creditors in a chapter 11 plan confirmation, or in a pre-plan chapter 11 settlement.

In a similar case, the Second Circuit in *In re Iridium Operating, LLC* again declined to decide whether “gifting” could occur outside the context of a chapter 11 plan, for instance in a chapter 11 settlement.³¹ While the question was presented, the Second Circuit never addressed whether a secured senior debt holder of a debtor’s assets could “gift” a portion of those assets to a subordinate debt holder if a priority debt holder remained unpaid outside of the plan.³² Instead, the *Iridium* Court determined that the senior debt holder did not in fact have a perfected interest in the debtor’s assets.³³ Therefore, the court could not and would not decide such an issue, declaring that “we need not decide if *SPM* could ever apply to chapter 11 settlements, because it is clear that the [secured creditor] did not actually have a perfected interest in the cash on hand.”³⁴

The *Iridium* court did hold that “gifting” to junior lien holders could occur outside of a chapter 11 plan of reorganization if the settlement was fair and equitable.³⁵ Additionally, the *Iridium* court went further and stated that settlement should be approved if factors weighed in favor of approving a settlement, even if the settlement does not completely comply with the absolute priority rule.³⁶ Such factors included but were not limited to: “(1) the balance between the litigation’s possibility of success and the settlement’s future benefits; (2) the likelihood of complex and protracted litigation...and (3) the paramount interests of the creditors...”³⁷

.....

The *DBSD* court’s precision in explicitly stating that it would not comment on the above issues, as well as the court’s discussion of the policy implications in favor of “gifting” as an efficient tool for confirming chapter 11 plans, suggests that “gifting” may not be dead.

.....

While *DBSD*’s ultimate holding is straight-forward and leaves no room for ambiguity, notably, the *DBSD* court did not comment on whether subordinate classes could receive property outside of the plan in a chapter 11 case, as was mentioned but not decided in *Iridium*. The *DBSD* court even went so far as to state, “We need not decide whether the Code would allow the existing shareholder and Senior Noteholders to agree to transfer shares outside of the plan, for, on the present record, the existing shareholder clearly receives these shares and warrants ‘under the plan.’”³⁸

Interestingly, the decision explicitly recognized the strong arguments in favor of less strict compliance with the absolute priority rule.³⁹ For example, in general, “gifting” to subordinate classes expeditiously and non-contentiously resolves chapter 11 proceedings.⁴⁰ Moreover, the *DBSD* court described the history of objection and protest to the absolute priority rule.⁴¹

The court’s unwillingness to extend its holding to gifting outside of the plan can also be gleaned by interpreting the court’s distinct reliance on the precise interpretation of the meaning of the words in the Code. For instance, the court notes, “[u]nder the plan in this case, Sprint does not receive ‘property of a value...equal to the allowed amount’ of its claim...The plan may be confirmed, therefore, only if the existing shareholder [] does ‘not receive or retain’ ‘any property’ ‘under the plan on account of such junior... interest.’”⁴²

Therefore, it is seemingly permissible to gift assets to subordinate classes outside of a chapter 11 plan, as the question remains unanswered. Additionally, the dictum in the Second Circuit’s most recent ruling explicitly touts the benefits of “gifting” in order to expeditiously confirm chapter 11 cases.

Furthermore, the *DBSD* decision did not address the factual situation originally brought before the First Circuit in *SPM*. In *SPM*, the property that was later gifted to a general unsecured creditor and not given to a priority, administrative claimant was the property of the secured creditor, and the secured creditor alone.⁴³ The secured creditor in *SPM* foreclosed on the property in question, and thus, the secured creditor was within its rights to gift or utilize the property in whichever way it saw fit.⁴⁴

However, the *DBSD* court specifically stated that the factual situation before the court was distinguishable.⁴⁵ The property in question was certainly part of the estate and had never belonged to the secured creditor “outright.”⁴⁶ The *DBSD* court specifically declined to address whether the *SPM* reasoning would be appropriate in a chapter 11 case if the property had been foreclosed on by the secured creditor.⁴⁷ “[A]ssuming without deciding that the First Circuit’s approach was correct in the context of a Chapter 7 - a question not before us - we do not find it relevant to this case.”⁴⁸

Thus, the *DBSD* decision leaves open the possibility that a secured creditor may gift to subordinate classes in a chapter 11 reorganization if it has foreclosed on the property in question.

The *DBSD* court’s precision in explicitly stating that it would not comment on the above issues, as well as the court’s discussion of the policy implications in favor of “gifting” as an efficient tool for confirming chapter 11 plans, suggests that “gifting” may not be dead. Instead, those looking to utilize the gifting doctrine may have to read between the lines of the Second Circuit’s ruling and find other means of accomplishing their goals of quickly and non-contentiously confirming chapter 11 cases.

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¹ *Rock Island & Pac. R.R. v. Howard*, 74 U.S. (7 Wall) 392, 409-10, (1868); *Bank of Am. Nat'l Trust & Sav. Ass'n v. 203 N. LaSalle St. P'ship*, 526 U.S. 434, 444 (1999).

² *In re DBSD North America*, 634 F.3d 79, 94 (2nd Cir. 2011).

³ *Id.*

⁴ *Id.*

⁵ *N. Pac. Ry. Co. v. Boyd*, 228 U.S. 482, 507-08 (1913).

⁶ 11 U.S.C. § 1129(b)(1)-(2). Specifically, § 1129(b)(2) states, “With respect to a class of unsecured claims – (i) the plan provides that each holder of a claim of such class receive or retain on account of such claim property of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or (ii) the holder of any claim or interest that is junior to the claims of such class will not receive or retain under the plan on account of such junior claim or interest any property...”

⁷ 11 U.S.C. § 1129(b)(2)(B).

⁸ Harvey R. Miller and Ronit J. Berkovich, 55 *AMULR* 1345, *The Implications of the Third Circuit's Armstrong Decision on Creative Corporate Restructuring: Will Strict Construction of the Absolute Priority Rule Make Chapter 11 Consensus Less Likely?* *American University Law Review*. at 1346.

⁹ *Id.* at 1359.

¹⁰ *In re Armstrong World Industries, Inc.*, 432 F.3d 507 (3d Cir. 2005).

¹¹ *Id.* at 513.

¹² *DBSD*, 634 F.3d at 85.

¹³ *Id.* at 86.

¹⁴ *Id.* (quoting § 1129(b)(2)(B)).

¹⁵ *Id.* at 85.

¹⁶ *Id.* at 86.

¹⁷ *Id.* at 95.

¹⁸ *Id.* at 96.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 97.

²² *Id.*

²³ *Id.*

²⁴ *Id.* at 97-98.

²⁵ *Id.*

²⁶ *In re SPM Manufacturing Co.*, 984 F.2d 1305 (1st Cir. 1993).

²⁷ *Id.*

²⁸ *Id.* at 1308.

²⁹ *Id.* at 1313.

³⁰ *Id.*

³¹ *In re Iridium Operating LLC*, 478 F.3d 452, 460-61 (2d Cir. 2007).

³² *Id.*

³³ *Id.* at 461.

³⁴ *Id.*

³⁵ *Id.* at 463.

³⁶ *Id.* at 465-466 (“[T]he bankruptcy court, in its discretion, could endorse a settlement that does not comply in some minor respects with the priority rule if the parties to the settlement justify, and the reviewing court clearly articulates the reasons for approving, a settlement that deviates from the priority rule.”).

³⁷ *Id.* at 462.

³⁸ *DBSD*, 634 F.3d at 95.

³⁹ *Id.* at 98.

⁴⁰ *Id.* at 100 (quoting Leah M. Eisenberg, *Gifting and Asset Reallocation in Chapter 11 Proceedings: A Synthesized Approach*, 29 *Am. Bankr. Inst. J.* 50 (2010)).

⁴¹ *Id.* at 98-99.

⁴² *Id.* at 95.

⁴³ *SPM*, 984 F.2d at 1313.

⁴⁴ *DBSD*, 634 F.3d at 98 (“In a very real sense, the property belonged to the secured creditor alone, and the secured creditor could do what it pleased with it.”).

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.* at 98.

Claims

District Court Dismisses Claim Purchaser’s Action Seeking Refund and Damages Against Seller

Longacre Master Fund, Ltd v. ATS Automation Tooling Sys. Inc., No. 10-8024, 2011 BL 202604 (S.D.N.Y. Aug. 4, 2011)

➔ **Highlighting the allocation of risk between a purchaser and seller in the context of the sale of claims in bankruptcy.**

The United States District Court for the Southern District of New York dismissed various causes of action filed by a claims purchaser against the seller of a claim alleging an impairment of the transferred claim that entitled purchaser to a refund of its purchase price, plus interest, seller’s breach of warranties under the transfer agreement and purchaser’s right to indemnification. In granting seller’s summary judgment motion, the court held that no impairment existed with respect to the claim and that seller had not breached any warranties, defeating purchaser’s indemnity claim.

The Bankruptcy Filing and Transfer Agreement

In October 2005, Delphi Automotive Services, LLC (“Debtor”) filed a petition for chapter 11 bankruptcy protection. ATS Automation Tooling Systems, Inc. (“ATS”) filed unsecured proofs of claim (together, “Claim”) in Debtor’s case totaling approximately \$2.1 million. In 2006, ATS and Longacre Capital Partners (QP), L.P. (“Longacre”) executed an agreement (“Agreement”) under which ATS sold, transferred and assigned to Longacre its Claim for \$1.9 million. The Agreement specified that the Claim was being assigned only to the extent necessary to enforce the Claim. Further, the Agreement provided that if all or part of the Claim was offset, objected to or disallowed for any reason pursuant to a bankruptcy court order (“Impairment”), ATS would repay Longacre a portion

of the Claim, plus interest. Similarly, the Agreement indicated that if a possible Impairment was filed against the Claim (“Possible Impairment”) and was not resolved within 180 days (“Limitation Day”), ATS would repay Longacre a portion of the Claim, plus interest.

Debtor’s Adversary Complaint

The following year, in 2007, Debtor filed hundreds of adversary complaints under seal seeking to avoid and recover alleged preferential payments (“Payments”), including an adversary complaint alleging that ATS received \$17.3 million in Payments from Debtor during the preference period (“Adversary Complaint”). Prior to serving the Adversary Complaint on ATS, Debtor filed an omnibus objection (“Omnibus Objection”) seeking to preserve its right to object to the Claim and other Payments, on the ground that such amounts were potentially subject to disallowance as preference payments. The bankruptcy court entered an order (“Omnibus Order”) approving the Omnibus Objection and preserving Debtor’s objection to each preference-related claim, pending resolution of the related avoidance actions.

ATS remained unaware of the Adversary Complaint until April 2010, when it was unsealed and served. In May 2010, the bankruptcy court dismissed all of the adversary complaints, subject to Debtor’s right to amend them. On August 25, 2010, Longacre notified ATS that pursuant to the Agreement, the Possible Impairment had not been fully resolved by August 9, 2010, the Limitation Day that was 180 days from the filing of the Omnibus Objection and therefore, Longacre was entitled to a refund (“Refund”) of the purchase price, plus interest. In March 2011, Debtor withdrew the Omnibus Objection and dismissed the Adversary Complaint, withdrawing its reservation of rights and confirming the allowance of the Claim. After ATS failed to remit the Refund, Longacre filed a complaint against ATS alleging: (1) Impairment of the Claim; (2) breach of warranty; and (3) a right to indemnification. In response, ATS filed a motion for summary judgment (“Summary Judgment Motion”).

No Impairment or Possible Impairment Existed on the Claim

Beginning its analysis, the court analyzed whether the filing of the Omnibus Objection or Omnibus Order constituted an Impairment or Possible Impairment under the Agreement. To that end, the court distinguished that while the Agreement provided that an Impairment would occur if the Claim was actually offset, objected to or disallowed pursuant to a court order, the Omnibus Order only preserved Debtor’s right to object to claims pending conclusion of the related avoidance actions. As such, the court declared that the Omnibus Order did not constitute an Impairment. Similarly, noting that a Possible Impairment was defined as a possible Impairment filed against the Claim that remained unresolved by the Limitation Day, the court concluded that no Possible Impairment occurred because Debtor had not filed a [11 U.S.C. § 502\(d\)](#) objection seeking to disallow the Claim.

Nevertheless, the court reasoned that even if a § 502(d) objection to the Claim had been made, it would not have constituted an Impairment because the Agreement affected a sale, instead of an assignment of the Claim. In that regard, the court explained that unlike a sale, an assignment requires a complete transfer of the assignor’s interest in the property, which divests the assignor of all control over the property. Noting that the Agreement transferred to Longacre those rights needed to enforce the Claim, but left ATS with other rights in the Claim, the court held that the transfer of the Claim constituted a sale but not an assignment. Moreover, the court instructed that disallowance of claims under § 502(d) is a personal disability of the transferor of a claim that is transferred to a claim’s transferee only if the claim is assigned, but not if the claim is sold. *In re Enron Corp.*, 379 B.R. 425, 436 (S.D.N.Y. 2007). The court reviewed that in *Enron*, the court held that disallowance is a personal disability of the transferor-claimant and not a characteristic of the claim, such that unless the transfer was affected through an assignment, the claim in the hands of the transferee is not subject to disallowance based on the transferor’s conduct. *Id.* at 439. Applying *Enron*, the court held that because the Claim was transferred through a sale, no Impairment or Possible Impairment could have occurred.



Credit: Bloomberg

Dismissal of the Remaining Causes of Action

Continuing its analysis, the court addressed Longacre’s position that the Omnibus Objection constituted a breach of ATS’s representations and warranties that the Claim was valid. First, the court pointed out that ATS’s representations and warranties regarding the validity of the Claim were made as of December 14, 2006 (“Effective Date”), the date that the Agreement was signed. Further, noting that the Omnibus Objection was not an objection to the Claim, the court held that ATS did not breach any representation or warranty as to validity.

Similarly, regarding Longacre’s allegation that the Adversary Complaint constituted a breach of ATS’s representation and warranty that it had no liability or obligation related to the Claim, the court reasoned that no such liability existed as of the Effective Date. Adding that the Adversary Complaint was not an obligation



related to the Claim, but an attempt to recover Payments made to ATS, the court held that ATS breached no warranty as to liability on the Claim.

Next, examining Longacre's allegation that ATS breached its representation and warranty that the Claim was free and clear of liens, the court noted that the Adversary Complaint and Omnibus Objection were filed more than three years after the Effective Date, such that the alleged encumbrances did not exist as of the Effective Date

Next, examining Longacre's allegation that ATS breached its representation and warranty that the Claim was free and clear of liens, the court noted that the Adversary Complaint and Omnibus Objection were filed more than three years after the Effective Date, such that the alleged encumbrances did not exist as of the Effective Date. Further, the court remarked that the Omnibus Objection, Omnibus Order and Adversary Complaint were not claims against the Claim, because they did not fit the standard definitions of claims and encumbrances. Rejecting Longacre's position that the Adversary Complaint constituted a breach of ATS's warranty that the Claim was not subject to any impairment, avoidance, disallowance or preference action that could affect its validity, priority or enforceability, the court noted that ATS had no knowledge of any of those conditions as of the Effective Date. Moreover, the court clarified that the Adversary Complaint did not affect the claim, but simply sought to recover alleged preferences from ATS. Finally, observing that the Agreement's indemnity clause was triggered only upon Impairment or breach by ATS, the court dismissed Longacre's indemnity claim.

Court Grants Summary Judgment Motion

In sum, dismissing Longacre's causes of action, the court granted the Summary Judgment Motion.

Jurisdiction & Venue

Tenth Circuit Rules B.A.P. Lacked Appellate Jurisdiction over a Post-Transfer Order for Relief

In re Healthtrio, No. 10-1351, 2011 BL 204425
(10th Cir. Aug. 5, 2011)

➔ Discussing the jurisdiction to hear a post-transfer order for relief of an extra-district bankruptcy judge.

The United States Court of Appeals for the Tenth Circuit affirmed a decision of the Bankruptcy Appellate Panel for the Tenth Circuit ("B.A.P."), holding that the B.A.P. lacked jurisdiction to review an order for relief, which was entered by a Delaware bankruptcy judge, after the case had been transferred to the Colorado bankruptcy court pursuant [28 U.S.C. § 1412](#). In support of its decision, the Tenth Circuit primarily relied upon the second sentence of [28 U.S.C. § 158\(a\)](#), which provides that an appeal of a decision by a bankruptcy judge "shall be taken only to the district court for the judicial district in which the bankruptcy judge is serving." Alternatively, the Tenth Circuit suggested that the parties could seek to have the order for relief reevaluated by the Colorado bankruptcy court and the B.A.P. could then review that court's application of law-of-the-case principles. The decision illustrates the jurisdictional limitations of an appellate court over a post-transfer order of an extra-district bankruptcy judge.

Delaware Involuntary Chapter 7 Case

Pursuant to [11 U.S.C. § 303\(b\)\(1\)](#), three creditors (the "Petitioning Creditors") commenced an involuntary chapter 7 proceeding against Healthtrio, Inc. ("Debtor") in the Delaware bankruptcy court. In response, Debtor moved to dismiss the petition and sought to transfer venue to the Colorado bankruptcy court claiming that, although it was a Delaware corporation, all of its books, records, principal offices, assets, business operations, and some of its offices were located in Colorado. Debtor's motion cited to [§ 1412](#), which authorizes a transfer of venue "in the interest of justice or for the convenience of the parties." The Delaware bankruptcy court entered a written order denying the motion to dismiss and the Petitioning Creditors moved for summary judgment on the involuntary petition, requesting that an order for relief be entered against Debtor. Subsequently, on November 12, 2009, the Delaware bankruptcy court, having conducted several hearings with respect to discovery disputes arising from the order for relief, indicated that it would either issue rulings on the pending motions or would set up another hearing. Notably, however, the Delaware bankruptcy court did not mention or issue an order for relief.



Delaware Bankruptcy Court Transfers Venue to Colorado

Immediately following the November 12th hearing, the Delaware bankruptcy court entered an order granting Debtor's motion to transfer venue, in which it referred to "an order for relief having been entered in this involuntary case [Docket 19]" as one of the factors that informed its decision. Significantly, Docket 19 was the order denying Debtor's motion to dismiss, not an order for relief. A few days later, on November 16, 2009, the case was docketed by the Colorado bankruptcy court. On November 23, 2009, the Petitioning Creditors filed a motion in the Delaware bankruptcy court seeking clarification of the transfer order, explaining that the order entered on Docket 19 was not an order for the relief as the court had indicated. Upon reevaluation of its order, the Delaware bankruptcy court entered an order for relief on December 10, 2009, amending its previous order dated November 12, 2009. The order for relief was then docketed in both the Delaware and Colorado bankruptcy courts.

B.A.P. Dismisses Debtor's Appeal for Lack of Jurisdiction

After the Delaware bankruptcy court entered its order for relief, Debtor filed notices of appeal from the order of relief in both jurisdictions. In the Colorado appeal, Debtor argued that, under § 158(a), the B.A.P. had jurisdiction to hear its appeal once the case had been docketed in the Colorado bankruptcy court. Joined by the Petitioning Creditors, Debtor requested that the B.A.P. vacate of the order for relief issued by the Delaware bankruptcy court. While ultimately agreeing with the parties that the transfer appeared to have deprived the Delaware bankruptcy court from entering the order for relief, the B.A.P. dismissed the appeal, concluding that it lacked jurisdiction to review an order of the Delaware bankruptcy court. Debtor then filed an appeal with the Tenth Circuit, to which the Petitioning Creditors filed a joinder.

The Tenth Circuit determined that, like § 158(a), § 1294(l) confers jurisdiction in a territorial manner, such that the court has interpreted the statute to preclude appellate review of any pre-transfer decision by a district court lying outside of the mandated geographic territory.

Effective Date of the Transfer of Venue

Rendering its decision on appeal, the Tenth Circuit began its analysis by evaluating the procedural issue of whether the transfer of venue was complete before the Delaware bankruptcy court filed the order for relief. In this regard, the Tenth Circuit cited the general rule that, the date the papers in the transferred case are docketed in the transferee court is the effective date that jurisdiction in the transferor court is terminated. *Chrysler Credit Corp. v. Country Chrysler, Inc.*, 928 F.2d 1509, 1517 (10th Cir. 1991). Applying this rule to the electronically filed documents in the present case, the Tenth Circuit determined that the date the transmittal letter from the Delaware bankruptcy court to the Colorado bankruptcy court was docketed, November 16, 2009, was the effective date of the transfer. As such, the Tenth Circuit resolved that transfer had been completed prior to the entry of the order for relief on December 10, 2009.

B.A.P. Lacked Jurisdiction over the Appeal

Turning to the merits of the appeal, the Tenth Circuit rejected Debtor's contention that § 158(a) did not require an appeal to be heard in the district in which the order was entered, where the judgment was entered in the absence of jurisdiction and is void. Recognizing the lack of authority regarding application of § 158(a) in the context of a § 1412 transfer of venue, the Tenth Circuit compared analogous statutes outside the bankruptcy context. Specifically, the Tenth Circuit reviewed 28 U.S.C. § 1294(l), which confers federal circuit court appellate jurisdiction based on territory or geographic scope, and 28 U.S.C. § 1404(a), the change-of-venue statute applicable in civil actions. The Tenth Circuit determined that, like § 158(a), § 1294(l) confers jurisdiction in a territorial manner, such that the court has interpreted the statute to preclude appellate review of any pre-transfer decision by a district court lying outside of the mandated geographic territory. *Chrysler Credit Corp.* 928 F.2d at 1518. Applying this same territorial view of appellate jurisdiction in the present case, the Tenth Circuit concluded that § 158(a)'s mandate that an appeal of a decision by a bankruptcy judge "shall be taken only to the district court for the judicial district in which the bankruptcy judge is serving" foreclosed the B.A.P.'s review of the Delaware bankruptcy court's order for relief. At the same time, the Tenth Circuit suggested that, per its holding in the *Chrysler* decision, the parties could seek to have the Colorado bankruptcy court reevaluate the order for relief and the B.A.P. could then review that court's application of the law-of-the-case principles. *Id.* at 1516.

Tenth Circuit Affirms B.A.P.'s Dismissal of Debtor's Appeal for Lack of Jurisdiction

Ultimately, the Tenth Circuit affirmed the dismissal of Debtor's appeal and held that the B.A.P. lacked jurisdiction to review the order for relief entered by the Delaware bankruptcy court after Debtor's case had been transferred to Colorado.



Judgments & Liens

District Court Declines to Impose Charging Lien on Plan Proceeds

Jenelle M. Chalmers | Bloomberg Law

Thaddeus Freeman, PLLC v. Summit View, LLC
(*In re Summit View, LLC*), No. 11-cv-724, 2011 BL 199230
(M.D. Fla. Aug. 1, 2011)

- ➔ Discussing that a charging lien is an equitable remedy used by the courts as a way of ensuring that an attorney is compensated for his work.
- ➔ Noting the elements needed to impose a charging lien under Florida State law.

The United States District Court for the Middle District of Florida affirmed the bankruptcy court's decision to enforce a settlement agreement, while declining to impose an attorney's charging lien on plan payments that his client assigned under the terms of the settlement agreement. Further, the district court found that the attorney's charging lien only attached to the proceeds that his client actually received under the settlement agreement.

The Confirmation of the Plan and the Settlement Agreement

In early 2009, Summit View, LLC and certain related entities ("Summit View" or "Debtors"), filed voluntary petitions for chapter 11 bankruptcy protection. Nearly a year later, on March 17, 2010, the bankruptcy court confirmed Debtors' plan, which included a secured claim in the amount of \$1,002,093.77 in favor of WDG Construction, Inc. ("WDG"). At the time of confirmation, WDG had several pending adversary proceedings, in which it had filed counterclaims, all of which were settled post-confirmation. Thaddeus Freeman, PLLC ("Appellant") represented WDG in the adversary proceedings and settlement negotiations, whereby the parties executed an Hourly/Contingency Fee Agreement, whereby WDG agreed to pay Appellant the greater of \$350.00 an hour or 33 1/3 percent of the gross amount of any recovery paid.

As part of the settlement agreement ("Settlement Agreement") reached by the parties as to all claims and adversary proceedings, WDG agreed to assign its rights to receive payments under Debtors' plan to CWES II, LLC ("CWES") and in return CWES agreed to pay WDG \$200,000 without assuming any of WDG's obligations or liabilities. Once the court had approved the Settlement Agreement and CWES transferred the settlement funds, Appellant filed a motion seeking to disburse one-third of the settlement funds, \$66,000, to it under the terms of the Hourly/Contingency Fee Agreement, arguing that it was entitled to a charging lien on the settlement funds received by WDG. The court approved the transfer and Appellant received its share of the proceeds.

Debtors' Motion to Enforce the Settlement Agreement

After receiving proceeds fees of \$66,000, Appellant claimed that it was also entitled to receive one-third of the plan payments that WDG assigned to CWES arguing that it had retained a valid charging lien as to the plan payments. In response, Summit View filed a motion to enforce the Settlement Agreement, seeking a determination that neither CWES nor Summit View was required to make payments to Appellant.

After a hearing on the matter, the bankruptcy court granted Summit View's motion, holding that Appellant's charging lien did not extend to the plan payments. The bankruptcy court explained that none of the parties had ever considered that Appellant's lien would extend to the plan payments, nor should they have contemplated such a notion. Noting that Appellant was retained as a collection lawyer by WDG, the court observed that Appellant was only entitled to the agreed upon percentage of the actual funds received by WDG and that Appellant had properly received his share of these proceeds. In appealing the bankruptcy court's decision, Appellant argued that the bankruptcy court erred in declining to impose a charging lien on the plan payments due to CWES under the Settlement Agreement because its charging lien extended to not only the proceeds recovered by WDG, but also the plan payments. In response, the Appellees argued that Appellant's recovery was limited to its share of the \$200,000 settlement proceeds and that Appellant should be estopped from recovering any fees related to the plan payments.

To this end, the district court noted that the purpose of the charging lien is to ensure that after a client collects his judgment, he pays his attorney for his work in securing it.

Appellant's Charging Lien Does Not Attach to Plan Payments

Asserting that a charging lien is an equitable remedy and a matter of state law, *Weed v. Washington*, 242 F.3d 1320, 1323 (11th Cir. 2001), the district court pointed out that under Florida law, in order to impose a charging lien, an attorney must show (1) an express or implied contract between attorney and client; (2) an express or implied understanding for payment of attorney's fees out of the recovery; (3) either an avoidance of payment or a dispute as to the amount of fees; and (4) timely notice. *Daniel Mones, P.A. v. Smith*, 486 So. 2d 559, 561 (Fla. 1986). Additionally, the district court declared that charging liens apply to the proceeds of a lawsuit, or the amount of money actually received by the client. To this end, the district court noted that the purpose of the charging lien

is to ensure that after a client collects his judgment, he pays his attorney for his work in securing it. *In re Estate of Warner*, 35 So. 2d 296, 298 (Fla. 1948).

The district court observed that, in the instant case, both parties had agreed that Appellant had a valid charging lien that attached to the settlement funds recovered by its client. However, the district court determined that Appellant's notice of a charging lien as to the confirmation plan payments was untimely and inappropriate. In reaching its decision, the district court noted that Appellant had not mentioned its assertion of a charging lien over the plan payments until two months after confirmation of the plan, well after the confirmation order became a final judgment. Moreover, the district court stated that even if Appellant's notice of a charging lien was timely as to the plan payments, a charging lien can only attach to proceeds obtained by an attorney on behalf of its client, *Mitchell v. Coleman*, 868 So. 2d 639, 641 (Fla. 2d DCA 2004). Elaborating, the district court explained that since WDG no longer had a right to the plan payments, nor did its attorney have a right to a charging lien on such payments.

District Court Affirms Ruling

Accordingly, the district court affirmed the bankruptcy court's decision concluding that a charging lien did not attach to plan payments that WDG had never received.

Discharge

Bankruptcy Court Denies Debtor's Discharge Based on False Statements Regarding His Domicile and Failure to Account for Loss of Money

McDow v. Ryan (In re Ryan), No. 09-05029, 2011 BL 200251 (Bankr. E.D. Va. Aug. 2, 2011)

➔ Discussing that the debtor's lack of credible explanation for the loss of over \$400,000 was sufficient to deny a discharge under 11 U.S.C. § 727(a)(5).

The United States Bankruptcy Court for the Eastern District of Virginia granted a motion by the United States Trustee ("U.S. Trustee") for default judgment on its amended complaint seeking to deny a debtor's discharge under 11 U.S.C. §§ 727(a)(2), (a)(3), (a)(4) and (a)(5). In entering a default, the court ruled that the debtor was in default for failing to file a responsive pleading to the amended complaint and, according to the merits of the claims, held that the U.S. Trustee had sufficiently alleged that the debtor

made contradictory statements under oath regarding his true place of domicile and had failed to account more than \$400,000 in missing cash.

Debtor's Contradictory Statements under Oath and Repeated Failure to Appear

In July, 2008, Mykal S. Ryan ("Debtor") filed a petition for chapter 7 bankruptcy protection in Virginia. At the time, Debtor was incarcerated due to his failure to respond to interrogatories in a state court action relating to the satisfaction of three foreign judgments against him. Shortly after the filing of the petition, Debtor's bankruptcy counsel filed an emergency motion, seeking the protection of the automatic stay and Debtor's release from jail. Upon being advised of the motion, the state court ordered Debtor's release. Debtor's attorney then withdrew as counsel and Debtor proceeded pro se in his bankruptcy case.

Notably, while serving as his own counsel, Debtor's true place of domicile and failure to appear became contentious subjects in the bankruptcy case. While Debtor's petition indicated that he resided in Virginia and owned real property in Virginia, Debtor subsequently informed the court that he had moved to California. Moreover, Debtor filed a motion in January 2009, stating that he had been a resident of California since 2005, and filed a declaration in May 2010 ("Declaration"), indicating that his true domicile had been California since 2007. The Declaration further claimed that the amount of real property declared on Debtor's schedules should be reduced from \$365,000 to \$20,000 and that the amount of personal property should be reduced from \$387,145 to \$0. Finally, in addition to these contradictory statements under oath, Debtor also repeatedly failed to appear at his scheduled § 341 meeting of creditors. Significantly, only after the court provided Debtor one final opportunity to appear, did Debtor finally appear at a § 341 meeting of creditors held in California in July, 2010.

U.S. Trustee's Motion Seeking to Deny Debtor's Discharge

During this period, the U.S. Trustee filed a complaint, which was subsequently amended ("Amended Complaint"), seeking to deny Debtor's discharge under 11 U.S.C. § 727 of the Bankruptcy Code for (1) refusal to obey the lawful orders of the court under 11 U.S.C. § 727(a)(6); (2) failure to sufficiently explain a loss of assets to meet liabilities under § 727(a)(5); (3) false oath or account under § 727(a)(4)(A); (4) the transfer of property with the intent to hinder, delay or defraud under § 727(a)(2); and (5) failure to keep recorded financial information under § 727(a)(3). Thereafter, the U.S. Trustee filed a motion for entry of default judgment ("Default Motion"), citing Debtor's failure to respond to the Amended Complaint. At a hearing on the matter, Debtor failed to appear, despite being afforded notice and the chance to appear by telephone. Ruling on the motion in Debtor's absence, the court dismissed the § 727(a)(6) count for refusal to obey the lawful orders of the court based Debtor's eventual appearance at the § 341 meeting of creditors and then reviewed the remaining counts.

Court Rules Debtor Was in Default as to the Amended Complaint

Rendering its decision on the remaining counts addressed in the Default Motion, the court began by concluding that Debtor was in fact in default with respect to the Amended Complaint because he was properly served, yet failed to comply with Federal Rule of Bankruptcy Procedure 7015(a)(3), which requires the filing of a response within 14 days. Observing however, that default was an extraordinary remedy, the court resolved that it was further required to evaluate the validity of the underlying claims in order to enter a default judgment. *See, e.g., Lolatchy v. Arthur Murray, Inc.*, 816 F.2d 951, 953 (4th Cir. 1987).

Observing however, that default was an extraordinary remedy, the court resolved that it was further required to evaluate the validity of the underlying claims in order to enter a default judgment.

Court Finds Denial of Discharge Was Warranted under §§ 727(a)(2) and (a)(3)

Examining the substance of the U.S. Trustee's claims, the court began by deciding that the record supported a claim for the transfer of property with the intent to hinder, delay or defraud under § 727(a)(2) and a claim for the failure to keep recorded financial information under § 727(a)(3). In support of this holding, the court highlighted the U.S. Trustee's allegation that Debtor had withdrawn hundreds of thousands of dollars from his bank accounts, only to then open accounts in the name of his mother, of which he maintained authority. Similarly, the court cited the allegation that Debtor had directed that his retirement, social security, and disability income be paid directly into these accounts, and had purchased some \$350,000 worth of money orders within one year of his bankruptcy filing. Additionally noting Debtor's failure to provide a proper accounting of \$434,926 in missing funds, the court referenced Debtor's contradictory assertions that the funds were lost while gambling or placed in a backpack which was stolen from his Virginia home, and found that Debtor failed to provide the court with a complete disclosure of the funds and their disposition. *Doubet LLC v. Palermo (In re Palermo)*, 370 B.R. 599, 612-13 (Bankr. S.D.N.Y. 2007). Finally, the court noted the lack of any recorded information from which Debtor's financial condition could be ascertained. *See Keeling v. Ozey (In re Ozey)*, 172 B.R. 83, 91 (Bankr. N.D. Okla. 1994). Based on this record, the court held that the U.S. Trustee had sufficiently plead grounds to deny Debtor's discharge under both §§ 727(a)(2) and (a)(3).

Court Also Denies Debtor's Discharge under §§ 727(a)(4) and (a)(5)

Turning to the U.S. Trustee's 11 U.S.C. § 727(a)(4)(A) count based on a false oath or account, the court resolved that the Amended Complaint sufficiently alleged that Debtor had made contradictory statements regarding his true place of domicile. In this regard, the court noted that Debtor first indicated on his petition, under penalty of perjury, that his place of domicile was Virginia, only to later repudiate this statement under oath by stating that he had never lived in Virginia and indicating that "[t]here were other errors on the Schedules and Statement of Financial Affairs that will be corrected at a later date." Likewise, the court referenced Debtor's attempt, through the Declaration and related motion, to amend his petition to change his place of domicile from Virginia to California and to reduce his personal and real property assets to nearly zero. Based on these allegations, the court concluded that the U.S. Trustee had sufficiently demonstrated that Debtor had willfully ignored the requirement that his statements filed under penalty of perjury be truthful and accurate, such that judgment under § 727(a)(4) was appropriate.

Finally, also granting judgment in favor of the U.S. Trustee with respect to his § 727(a)(5) count alleging a failure to satisfactorily explain a loss of assets to meet liabilities, the court again cited the U.S. Trustee's allegations regarding Debtor's failure to properly account for the approximately \$350,000 in money orders and claimed losses of \$434,926. Furthermore, the court pointed to Debtor's failure to disclose a transfer of real property in the Virgin Islands to his brother. On the record, the court resolved that Debtor's failure to provide a plausible explanation for how he disposed of his property, including over \$400,000 in cash, supported the denial of a discharge under § 727(a)(5).

Turning to the U.S. Trustee's § 727(a)(4)(A) count based on a false oath or account, the court resolved that the Amended Complaint sufficiently alleged that Debtor had made contradictory statements regarding his true place of domicile.

Court Grants U.S. Trustee's Default Motion

Ultimately granting the Default Motion, the court held that Debtor was in default with respect to the Amended Complaint by failing to file a responsive pleading and that the U.S. Trustee had sufficiently alleged claims to warrant denial of Debtor's discharge under § 727(a)(2), (a)(3), (a)(4) and (a)(5). As a result of this decision, any debts resulting from any pending state court litigation, would not be discharged in Debtor's bankruptcy case.



Bloomberg LawNotes®

Introduction to First Day Motions

Generally, the first few days of a chapter 11 bankruptcy case are critical to a debtor because they set the stage for the case and often provide the debtor with much needed relief on a variety of matters. The immediate relief that the debtor seeks in its “First Day Motions” largely depends on the facts and circumstances of the particular case, the notice given and other related factors. A debtor usually asserts that it needs the relief sought in the First Day Motions in order to maintain the viability of the business and to begin the successful start in its bankruptcy case.

Motions filed seeking administrative relief are intended to ease the administrative burdens and associated costs typically placed on a debtor, the bankruptcy court and other parties involved in the case. Typical administrative First Day Motions include the following:

- Joint Administration
- Consolidated Mailing Matrix of All Known Creditors
- Case Management
- First Day Affidavit of Company Executive
- Extension of Time to File Schedules and Statements
- Interim Compensation of Professionals
- Ordinary Course Professionals
- Pro Hac Vice
- Foreign Enforcement of the Automatic Stay

Motions filed regarding the debtor’s business operations seek to continue those business practices that are necessary to the debtor’s on-going business operations. Typical First Day Motions regarding business operations include the following:

- Cash Management
- Customer Programs
- Utilities
- Cash Collateral
- DIP Financing
- Prepetition Taxes
- Rejection of Unexpired Leases and Executory Contracts
- Swap Financing Agreements
- Insurance

Motions filed regarding the debtor’s employees are intended to alleviate employees’ concerns regarding the payment of wages and other employee obligations, such as the reimbursement of expenses, and the continuation of employee benefit programs and to assist in the retention of such employees. Typical First Day Motions regarding employees include the following:

- Employee Motion (payment of Wages and Benefits)
- Notice Procedures, Briefing Schedule and Hearing Date Regarding Conditional Applications for Relief under Section 1113
- Protective Order for Distribution of Confidential Information to Unions
- Workers’ Compensation

Motions filed regarding vendor relations are intended to provide assurance to the debtor’s vendors and avoid any disruption of the debtor’s business. Typical First Day Motions regarding vendors include:

- Critical Trade Vendors
- Foreign Vendors, Service Providers and Governments
- Reclamation Claims
- Grant of Administrative Expense Status to Obligations Arising from the Postpetition Delivery of Goods Ordered Prepetition
- Prepetition Lienholders



Bankruptcy Law

Debtors

Chapter 11 Filings

The Chapter 11 Filings chart provides a listing of the significant chapter 11 filings made by companies during the time period indicated. The chart includes pertinent information about these chapter 11 debtors, including the debtor's name, the bankruptcy court in which the debtor filed its petition, the case number, the filing date, the judge assigned to the bankruptcy case, and the counsel retained by the debtor.

Notably, this week's Chapter 11 Filings included Inner City Media Corp., in which the creditors filed an involuntary chapter 11 petition in the United States Bankruptcy Court for the Southern District of New York. The alleged debtors are the holding company for the owner of New York's WLIB and WBSL radio stations. According to their pleadings, the petitioners are seeking to recover a total of \$254,075,278.



Filed August 17, 2011 through August 23, 2011

Debtor	Bankruptcy Court	Case Number	Filing Date	Judge	Debtor's Counsel
Crenshaw Avalon Properties LLC	Central District of California	11-bk-45767	8/23/11	Richard M. Neiter	Law Offices of Anthony O. Egbase & Assoc.
JP Unlimited LLC	Central District of California	11-bk-45863	8/23/11	Sheri Bluebond	Pro se
U.S. Granite	Eastern District of California	11-bk-40493	8/23/11	Michael S. McManus	Pro se
PTL Holdings LLC and its affiliated debtors.	District of Delaware	11-bk-12676	8/23/11	Brendan Linehan Shannon	Pachulski Stang Ziehl & Jones LLP
Pinnacle Investments & Developments, Inc.	Southern District of Florida	11-bk-33481	8/23/11	John K. Olson	Susan D. Lasky
NAHADA, Inc.	Northern District of Georgia	11-bk-74252	8/23/11	Mary Grace Diehl	M. Denise Dotson, LLC
Wildwood Owners Association	Northern District of Illinois	11-bk-34347	8/23/11	Eugene R. Wedoff	Law Offices of Timothy C. Culbertson
12 Martense Associates LLC	Eastern District of New York	11-bk-47249	8/23/11	Elizabeth S. Stong	Rattet Pasternak, LLP
Kev's Printing, Inc.	Southern District of New York	11-bk-14000	8/23/11	Stuart M. Bernstein	Flaum & Associates, P.C.
Western Communications, Inc.	District of Oregon	11-bk-37319	8/23/11	Elizabeth L. Perris	Albert N. Kennedy
Riverfront, LLC	Southern District of Alabama	11-bk-03404	8/22/11	Margaret A. Mahoney	Marion E. Wynne, Jr.
NCH Rocky Point, LLC	District of Arizona	11-bk-24065	8/22/11	James M. Marlar	Eric Slocum Sparks PC



Debtor	Bankruptcy Court	Case Number	Filing Date	Judge	Debtor's Counsel
Mexican Benefit Corporation	Central District of California	11-bk-45565	8/22/11	Vincent P Aurzolo	Keith F. Rouse
Andronico's Markets, Inc.	Northern District of California	11-bk-48963	8/22/11	Edward D. Jellen	Law Office of Murray and Murray
Wall Concepts, Inc.	District of Colorado	11-bk-29941	8/22/11	Michael E. Romero	Robert Padjen
329 Greene Street, LLC	District of Connecticut	11-bk-32184	8/22/11	Lorraine Murphy Weil	Groob Ressler & Mulqueen
San Marco at Venetian Bay LLC	Middle District of Florida	11-bk-12738	8/22/11	Arthur B. Briskman	Wolff McFarlin & Herron PA
Florida Magnum Group, LLC	Middle District of Florida	11-bk-12741	8/22/11	Arthur B. Briskman	Wolff McFarlin & Herron PA
Construction Due Diligence Inc.	Middle District of Florida	11-bk-15743	8/22/11	K. Rodney May	Law Offices of Kevin P. O'Brien, P.A.
Lainhart and Potter, Inc.	Southern District of Florida	11-bk-33276	8/22/11	Paul G Hyman, Jr.	Robert C. Furr
CIMA, L.L.C.	Southern District of Florida	11-bk-33279	8/22/11	Raymond B. Ray	Leslie Gern Cloyd
Fishbusterz Freight Co., LLC	Southern District of Florida	11-bk-33382	8/22/11	Robert A. Mark	Brian S. Behar
Doug Larsen Construction, Inc.	District of Idaho	11-bk-02567	8/22/11	Terry L. Myers	D. Blair Clark
Loomis - 15th Lofts, LLC	Northern District of Illinois	11-bk-34169	8/22/11	Susan Pierson Sonderby	Stahl Cowen Crowley Addis LLC
Marche Design LLC	District of Kansas	11-bk-41358	8/22/11	Janice Miller Karlin	Engel Law, P.A.
Victory Chapel Church Corp.	District of Massachusetts	11-bk-43560	8/22/11	Henry J. Boroff	Sonia Walrond
Spyke L.L.C.	Western District of Missouri	11-bk-43909	8/22/11	Arthur B. Federman	Berman DeLeve Kuchan & Chapman
McDonald Brothers, Inc.	Middle District of North Carolina	11-bk-81363	8/22/11	Catharine R. Aron	John A. Northern
Andi-Zach, Inc.	Southern District of Ohio	11-bk-15123	8/22/11	Beth A. Buchanan	Minnillo & Jenkins Co. LPA
Nicholson Farms, LP	Western District of Tennessee	11-bk-12548	8/22/11	G. Harvey Boswell	Barron, Johnson & Parham
Korea Technology Industry America, Inc.	District of Utah	11-bk-32259	8/22/11	R. Kimball Mosier	Durham Jones & Pinegar
Uintah Basin Resources, LLC	District of Utah	11-bk-32261	8/22/11	Joel T. Marker	Durham Jones & Pinegar
Crown Asphalt Ridge, LLC	District of Utah	11-bk-32264	8/22/11	R. Kimball Mosier	Durham Jones & Pinegar
RCP Investements VI, LLC	Middle District of North Carolina	11-bk-81357	8/21/11	William L. Stocks	Jordan, Price, et. al., PLLC
RCP Investments VII, LLC	Middle District of North Carolina	11-bk-81358	8/21/11	William L. Stocks	Jordan, Price, et. al., PLLC

Debtor	Bankruptcy Court	Case Number	Filing Date	Judge	Debtor's Counsel
Madeline P Corp	District of Puerto Rico	11-bk-07058	8/20/11	Enrique S. Lamoutte Inclan	Lugo Mender & Co.
Ramoni Inc.	District of Puerto Rico	11-bk-07059	8/20/11	Enrique S. Lamoutte Inclan	Lugo Mender & Co.
Ritz Interactive, Inc.	Central District of California	11-bk-21690	8/19/11	Erithe A. Smith	Pietzman Weg & Kempinsky LLP
Roxbury Associates LLC	Central District of California	11-bk-45427	8/19/11	Barry Russell	Law Offices of Mark E Goodfriend
Salt Creek Golf, LLC	Southern District of California	11-bk-13898	8/19/11	Louise DeCarl Adler	Solomon Ward Seidenwurm & Smith, LLP
Dave B Howell & Associates, LLC	Middle District of Florida	11-bk-12619	8/19/11	Karen S. Jennemann	Pro se
Odyssey (III) DP IX, LLC	Middle District of Florida	11-bk-15654	8/19/11	Catherine Peek McEwen	Edward J. Peterson, III
Mani Vallabh, Inc.	Western District of Louisiana	11-bk-20836	8/19/11	Robert Summerhays	Wade N. Kelly
Farmhouse Family Eatery, Inc.	Eastern District of Michigan	11-bk-33913	8/19/11	Daniel S. Opperman	Rozanne M. Giunta
International Rarities Corp.	District of Minnesota	11-bk-45512	8/19/11	Robert J. Kressel	Hinshaw & Culbertson LLP
Casa Bella Development, LLC	Western District of Missouri	11-bk-61795	8/19/11	Arthur B. Federman	David Schroeder Law Offices, PC
Silver Fox, LLC	Western District of Missouri	11-bk-61796	8/19/11	Arthur B. Federman	David Schroeder Law Offices, PC
Outdoor Rooms by Design LLC	Western District of Missouri	11-bk-61797	8/19/11	Arthur B. Federman	David Schroeder Law Offices, PC
Maxco, Inc.	District of Nebraska	11-bk-82113	8/19/11	Timothy J. Mahoney	Pollak & Hicks PC
Shengda Tech, Inc.	District of Nevada	11-bk-52649	8/19/11	Bruce T. Beesley	Greenberg Traurig LLP
V-R Property Management	District of Nevada	11-bk-52653	8/19/11	Bruce T. Beesley	Paul W. Freitag
Einstein Moomjy, Inc.	District of New Jersey	11-bk-34723	8/19/11	Novalyn L. Winfield	Wasserman, Jurista & Stolz
Circus Beach Partners Inc.	District of New Jersey	11-bk-34741	8/19/11	Gloria M. Burns	Law Office of Moishe Rothenberg
Legendale LP	District of New Mexico	11-bk-13758	8/19/11	James S. Starzynski	Ronald E. Holmes
Astoria Mechanical Corp.	Eastern District of New York	11-bk-47177	8/19/11	Elizabeth S. Stong	Rosenberg Musso & Weiner LLP
Inner City Media Corp.	Southern District of New York	11-bk-13967	8/19/11	Shelley C. Chapman	Pro se
ICBC Broadcast Holdings, Inc.	Southern District of New York	11-bk-13968	8/19/11	Shelley C. Chapman	Pro se



Debtor	Bankruptcy Court	Case Number	Filing Date	Judge	Debtor's Counsel
ICBC Broadcast Holdings-CA, Inc.	Southern District of New York	11-bk-13969	8/19/11	Shelley C. Chapman	Pro se
ICBC Broadcast Holdings-NY, Inc.	Southern District of New York	11-bk-13970	8/19/11	Shelley C. Chapman	Pro se
ICBC-NY, L.L.C.	Southern District of New York	11-bk-13971	8/19/11	Shelley C. Chapman	Pro se
Inner-City Broadcasting Corp. of Berkeley	Southern District of New York	11-bk-13972	8/19/11	Shelley C. Chapman	Pro se
Urban Radio I, L.L.C.	Southern District of New York	11-bk-13973	8/19/11	Shelley C. Chapman	Pro se
Urban Radio II, L.L.C.	Southern District of New York	11-bk-13974	8/19/11	Shelley C. Chapman	Pro se
Urban Radio III, L.L.C.	Southern District of New York	11-bk-13975	8/19/11	Shelley C. Chapman	Pro se
Urban Radio IV, L.L.C.	Southern District of New York	11-bk-13976	8/19/11	Shelley C. Chapman	Pro se
Urban Radio of Mississippi, L.L.C.	Southern District of New York	11-bk-13977	8/19/11	Shelley C. Chapman	Pro se
Urban Radio of South Carolina, L.L.C.	Southern District of New York	11-bk-13978	8/19/11	Shelley C. Chapman	Pro se
Urban Radio, L.L.C.	Southern District of New York	11-bk-13979	8/19/11	Shelley C. Chapman	Pro se
SpectraWatt, Inc.	Southern District of New York	11-bk-37366	8/19/11	Cecelia G. Morris	King & Spalding LLP
Jones Body Shop, Inc.	Middle District of North Carolina	11-bk-11280	8/19/11	Thomas W. Waldrep, Jr.	Brumbaugh & Stroupe, P.L.L.C
Ed Holmes and Associates Land Surveyors, PA	Western District of North Carolina	11-bk-10807	8/19/11	George R. Hodges	Kight Law Office PC
Empresas Martinez Valentin, Corp.	District of Puerto Rico	11-bk-07018	8/19/11	Mildred Caban Flores	Carmen D. Conde Torres
Scott Olson Digging, Inc.	District of South Dakota	11-bk-40680	8/19/11	Charles L. Nail, Jr.	Dougherty & Dougherty
Comprehensive Obstetrics & Gynecology of Granbury, PA	Northern District of Texas	11-bk-20465	8/19/11	Robert L. Jones	Cavada Law Office
Chicken Done Right, Inc.	Northern District of Texas	11-bk-35252	8/19/11	Stacey G. Jernigan	Eric A. Liepins, P.C.
Images Cosmetics and Laser Center, LLC	Northern District of Texas	11-bk-44718	8/19/11	D. Michael Lynn	Cavada Law Office
DSW Restaurant, Inc.	Southern District of Texas	11-bk-37093	8/19/11	Karen K. Brown	Fuqua & Associates, PC
Lone Cactus Holding Co. LLC	District of Arizona	11-bk-23708	8/18/11	Sarah Sharer Curley	Barski Drake PLC
701 Mariposa Project, LLC	Central District of California	11-bk-19932	8/18/11	Maureen Tighe	Law Offices of Mark E. Goodfriend

Debtor	Bankruptcy Court	Case Number	Filing Date	Judge	Debtor's Counsel
1663 W. 11th Place, LP	Central District of California	11-bk-45150	8/18/11	Ellen Carroll	Pro se
Eurowalk RSW Shoe Group Inc.	Northern District of California	11-bk-48861	8/18/11	Roger L. Efremsky	Law Offices of Darya Sara Druch
The Bilo Corp.	District of Connecticut	11-bk-32155	8/18/11	Lorraine Murphy Weil	Groob Ressler & Mulqueen
MAC Distributing, Inc.	Southern District of Indiana	11-bk-81167	8/18/11	Frank J. Otte	McMahan Law Firm
Milner Electrical Company, Inc.	Eastern District of Kentucky	11-bk-52333	8/18/11	Joseph M. Scott, Jr.	Michael B. Baker
RDM Enterprises, Inc.	District of Maine	11-bk-21211	8/18/11	James B. Haines, Jr.	Cope Law Firm
Tristar Fire Protection, Inc.	Eastern District of Michigan	11-bk-62283	8/18/11	Phillip J. Shefferly	Michael A. Baum
College Corner, L.L.C.	Western District of Missouri	11-bk-43879	8/18/11	Arthur B. Federman	Van Matre Harrison Volkert & Hollis
Red Door Lounge, Inc.	District of Montana	11-bk-61605	8/18/11	Ralph B. Kirscher	Steven M. Johnson
Jazs Pizza, Inc.	District of Nevada	11-bk-52639	8/18/11	Bruce T. Beesley	Gerry G. Zobrist
Otilio Properties, LLC	District of New Jersey	11-bk-34641	8/18/11	Morris Stern	LoFaro and Reiser, LLP
National Equities of New York, Inc.	Eastern District of New York	11-bk-47163	8/18/11	Elizabeth S. Stong	Diana Rezvin
Marrs Electric Sales Co., Inc.	Southern District of New York	11-bk-23666	8/18/11	Robert D. Drain	Rattet Pasternak, LLP
Timber Specialists, Inc.	Middle District of North Carolina	11-bk-51285	8/18/11	Thomas W. Waldrep, Jr.	Ivey, McClellan, Gatton, & Talcott, LLP
SRS Property Investment, Inc.	Middle District of Pennsylvania	11-bk-05758	8/18/11	Robert N. Opel, II	David W. Skutnik
Five Rivers Petroleum LLC	Western District of Pennsylvania	11-bk-25202	8/18/11	Jeffrey A. Deller	Law Offices of Michael J. Henny
QIS Knoxville LLC	Eastern District of Tennessee	11-bk-33859	8/18/11	Richard Stair, Jr.	Haygood, Tarpay & Cox PLLC
Center for Systems Management, Inc.	Eastern District of Virginia	11-bk-16101	8/18/11	Robert G. Mayer	Thomas F. DeCaro, Jr.
Victory Temple Church of 1st Born Intl.	Eastern District of Wisconsin	11-bk-32822	8/18/11	Margaret Dee McGarity	John D. Dries
Lumea Staffing, Inc. and its affiliated debtors	District of Arizona	11-bk-23582	8/17/11	James M. Marlar	Nussbaum Gillis & Dinner, P.C.
Huntley Associates LLC	Central District of California	11-bk-45135	8/17/11	Barry Russell	Law Offices of Mark E. Goodfriend
Sammy Hotels, LLC	District of Colorado	11-bk-29555	8/17/11	A. Bruce Campbell	Thomas F. Quinn
Bonita Beach Road Properties, Inc.	Middle District of Florida	11-bk-15472	8/17/11	Barry S. Schermer	Timothy W. Gensmer

Debtor	Bankruptcy Court	Case Number	Filing Date	Judge	Debtor's Counsel
Payara International Corp.	Southern District of Florida	11-bk-32955	8/17/11	Laurel M Isicoff	Pro Se
Robi Excavating Inc.	Northern District of Illinois	11-bk-83640	8/17/11	Manuel Barbosa	Springer, Brown, Covey, Gaertner & Davis
Shoe Crave LLC	District of Maryland	11-bk-26839	8/17/11	Nancy V. Alquist	Richard Mark Pavlick
CASCO Hotel Group, LLC	District of Maryland	11-bk-26880	8/17/11	Paul Mannes	Stinson Morrison Hecker
Lodger LLC	Eastern District of Michigan	11-bk-62128	8/17/11	Thomas J. Tucker	Financial Law Group, P.C.
Wilma and the Messenger Ministries	Eastern District of Missouri	11-bk-48778	8/17/11	Kathy A. Surratt-States	Rochelle D. Stanton
NPX Corp.	District of Nevada	11-bk-23065	8/17/11	Linda B. Riegle	Pro se
Glick Rentals, LLC	District of New Jersey	11-bk-34449	8/17/11	Morris Stern	Pro se
Fishbein Family, LLC	District of New Jersey	11-bk-34514	8/17/11	Novalyn L. Winfield	Teich Groh
552 West 24th LLC	Eastern District of New York	11-bk-47104	8/17/11	Jerome Feller	Pro se
Sagamore Ventures LLC	Eastern District of New York	11-bk-75892	8/17/11	Robert E. Grossman	Pro se
Stranahan Industries, Inc.	Northern District of New York	11-bk-12629	8/17/11	Robert E. Littlefield, Jr.	Robert J. Rock
Jarrett Millwork, Inc.	Southern District of New York	11-bk-23661	8/17/11	Robert D. Drain	Rattet Pasternak, LLP
Donnaray Enterprises, LLC	Western District of North Carolina	11-bk-40516	8/17/11	George R. Hodges	Gardner Law Offices, PLLC
ERP-Link Corp.	District of Oregon	11-bk-37108	8/17/11	Randall L. Dunn	Howard M. Levine
LG Guijarro Trust	District of Puerto Rico	11-bk-06961	8/17/11	Brian K. Tester	Luis D. Flores Gonzalez
Cookeville Marble and Granite, Inc.	Middle District of Tennessee	11-bk-08175	8/17/11	Keith M. Lundin	Law Offices Lefkovitz & Lefkovitz
Moore Sorrento, LLC	Northern District of Texas	11-bk-44651	8/17/11	Russell F. Nelms	Forshey & Prostok, LLP
Railroad Storage & Drayage, Inc.	District of Utah	11-bk-32033	8/17/11	R. Kimball Mosier	Franklin L. Slaugh
Talbitzer Construction, LLC	Western District of Washington	11-bk-46593	8/17/11	Paul B. Snyder	Nellor Retsinas Crawford PLLC
Lost Lake Resort LLC	Western District of Washington	11-bk-46596	8/17/11	Paul B. Snyder	Pro se



Distressed Debt

Credit Ratings Downgraded

The Credit Ratings Downgraded chart provides a listing of companies that have had their credit ratings significantly downgraded during the time period indicated. The chart includes pertinent information about these companies, including the company's name, the date on which the credit rating downgrade occurred, the rating type involved, the agency, the current and last credit ratings for the company, and the company's industry type.

Company	Date	Rating Type	Agency	Current	Last	Industry Type
Media USA Inc.	8/17/11	LT Corp Family Rating	Moody's	Caa1	B3	Publishing-Periodicals
Aquilex Holdings LLC	8/18/11	LT Local Issuer Credit	S&P	CCC+	B	Oil Field Services
Aquilex Holdings LLC	8/18/11	LT Foreign Issuer Credit	S&P	CCC+	B	Oil Field Services
William Lyon Homes Inc.	8/18/11	Senior Unsecured Debt	Moody's	C	Caa3	Bldg-Residential/ Commercial
William Lyon Homes	8/18/11	LT Corp Family Rating	Moody's	Ca	Caa2	Bldg-Residential/ Commercial
William Lyon Homes	8/19/11	LT Local Issuer Credit	S&P	D	CCC-	Bldg-Residential/Commer
William Lyon Homes	8/19/11	LT Foreign Issuer Credit	S&P	D	CCC-	Bldg-Residential/ Commercial
The River Rock Entertainment Authority	8/22/11	LT Corp Family Rating	Moody's	Caa2*-	Caa1*-	Gambling (Non-Hotel)
The River Rock Entertainment Authority	8/22/11	Senior Unsecured Debt	Moody's	Caa2*-	Caa1*-	Gambling (Non-Hotel)
The PMI Group Inc	8/22/11	LT Local Issuer Credit	S&P	CC*-	CC	Financial Guarantee Insurance
Catalent Pharma Solutions Inc.	8/23/11	Senior Unsecured Debt	Moody's	Caa1*-	Caa1	Research & Development
Catalent Pharma Solutions Inc.	8/23/11	Subordinated Debt	Moody's	Caa1*-	Caa1	Research & Development



Global Corporate Bonds Defaults

The Global Corporate Bond Defaults chart provides a listing of significant global corporate bond defaults that have occurred during the time period indicated. The chart includes pertinent information about these bond defaults, including the date of default, the issuer, the reason for default, the coupon rate, the date of maturity, the amount outstanding, the form of currency, and the industry type involved.

Effective Default Redemption Period August 17, 2011 through August 23, 2011

Default Date	Issuer	Default Reason	Coupon Rate	Maturity	Amt. Otstdg. (M)	Currency	Industry Type
8/19/11	Shengda Tech Inc.	Bankruptcy	6.000%	6/01/18	23,027.00	USD	Chemicals-Diversified
8/19/11	Shengda Tech Inc.	Bankruptcy	6.500%	12/15/15	130,000.00	USD	Chemicals-Diversified

Cross-Border Insolvency

Chapter 15 Filings

The Chapter 15 Filings Chart provides a listing of the significant chapter 15 cross-border insolvency proceedings that have been filed recently. The chart includes pertinent information about these chapter 15 proceedings, including the company's name, whether the proceeding was contested or uncontested, the place of the original proceeding, and the status of the proceeding.

Proceeding	Contested or Uncontested	Place of Original Proceeding	Status
think3 Inc., No. 11-bk-11925 (Bankr. W.D. Tex. Aug. 1, 2011)	Voluntary	Italy	Pending
Worldspan Marine Inc. and Composite FRP Products Ltd., No. 11-bk-19184 (Bankr. W.D. Wash. Aug 1, 2011)	Voluntary	Canada	Pending
The Grande Holdings Ltd., No. 11-bk-41459 (Bankr. C.D. Cal. July 21, 2011)	Voluntary	Hong Kong	Pending
Tokio Marine Europe Insurance Ltd., No. 11-bk-13420 (Bankr. S.D.N.Y. July 18, 2011)	Voluntary	United Kingdom	Pending
Millennium Global Emerging Credit Master Fund Ltd. And its affiliated debtors, No. 11-bk-13171 (Bankr. S.D.N.Y. June 30, 2011)	Voluntary	Bermuda	Pending
Vitro Packaging de Mexico S.A. de C.V., No. 11-bk-34224 (Bankr. N.D. Tex. June 30, 2011)	Voluntary	Mexico	Pending
Avastra Sleep Centres Ltd. (in Liquidation), No. 11-bk-18194 (Bankr. C.D. Cal. June 9, 2011)	Voluntary	Australia	Pending
SIVEC Srl, as successor in Liquidation to Sirz Srl, No. 11-bk-80799 (Bankr. E.D. Okla. June, 2, 2011)	Voluntary	Italy	Recognized as a foreign main proceeding



Proceeding	Contested or Uncontested	Place of Original Proceeding	Status
<i>The Containership Co. (TCC) A/S</i>, No. 11-bk-12622 (Bankr. S.D.N.Y. May 31, 2011)	Voluntary	Denmark	Recognized as a foreign main proceeding
<i>Grant Thornton Ltd. (Receiver of Blockbuster Canada Co.)</i>, No. 11-bk-12433 (Bankr. S.D.N.Y. May 20, 2011)	Voluntary	Canada	Pending
<i>William Switzer & Associates, Ltd.</i>, No. 11-bk-12449 (Bankr. S.D.N.Y. May 20, 2011)	Voluntary	Canada	Recognized as a foreign main proceeding
<i>Satisfied Brake Products, Inc.</i>, No. 11-bk-51427 (Bankr. E.D. Ky. May 16, 2011)	Voluntary	Canada	Recognized as a foreign main proceeding
<i>Enco Zolcsak Equipamentos Industriais Ltda.</i>, No. 11-bk-22924 (Bankr. S.D. Fla. May 11, 2011)	Voluntary	Brazil	Recognized as a foreign main proceeding
<i>Inverness Distribution Ltd.</i>, No. 11-bk-12106 (Bankr. S.D.N.Y. May 3, 2011)	Voluntary	Bermuda	Recognized as a foreign main proceeding
<i>Embraer Alpha Alpha Foxtrot Aircraft (Proprietary) Ltd.</i>, No. 11-bk-21437 (Bankr. S.D. Fla. Apr. 28, 2011)	Voluntary	South Africa	Recognized as a foreign main proceeding
<i>Safe Harbor Bank, Ltd.</i>, No. 11-bk-13629 (Bankr. D. Mass. Apr. 21, 2011)	Voluntary	St. Vincent and the Grenadines	Recognized as a foreign main proceeding
<i>Vitro, S.A.B. de C.V.</i>, No. 11-bk-33335 (Bankr. N.D. Tex. Apr. 14, 2011)	Voluntary	Mexico	Recognized as a foreign main proceeding
<i>Transbrasil S.A. Linhas Areas</i>, No. 11-bk-19484 (Bankr. S.D. Fla. Apr. 7, 2011)	Voluntary	Brazil	Recognized as a foreign main proceeding
<i>Hotel Solutions USA, Inc.</i>, No. 11-bk-31691 (Bankr. N.D. Tex. Mar. 10, 2011)	Voluntary	Canada	Recognized as a foreign main proceeding
<i>Korea Line Corp.</i>, No. 11-bk-10789 (Bankr. S.D.N.Y. Feb. 25, 2011)	Voluntary	South Korea	Recognized as a foreign main proceeding
<i>Ex Ced Foods and its affiliated debtors</i>, No. 11-bk-30703 (Bankr. N.D. Cal. Feb. 25, 2011)	Voluntary	New Zealand	Recognized as a foreign main proceeding
<i>Wellpoint Systems Inc. and its affiliated debtors</i>, No. 11-bk-10423 (Bankr. D. Del. Feb. 10, 2011)	Voluntary	Canada	Recognized as a foreign main proceeding
<i>Global General and Reinsurance Co. Ltd.</i>, No. 11-bk-10327 (Bankr. S.D.N.Y. Jan. 31, 2011)	Voluntary	England	Recognized as a foreign main proceeding
<i>Angiotech Pharmaceuticals, Inc. and its affiliated debtors</i>, No. 11-bk-10269 (Bankr. D. Del. Jan. 30, 2011)	Voluntary	Canada	Pending
<i>Factum Bau und Projektmanagement GmbH</i>, No. 11-bk-00097 (Bankr. M.D. Fla. Jan. 5, 2011)	Voluntary	Austria	Recognized as a foreign main proceeding



Bankruptcy News

U.S. Daily Bankruptcy News Wrap-Up

Carla Main, Michael Bathon and Bill Rochelle | [Bloomberg News](#)

Aug. 18 (Bloomberg)

The Los Angeles Dodgers paid company insiders, defined as directors, officers and their relatives, \$5.9 million in the year before the Major League Baseball team filed for bankruptcy, according to court documents. The recipients' names weren't listed in the team's statement of financial affairs because the information is confidential, Dodgers' attorney Sidney Levinson told reporters yesterday after he met with creditors in Wilmington, Delaware. At the meeting, which was open to the public, the creditors' attorneys asked whether owner Frank McCourt took any money from the team. Dodgers' Chief Financial Officer Peter D. Wilhelm told them McCourt hadn't received any compensation or any loans for at least two years. Instead, McCourt made an "equity contribution" of \$23.5 million within 90 days of the team's June 27 bankruptcy. The Dodgers have denied claims by Major League Baseball that McCourt "siphoned off well over \$100 million of club revenues." Baseball Commissioner Bud Selig and McCourt have traded accusations about who is at fault for the team's financial woes. Under the U.S. Bankruptcy code, companies are required to list the names and amounts paid any insiders, who are generally defined as top officers and equity owners. Mark S. Kenney, an attorney with the Office of the U.S. Trustee, which hosted yesterday's meeting, declined to say why the insider names weren't made public. The U.S. Trustee monitors bankruptcies on behalf of the Justice Department to ensure compliance with the bankruptcy code's filing requirements. In court papers filed Aug. 12, the Dodgers listed two categories of insider payments as aggregated amounts, without any names attached. Current employees collected \$3.82 million between June 27, 2010, and June 26, 2011, according to the statement. Former employees were said to have received \$2.09 million in the same time period, including more than \$987,000 in severance pay. The payments went to a "large number" of insiders, Levinson said.

The case is [In re Los Angeles Dodgers LLC, 11-bk-12010](#), U.S. Bankruptcy Court, District of Delaware (Wilmington).

– Madison 92nd Street Associates Seeks Bankruptcy Protection

Madison 92nd Street Associates LLC, owner of the Upper East Side Courtyard by Marriott in Manhattan, sought bankruptcy protection to avoid a foreclosure sale and pursue mortgage refinancing. The corporation listed assets of as much as \$500 million and debt of as much as \$100 million, according to a filing yesterday in U.S. Bankruptcy Court in Manhattan. The company

owns the 226-room hotel on East 92nd Street that opened in 2006 and has been managed by Courtyard Management Corp., a unit of Marriott International Inc., according to the filing. The New York State Department of Taxation and Finance holds the largest unsecured claim of \$679,581, court papers show. Lender General Electric Capital Corp., owed \$74 million, has scheduled a foreclosure sale for Aug. 24. The company's majority equity holders are working with Westport Capital Partners LLC to line up refinancing, according to the filing. Mismanagement, high labor costs and the economic slowdown have contributed to an erosion in net operating income and caused the company to become delinquent on its mortgage and subject to foreclosure proceedings, according to the filing. The company has a pending lawsuit against Marriott alleging fraud and will seek to end the existing management agreement with Courtyard, according to the filing. A call to Marriott's media line after regular business hours wasn't immediately returned.

The case is [In re Madison 92 Street Associates LLC, 11-bk-13917](#), U.S. Bankruptcy Court, Southern District of New York (Manhattan).

– Merced Falls Ranch Seeks Chapter 11 Protection in California

Merced Falls Ranch LLC filed for chapter 11 protection from creditors yesterday declaring assets of as much as \$500 million and debts of as much as \$50 million, according to court records in Fresno, California. The debtor, based in Los Banos, California, listed the Merced County Tax Assessor as its largest unsecured creditor with an undisputed claim of \$302,803. Stephen W. Sloan was identified as a member of Merced Falls Ranch and the holder of all of the equity in the debtor company in court papers.

The case is [In re Merced Falls Ranch, LLC, 11-bk-19212](#), U.S. Bankruptcy Court, Eastern District of California (Fresno).

– Moore Sorrento Files for Chapter 11 Protection in Texas

Moore Sorrento LLC filed for chapter 11 protection from creditors yesterday in Fort Worth, Texas, declaring assets of at least \$50 million and debts of \$10 million or more. Moore estimates that funds will be available for unsecured creditors, according to court papers. The company said it has fewer than 50 creditors, none of whom were identified in the filing.

The case is [In re Moore Sorrento, LLC, 11-bk-44651](#), U.S. Bankruptcy Court, Northern District of Texas (Fort Worth).

– Fiddler's Creek Bondholders' Request for Examiner Denied

U.S. Bank NA's request that the bankruptcy court appoint an examiner in the Fiddler's Creek bankruptcy case was denied Aug. 16 in an order signed by U.S. Bankruptcy Judge K. Rodney May in Fort Meyers, Florida. U.S. Bank NA made the motion, in its role as indentured trustee, as part of a hearing that began May 26 and lasted several days, according to the Aug. 16 order.



The appointment of an examiner is “absolutely necessary” to investigate serious improprieties suspected of the debtors,” U.S. Bank NA said in a court filing when it made the request. U.S. Bank NA sought information on alleged financial issues relating to liens, collateral and exit financing. The bank said it discovered that “certain senior secured creditors” liens have been shifted to less valuable collateral and property.” The bank argued it in court papers it could not obtain sufficient information through an ordinary discovery process. Fiddler’s Creek is the developer of a master-planned community in Naples, Florida. The disclosure statement explaining the plan was approved in March by the bankruptcy judge. The plan reflects an agreement with the official creditors’ committee, an ad hoc group of homeowners, and two lenders, Regions Bank NA and Fifth Third Bank. Fiddler’s Creek filed for bankruptcy reorganization in February 2010, saying assets and debt both exceeded \$100 million. At completion, the project is to have 100 communities on almost 4,000 acres.

The case is [In re Fiddler’s Creek LLC, 10-bk-03846](#), U.S. Bankruptcy Court, Middle District Florida (Fort Myers).

– Madoff Trustee Amends UBS Case, Says Bank Misled Regulators

The trustee liquidating Bernard Madoff’s firm amended his lawsuit seeking \$2 billion from UBS AG, claiming the Swiss bank misled regulators in the U.S. and Luxembourg to help hide Madoff’s Ponzi scheme. UBS misled the U.S. Securities and Exchange Commission and the Commission de Surveillance du Secteur Financier in Luxembourg about Madoff, the trustee, Irving Picard, said yesterday in a filing in Manhattan federal court, according to a copy of the complaint posted on his website. The filing couldn’t immediately be confirmed in court records. UBS, based in Zurich, hid Madoff’s role as the true custodian of two so-called feeder funds that attracted investors to Bernard L. Madoff Investment Securities before his arrest in December 2008, according to the complaint. Madoff pleaded guilty to running a Ponzi scheme and is serving 150 years in federal prison. Peter McKillop, a spokesman for UBS, said the bank denies the trustee’s allegations. “UBS was not aware of any wrongdoing by Mr. Madoff and will take all appropriate steps to demonstrate that the allegations are false and unfounded,” he said in an e-mail.

The case is [Picard v. UBS AG, 11-cv-04212](#), U.S. District Court, Southern District of New York (Manhattan).

– U.S. Judge to Review Madoff Trustee’s Anti-Class Action Suit

U.S. District Judge Jed Rakoff said he will decide if the liquidator of Bernard Madoff’s firm may stop a class-action suit against directors and advisers of so-called feeder fund Thema International Fund Plc, according to a court filing April 16 in Manhattan. Trustee Irving Picard sued the class-action plaintiffs in April, claiming they were undermining the U.S. bankruptcy court’s jurisdiction over Madoff’s estate. They said Picard was trying to “commandeer” their claims by suing some of the same defendants and wouldn’t share any recoveries with them.

The case is [Picard v. Repex, 11-cv-03477](#), U.S. District Court, Southern District of New York (Manhattan).

– WCAS Fraser Sullivan Approved to Manage Lehman Loan Portfolio

WCAS Fraser Sullivan Investment Management, LLC said it won bankruptcy court approval to manage Lehman Brothers Holdings Inc.’s \$5.3 billion commercial loan portfolio. The portfolio includes \$3.8 billion in commercial loans and \$1.5 billion in unfunded loan commitments, according to the statement yesterday by the investment company. WCAS Fraser Sullivan will transfer assets from the loan portfolio into “a series of static collateralized loan obligations,” it said in the statement. It expects to issue one or more such transactions, known as CLOs, involving collectively at least \$500 million in loans within the next six months and one or more CLO transactions involving collectively at least an additional \$500 million in loans within a year, it said in the statement.

The case is [In re Lehman Brothers Holdings Inc., 08-bk-13555](#), U.S. Bankruptcy Court, Southern District of New York (Manhattan).

– Charter Uses Low-Yielding Cash for Stock Buybacks

Charter Communications Inc., the cable television operator that emerged from bankruptcy two years ago, is buying back stock and retiring bonds as it jettisons cash earning minimal interest to reward investors. Charter plans to buy \$100 million of its \$1.1 billion of 8 percent senior second-lien notes that mature in April 2012 and authorized up to \$200 million in share buybacks over the next 12 months, the St. Louis-based company said in an Aug. 9 filing with the Securities and Exchange Commission. If it can purchase the debt before its final two coupon payments, Charter can save about \$4 million in interest. The company, which has more borrowing relative to profit than all but one of its peers, is trying to meet a leverage target of 4 to 4.5 times debt to earnings before interest, taxes, depreciation and amortization.

Aug. 19 (Bloomberg)

Manistique Papers Inc., the 97-year-old recycled paper producer that shut down and filed for bankruptcy this month, should be placed under the control of a trustee who can liquidate the company’s assets, the company’s lender, RBS Citizens NA, said in court documents Aug. 17. RBS Citizens asked U.S. Bankruptcy Judge Kevin J. Carey to convert Manistique’s bankruptcy from a Chapter 11 case, which is used by companies that want to reorganize and continue operating, to a Chapter 7 case, which is designed to liquidate assets and put the proceeds in the hands of creditors as quickly as possible. Under chapter 11, management remains in charge of the bankruptcy, while in chapter 7, a court-appointed trustee oversees the liquidation. RBS Citizens said a trustee would be cheaper. Manistique, founded in 1914 in Manistique, Michigan, listed assets of \$10 million to \$50 million and debt of \$50 million to \$100 million in chapter 11 documents filed Aug. 12 in U.S. Bankruptcy Court in Wilmington, Delaware. The company, known



as MPI, was the first manufacturer of recycled content newsprint in North America, according to its website. The company ceased production Aug. 5, according to court papers. The company has “no reasonable likelihood” of finding an investor to restart operations in the near future, RBS Citizens said in its motion.

The case is [In re Manistique Papers Inc., 11-12562](#), U.S. Bankruptcy Court, District of Delaware (Wilmington).

– Lumea Inc. Units File for Bankruptcy Protection in Arizona

Two units of Lumea Inc., a human resources industry company, filed for chapter 11 protection in Phoenix yesterday. Employment agency Lumea Staffing Inc. and Lumea Staffing of CA Inc. each declared as much as \$500,000 in assets and as much as \$50 million in debts, court files showed. The largest unsecured creditors of Lumea Staffing are the Internal Revenue Service, with a disputed claim of \$10.37 million, and Easy Staffing Services Inc., with disputed claims of \$4.6 million and \$1.04 million subject to ongoing civil suits. Other unsecured creditors include state taxing authorities. The IRS and Easy Staffing Services are also the largest unsecured creditors of Lumea Staffing of CA. The IRS has a disputed claim against that debtor for \$3.9 million and Easy Staffing has disputed claims of \$1.04 million and \$4.46 million.

The first case is [In re Lumea Staffing, Inc., 11-bk-23582](#), U.S. Bankruptcy Court, District of Arizona (Phoenix), and the companion case is [In re Lumea Staffing of CA, 11-bk-23585](#), in the same court.

– Talbitzer Construction Seeks Bankruptcy Protection

Talbitzer Construction LLC, builder of the Lacamas Meadows development, filed for chapter 11 bankruptcy protection in Tacoma, Washington, listing assets of at least \$1 million and debts of \$10 million to \$50 million, according to court papers. First Independent Bank, based in Vancouver, Washington, has \$10.9 million in larger unsecured claims, against which the bank holds security in the amount of \$5.4 million and a senior secured lien in the amount of \$3.08 million, according to court papers.

The case is [In re Talbitzer Construction LLC, 11-bk-46593](#), U.S. Bankruptcy Court, Western District of Washington (Tacoma).

– NPX Files Chapter 11 Bankruptcy in Las Vegas

NPX Corp., a single-asset real estate company, filed for chapter 11 bankruptcy protection on Aug. 17 in Las Vegas, where it's based. The company valued its real estate holdings, comprising 47 condominium units in Renton, Washington, at \$12 million. NPX's property is subject to a pending foreclosure suit brought by First Citizens Bank & Trust, it said in court papers. A creditors meeting is scheduled for Sept. 22.

The case is [In re NPX Corp., 11-bk-23065](#), U.S. Bankruptcy Court, District of Nevada (Las Vegas).

– Casco Hotel Group Enters Bankruptcy in Maryland

Casco Hotel Group LLC, a unit of bankrupt Congressional Hotel Corp., filed for chapter 11 bankruptcy protection on Aug. 17 in Greenbelt, Maryland. The single-asset real estate company declared assets and liabilities each in the range of \$10 million to \$50 million. Two days earlier, Congressional Hotel filed for reorganization in the same court, listing Mervis Diamond Corp. of Vienna, Virginia, as its largest unsecured creditor, with a claim of \$3.96 million. A meeting of creditors in the Casco Hotel case is scheduled for Sept. 26.

The case is [In re Casco Hotel Group LLC, 11-bk-26880](#), U.S. Bankruptcy Court, District of Maryland (Greenbelt). The related case, in the same court, is [In re Congressional Hotel Corp., 11-br-26832](#).

– Icahn Settles Tropicana Las Vegas Trademark Suit Over Name

Carl Icahn and the Tropicana Las Vegas hotel and casino settled a trademark lawsuit over the right to the name Tropicana with each allowed to use it depending on the location. The accord between the owner of the hotel and several Icahn companies needs approval by the U.S. Bankruptcy Court in Delaware, according to an Aug. 15 filing in that court. The action arose out of the hotel's chapter 11 case. Icahn, the billionaire investor whose companies include Tropicana Entertainment Inc., operates the Tropicana Casino & Resort in Atlantic City, New Jersey. Under the terms of the settlement, Tropicana Las Vegas will have rights to the name in Las Vegas within 50 miles of the casino. Icahn will have rights in New Jersey and other areas. Tropicana Entertainment LLC, the Las Vegas hotel operator, filed for chapter 11 creditor protection in May 2008. Two plans of reorganization were filed and approved by the bankruptcy court. Each group filing a plan claimed trademark rights. Ramada of Nevada is listed along with Tropicana Las Vegas as a defendant in the suit.

The lawsuit is [Icahn Agency Services LLC v. Tropicana Las Vegas Inc., 10-ap-52489](#), and the bankruptcy case is [In re Tropicana Entertainment LLC, 08-bk-10856](#), U.S. Bankruptcy Court, District of Delaware (Wilmington).

– Vitro Units Sued by Bond Trustee Over \$1.35 Billion in Notes

Units of Vitro SAB, the Mexican glassmaker that defaulted in 2009, were sued by a bondholder trustee seeking to recover \$1.35 billion owed under notes issued by the company. Vitro and its subsidiaries are engaged in a “a multiyear scheme” to avoid paying bondholders, Wilmington Trust NA, the trustee under two series of notes issued by Vitro and guaranteed by the units, said in a complaint filed Aug. 17 in New York state court in Manhattan. Vitro in 2009 defaulted on \$1.5 billion in debt, including \$1.2 billion of bonds, after the recession cut demand for construction and auto glass. Bondholders have been fighting the company's debt restructuring efforts in the U.S. and Mexico. A Vitro spokesman didn't immediately respond to an e-mail seeking comment. Several



Vitro U.S. subsidiaries put themselves into chapter 11 in April following involuntary petitions filed in November by bondholders. The subsidiaries subsequently sold their businesses to an affiliate of Sun Capital Partners Inc. for \$55 million.

The case is Wilmington Trust NA v. Vitro Automotriz, 652303-2011, New York State Supreme Court (Manhattan). The chapter 11 cases for U.S. subsidiaries is In re Vitro Asset Corp., 11-bk-32600, U.S. Bankruptcy Court, Northern District of Texas (Dallas). The chapter 15 case for the parent is Vitro SAB de CV, 11-bk-33335, in the same court.

– Tavern on the Green Rights Get \$1.3 Million Opening Bid

A potential buyer agreed to start the bidding for limited rights to the name Tavern on the Green at \$1.3 million in an auction in Manhattan bankruptcy court. Tavern International LLC will be the opening bidder, known as the stalking horse, at the auction, Streambank LLC, the firm hired to find a buyer, said in a statement. Tavern on the Green LP filed for bankruptcy protection in September 2009 after losing its lease to operate the namesake restaurant in New York's Central Park. The company lost a fight with New York City for rights to the trademark. U.S. Bankruptcy Judge Allan Gropper in April approved a settlement between the city and the chapter 7 trustee for the company, Jil Mazer-Marino. The terms of that accord allowed the trustee to sell the name for restaurants outside New York, New Jersey, Connecticut and part of Pennsylvania and for food products. Proceeds are to go to creditors. A hearing to approve bidding procedures will be Aug. 31, according to a court filing. If the rights are sold to another company, the stalking-horse bidder is to receive a breakup fee of \$65,000, the filing states.

The chapter 7 case is Tavern on the Green LP, 09-bk-15450, U.S. Bankruptcy Court, Southern District of New York (Manhattan).

– Tronox Keeps Bankruptcy Bankers to Work on 'Strategic Options'

Tronox Inc. said it's working with the same investment bankers who advised the paint-pigment maker during its bankruptcy reorganization as the company explores "strategic options." Chief Executive Officer Dennis L. Wanlass yesterday in a conference call declined to identify the banks or say whether they're helping Oklahoma City-based Tronox assess a possible sale. Tronox hired Moelis & Co. and Goldman Sachs Group Inc. to explore mergers and acquisitions and dividend options, Debtwire reported Aug. 16. Goldman organized a loan for Tronox in October to help it exit bankruptcy. Investment bank Rothschild Inc. advised Tronox, according to an Oct. 1 court filing. Tronox is the world's fifth-biggest producer of titanium dioxide, a white pigment that adds opacity to paint. Tronox, which was spun off from Kerr-McGee Corp., went into chapter 11 bankruptcy in May 2009 after being saddled with environmental clean-up costs. It exited bankruptcy in February. Tronox expects to keep running its plants at full capacity amid "moderate growth" in demand for the remainder of the year, Wanlass said. Second-quarter net income jumped to \$66.2 million, or \$4.18 a share, from \$11.8 million, or 29 cents,

a year earlier as sales gained 42 percent to \$428.3 million, the company said yesterday in a statement. Tronox is updating its 2008 and 2009 financial statements in order to file by the end of September for listing its stock on a major exchange, Wanlass said.

Aug. 22 (Bloomberg)

New York Mets Owner Fred Wilpon needs to decide in the next month whether to settle the lawsuit by the trustee liquidating Bernard L. Madoff Investment Securities Inc. or face a potential judgment of more than \$1 billion at a two-week jury trial beginning March 5. Wilpon's quandary resulted from an Aug. 19 hearing when he asked U.S. District Judge Jed Rakoff to dismiss the entire lawsuit by the Madoff trustee. While not immediately making a ruling, Rakoff's decision to schedule a trial beginning March 5 wasn't a hopeful sign for Wilpon. By the end of the year, Wilpon and the trustee must finish scouring each other's files for evidence. Losing the trial might require selling the entire team where a settlement now may enable Wilpon to retain some of the Mets. Rakoff said he would issue a formal ruling by the end of September on whether to dismiss the lawsuit. The Trustee seeks \$300 million from Wilpon, his friends, family and associates, for fictitious profits, according to the lawsuit. He is after another \$700 million of principal the Wilpon group withdrew from the Madoff firm before the fraud surfaced. The trustee contends Wilpon has essentially no defense to recovery of the \$300 million in false profits, which represented money stolen from other investors. The trustee argues the Wilpon group must pay back the \$700 million if they didn't receive the funds in good faith. If Wilpon loses at trial, he faces the possibility of a judgment for \$1 billion plus interest that might amount to tens or hundreds of millions more. The trustee wouldn't likely take less than \$300 million in a settlement. If the trustee lets the Wilpon group off for just the false profits, he would make a precedent indicating he will drop every other lawsuit pursuing principal repayments from customers who had reason to suspect Madoff was operating a fraud. If Wilpon chooses to settle, he must decide how much to pay in excess of \$300 million. If Wilpon gives the trustee a 30 percent chance of success on the \$700 million claim, the total settlement would probably be about \$510 million. If he believes the trustee's probability of success is 50-50, then he would likely settle for about \$650 million. The trustee has filed 60 lawsuits seeking return of both principal and profits, the trustee's lawyer said in court. The Madoff trustee has reason to settle now and avoid the chance Rakoff dismisses some of the suit. If Wilpon doesn't settle now and Rakoff doesn't dismiss any of the suit, the cost to settle could rise. Former New York Governor Mario Cuomo, who was appointed to mediate a settlement between the parties, attended the Aug. 19 hearing. Although it's difficult to guess how a judge will rule based on comments made during oral argument, Rakoff didn't seem receptive to arguments by Wilpon's lawyer calling for dismissal of the entire suit. Rakoff characterized Wilpon's papers as admitting that complete dismissal isn't possible if the trustee can show what the parties were calling willful blindness to the possibility Madoff was a fraud. Most of the argument centered on what constitutes willful blindness in the bankruptcy of a broker conducting a Ponzi scheme. Wilpon's lawyer, Karen E. Wagner, argued that bad faith or willful blindness is shown only if the customer knew



there was a fraud. The Madoff trustee, represented by David J. Sheehan, argued for a more objective standard evaluating only the red flags the customers saw, not the conclusions they drew. Rakoff asked Wagner why it was “not appropriate” to distinguish between customers who had no notice of fraud and those who did. He also asked Wagner why the trustee’s complaint hadn’t shown enough “willful blindness” for sending the case to a jury. Wilpon sought dismissal based on a section of the Bankruptcy Code known as the safe harbor. Generally, the section precludes a trustee from bringing suit to recover on transfers of securities. Sheehan said safe harbor defense wasn’t to give protection when the broker was a fraud from top to bottom. Previously, Rakoff said he would return the case to bankruptcy court after ruling on Wilpon’s motion to dismiss. He changed course at the hearing, saying it’s proper for the suit to remain in district court on account of non-bankruptcy issues. Although he didn’t say so, Rakoff’s about face was likely the result of a decision in June by the U.S. Supreme Court saying that bankruptcy judges can’t try cases against creditors based on state law claims. Remaining proceedings should occur faster in district court, where Rakoff scheduled a two-week trial beginning March 5. Proceeding more quickly to trial may put more pressure on the Wilpon group to settle. Before trial begins, Wilpon will have another chance in early 2012 to seek dismissal from Rakoff. Rakoff said that scheduling trial shouldn’t be taken as an indication for how he will rule. The Wilpon group received a setback when the U.S. Court of Appeal in Manhattan ruled on Aug. 16 that the bankruptcy judge was correct in saying that fictitious account statements should be disregarded in calculating a customer’s claim. A different ruling could have resulted in dismissal of the Wilpon suit and others like it. The decision in September will afford Rakoff a chance to explain what meaning, if any, the appeals court ruling has for the Wilpon suit. The Madoff firm began liquidating in December 2008, with the appointment of the trustee under the Securities Investor Protection Act. Bernard Madoff individually went into an involuntary chapter 7 liquidation in April 2009. His bankruptcy case was consolidated with the firm’s liquidation. Madoff is serving a 150-year prison sentence following a guilty plea.

The Wilpon suit in district court is [Picard v. Katz, 11-03605](#), U.S. District Court, Southern District New York. [The Madoff liquidation case is *Securities Investor Protection Corp. v. Bernard L. Madoff Investment Securities Inc.*, 08-bk-01789](#), U.S. Bankruptcy Court, Southern District of New York (Manhattan). [The criminal case is *U.S. v. Madoff*, 09-cr-00213](#), U.S. District Court for the Southern District of New York (Manhattan).

– Madoff Trustee Sues Lion Global, 6 Firms for \$172 Million

The liquidator of Bernard L. Madoff’s firm sued Lion Global Investors Ltd. and at least six other companies to recover at least \$172.8 million they allegedly received from investments made with the con man by Fairfield Sentry Ltd. Irving Picard, the trustee overseeing the liquidation of Bernard L. Madoff Investment Securities LLC, claims Fairfield, a so-called feeder fund to the Madoff company, transferred “customer property” to Lion Global, a Singapore-based asset management company; Quilvest Finance

Ltd., a unit of Luxembourg-based investor Quilvest SA; and five other entities, according to filings in U.S. Bankruptcy Court in Manhattan. Seven complaints filed Aug. 18 seek at least \$172.8 million for investors in Madoff’s Ponzi scheme. Picard demanded \$11.5 million from First Gulf Bank PJSC, the United Arab Emirates lender owned by Abu Dhabi’s ruling family. Picard said he has the authority to take back the transfers as he works to recover money for Madoff customers. Picard, after targeting and sometimes settling with the largest feeder funds, is pursuing comparatively small amounts from investors who redeemed money from the feeders before Madoff’s 2008 arrest. The trustee’s settlement with Walter Noel’s Fairfield Sentry was approved in court in June. The trustee last month lost the right to claim almost \$9 billion in damages from HSBC Holdings Plc and feeder funds after a ruling by U.S. District Judge Jed Rakoff, who said Picard was free to pursue bankruptcy claims. Picard is seeking at least \$50.6 million from Lion Global, according to the filing. Lion Global’s lawyers are looking into the lawsuit, Mae Wong, a spokeswoman for the Singapore firm, said Aug. 19. A call to Quilvest USA in New York seeking comment on the lawsuit after regular business hours wasn’t immediately returned. A call to First Gulf Bank wasn’t answered after regular business hours.

The case is [Picard v. Lion Global, 11-bk-2540](#), U.S. Bankruptcy Court, Southern District of New York (Manhattan).

– Linden Ponds’ Disclosure Statement Approved; Plan Confirmed

Linden Ponds Inc., which operates a 108-acre retirement community in Hingham, Massachusetts, won approval of its disclosure statement and confirmation of its plan of reorganization at a hearing Aug. 18 at the bankruptcy court in Dallas, Texas, according to Thomas Califano of DLA Piper, an attorney for Linden Ponds. The confirmation of the plan by Judge Stacey Jernigan could not be immediately confirmed through court filings. The plan restructures \$152 million of outstanding principal of Massachusetts Development Agency Bonds, Califano said. “The principal reduction was approximately \$900,000,” he said. Unsecured creditors “will be paid in full and all resident care agreements will remain in full force and effect,” Califano said. The Linden Ponds bankruptcy was consolidated with that of its unit, Hingham Campus LLC bankruptcy, which is also covered by the plan and the confirmation. Scott Goldstein, an attorney at Spencer, Fane, Britt & Browne LLP in Kansas City, Missouri, who represents the bondholders, didn’t immediately return a voice-mail seeking comment on the plan confirmation. Linden Ponds sought U.S. Bankruptcy Court protection June 14, citing as much as \$500 million each in assets and debts. The debtor, which opened in 2004, is a 998-unit continuing-care complex, offering a range of services from independent living to skilled nursing.

The case is [In re Hingham Campus LLC, 11-bk-33912](#), U.S. Bankruptcy Court, Northern District of Texas (Dallas), and in the same court, [In re Linden Ponds, 11-bk-11913](#).



– Petters, Polaroid Global Settlement Upheld on Appeal

The global settlement for the companies that made up the Ponzi scheme orchestrated by Thomas Petters was upheld on appeal by the Bankruptcy Appellate Panel for the 8th Circuit in St. Louis. The settlement was challenged by only one creditor, Interlachen Harriet Investments Ltd., the holder of a \$60 million claim. Interlachen had the misfortune of being one of the last investors before Petters' fraud was unearthed in October 2008. The Petters Ponzi scheme was the country's largest until the Bernard Madoff scam surfaced about two months later. The settlement included the Petters companies along with the trustee for Polaroid Corp., a \$426 million acquisition that Petters completed in 2005 using stolen money. The settlement also wrapped up claims by and against Asset Based Resource Group LLC, which invested a total of \$2.7 billion in the Petters scam and ended up asserting a \$312 million claim after deducting amounts it took out before the fraud became known. A receiver was appointed for the Petters companies in October 2008. He put the companies into chapter 11 the same month and continued as trustee. The Polaroid chapter 11 began in December 2008. Polaroid's assets were sold for \$87 million in April 2009. The case was converted to chapter 7 in Sept. 2009. Asset Based Resource was sued in the bankruptcies for receiving more than \$2.7 billion in fraudulent transfers and preferences. In settlement, Polaroid paid Asset Based Resource \$11.5 million to release a \$291 million secured claim. Polaroid will pay the Petters companies \$3 million to settle a \$3.9 million preference claim against ABRG. Asset Based Resource's claims against the Petters companies was reduced from \$312 million to \$141.3 million, unsecured. ABRG exchanged releases with Polaroid and the Petters companies. Petters was convicted in December 2009 on 20 counts including fraud, conspiracy, and money laundering and given a 50-year prison sentence.

The appeal is *Interlachen Harriet Investments Ltd. v. Kelley* (In re Petters Co. Inc.), 11-6013, Bankruptcy Appellate Panel for the 8th Circuit (St. Louis). The bankruptcy cases for two Petters companies are *In re Petters Co.*, 08-45257 and *In re Petters Group Worldwide LLC*, 08-45258, U.S. Bankruptcy Court, District of Minnesota (St. Paul).

– Grupo Mexico Unit Ordered to Pay Law Firm \$122.4 Million

Grupo Mexico SAB's U.S. mining unit must pay \$122.4 million in fees and \$6.5 million in expenses to the Houston law firm the Mexican copper producer spent six years fighting in federal courts in Texas. U.S. Bankruptcy Judge Richard S. Schmidt in Corpus Christi, Texas, Aug. 18 ordered Asarco LLC to pay the fees and expenses of Baker Botts LLP, which won a judgment potentially worth more than \$6 billion against Grupo Mexico in 2008 related to Asarco's bankruptcy. The case was settled when Grupo Mexico agreed to pay creditors about \$2.5 billion to bring Asarco out of bankruptcy. The payment order was issued Aug. 18. Group Mexico, acting through a U.S. holding company, put Asarco into bankruptcy in 2005 seeking protection from creditors owed billions of dollars. At the start of the bankruptcy, Asarco, a copper miner based in Tucson, Arizona, was in danger of being forced to liquidate,

Schmidt wrote. After the judge installed independent directors to run Asarco, Baker Botts sued Grupo Mexico, accusing the Mexican mining company of causing Asarco's bankruptcy by stripping its subsidiary of its most valuable assets and then abandoning it. The victory over Grupo Mexico "is likely the largest fraudulent transfer judgment in chapter 11 history," Schmidt wrote. Chapter 11 refers to the section of the U.S. Bankruptcy Code companies use to reorganize. G. Irvin Terrell was Baker Botts's lead attorney in the fraudulent-transfer suit. Jack L. Kinzie was the lead lawyer in the bankruptcy case before Grupo Mexico regained control of Asarco and hired a new law firm. Asarco objected to the fees. The company's new attorney, Marty L. Brimmage Jr. of the law firm Haynes & Boone LLP, didn't immediately reply to an e-mail requesting comment on the fee decision.

The case is *In re Asarco LLC*, 05-21207, U.S. Bankruptcy Court, Southern District of Texas (Corpus Christi).

– ShengdaTech Seeks Bankruptcy With About \$181 Million in Debt

ShengdaTech Inc., a manufacturer of nano precipitated calcium carbonate, sought bankruptcy protection from creditors without citing a reason. The company listed \$295.4 million in assets and \$180.9 million in debt as of Sept. 30 in chapter 11 documents filed Aug. 19 in U.S. Bankruptcy Court in Reno, Nevada. ShengdaTech is a leading maker of nano precipitated calcium carbonate or NPCC, an additive used in automotive and polyvinyl chloride products, in the People's Republic of China, according to its website. The company is the only supplier of NPCC products to the tire industry. The company, which is based in Reno, said in court papers that unsecured creditors should expect to see a recovery from the reorganization. The 20 largest unsecured creditors are owed about \$167.5 million, with the Bank of New York Mellon the biggest acting as the indenture trustee for 6.5 percent noteholders, owed about \$130 million, court documents show. The bank is also listed as the trustee for 6 percent noteholders owed about \$36.3 million. Fifteen of the 20 are listed as owed an "unknown" amount. ShengdaTech fell 4 cents, or 6.4 percent, to close on Aug. 19 at 59 cents in over-the-counter trading. The stock has plummeted 88 percent this year, according to Bloomberg data.

The case is *In re ShengdaTech Inc.*, 11-52649, U.S. Bankruptcy Court, District of Nevada (Reno).

Aug. 23 (Bloomberg)

Cerberus Capital Management LP and Chatham Lodging Trust terminated their agreement to buy 64 hotels from Innkeepers USA Trust for \$1.1 billion, citing a possible adverse change in the business. The firms agreed to the transaction in June as part of Innkeepers' bankruptcy reorganization. At an auction in May, they placed the winning bid for the largest group of Innkeepers hotels, topping an offer from a unit of Lehman Brothers Holdings Inc. and Five Mile Capital Partners LLC. The reneging buyers cited a possible adverse change in Innkeepers' business as the reason for backing out of the June transaction, in a statement yesterday.



The sale was a key element in the lodging company's plan to exit bankruptcy. "Throughout our restructuring process, Innkeepers has maintained normal business operations at all of its properties," Marc A. Beilinson, Innkeepers' chief restructuring officer, said in a statement. "Cerberus/Chatham cannot dispute this fact and cannot support any argument that recent volatility in the global markets has negatively impacted the 64 hotels." Cerberus, the New York-based buyout firm, and Chatham, a publicly traded hotel investor in Palm Beach, Florida, didn't specify what triggered the decision to invoke what is known as a material adverse effect clause. The clause allowed them to back out of the deal in the occurrence of a "condition, change or development that could reasonably be expected to have a material adverse effect" on conditions including Innkeepers' business and financial position, according to the statement. Innkeepers said the companies acted "inappropriately," and it will evaluate "all legal and equitable remedies." The collapse of the sale to Cerberus and Chatham disrupts Innkeepers' exit from chapter 11 after a judge previously signed off on a plan that has approval of the Palm Beach-based company's creditors. Officials for Cerberus didn't respond to phone calls or e-mails seeking comment. "Chatham looks at this development as transaction specific not as a reflection of the hotel industry environment," said Michael Kontos, a spokesman for the company. Innkeepers owns 71 hotels in 20 U.S. states and the District of Columbia, including Residence Inns by Marriott and Hampton Inns, according to a July 19 statement. On July 14, Chatham completed the acquisition of five hotels comprising 764 rooms from Innkeepers for \$195 million in cash, a deal that isn't affected by today's decision.

– Capmark's \$4 Billion Reorganization Plan Wins Court Approval

Capmark Financial Group Inc., the commercial lender once a part of General Motors Corp., won court approval to exit bankruptcy by giving creditors cash, stock and new debt worth a total of almost \$4 billion. U.S. Bankruptcy Judge Kevin Gross said he would sign an order approving the plan this week after minor wording changes are made to the documents. After almost two years in bankruptcy, the company will reorganize around its Utah-based bank and will be owned by creditors, including unsecured noteholders and lenders. Those creditors voted overwhelmingly in favor of the plan. Under the plan, creditors will split \$900 million in cash, new debt securities of \$1.25 billion and stock in the reorganized company, estimated to be worth about \$1.83 billion. The company may implement the plan, and pay the creditors, by Sept. 30, said a Capmark attorney. Capmark, based in Horsham, Pennsylvania, became partly owned by affiliates of New York-based Goldman Sachs Group Inc. when the bank and a group of investors bought 78 percent of Capmark, then called GMAC Commercial Mortgage, in 2006 for \$1.5 billion in cash and the repayment of \$7.3 billion of debt. While in bankruptcy, Capmark sold its loan-servicing unit to Warren Buffett's Berkshire Hathaway Inc. and Leucadia National Corp. in a deal valued at \$468 million. The creditors committee also battled with Goldman Sachs over how to handle so-called insider preference claims – lawsuits sometimes brought against company insiders, including equity holders, accused of wrongly taking money from the company in the months before

the bankruptcy filing. The right to file any insider claims passes to the new company, under the plan. "It was clear that it was an extremely intricate case," said Gross, who presided over the hearing because U.S. Bankruptcy Judge Christopher Sontchi wasn't available.

[The case is In re Capmark Financial Group Inc., 09-13684, U.S. Bankruptcy Court, District of Delaware \(Wilmington\).](#)

– Peter Madoff's Aston Martin Sells at Auction for \$247,500

An Aston Martin previously owned by Peter Madoff, brother of Bernard L. Madoff, sold at auction for \$247,500 in Monterey, California, according to RM Auctions. The 1958 Aston Martin MK III Drophead Coupe was sold Aug. 19. Amy Christie, a spokeswoman for the auction house, said in an e-mail. An online sale catalog valued the car at \$200,000 to \$250,000. The proceeds will go to investors who lost as much as \$19 billion in his brother's Ponzi scheme, according to Irving Picard, the trustee liquidating Bernard Madoff's firm in New York. Madoff's U.K. firm bought the car for Peter Madoff in 2008 for \$267,000 and wasn't reimbursed for the expense, Picard said in a court filing. The car, with a carriage green finish and tan upholstery and showing about 30,400 miles, is one of 84 Drophead Coupes built and has a "well-maintained older restoration," according to the catalog. It had servicing and "paintwork" in 2008 from Aston Workshop in the U.K. at a recorded 30,184 miles, RM said. The restoration has held up and the car performed well on a recent road test, it said in the catalog. Peter Madoff, sued by U.K. liquidators in 2009 for allegedly enriching himself unjustly by taking the Aston Martin, transferred ownership of the car to Picard on May 4, the trustee said in a filing. It is being auctioned with agreement from the U.K. liquidators, Picard said. Peter Madoff was chief compliance officer at Bernard L. Madoff Investment Securities LLC. He was among those to whom Bernard Madoff confessed shortly before his arrest, according to Ira Sorkin, a lawyer for Bernard Madoff. Peter Madoff also co-signed Bernard Madoff's \$10 million bond following the money manager's arrest. The \$247,500 sales price includes the buyer's premium, Christie said in the e-mail.

[The main case is Securities Investor Protection Corp. v. Bernard L. Madoff Investment Securities LLC, 08-1789, U.S. Bankruptcy Court, Southern District of New York \(Manhattan\).](#)

– Vallejo Citizens Still Feeling Shockwaves From Bankruptcy

While Vallejo, California, located 24 miles (39 kilometers) north of San Francisco, emerged from court protection on Aug. 5, the city's citizens are still feeling the ripple effects caused by its trip through bankruptcy. "I see prostitutes, pimps and drug dealers out my front window," resident Ruth Rooney, who moved to the city in 2005, said in a telephone interview with Bloomberg's Alison Vekshin on Aug. 5. "There's two on the corner right now." Her property value has dropped 70 percent in six years, she said. Vallejo, a onetime U.S. Navy town of about 120,000 on San Francisco Bay, sought protection from creditors in May 2008 after the recession eroded tax revenue and unions rejected



wage cuts. Prostitution became a growth industry in Vallejo as the city slashed its payroll, cutting police by a third, to 90 from 134. The largest municipal bankruptcy in California since Orange County's in 1994 has forced law enforcement to focus on violent crime at the cost of so-called quality-of-life issues, residents and officials said. "When you have half the number of people, you can only do half the amount of work," Robert Nichelini, Vallejo's police chief, said in an Aug. 15 telephone interview. "Where it's taken a toll is the lower-priority crimes, which have had to take a back seat." Interim Fire Chief Paige Meyer said his department employs 67, down from 122 in May 2008. Three of eight stations were closed about the time the city filed for bankruptcy. The sharp reduction in city services has prompted residents to fill the void, particularly in law enforcement. Vallejo has 302 neighborhood-watch associations with 2,552 members, up from 10 groups with 60 people in 2009, said Tony Pearsall, executive director of the Fighting Back Partnership, a Vallejo-based nonprofit social-services group.

– ShengdaTech Board Sues CEO in Chinese Reverse Merger Case

Board members of ShengdaTech Inc., a Chinese company that gained access to U.S. investors through a reverse merger, sued the chief executive officer of the bankrupt chemical maker, claiming he's obstructing an internal fraud investigation. A special committee of ShengdaTech sued Chen Xiangzhi to prevent him from regaining control of the company, ending a probe of its finances and ousting a newly appointed chief restructuring officer. Reorganizing ShengdaTech requires "the continued existence of the special committee and the CRO, and the preservation of their independent powers," the board members said in court papers filed Aug. 20 in U.S. Bankruptcy Court in Reno, Nevada. The company listed \$295.4 million in assets and \$180.9 million in debt as of last Sept. 30 in court papers the special committee filed Aug. 19. ShengdaTech makes nano precipitated calcium carbonate, or NPCC, a chemical additive used in automotive and polyvinyl chloride products. ShengdaTech is the only supplier of NPCC products to the tire industry in China, according to the company's website. The company was organized by a so-called reverse merger in 2006, when Chen's Faith Bloom Limited acquired a U.S. company incorporated in Nevada named Zeolite Exploration Co. In a reverse merger, a company not listed in the U.S. buys an American public shell corporation, allowing the new entity to avoid the scrutiny of an initial public offering.

The case is [In re ShengdaTech Inc., 11-52649](#), U.S. Bankruptcy Court, District of Nevada (Reno).

– Canary Wharf Agrees Not to Vote Against Lehman Liquidation Plan

Canary Wharf Group Plc, saying it won't vote against Lehman Brothers Holdings Inc.'s amended liquidation plan, agreed to reduce its claims against the collapsed bank to \$780 million from \$4.5 billion. Under an agreement with the London real estate

developer, Lehman will reserve against payment an amount equal to what would have been provided had the debt been classified as senior unsecured claims in the amended plan, according to a filing yesterday in U.S. Bankruptcy Court in Manhattan. Lehman had earlier disputed Canary Wharf's \$4.5 billion in claims, filed in September 2009, according to the filing. The agreement is subject to bankruptcy court approval. Lehman, Canary Wharf Group's largest tenant, occupied more than 1 million square feet (93,000 square meters) of office space at London's 20-25 Bank Street in 2003 on a 30-year lease. Canary Wharf filed three claims in 2009, including a \$4.3 billion claim in rent and charges for units on Heron Quays. The Heron Quays claim was reduced to \$770 million, according to the filing. Lehman filed an amended payout plan on July 1 that allots more money to a group including Goldman Sachs Group Inc. and less to bondholders including Paulson & Co. Creditors holding more than \$100 billion in claims support the plan, Lehman said.

The case is [In re Lehman Brothers Holdings Inc., 08-13555](#), U.S. Bankruptcy Court, Southern District of New York (Manhattan).

– Radio Station Owner Inner City Media Targeted for Bankruptcy

Creditors of Inner City Media Corp., the holding company for the owner of New York's WLIB and WBLS radio stations, filed an involuntary chapter 11 bankruptcy petition. The creditors, a group of senior secured lenders including Yucaipa Cos. funds, listed about \$254 million in debt in an Aug. 19 filing in U.S. Bankruptcy Court in Manhattan. The Yucaipa affiliates are owed a bulk of the debt, holding about \$155.2 million. "The alleged debtors have been mismanaged and the value of the senior lenders' collateral has steadily decreased to the point where they are now substantially undersecured," the creditors said in court papers. The involuntary filing was "the only means to break the apparent impasse caused by the entrenched equity holders who have disregarded their fiduciary duties as directors and officers" of the company, they added. The creditors claim the company's chairman, Pierre Sutton, scuttled a restructuring proposal they negotiated with the company's board which would have been implemented through a consensual chapter 11 bankruptcy filing. Sutton removed the incumbent board and replaced them in an effort to gain leverage, according to court documents. The lenders' proposed reorganization plan would have left unsecured creditors unaffected and paid equity holders about \$1.2 million and 2 percent of the equity with warrants to buy more. The creditors will seek court permission to file their own reorganization plan for the radio owner, lawyers said in court papers. Inner City Media, through Inner City Broadcasting, owns urban-formatted radio stations in New York, California, South Carolina and Mississippi.

The case is [In re Inner City Media Corp., 11-13967](#), U.S. Bankruptcy Court, Southern District of New York (Manhattan).



– Andronico’s Market Files for Bankruptcy, Will Sell Assets

Andronico’s Market Inc., the 82-year-old California supermarket chain, sought bankruptcy protection from creditors and will sell the company to private equity investor Renovo Capital. The company, based in San Francisco, California listed as much as \$50 million in both debt and assets in chapter 11 documents filed yesterday in U.S. Bankruptcy Court in Oakland, California. Andronico’s, founded in 1929 by Greek immigrant Frank Andronico, has struggled after the grocer took on a significant amount of debt in a bid to expand its operations, according to a company statement issued yesterday. The expansion campaign failed due to the slumping economy, forcing it to close some stores. “This is a bittersweet moment in our history,” said Bill Andronico, Andronico’s CEO and a member of the third generation of the family that owns the markets, in the statement. “We have struggled mightily to keep going, but the combination of the economic downturn and a broken balance sheet was too heavy a burden. The good news is that this deal preserves our markets and keeps our employees working.” Renovo Capital, which will buy the company for an undisclosed amount, will also provide a loan to help fund Andronico’s operations while in bankruptcy. The company has about 400 workers at seven supermarkets. Four stores are located in Berkeley and the other three markets in San Francisco, Los Altos and San Anselmo, California.

The case is [In re Andronico’s Market Inc.](#), 11-48963, U.S. Bankruptcy Court, Northern District of California (Oakland).

Aug. 24 (Bloomberg)

Innkeepers USA Trust objected to a demand from Cerberus Capital Management LP and Chatham Lodging Trust to recover a \$20 million deposit for their now disputed plan to acquire 64 of the bankrupt company’s hotels. Innkeepers, an operator of 71 hotels including Residence Inns, Marriotts and Hampton Inns, already has final court approval of a bankruptcy plan that rests on the sale of 64 properties to Cerberus and Chatham. Cerberus and Chatham said Aug. 22 that they had ended the \$1.12 billion agreement, citing a possible adverse change that could affect Innkeepers’ long-term business. They didn’t state what the change was. Cerberus and Chatham have demanded their \$20 million deposit back from Wells Fargo, according to a status report filed in Manhattan court yesterday. In an Aug. 19 letter to Wells Fargo, they demanded that 90 percent be returned to Cerberus and 10 percent be returned to Chatham. Innkeepers objected, saying in a separate letter to Wells Fargo “there has not been an occurrence of any condition, change, or development that could reasonably be expected to have a material adverse effect” on its business since the deal was agreed to in May. As a result, Wells Fargo must keep the money until a court rules on the dispute, Innkeepers said. Separately, Innkeepers creditor Midland Loan Services, questioned a request for fees from Innkeepers bankruptcy counsel Kirkland & Ellis LLP, saying Innkeepers’ exit from bankruptcy was now uncertain. Midland, servicer of an \$825 million mortgage loan, said Kirkland & Ellis’s request for \$1.6 million should be partially held back given uncertainties for all of Innkeepers’ interrelated reorganization

plans. Cerberus and Chatham’s announcement that they’ll terminate the purchase agreement raises “the question of whether such plans will become effective,” lawyers for Midland wrote.

The case is [In re Innkeepers USA Trust](#), 10-13800, U.S. Bankruptcy Court, Southern District of New York (Manhattan).

– Caribe Media Files Restructuring Plan Giving Lenders Equity

Caribe Media Inc., a publisher of directories in Puerto Rico and the Dominican Republic, filed a reorganization plan that would give control of the company to its lenders. Caribe sought chapter 11 protection from creditors in May in U.S. Bankruptcy Court in Wilmington, Delaware, citing as much as \$500 million each in assets and liabilities. The company, based in San Juan, Puerto Rico, has about \$184 million in funded debt. Senior secured lenders, owed about \$127 million, would get all of the reorganized company’s equity and share in a \$55 million exit loan, for a projected recovery of 79 to 95 percent, according to the plan. Subordinated noteholders owed about \$58.5 million won’t receive any recovery under the plan. The company filed bankruptcy so its lenders could pursue \$44.2 million they claim was wrongly transferred to affiliates as dividend payments. Before the filing, an unofficial committee of senior secured lenders “raised issues regarding approximately \$44.2 million in dividend payments that Caribe Media Inc. transferred to non-debtor Local Insight Media Inc.,” Caribe Chief Financial Officer Chris Batson said in court papers. The money was moved in 2009 and 2010, and the committee believes the transfers were “improper” and subject to scrutiny under “federal or state fraudulent conveyance laws,” Batson said. A fraudulent conveyance occurs when assets or property are transferred and the company doesn’t receive equivalent value. The company’s main operating units provide directory services to Puerto Rico and the Dominican Republic, commanding 80 percent and 98 percent of the market respectively, court papers show. Caribe is indirectly owned by Local Insight Media Holdings Inc., based in Englewood, Colorado, which filed for chapter 11 protection in November.

The case is [In re Caribe Media](#), 11-11387, U.S. Bankruptcy Court, Delaware (Wilmington).

– Nortel Judges Approve Price Cut for Internet Phone Business

Nortel Networks Inc., the bankrupt former maker of telephone equipment, won court permission to cut the price of its former Internet phone business by \$25 million, almost 17 months after selling the unit to Genband Inc. At a joint hearing of courts in the U.S. and Canada, the judges overseeing Nortel’s liquidation approved the reduction, which came after Genband challenged the price formula used last year when it bought the unit. Genband completed the sale in May 2010, paying \$182.5 million into an escrow account, according to court records. Since filing for bankruptcy in 2009, Nortel has been selling its business units. Last month, Nortel won court approval for the last and largest major transaction, the \$4.5 billion sale of its patent portfolio



to a group that includes Apple Inc. and Microsoft Corp. After negotiating with Genband, Nortel's units in Canada and the U.S. agreed to a final purchase price of \$157.7 million, according to court documents. "These resolutions move the matter toward the ultimate resolution of the case," U.S. Bankruptcy Judge Kevin Gross said in Wilmington, Delaware. The price adjustment was also approved by Ontario Superior Court Judge Geoffrey Morawetz in Toronto.

The case is [Nortel Networks Inc., 09-10138](#), U.S. Bankruptcy Court, District of Delaware (Wilmington).

– The Russ Companies \$52 Million in Inventory to Be Liquidated

A joint Venture of SB Capital Group LLC, Worldwide Merchandise Resources Corporation and Just Inventory Solutions LLC was the winning bidder to liquidate the remaining inventory of iconic gift-maker, The Russ Companies Inc. The joint venture said the inventory was worth more than \$52 million at suggested retail prices, according to an Aug. 19 statement announcing the transaction. The Russ Companies based in Wayne, New Jersey makes gifts such as teddy bears and other plush toys, including licensed products such as Raggedy Ann & Andy, Curious George, Scooby Doo, Barbie Pets, Corduroy and The Simpsons. The company also makes memorial and seasonal gifts. "During its almost 50 years in business, The Russ Companies, Inc., has been a major force in the gift business. With its widespread availability and its unsurpassed reputation for quality, the Russ Berrie brand has set the industry standard," the joint venture said in the statement. Russell Berrie, who founded the company in 1963, designed his first toy product, the plush "Fuzzy Wuzzies" in 1964, after working as a toy sales representative, according to the company's web site. In 1984 the company went public. His company later went on to sell the "Snuggle" bear, the most popular teddy bear on the market, helping it to top \$200 million in sales in 1985. "Troll" mania took the world by storm driving sales to a record, past \$400 million, in 1992. The company sought chapter 7 bankruptcy protection on April 21, in Newark, New Jersey, according to court documents. The company listed debt of as much as \$50 million.

The case is [In re The Russ Companies Inc, 11-22471](#), U.S. Bankruptcy Court, District of New Jersey (Newark).

– Madoff Trustee Defends 'Clawbacks' in U.S. District Court

The liquidator of Bernard L. Madoff's firm defended a "clawback" lawsuit against a doctor who invested in the Ponzi scheme, saying a U.S. appeals court ruling backed up his claim that fictitious paper profits are an "absurd" measure of investors' holdings. Gerald Blumenthal, the investor, is asking a U.S. District Court judge to rule on his argument that the Madoff estate owes him the amount reflected on his Madoff brokerage statements, trustee Irving Picard said in an Aug. 22 court filing. The trustee is demanding return of \$1.6 million in transfers deemed "fraudulent" under bankruptcy law. A federal appeals court in New York ruled on

Aug. 16 that in calculating what to pay Madoff customers, Picard should ignore fictitious profit, which merely reflected the con man's "machinations." While the court didn't say what Picard can take from investors, his argument for clawing back profit was "bolstered" by the ruling, said Peter Henning, a professor at Wayne State University in Detroit. "It does not address the clawback suits directly, but that is the basis for assessing the claims and pursuing the suits against the net winners," he said. Jonathan Landers, a lawyer for Blumenthal, declined to comment on the Picard filing. Most of the 1,000 suits Picard has filed to gather money for Madoff customers are aimed at taking back profit withdrawn before Madoff's 2008 bankruptcy, the trustee has said.

The case is [Picard v. Blumenthal, 11-cv-04293](#), U.S. District Court, Southern District of New York (Manhattan).

– Raser Technologies Loses \$1.9 Million in July

Raser Technologies Inc., a geothermal-energy developer, lost about \$1.9 million in July on sales \$324,278. Since filing for bankruptcy the company has lost about \$5.2 million. The company had a net loss of about \$1.15 million for the month before factoring in restructuring costs, court papers show. The company spent about \$714,000 on professional fees for its reorganization. Raser is a renewable energy company focusing on geothermal power development, according to a March press release. The company has one operating plant in Utah and another eight early and development stage projects in Utah, New Mexico, Nevada and Oregon. When the company sought bankruptcy protection it hadn't recorded a profit since it began posting its results in the quarter ending March 31, 2001, according to data compiled by Bloomberg News. The company, based in Provo, Utah, listed \$107.8 million in debt and \$41.8 million in assets as of Dec. 31, in chapter 11 documents filed April 29 in U.S. Bankruptcy Court in Wilmington, Delaware.

The case is [In re Raser Technologies Inc., 11-11315](#), U.S. Bankruptcy Court, District of Delaware (Wilmington).

– Grace Lost Secret Auction, Company Tells Bankruptcy Judge

W.R. Grace & Co. lost an auction last month in which the specialty-chemical maker bid in secret for assets it wouldn't publicly identify, the company told the judge overseeing its bankruptcy case. Grace asked U.S. Bankruptcy Judge Judith K. Fitzgerald on Aug. 22 in Wilmington, Delaware, for permission to destroy all of the auction-related materials it had in its possession. Because the company is in bankruptcy, it was required to seek court permission to participate in the auction. The documents Grace used to win Fitzgerald's approval to bid are sealed. Now that the auction is over, the unidentified seller "requested that the debtors destroy all evaluation material," Grace said in court papers. Grace is awaiting permission from higher-level courts to leave bankruptcy. Fitzgerald approved the company's reorganization plan in January. Should it resolve all appeals and win final approvals, Grace will pay creditors in full and set up a trust to pay victims of asbestos poisoning. Grace, based in Columbia, Maryland, was among



companies that filed multibillion-dollar bankruptcies in 2000 and 2001 to limit their financial exposure to hundreds of thousands of asbestos lawsuits.

The bankruptcy case is *In re W.R. Grace*, 01-1139, U.S. Bankruptcy Court, District of Delaware (Wilmington).

– SpectraWatt Inc Files for Bankruptcy Protection In New York

SpectraWatt Inc, a solar cell manufacturer and former Intel Corp. unit, sought bankruptcy protection from creditors with plans to sell virtually all its assets. The company, based in Hopewell Junction, New York listed as much as \$50 million in both debt and assets in chapter 11 documents filed Aug. 19 in U.S. Bankruptcy Court in Poughkeepsie, New York. The solar cell maker said in court filings that it was forced to seek court protection due to competition from Chinese rivals, deterioration in the solar cell industry and disputes with vendors. “United States based manufacturers are under a great deal of stress because of the emergence of manufacturers in China, who receive considerable government and financial support,” SpectraWatt’s Chief Restructuring Officer and Chief Executive, Brad Walker, said in court papers. “This support, coupled with China’s inexpensive production costs, have created a competitive advantage for Chinese manufacturers and allowed them to become price leaders within the industry.” SpectraWatt was spun off from Intel in June 2008 and raised \$50 million through a sale of preferred stock to its former parent and other investors including Goldman Sachs Group Inc.’s Cogentrix Energy LLC, PCG Clean Energy and Berlin-based solar panel maker Solon SE, according to court documents. The company has also issued about \$36.7 million in senior secured convertible notes. The solar cell maker built a manufacturing facility in Hopewell Junction, New York designed to generate over 200 megawatts of production per year, according to court filings. The plant began operations in January 2010 with an initial capacity of only 30 megawatts per year. The company began winding down its affairs late last year after encountering setbacks and shut down the lone manufacturing facility in March, and fired all its workers. SpectraWatt decided to sell substantially all its assets and will seek court approval of a bankruptcy auction, court papers show. Although SpectraWatt has received interest from foreign companies, it hasn’t secured a lead bidder for the auction because the potential foreign buyers aren’t familiar with U.S. bankruptcy sales. The company said it wants to sell the assets quickly and will seek court approval to hold the auction on Sept. 28, according to court documents. SpectraWatt said it is crucial that the sale proceed immediately because companies with assets similar to their own are also financial distressed, which would diminish the value of its assets. “Within the next 3-6 months, there is a high likelihood that a significant amount of used solar cell manufacturing equipment and related assets will flood the market and drive down the value of the debtor’s assets” Walker said in court papers. Evergreen Solar Inc, a rival U.S. solar panel maker, sought bankruptcy protection as well last week, owing creditors about \$485.6 million. Evergreen’s convertible noteholders have agreed to buy the company at auction offering to forgive debt owed to them instead of cash.

The case is *In re SpectraWatt Inc*, 11-37366, U.S. Bankruptcy Court, Southern District of New York (Poughkeepsie).

– FDIC’s ‘Problem’ List Shrinks for First Time Since 2006

The Federal Deposit Insurance Corp.’s list of “problem” banks fell in the second quarter for the first time since 2006 as the industry’s income improved and costs tied to bad loans eased. The confidential list of banks deemed at greater risk of collapse shrank by 23 firms to 865, the FDIC said yesterday in its Quarterly Banking Profile. The last time that happened was the third quarter of 2006 before the credit crisis began, the agency said. Net income rose 38 percent to \$28.8 billion from a year earlier, the eighth consecutive quarterly improvement, boosted by a seventh straight drop in provisions for bad loans. The FDIC defines “problem” institutions as those with financial, operational or managerial weaknesses that threaten their viability. Lenders put aside 53 percent less money to cover bad loans and charge-offs dropped 42 percent. The \$20.9 billion decline in charge-offs was the largest since the recovery in credit quality began, the FDIC said. The deposit insurance fund, which protects customer holdings up to \$250,000 per account in the event of a failure, was positive for the first time in two years, the agency said. The fund, which had been depleted by a wave of bank failures stemming from the collapse of the U.S. housing market, rose to \$3.9 billion, because of fewer expected bank failures and assessment revenue, the agency said. The FDIC insures deposits at more than 7,500 banks and thrifts. The agency is prepared to deal with dismantling any lenders that fail if the need arises, Gruenberg said at a news conference in Washington, citing new authority granted by the Dodd-Frank regulatory overhaul. The Dodd-Frank Act requires the FDIC to craft regulations including the so-called living wills rule, which would force systemically risky firms to spell out how they can be unwound in the event of a collapse. Banks net operating revenue declined for a second consecutive quarter, falling 1.8 percent as they struggled with the effects of a slowing economy and low yields on assets. Net interest margins were lower than a year earlier at nine of the 10 largest banks, the agency said.

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International Daily Bankruptcy News Wrap-Up

Heather Smith | Bloomberg News

Aug. 18 (Bloomberg)

Leo Kirch's death a month ago hasn't laid to rest his legal fight with Deutsche Bank AG and its former chief, Rolf Breuer. The man Kirch blamed for the downfall of his media group faces claims he lied to judges in a trial that began today and was adjourned only shortly after. The Munich trial, whose start was delayed an hour because a stand-in lay judge arrived late, was paused after Breuer's defense asked for more time to review the bench's composition. A resumption of the trial isn't expected before the end of October, the court said in a statement. "It turned out that we wouldn't be able to hold hearings for another seven weeks," said Presiding Judge Anton Winkler. "We decided to restart the trial with newly chosen lay judges in due course." In some criminal cases in Germany, lay judges hear cases together with professional judges. The trial is part of a nine-year fight over comments Breuer made to Bloomberg TV in 2002 about how creditworthy Kirch's media group was. Kirch, once one of Germany's biggest media tycoons, claimed Breuer's remarks precipitated the company's bankruptcy and filed claims totalling at least 3.3 billion euros (\$4.7 billion). These suits continue in spite of Kirch's death.

– Denmark's Regional Banks Dump Assets to Avoid Funding Wall

Denmark's regional banks are cutting lending and selling off assets to generate cash needed to escape an international funding wall as policy makers grope for measures to boost liquidity. "It still looks difficult for banks of our size to get money in the international markets," Lasse Nyby, chief executive officer at Spar Nord Bank A/S, Denmark's fourth-largest listed lender, said in an interview yesterday. "We think it will remain that way for some time." Spar Nord is now looking for buyers to offload its leasing business, for which it hopes to generate about 7 billion kroner (\$1.35 billion). That will cover the 7.2 billion kroner in state-backed bonds the bank needs to repay by 2013, Nyby said. Such a sale "would mean we'd be completely independent of having to get funding internationally," he said. "We want to be free of having to get funding in the international markets." Denmark's bank industry is still reeling from the fallout of two regional bank failures this year that triggered the European Union's toughest resolution laws and resulted in senior creditor losses. While the government is working on measures to allow lenders to sidestep the bill, banks still face liquidity shortages. The central bank this week responded by extending its collateral terms indefinitely, as policy makers hammer out the details of proposals to ease Denmark's banking crisis.

– A-Tec Sales Delayed on Fear of Damage Claims, Format Reports

The sale of insolvent A-Tec Industries AG has been delayed after the company's supervisory board didn't make a recommendation for any of the bids, Format magazine reported, citing Chief Executive Officer Mirko Kovats. The supervisory board has hired business professor Leo Chini and former justice minister Dieter Boehmdorfer to evaluate the danger of potential damage claims, the Vienna-based magazine said, citing nobody. Chini's evaluation is due to be discussed on Aug. 24, Format said. The bidders for A-Tec include hedge fund Springwater Capital, private-equity company Penta Investments Ltd. and Pakistani billionaire Alshair Fiyaz, the paper said.

– Eircom PIK Lenders Claim Company Insolvent, Irish Times Says

A group representing Eircom Group Ltd.'s pay-in-kind debt holders has written to the board of the company's Cayman Islands-based parent, saying they believe the company is insolvent, the Irish Times reported. The creditors also question how the company plans to repay its debt and accused the directors of being in breach of trust, the newspaper reported. Eircom spokesman Paul Bradley wasn't immediately available for comment.

– Sazka Sale Process May Start in 'Few Days,' Administrator Says

The sale of Sazka AS, a bankrupt lottery company, may start in a "few days" after the Prague Municipal Court approved conditions for a tender proposed by a creditors' committee, a bankruptcy administrator said. The court approved today a proposal by the creditors' committee to sell Sazka by tender where all prospective bidders will be asked to provide a deposit of 500 million koruna (\$29.6 million), Lenka Ticha, a spokeswoman for bankruptcy administrator Josef Cupka, said by phone yesterday. The administrator may start the sale within a few days, Ticha said. The bidders will have to provide the deposit within three weeks after the sale is announced and will have another two weeks to file their bids. The Prague court put the company into bankruptcy in May. Sazka was declared insolvent after it breached covenants on bonds issued to finance the construction of the O2 Arena, which hosted the World Hockey Championship in 2004. Cupka said earlier that the price offered will be the main criteria for choosing the new owner.

– Swedish Regulator Starts Saab Automobile Debt-Collection Process

Sweden's Debt Enforcement Agency started collection proceedings against Saab Automobile after the cash-starved carmaker failed to meet an Aug. 16 deadline to pay two suppliers, an official at the regulator said. "We've just begun by looking at what kind of bank accounts they have and what kind of collateral there might be" in the process that started yesterday, Tommy Barkman, a case worker at the state agency, said by phone from his office



in the town of Uddevalla. Saab was supposed to pay Kongsberg Automotive AB, a Norwegian manufacturer of car-seat parts, and Infotiv AB, a Gothenburg, Sweden-based consulting firm, a combined 4 million kronor (\$620,000). The “big majority” of the money is owed to Kongsberg, Hans Ryberg, a division chief at the enforcement agency, said Aug. 16. The automaker was forced to halt production in late March amid a cash crunch, and the factory at Saab’s Trollhaettan, Sweden, headquarters has been quiet since early June. Saab is trying to raise more funds and has said it aims to restart manufacturing in a few weeks. Swedish Automobile NV, Saab’s Dutch owner, sold 4 million new shares to GEM Global Yield Fund Ltd. on Aug. 15 in an effort to bring in cash.

– China Didn’t See Large Scale Bankruptcies Among SMEs, Wu Says

China didn’t experience “large scale” bankruptcies among small and medium-sized enterprises in the first half of the year, Wu Xianting, deputy director of the Financial Market Department at the People’s Bank of China, said during an online webcast. Some small companies are in financial difficulty after expanding too rapidly, Wu said. Rising raw material, labor and financial costs are the main problems facing SMEs, Wu said. They have also been affected by the turmoil in global markets, he said. Lending to small companies as a proportion of overall credit is increasing, Wu said.

– Radiation Bankrupts Japan Cattle Ranch With \$5.6 Billion in Debt

Agura Bokujo, operator of a cattle ranch north of Tokyo, became Japan’s biggest corporate failure this year after consumer fears over beef contaminated with radiation damaged sales, Tokyo Shoko Research said. The closely held company in Tochigi prefecture had 433.1 billion yen (\$5.6 billion) in liabilities, Tokyo Shoko said on its website Aug. 15, citing Agura’s application for bankruptcy protection on Aug. 9. In its earnings report for the year ended March 2011, Agura had liabilities of 62 billion yen, said Kazufumi Masuda, a spokesman for Tokyo Shoko, which tracks corporate bankruptcy data. Radiation from Tokyo Electric Power Co.’s crippled Fukushima Dai-Ichi nuclear plant has entered Japan’s food chain in recent months, contaminating products from beef to milk and fish. Cattle with unsafe levels of radiation have been found in four Japanese prefectures after they were fed with hay contaminated with as much as 690,000 becquerels a kilogram, compared with a government safety standard of 300 becquerels.

– Aeon Bank May Win Bid to Acquire Incubator Bank, Asahi Reports

Aeon Bank may win a bid to buy the failed Incubator Bank of Japan, beating a group led by investment fund GCM, the Asahi newspaper said. Deposit Insurance Corp., which is overseeing the sale, plans to select a buyer in September, Asahi reported Aug. 13, without saying where it got the information.

Aug. 23 (Bloomberg)

International bondholders for Sazka AS, the bankrupt Czech lottery operator, said they oppose terms for the sale of the business as proposed by bankruptcy administrator Josef Cupka. “The international holders call on Mr. Cupka to reconsider the terms of the tender as a matter of urgency,” the law firm Dewey & LeBoeuf LLP said in a statement in Prague. The legal firm represents investors holding more than 25 percent of Sazka’s 2021 bonds. The statement said the bondholders believe the terms of the tender “are prejudicial” to their interests and “won’t maximize returns to Sazka’s creditors.” The Prague Municipal Court, which put the company into bankruptcy in May, approved the terms for Sazka’s tender proposed by its administrator and the creditors’ committee last week. The terms include a 500 million-koruna (\$29.35 million) deposit from each bidder before doing due diligence on the company. The price offered by bidders will be the main criterion for choosing the new owner.

– Canary Wharf Agrees Not to Vote Against Lehman Liquidation Plan

Canary Wharf Group Plc, saying it won’t vote against Lehman Brothers Holdings Inc.’s amended liquidation plan, agreed to reduce its claims against the collapsed bank to \$780 million from \$4.5 billion. Under an agreement with the London real estate developer, Lehman will reserve against payment an amount equal to what would have been provided had the debt been classified as senior unsecured claims in the amended plan, according to a filing in U.S. Bankruptcy Court in Manhattan. Lehman had earlier disputed Canary Wharf’s \$4.5 billion in claims, filed in September 2009, according to the filing. The agreement is subject to bankruptcy court approval. Lehman, Canary Wharf Group’s largest tenant, occupied more than 1 million square feet (93,000 square meters) of office space at London’s 20-25 Bank Street in 2003 on a 30-year lease. Canary Wharf filed three claims in 2009, including a \$4.3 billion claim in rent and charges for units on Heron Quays. The Heron Quays claim was reduced to \$770 million, according to the filing.

– ShengdaTech Board Sues CEO in Chinese Reverse Merger Case

Board members of ShengdaTech Inc., a Chinese company that gained access to U.S. investors through a reverse merger, sued the chief executive officer of the bankrupt chemical maker, claiming he’s obstructing an internal fraud investigation. A special committee of ShengdaTech sued Chen Xiangzhi to prevent him from regaining control of the company, ending a probe of its finances and ousting a newly appointed chief restructuring officer. Reorganizing ShengdaTech requires “the continued existence of the special committee and the CRO, and the preservation of their independent powers,” the board members said in court papers filed Aug. 20 in U.S. Bankruptcy Court in Reno, Nevada. Chen could not be immediately reached for comment at ShengdaTech offices, where no one answered the phone before business hours.



in China. The company listed \$295.4 million in assets and \$180.9 million in debt as of last Sept. 30 in court papers the special committee filed Aug. 19.

– **Danish Banks No Better Buy After Rescue Proposals, PFA Says**

Denmark's second-biggest pension fund is under-weighting its holding of Danish financial stocks as government efforts to ease the country's banking crisis fail to win over investors. "We would need to see both an improvement in the macro economy and a new government bank package before we would change our view," Glenn Martin Vestergaard, senior portfolio manager at PFA, said in an interview. The Copenhagen-based fund has about 285 billion kroner (\$55 billion) in investment assets. Danish financial stocks have underperformed the country's equity market this year after the economy contracted and two regional banks failed, triggering the European Union's first senior creditor losses within a resolution framework. Policy makers have struggled to repair the damage as banks face a funding drought that's likely to worsen when a state guarantee expires in 2013. Shares of the country's three biggest banks have lost more than a third of their value this year, compared with a 25 percent decline in the benchmark OMX Copenhagen Index of 189 companies. Bank stocks were today's biggest losers in the index, with the sub-index dropping 3 percent compared with a 0.7 percent decline for the overall gauge.

– **ISDA Rules No Bankruptcy Credit Event at Spain's CAM**

The International Swaps & Derivatives Association ruled there hasn't been a bankruptcy credit event at Caja de Ahorros del Mediterraneo, according to a statement on its website.

– **Pinnacle Point Says Five of Its Units Placed Into Liquidation**

Pinnacle Point Group Ltd. said yesterday five of its businesses have been placed in provisional liquidation.

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Index of Authorities

- 6 [Longacre Master Fund, Ltd v. ATS Automation Tooling Sys. Inc., No. 10-8024, 2011 BL 202604 \(S.D.N.Y. Aug. 4, 2011\)](#)
- 8 [In re Healthtrio, No. 10-1351, 2011 BL 204425 \(10th Cir. Aug. 5, 2011\)](#)
- 10 [Thaddeus Freeman, PLLC v. Summit View, LLC \(In re Summit View, LLC\), No. 11-cv-724, 2011 BL 199230 \(M.D. Fla. Aug. 1, 2011\)](#)
- 11 [McDow v. Ryan \(In re Ryan\), No. 09-05029, 2011 BL 200251 \(Bankr. E.D. Va. Aug. 2, 2011\)](#)

