turnarounds & workouts

News for People Tracking Distressed Businesses

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The Year Ahead in Restructuring

No Big Pickup in Work Anticipated in 2013

by Julie Schaeffer

If 2012 was "the year of leavings," 2013 will be the year of the placeholder, says Bill Brandt, president and CEO of Development Specialists, Inc. "The first uptick we'll see in the reorganization business will be toward the end of February 2013, when companies that were waiting for the outcome of the election will begin to file," he says. "But it will be no great swamping effect."

According to Brandt, business was solid in 2012 for larger firms, but marginal firms were fighting over the scraps, and he expects to see more of the same in 2013.

Part of the reason, says John Brincko, president of Brincko Group, an international

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ShengdaTech Plan Leaves Doubt

Difficulties Recovering PRC Assets Remain

by Randall Reese

In October 2012, a liquidating plan of reorganization was confirmed in the chapter 11 case of ShengdaTech, Inc. and became effective. In most bankruptcy cases, reaching those milestones would signify a light at the end of the tunnel, or at least provide a large measure of finality, for many creditors and other stakeholders. ShengdaTech's stakeholders, however, may have to wait much longer to know whether their claims and interests have any value.

ShengdaTech was a publicly-traded Nevada corporation which, through a subsidiary, was the parent company of five subsidiaries formed under the laws of, and operating in, the

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Evidence of Value

Decision Stresses Importance of Competent Valuation

by Julie Schaeffer

Presenting competent evidence of value in disputes about collateral valuation is essential, according to a recent appellate court decision.

"The United States Court of Appeals for the Third Circuit held that in a Chapter 11 case, the value of a secured creditor's collateral under Section 506(a) of the Bankruptcy Code was the fair market value of the property as established by expert testimony," says Michael H. Reed, a partner in Pepper Hamilton LLP's corporate restructuring and bankruptcy practice group, "and it was permissible to 'strip the lien' of the creditor where it was unsupported by collateral value."

In August 2005, Heritage Highgate, a real estate developer, began constructing a

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management consulting firm that offers advice to companies in varied business situations, is the economy. "The U.S. economic crisis is making everyone save for a rainy day," he says. "Until that gets resolved, I don't see our economy expanding, and I think we do need some economic expansion because it leads people to take new risks, which creates potential opportunities later for our industry."

Additionally, says Brincko, there won't be a significant debt maturing in 2013. "As a result, there will still be plenty of money available for mid- and large-sized companies to make deals, which isn't good for us."

"There is a lot of money sitting on the sidelines, looking to be put to work in this artificially low-interest-rate environment," says Christopher Mirick, a partner in the insolvency practice of Pillsbury Winthrop Shaw Pittman LLP. "We expect that companies that need a restructuring may find replacement financing, enabling them to continue on rather than filing or liquidating. If and when these companies do end up in bankruptcy, there will be fewer unencumbered assets, thus reducing the possible return to unsecured creditors and constraining the companies' flexibility to use the tools of Chapter 11 to restructure their debts and their operations."

Mark Berkoff, a partner at Neal, Gerber & Eisenberg LLP, says that when the economy improves and there's more money in the system, there will be more Chapter 11s. "People will say, 'Wow, I thought things were getting better, so why are so many companies going bankrupt?'" "But," he continues, "Chapter 11 is a more viable business strategy when there is more liquidity in the market. For example, buyers of assets in bankruptcy 363 sales often need financing."

Another part of the problem, says Brincko, is that many companies are realizing the seriousness of the state of their operations and taking action themselves.

"In the past, companies didn't take the state of their operations as seriously," he explains. "Today, our economic climate has been so severe, companies have really picked up the ball. They've been resolute and disciplined in dealing with the problems they creates themselves,

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People's Republic of China (PRC). Those subsidiaries manufacture a specialty additive known as nano-precipitated calcium carbonate, which is used in a variety of products in the paint, paper, plastic, and rubber industries.

The companies' filings with the Securities and Exchange Commission painted a rosy picture of their operations. In 2009, the last year for which an annual report was filed, ShengdaTech reported net profits of over $23 million on revenues of approximately $102 million. In its final quarterly report filing, ShengdaTech reported that it had over $295 million in assets, but owed less than $100 million in liabilities as of September 30, 2010.

All of ShengdaTech's apparent success would be called into question in early 2011, however. In March, while auditing the company's financial statements for the fiscal year ending December 31, 2010, KPMG reported to the audit committee of ShengdaTech's board of directors that it had uncovered "potentially serious discrepancies and unexplained issues" relating to the debtor's financial records. The board of directors quickly appointed a special committee to conduct an internal investigation. The special committee retained legal and forensic accounting professionals.

According to bankruptcy court filings, the investigation quickly identified serious problems, including the inability of KPMG to verify the companies' cash accounts held at financial institutions in the PRC and the inability of the special committee to authenticate the veracity of certain U.S. certificates of deposits. For example, while SEC filings showed cash balances of over $120 million as of September 30, 2010, ShengdaTech had only obtained control over $14 million in cash as of June 2012. In addition, the special committee was provided with photocopies of CDs by Xiangzhi Chen, ShengdaTech's president, chief executive officer, and largest shareholder. The special committee later learned, however, that the bank that issued the CDs was unable to verify them and had no record of issuing them to the ShengdaTech subsidiary that allegedly held the CDs.

On April 29, KPMG formally resigned and, on June 10, 2011, ShengdaTech's securities were suspended on the NASDAQ market. On August 19, 2011,

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residential subdivision in Pennsylvania.

The developer financed construction with a loan from a group of banks, which retained a lien on substantially all of Heritage Highgate's assets. The developer then borrowed more money from private investors, the so-called Cornerstone Investors, which agreed to subordinate their claims to the bank lenders' claims.

Heritage Highgate built and sold 25 percent of the planned units before filing for Chapter 11 on January 20, 2009. At that time, the bank lenders' loan was outstanding at $12 million and the Cornerstone Investors' loan was outstanding at $1.4 million.

Shortly after filing for bankruptcy, during a contested cash collateral hearing, Heritage Highgate submitted an appraisal of the fair market value of the subdivision. That appraisal was $15 million, exceeding the $13.4 million of secured debt outstanding as of the petition date. There were no objections from the parties involved, so the bankruptcy court accepted the appraisal.

In June 2009, Heritage Highgate filed a joint plan of reorganization, under which it would complete development and make distributions to creditors according to a set of projections (for paying the bank lenders in full, then paying the Cornerstone Investors in full, then making a distribution to unsecured creditors).

By September, however, the official committee of unsecured creditors had become concerned that the subdivision's value was not the $15 million it was alleged to be. It believed that interim sales had reduced the fair market value of the subdivision from $15 million to approximately $9.54 million

"This amount, the committee asserted, would be insufficient to cover the approximately $12 million outstanding senior secured claims, and would render the Cornerstone Investors' claims unsecured," says Matthew J. Oliver, an associate with Cadwalader, Wickersham & Taft LLP.

"We said, wait a minute. The second-lien creditors are out of the money; why should they get paid sooner than any other unsecured creditor?" says Michael J. Viscount, Jr., Esq., a partner at Fox Rothschild LLP, counsel to the unsecured creditor's committee, which filed a motion to value the Cornerstone Investors' claims pursuant to Section

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Research Report

Who's Who in AMF Bowling Worldwide, Inc.

by Francoise C. Arsenault

AMF Bowling Worldwide, Inc. (AMF) is the world's largest owner and operator of bowling alleys. AMF, which was founded as the American Machine & Foundry Company in 1900 in New Jersey, introduced the first fully automated pin spotter in 1946. Headquartered in Mechanicsville, Virginia, AMF today operates 279 bowling alleys in the United States and Mexico. The chain offers league and non-league bowling, video games, billiards, and other amusements. The AMF centers also offer food and beverage services and sell bowling equipment. More than 20 million customers visit AMF bowling alleys each year. In addition to the chain of bowling centers, AMF owns 50 percent of QubicaAMF Worldwide, a joint venture with Italian manufacturer Qubica that sells bowling center equipment. The company is now owned by Code Hennessey & Simmons, LLC, a Chicago-based equity firm which acquired AMF in 2004 for $307.5 million in cash and $352.5 million in assumed debt. AMF, which currently has a workforce of about 7,000, closed about 20 of its underperforming bowling centers in the summer 2012.

AMF Bowling Worldwide, Inc. and 15 affiliates filed for Chapter 11 reorganization on November 12, 2012, in the United States Bankruptcy Court for the Eastern District of Virginia (Richmond Division). In the bankruptcy filing, AMF officials cited the economic downturn as the primary cause for the bankruptcy as consumers have had less disposable income to spend on bowling and other recreational activities. According to company officials, other factors contributing to the bankruptcy included the company's debt load, estimated at close to $300 million, and the decrease in regular league bowlers. In 1998, there were 4.1 million members in bowling league organizations in the United States. By 2008, the membership had decreased to 2.6 million.

In the year before its filing for Chapter 11, AMF and its financial advisors had attempted unsuccessfully to sell the company. The pre-arranged bankruptcy filing, which does not include QubicaAMF, provides for post-petition financing in the amount of $50 million from some of the company's first lien secured lenders and exit financing in the amount of $200 million. The bankruptcy court approved the financing from Credit Suisse Group AG, Goldman Sachs Group Inc., Liberty Harbor Master Fund LP, and Midtown Acquisitions LP on December 19. This is the second bankruptcy filing for AMF, which first filed in July 2001 and exited in February 2002.

AMF officials have stated that the company should be able to exit bankruptcy within about 5 months under the ownership of its senior lenders, subject to rival bids at an auction to be supervised by the Bankruptcy Court. On December 23, the Bankruptcy Court approved the rules governing the auction, scheduled for March 18, 2013. The bankruptcy court ruling dismisses the objections of junior lenders, affiliates of J.P. Morgan Chase, and Cerberus Capital Management, which alleged that the proposed bidding procedures were not formulated to maximize value and would unduly favor the company's senior lenders by discouraging rival bidding.

The Debtor

Frederick R. (Fred) Hipp is the Chief Executive Officer and President of AMF Bowling Worldwide, Inc. **Stephen D. Satterwhite** is the Chief Financial Officer and the Chief Operating Officer. **Daniel M. McCormack** is a Vice President, General Counsel, and the Secretary. **C. Merrell Wedren** is the Vice President for Marketing.

Kirkland & Ellis LLP is serving as the bankruptcy counsel to AMF. The team includes **Patrick J. Nash, Jr.** and **Stephen C. Hackney**, partners in the firm's Chicago office, **Joshua A. Sussberg**, a partner in the New York office, and **Jeffrey D. Pawlitz** and **W. Benjamin Winger**, associates in the Chicago office.

The law firm of **McGuirreWoods LLP** is acting as the local bankruptcy counsel to AMF. **Dion W. Hayes** and **John H. Maddock III**, partners with the firm, and **Sarah B. Boehm**, of counsel, are working on the case.

McKinsey Recovery & Transformation Services U.S., LLC is providing restructuring advisory services to AMF. **Kevin M. Carmody**, a director and practice leader with the firm, heads up the team.

Moelis & Company LLC is acting as the financial advisor and investment banker to AMF. **Robert J. Flachs** and **Evan Winkler**, managing directors in the firm's New York office, direct the work.

KPMG LLP is providing AMF with auditing, tax compliance, and tax advisory services. **James L. Phillips**, a partner with the firm, leads the engagement.

Kekst and Company is serving as the media relations and communications advisor to AMF. The engagement is being led by **Kimberly Kriger**, a partner with the firm.

The Official Committee of Unsecured Creditors

The Committee includes **Statecourt Enterprises, Inc.**; **Strike 'N Spare**; **VIP Cleaning Solutions, LLC**; **Pasadena Hastings Center**; and **Pepsi-Cola Fountain Company, Inc.**

Pachulski Stang Ziehl & Jones LLP is serving as the counsel to the Committee. **Robert J. Feinstein** and **Alan J. Kornfield**, partners in the firm's New York office, and **Jeffrey N. Pomerantz**, a partner in the Los Angeles office, are working on the case.

Christian & Barton, LLP is acting as local co-counsel to the Committee. The team includes **Augustus C. Epps, Jr.**, **Michael D. Mueller**, and **Jennifer M. McLemore**, all partners with the firm.

Mesirow Financial Consulting, LLC is providing the Committee with financial advisory services. **Monty L. Kehl**, a senior managing director in the firm's Chicago office, leads the engagement.

The Trustee

The U.S. Trustee is **W. Clarkson McDow, Jr.**

The Judge

The judge is the **Honorable Kevin R. Huennekens**. ¤

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and they've done a lot of things we would recommend they do."

Many companies, says Brincko, are learning a lesson from Europe. "In the past, companies that didn't have operations in Europe couldn't care less about what's going on there. Now, companies in the United States are gaining a better knowledge of the potential impact of Europe's problems here at home. They're curtailing expansions there, and fewer expansions mean fewer opportunities for restructuring folks."

Mirick believes 2013 will continue to be hard on the U.S. banking industry as consolidation continues and banks seek to meet the new reserve requirements. "Due to the large number of real estate loans in distress (both commercial and residential), some long-term solution is required," he says.

Mirick adds that unless the housing industry picks up, ancillary industries will continue to suffer. "Look for the fallout in steel, lumber, home supplies, and related suppliers. On the bright side, real-estate prices may be stable, if low, which may drive some acquisition opportunities in both commercial and residential sectors. On the residential front, this may be the time for creative investors to aggregate low-cost residential housing (out of foreclosures or short sales) and create a rental portfolio."

Finally, Mirick notes that a few industries are likely to see some changes. "Health care is likely to see a shakeout, as the pressures of the recession and the anemic recovery, combined with the challenges of the Affordable Care Act, work their way through the system," he says, adding that he also anticipates a shakeout in various energy sectors, particularly liquefied natural gas and fracking, where "there should be consolidation among companies, at least to some extent."

"I think we'll continue to see pressure on shipping and transportation companies as long as they're experiencing overcapacity and depressed pricing," adds Lisa Donahue, managing director and co-lead of turnaround and restructuring services at AlixPartners. Mirick agrees and expands on that thought, adding that "if the global slowdown continues, we are likely to see a need for restructuring in consumer products companies, as well as in related industries such as shipping and transportation, and manufacturing that feeds into consumer products."

Berkoff is concerned that some high-end retailers will need a good holiday season to have a successful 2012. "They call the day after Thanksgiving Black Friday because that's the first day of the year many retailers' balance sheets go in the black," he says. "I heard that this year's Black Friday had more shoppers than 2011, but actual dollars spent year-over-year were down in 2012. That's a problem."

Another concern is the wave of municipal bankruptcies,which Mirick expects to continue. "Until the economy generally improves, municipal tax revenues will be weak and municipalities will need to adjust to the continuing lower revenue stream."

Continued economic weakness will also put pressure on student loans, says Mirick, and an increase in defaults is possible. "This may lead to pressure to change the treatment of student loan debt under the bankruptcy code."

What will trigger improvement? According to Brandt, it may be interest rates. "Bankruptcies are a lagging economic indicator and when the economy begins to

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ShengdaTech filed for Chapter 11 protection in Nevada following a vote by the special committee. On the same day, the special committee removed Mr. Chen from his management positions and appointed Michael Kang of Alvarez & Marsal as chief restructuring officer.

Much of the effort during the Chapter 11 case was dedicated to investigating the nature and extent of the discrepancies and issues initially identified by KPMG, attempting to gain control of the subsidiaries' assets and operations in the PRC, and seeking to maximize recoveries for creditors who are collectively owed over $160 million. To that end, ShengdaTech, through its direct subsidiary, filed civil actions in the PRC against former legal representatives and managers of the PRC subsidiaries in an attempt to effectuate the transfer of assets embodying corporate authority under Chinese laws, including the corporate seals, business licenses, and relevant licenses. ShengdaTech sought discovery from each of the financial institutions at which it was believed that the company's

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Calendar

New York Institute of Credit and the Association of Insolvency and Restructuring Advisors
8th Annual NYIC/AIRA Joint Bankruptcy and Restructuring Event
January 31, 2013
Arno's Ristorante
New York, NY
Contact: www.aira.org

Turnaround Management Association
2013 TMA Distressed Investing Conference
February 6–8, 2013
Bellagio
Las Vegas, NV
Contact: www.turnaround.org

National Association of Bankruptcy Trustees
2013 Spring Seminar
February 22–23, 2013
The Fairmont Scottsdale Princess
Scottsdale, AZ
Contact: www.nabt.com

American Bankruptcy Institute
31st Annual Spring Meeting
April 18–21, 2013
Gaylord National Resort and Convention Center
National Harbor, MD
Contact: www.abiworld.org

Turnaround Management Association
2013 TMA Spring Conference
May 14–16, 2013
JW Marriott Chicago
Chicago, IL
Contact: www.turnaround.org

International Association of Restructuring, Insolvency & Bankruptcy Professionals
Ninth World Congress of INSOL International
May 19–22, 2013
The Hague, The Netherlands
Contact: www.insol.org

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Special Report

Largest Chapter 11s – 2012

Company Name	Industry	Filing Information	Assets	Debtor's Counsel
Residential Capital	Finance & Insurance	Filed: May 12 New York, Southern District Judge Martin Glenn	$15,675,571,000	Larren Nashelsky Morrison & Foerster New York, NY
Dynegy Inc.	Utilities	Filed: July 6 Texas, Southerm District Judge Cecelia Morris	$11,353,000,000	J. Christopher Shore White & Case New York, NY
Edison Mission Energy	Utilities	Filed: December 17 Illinois, Northern District Judge Jacqueline Cox	$5,125,949,000	David Seligman Kirkland & Ellis Chicago, IL
Lightsquared, Inc.	Information	Filed: May 14 New York, Southern District Judge Shelley Chapman	$4,480,000,000	Matthew Barr Milbank Tweed Hadley & McCloy New York, NY
ATP Oil and Gas Corp.	Mining	Filed: Aug. 17 Texas, Southerm District Judge Marvin Isgur	$3,638,399,000	Stuart Rozen Mayer Brown Houston, TX
Patriot Coal Corporation	Utilities	Filed: July 9 New York, Southern District Judge Shelley Chapman	$3,570,000,000	Marshall Huebner Davis Polk & Wardwell New York, NY
Arcapita Bank BSC	Finance & Insurance	Filed: March 19 New York, Southern District Judge Sean Lane	$3,060,000,000	Michael Rosenthal Gibson Dunn & Crutcher New York, NY
Hawker Beechcraft Inc.	Manufacturing	Filed: May 3 New York, Southern District Judge Stuart Bernstein	$2,770,000,000	Paul Basta Kirkland & Ellis New York, NY
Houghton Mifflin Harcourt Publishing Company	Information	Filed: May 21 New York, Southern District Judge Robert Gerber	$2,680,000,000	Jeffrey Saferstein Paul Weiss Rifkind Wharton & Garrison New York, NY
Ocala Funding	Finance & Insurance	Filed: July 10 Florida, Middle District Judge Jerry Funk	$1,747,749,000	Jeff Marwil Proskauer Rose Chicago, IL
Pinnacle Airlines Corp.	Transportation & Warehousing	Filed: April 1 New York, Southern District Judge Robert Gerber	$1,539,488,000	Marshall Huebner Davis Polk & Wardwell New York, NY
RG Steel and WP Steel Inc.	Manufacturing	Filed: May 31 Delaware Judge Kevin Carey	$1,293,320,000	Robert Dehney Morris Nichols Arsht & Tunnell Wilmington, DE
Elpida Memory Inc.	Manufacturing	Filed: March 19 Delaware Judge Christopher Sontchi	$1 billion +	Lee Kaufman Richards Layton & Finger Wilmington, DE
City of Stockton, California	NA– Public	Filed: June 28 Calif., Eastern District	$1 billion +	Marc Levinson Orrick Herrington & Sutcliffe Sacramento, CA
Royal Seating	Manufacturing	Filed: March 19 Texas, Western District Judge Craig Gargotta	$1 billion +	Larry Kelly Beard Kultgen Brophy Bostwick Dickson & Squires Waco, TX

Worth Reading

Beyond the Quick Fix: Managing Five Tracks to Organizational Success

Author: Ralph H. Kilmann
Publisher: Beard Books
Softcover: 320 pages
List Price: $34.95

Every few years, a new approach is offered for unleashing the full potential of organized efforts. These are the quick fixes to which the title of this book refers. The jargon of the quick fix is familiar to any businessperson: decentralization, human resources, restructuring, mission statement, corporate strategy, corporate culture, and so on. These terms are all limited in scope or objective, and some are even irrelevant or misconceived with regard to the overall well-being and purpose of a corporation.

With his extensive experience as a corporate consultant, author of numerous articles, and professor in business studies, Kilmann recognizes that each new idea for optimum performance and results is germane to some area of a corporation. However, he also recognizes that each new idea inevitably falls short in bringing positive change – that is, a change that is spread throughout the corporation and is lasting. At best, when a corporation relies on an alluring, and sometimes little more than fashionable, idea, it is a wasteful distraction. At worst, it can skew a corporate organization and its operations, thereby allowing the corporation's true problems or weaknesses to grow until they become ruinous. As the author puts it, "Essentially, it is not the single approach of culture, strategy, or restructuring that is inherently ineffective. Rather, each is ineffective only if it is applied by itself – as a 'quick fix'."

Kilmann tells corporate leaders how to break the cycle of embracing a quick fix, discarding it after it proves ineffective, and then turning to a newer and ostensibly better quick fix that soon proves to be equally ineffective. For a corporation to break this self-defeating cycle, the author offers a five-track program. The five tracks, or elements, of this program are corporate culture, management skills, team-building, strategy-structure, and reward system. These elements are interrelated. The virtue of Kilmann's multidimensional five-track program is that it addresses a corporation in its entirety, not simply parts of it.

Kilmann's five tracks offer structural and operational aspects of a corporation that executives and managers will find familiar in their day-to-day leadership and strategic thinking. Thus, the author does not introduce any unfamiliar or radical perspectives or ideas, but rather advises readers on how to get all parts of a corporation involved in productive change by integrating the five tracks into "a carefully designed sequence of action: one by one, each track sets the stage for the next track." Kilmann does more, though, than bring all significant features of a modern corporation together in a five-track program and demonstrate the interrelation of its elements. His singularly pertinent and useful contribution is providing a sequence of steps to be implemented with respect to each track so that a corporation progresses toward its goals in an integrated way.

Beyond the Quick Fix is a manual for implementing and evaluating the progress of a five-track program for corporate success. The book should be read by any corporate leader desiring to bring change to his or her organization. ¤

Ralph H. Kilmann is CEO of a management consulting firm. Previously, he was connected with the University of Pittsburgh for 30 years. For a time, he was its George H. Love Professor of Organization and Management at its Katz Graduate School of Business.

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

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get healthy, a lot of old companies begin to get shaken out, especially as interest rates rise."

Brandt doesn't think interest rates will rise quickly, and Donohue concurs. "It doesn't look like there will be any lack of liquidity, and if that continues, I think the amend-and-extend trend will continue," she says.

That said, Brandt does think we'll see an uptick toward the end of 2013 or the beginning of 2014 and into 2015. "We're on a long road back," he says. "The situation is getting better all the time, but it is going to continue for another 18 months, so look for no big pickup in 2012."

As for when to expect an uptick, Berkoff says that "if you ask 100 people, a third will say that 2013 will be more of the same, a third will say 2013 is going to get busier for restructuring professionals, and a third will say it depends."

Boris Steffen, managing director at corporate restructuring and public affairs firm Gavin/Solmonese, is one who believes we'll see a reversal of the downward trend in 2013.

He points to a number of data points as evidence. For example, he says investor expectations that U.S. gross domestic product will decrease by 0.3 percent vs. growing by 0.3 percent could translate into an unemployment rate of above 9 percent (particularly in the aerospace, construction, defense, federal, health care, and technology sectors). He also notes that approximately $350 billion of bank debt will come due between 2013 and 2014. Finally, Steffen says, the Federal Reserve Board's easy-money policy has inadvertently increased the present value of pension fund liabilities.

For his part, Berkoff says, "I fall in the 'depends' camp. I think a lot depends on whether Washington straightens out the fiscal cliff problem and what happens with tax rates for individuals and small businesses."

In this environment, AlixPartners is paying attention to companies that are not totally distressed, but need help. It has launched a marketing initiative called Finance Transformation that helps stressed companies return to the value creation path and good companies become great and by offering. "We are using crisis techniques to help healthier companies improve their internal processes," says Donahue. ¤

Special Report

Successful Restructurings – 2012

4Kids Entertainment, Inc.
Lead Counsel: Kaye Scholer, Chicago, IL and New York, NY (D Tyler Nurnberg Matthew Micheli, Fred Yerman, Paul Llewellyn, and Rory Greiss)
Nature of the Success: A favorable court ruling enabled debtor to retain and then sell a valuable license and receive a sizable settlement with licensors Plan of reorganization paid all creditors in full, kept existing shareholders in place, and allowed 4Kids to reorganize around its remaining licenses as well as expand into a new business, the sports licensing segment 4Kids' shareholders were the only class entitled to vote on the plan and approved the reorganization overwhelmingly – affirmative votes were received from 99 9% of the almost 7 million shares that were voted

Aquilex Holdings LLC
Restructuring Firm: Alvarez & Marsal, New York, NY (Lawrence Hirsh)
Lead Counsel: Kirkland & Ellis, New York, NY (Counsel to Centerbridge Partners) (James H M Sprayregen, P C , Anup Sathy P C , and Joshua A Sussberg)
Nature of the Success: In the face of pending defaults and liquidity shortfall, Aquilex Holdings, a leading provider of critical maintenance, repair and industrial cleaning solutions to the energy industry, entered into a debt-for-equity exchange and an $80 million equity investment that allowed the company to reduce outstanding debt by 70 percent (or approximately $318 million), reduce debt service costs by 69 percent (to approximately $13 million annually), and provide liquidity that had been sorely lacking, thus avoiding liquidation and preserving hundreds of jobs

Contec Holdings Ltd.
Restructuring Firm: AlixPartners
Lead Counsel: Ropes & Gray (D Ross Martin, Adam J Goldstein)
Nature of Success: Broadband services provider reduced its long-term debt by $290 million through a 36-day prepackaged Chapter 11, enhanced liquidity through a new $25 million revolving credit instrument, aligned its core activities around its customers' evolving business strategies, and establish a growth strategy to increase revenue by 30% during the case

DSW Group Inc.
Restructuring Firm: Jefferies & Company, Inc , New York, NY (Richard Morgner, Jeffrey Greenip, Robert White)
Lead Counsel: Skadden, Arps, Slate, Meagher & Flom, New York, NY (Jay Goffman, Gregory Fernicola, Mark McDermott, Steven Messina, David Turetsky, Dwight Yoo)
Nature of Success: Two-step out-of-court refinancing and restructuring involving more than $900 million of debt allowed DSW to complete a significant acquisition while pursuing the refinancing/restructuring and resulted in: (a) full repayment of approximately $500 million in DSW subsidiary debt, (b) conversion to preferred and common equity of more than $400 million in DSW Group notes (with estimated 100% recoveries to noteholders), and (c) retention of a minority residual common equity stake in DSW Group by existing stockholders

General Maritime Corporation, et al.
Restructuring Firm: Moelis & Company, New York, NY (Thane Carlston)
Lead Counsel: Kramer Levin Naftalis & Frankel, New York, NY (Kenneth H Eckstein, Douglas H Mannal, Stephen D Zide)
Conflicts Counsel to Debtor: Curtis, Mallet-Prevost, Colt & Mosle, New York, NY (Steven J Reisman and Maryann Gallagher)
Nature of Success: Leading provider of international seaborne transportation for crude oil restructured more than $1 3 billion in pre-bankruptcy debt, reduced its debt by $600 million, converted certain prepetition debt obligations to equity, obtained access to new money to allow the debtors to continue operating as a leading seaborne transportation service

Global Aviation Holdings Inc.
Restructuring Firm: Rothschild, Inc , NY, New York (Todd Snyder, Daniel Gilligan, Jay Johnson)
Lead Counsel: Kirkland & Ellis, Chicago, IL (James H M Sprayregen, Jonathan S Henes, Ryan B Bennett, Michael B Slade)
Nature of Success: One of largest providers of supplemental airlift services to U S military Completely restructured operations and balance sheet on a tight timetable and with insufficient cash to survive any material delays Rationalized fleet by 50 percent and renegotiated leases, resulting in approx $16 million in lease savings Also engaged in complex, extremely contentious bet-the-company negotiations with five unions that will reduce labor expenses by more than $100 million, and reached settlement with lenders, resulting in a largely consensual confirmation hearing

Houghton Mifflin Harcourt Publishing Company
Counsel to First Lien Lenders: Akin Gump Strauss Hauer & Feld, New York, NY (Ira Dizengoff, Philip Dublin)
Nature of the Success: Educational publishing giant filed for bankruptcy with a prepackaged plan of reorganization that eliminated $3 1 billion in debt and $250 million in annual interest costs and paid unsecured creditors in full Plan included a debt-for-equity swap with senior creditors receiving new equity plus $30 3 million in cash At filing, the plan had the support of 70% of senior secured lenders and bondholders, and it ultimately garnered the support of more than 90% of creditors, with no votes to reject the plan Emerged from bankruptcy just 32 days after filing

Nebraska Book Company, Inc.
Restructuring Firm: Rothschild, Inc , Southfield, MI; AlixPartners, New York, NY (Todd R Snyder (Rothschild), Dustin Mondell (Rothschild), Alan D Holtz (AlixPartners), Robb C McWilliams (AlixPartners)
Lead Counsel: Kirkland & Ellis, New York, NY (Marc Kieselstein, Chad J Husnick)
Nature of the Success: Leading provider of college textbooks, NBC retooled its business plan, focusing on more profitable on-campus book stores and closing approx 48 off-campus book stores Restructuring enabled company to negotiate a consensual resolution with secured and unsecured debtholders and unsecured creditors, including obtaining $80 million investment Reduced indebtedness by $240 million and equitized over $100 million of secured debt Challenging restructuring preserved an important going concern business in a struggling sector

TBS International
Lead Counsel: Gibson, Dunn & Crutcher, New York, NY (Michael Rosenthal, Matthew Kelsey)
Nature of the Success: TBS provides ocean transportation services that offer worldwide shipping solutions to a diverse client base of industrial shippers in more than 20 countries Pre-packaged plan, confirmed less than 2 months after the filing of the chapter 11, refinanced the company's secured debt obligations that totaled approximately $220 million and provided for the payment in full of all other creditors Plan was the result of extensive pre-petition negotiations and was supported by more than 95% of the company's secured lenders

TerreStar Corporation
Lead Counsel: Akin Gump Strauss Hauer & Feld, New York, NY (Ira Dizengoff, Arik Preis, Sarah Schultz)
Nature of the Success: TSC, parent of mobile satellite network operator TerreStar Networks, filed a plan of reorganization in June 2012 under which unsecured creditors would receive a secured note and preferred shareholders would receive 100% of the common stock of reorganized TSC TSC's DIP financing and disclosure statement was appoved by the court and plan of reorganization was confirmed in October, culminating a hotly contested case in which TSC debtors faced numerous requests for the appointment of an examiner and an equity committee

Tribune Company
Restructuring Firms: Alvarez & Marsal, Chicago, IL (Brian Whittman) and Lazard Freres, Chicago, IL (David Kurtz)
Lead Counsel: Sidley Austin, Chicago, IL (James Conlan, Bryan Krakauer, Kevin Lantry, Jessica Boelter)
Nature of Success: Restructured a major print and broadcast media company resulting in deleveraging of business from approximately $13 billion to $1 billion in funded debt and distribution of approximately $8 billion of cash and equity securities to creditors; settled fraudulent conveyance and other causes of action against senior lenders arising from a 2007 leveraged buyout; and addressed complex capital structure that at one point led to four competing plans of reorganization, allowing business to emerge from bankruptcy while directing other claims into a litigation trust

William Lyon Homes, Inc.
Restructuring Firm: Alvarez & Marsal, Phoenix, AZ (Shawn Hassel, Marc Liebman)
Lead Counsel: Pachulski Stang Ziehl and Jones, Irell & Manella Laura Jones (Delaware), David Bertenthal (San Francisco), Debra Grassgreen (San Francisco) – Pachulski Stang Ziehl and Jones; Jeff Reisner (Newport Beach) – Irell & Manella
Nature of Success: Market-leading homebuilder faced significant challenges resulting from the downturn in the housing market Comprehensive restructuring of over $490M of debt and raising of $85M of new equity during a time when the homebuilding industry was still suffering from one of the largest downturns in U S history Resulting capital structure deleveraged the company by $180 million, reducing cash interest expense by $25 million Within just 54 days, company confirmed a fully pre-solicited pre-negotiated Chapter 11 plan with no objections

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ShengdaTech, *from page 4*

PRC subsidiaries had any open or closed bank accounts. The special committee also continued its internal investigation, which had been commenced prior to the bankruptcy filing.

As of confirmation of the liquidating plan of reorganization, all of these efforts, while having "yielded positive results" according to court filings, had generated little in the way of assets for distribution to creditors. As of the end of September 2012, the estate had only $6.5 million in total assets consisting of cash and professional retainers. ShengdaTech's professionals had not been able to even locate ShengdaTech's headquarters in the PRC or the company's books and records.

The terms of the confirmed plan provide some hope for creditors that they may ultimately receive greater recoveries on account of their claims. Pursuant to the plan, most of ShengdaTech's cash was used to fund a liquidating trust tasked with continuing the asset recovery efforts. Michael Kang, who was appointed as the liquidating trustee, was also authorized to take out loans and accept investments to further fund the liquidating trust's operations, including from creditors. The plan allows the liquidating trustee to agree to repay any such creditors with, among other things, interest, fees, success fees, bonuses, and/or additional percentage recoveries.

On October 17, 2012, the special committee announced the findings of its internal investigation in a press release and SEC filing. While the special committee's report is confidential and subject to privilege, according to Kang, the investigation "confirmed KPMG's initial reports concerning discrepancies and/or issues relating to the company's financial records." The special committee's report recommended that the liquidating trust continue litigation in the PRC "to regain control of the company's assets in the PRC and pursue criminal and civil actions, as appropriate, in the United States and the PRC against the parties responsible" and pursue "the links between PRC operating subsidiaries and potential related third parties to recover assets." ShengdaTech's board of directors accepted the special committee's recommendations.

According to Kang, the liquidating trust "is continuing to aggressively pursue the individual litigation cases in the PRC to gain control of the operating subsidiaries" and recently received a favorable judgment in its litigation filed in the Hefei New and High Tech Zone Court, Anhui Province, against Chen Bo, the former general manager and legal representative of one of its PRC subsidiaries, Anhui Yuanzhong Nanomaterials Co., Ltd. The liquidating trust continues to "push the other cases to trial" in multiple PRC courts.

Kang also stated that the extent and value of the assets that exist and may potentially be recovered are "still under investigation." He was not able to provide a more specific expected recovery range for unsecured claimholders from the range provided in ShengdaTech's disclosure statement – greater than one percent. Kang noted that the liquidating trust currently has "monies to fund its ongoing recovery efforts" and disclosed that ShengdaTech would be filing a monthly operating report on or about January 20, 2013 which will provide an update on the trust's current cash position. ¤

The investigation quickly identified serious problems, including the inability to verify the companies' cash accounts held at financial institutions in the PRC and the inability of the special committee to authenticate the veracity of certain U.S. certificates of deposits.

Evidence, *from page 2*

506(a) of the Bankruptcy Code and Bankruptcy Rule 3012.

The Cornerstone Investors objected to the committee's motion on the grounds that the $9.54 million appraisal was not valid because Section 506(a) requires that the value of the collateral be determined in light of the collateral's "proposed disposition or use."

"The debtors' proposed plan of reorganization provided that the debtors would continue to develop the residential subdivision and sell units, and the plan's projected budget forecasted that the debtors would receive sufficient value from the sale of new units to pay all secured claims in full," says Oliver. "The Cornerstone Investors claimed that this proposed budget properly accounted for the residential subdivision's 'proposed disposition or use,' and therefore reflected a more accurate value of the collateral for purposes of Section 506(a)."

The bankruptcy court postponed valuation of the subdivision until it could properly determine the increased value of the property resulting from post-confirmation development and sales.

Ultimately, it confirmed a plan that projected the bank lenders and the Cornerstone Investors would be paid in full through development over 47 months, and unsecured creditors would receive distributions amounting to approximately 45 percent of their claims.

After the plan was confirmed in April 2010, the bankruptcy court scheduled a hearing on the unsecured creditor committee's September 2009 motion – and that's when trouble began.

The committee continued to argue that the proper method for valuing the Cornerstone Investors' secured claims was the fair market value of the debtors' residential subdivision as of the plan confirmation date ($9.5 million). It presented the appraisal, along with evidence of the diminished value of the project resulting from disposition of units in the time since the appraisal was issued.

The Cornerstone Investors, on the other hand, argued that the plan budget of $15 million represented the proper valuation of their collateral. The investors declined to present expert testimony and relied solely upon the projections in Highgate Heritage's confirmed plan.

That was important, says Reed, because "adding the value of certain additional assets that secured the bank loan, the aggregate value of the collateral securing the indebtedness was $11,155,477.15,

continued on page 9

Evidence, *from page 8*

which was less than the amount of the bank loan."

"The bankruptcy court agreed with the committee's arguments and ruled that the proper method for valuing the Cornerstone Investors' secured claims was the fair market value of the debtors' residential subdivision as of the plan confirmation date," says Nicole M. Stephansen, also of Cadwalader, Wickersham & Taft. "Accordingly, because the amount owed to the bank lenders exceeded the valuation of the debtors' residential subdivision, the bankruptcy court ruled that the Cornerstone Investors' claims were unsecured."

The Cornerstone Investors appealed this ruling to the U.S. District Court for the District of New Jersey, and the district court affirmed the bankruptcy court's order. The Cornerstone Investors then appealed the district court's ruling to the United States Court of Appeals for the Third Circuit.

The Third Circuit upheld the bankruptcy court's decision on the grounds that the revised appraisal accurately calculated the residential subdivision's fair market value on the date of plan confirmation, and this valuation was appropriate for Section 506(a) valuation purposes.

In reviewing the case, the Third Circuit first ruled that the initial burden of proof is on the party challenging a secured claim's value. If that party presents enough evidence that a creditor's secured claim is overvalued because the collateral is too low, the burden shifts to the creditor. In this case, then, the Cornerstone Investors had to persuade the bankruptcy court that the subdivision was worth enough to secure their claims – and they failed to meet that burden of proof "because they did not submit an alternative valuation or attack the court-accepted valuation," says Oliver.

The Third Circuit then addressed the proper method of valuation under Section 506(a), which provides that value shall be determined in light of the purpose of the valuation and the proposed distribution or use of the property.

The Cornerstone Investors had argued that reliance on fair market value violated Section 506(a)'s mandate that value be determined in light of the proposed disposition or use of the property, and the collateral's increase in value after the Section 506(a) valuation rightly accrued to their benefit.

The Third Circuit disagreed, however. It held that where a Chapter 11 plan provides for a debtor to retain and use collateral to generate income with which to make payments to creditors, fair market value should be used because is most respectful of the property's anticipated use.

Therefore, says Reed, the lower courts had properly accepted the appraisal as establishing fair market value. "The projections relied upon by the Cornerstone Investors did not equate to 'value' as of the plan confirmation date, given that they were premised upon the debtors expending time and money to realize such value at a later date," he says. "That future value could not be credited to the secured creditor as of the confirmation date. A probability of realizing the budget was not a certainty of its realization; in sum, valuations must be based upon realistic measures of present worth."

According to Stephansen, the ruling makes clear that in the Third Circuit a secured lender's claim will be entitled to the value of the collateral as determined at the date of plan confirmation regardless of whether the value of the collateral increases after confirmation.

Reed says the Third Circuit's decision also clarifies the importance of presenting competent evidence of value. "It appears that the Cornerstone Investors' acceptance of the appraisal as establishing fair market value and failure to present evidence through expert testimony to counter the appraisal may have been critical to the outcome of the case."

"We've been doing a lot of work with creditors' committees, which have been marginalized over the past four years or so with what we call pump and dumps – cases where the debtor files for Chapter 11 and does a 363 sale, paying the secured creditors and leaving the unsecured creditors are at the mercy of different levels of secured creditors," says Viscount. "You negotiate a carveout, keep your mouth shut, and go away. But in a situation where one or more of the secured creditors is undersecured, you have a little more leverage if you want to bring the action to challenge the extent and validity of the lien." ¤

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- *Special Report: Outstanding Bankruptcy Judges – 2012*
- *Research Report: Who's Who in Edison Mission Energy*

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