What price success? It’s anybody’s guess

Ah, the sweet smell of success fees.

These lump-sum payments—essentially bonuses to financial advisers for a well-executed workout—have become common in bankruptcies, not to mention a big source of revenue for turnaround firms. Kroll Inc., the parent company for Kroll Zolfo Cooper, says success fees made up 13% of last year’s sales at its corporate advisory and restructuring unit.

Questions are emerging, however, about when these fees are justified and how to dole them out. This debate recently flared in RCN Corp.’s Chapter 11 case, in which preferred shareholder Wells Fargo & Co. objected to the cabler’s plan to pay as much as $13 million in success fees to AlixPartners LLC and Blackstone Group.

Wells Fargo’s attorney at Andrews Kurth LLP declined comment, but the objection argues that RCN “fails to provide any information as to whether the success fee is comparable to other success fees in similar cases.” It also questions the need to pay two advisers millions of dollars to carry out a prepackaged Chapter 11.

Wells Fargo’s prepack argument falls flat, given RCN’s pact was the result of months of prepetition haggling by AlixPartners and Blackstone. But the bank’s objection raises a key question: What is the yardstick for gauging whether success fees are reasonable?

The answer, many experts say, is that there isn’t one. “There are generally no real standards in the determination of a success fee,” says John Marquess, president of Haddonfield, N.J.-based fee auditing firm Legal Cost Control Inc., which reviewed professionals’ fees in the Enron Corp. bankruptcy, among others.

Ted Stenger, a principal at AlixPartners, agrees there is no formula but says his firm considers various factors, including the case’s complexity and the time commitment required. The bankruptcy court must also approve the success fee, he adds.

Even so, the increasing use of success fees highlights the need for more formal guidelines about when and how to award them. (See page 2 for a sampling of recent success fees from The Deal LLC’s bankruptcy database.)

One promising approach: Award a success fee only when creditors’ final recovery is above the debtor’s expectations when the adviser was hired. This would reward above-average restructuring skills and encourage efforts to maximize the value of the estate.

In practice, though, many success fees are just meant to encourage speed. RCN’s fee structure actually penalizes AlixPartners and Blackstone by cutting their payout if its plan isn’t confirmed by mid-September. Wells Fargo argued that such a provision biases advisers in favor of the current plan, which gives Wells no recovery.

Meanwhile, some observers predict success fees will become rarer as workouts quicken and debtors balk at paying extra for them. “These firms may discover one day that they’ve done too good a job,” Marquess says. That’ll be the day.

—Peter Edmonston
n its search for another top turnaround executive, Conway, Del Genio, Gries & Co. LLC went back to its roots. The New York-based restructuring firm, launched in 1998 by a group of ex-partners from Ernst & Young LLP, recently announced that former Ernst & Young Corporate Finance LLC managing director Mark Hopkins will join as a senior managing director of its restructuring group. Hopkins will be one of four senior managing directors at Conway Del Genio, operating just below its three founding members.

Hopkins’ recent assignments for Ernst & Young’s restructuring arm included giving financial advice to bondholders in the bankruptcy of USGen New England Inc., a former subsidiary of California-based utility PG&E Corp. “His experience in a wide range of industries—including communications and wireless, energy and power, manufacturing, real estate and construction, shipping and transportation—will complement our existing capabilities,” said Conway Del Genio chairman Robert Conway. Asked if Ernst & Young plans to hire someone to fill Hopkins’ spot, a spokesman for the firm said, “We have no immediate replacement for Mark, but the practice remains robust and we have no plans to change that.” —Erik Moser

Sun Capital Partners, a fireball of distressed investing of late, is rolling into Europe. Philip Dougall, the firm’s managing director, is heading to London to open Sun Capital’s first European office in July. He’ll take two associates, Nathaniel Meyohas and Anuj Singh. Dougall says Sun Capital will make some hires in London once they get there. The firm is no stranger to the Continent, however, having invested in Hunnebeck, a German construction equipment company, and lots of companies with operations in Europe, Dougall says. The London office will be Sun Capital’s fourth, adding to its presence in New York, Los Angeles and Boca Raton, Fla. —Soma Biswas

As bankrupt Kaiser Aluminum & Chemical Corp. gets set to announce the closing of a sale of its Jamaican division, its bondholders have banded together. A committee of Kaiser Aluminum’s senior subordinated noteholders has formed to “discuss certain issues of mutual interest,” according to a press release from law firm Bingham McCutchen LLP, whose bankruptcy practice head, Evan Flaschen, is the informal committee’s counsel. Kaiser’s official committee of creditors—advised by Lisa Beckerman of Akin Gump Strauss Hauer & Feld LLP—has taken a prominent role in the bankruptcy case thus far. The committee led a successful effort to force a public auction of Kaiser’s 65% stake in Alumina Partners, which resulted in a big boost to the sale price. —Greg Johnson

St. Louis-based law firm Thompson Coburn LLP has recruited the former general counsel of United Van Lines parent UniGroup Inc. to join its bankruptcy and transportation practices. Morton Golder, who spent 20 years at UniGroup, will be of counsel at the firm. In Pittsburgh, Dickie, McCamey & Chilcote PC announced that it hired Samuel Grego as principal to lead the expansion of its bankruptcy practice. Grego previously worked at Pittsburgh’s DKW Law Group LLC. —Peter Edmonston

If there was any doubt about the growing role of success fees in the turnaround business, here are a few big numbers to consider. Topping a sample of recent success fees from The Deal LLC’s bankruptcy database is the $15 million minimum bonus due to Lazard as reward for ushering WorldCom through its record-setting Chapter 11 case. (See table, left.) The telecom company’s reorganization plan was confirmed by the court in October, and Lazard, which acted as financial adviser and investment bank, submitted its fee request on April 7, two weeks before it exited bankruptcy as MCI Inc. The actual fee that Lazard requested, however, was cut to $13.9 million under a formula that takes into account a $2.1 million sale transaction fee it requested, however, was cut to $13.9 million under a formula that takes into account a $2.1 million sale transaction fee it earned by arranging WorldCom’s buyout of Digex Inc. (The formula wasn’t dollar-for-dollar.) So in the end, Lazard will get $16 million in success and sale transaction fees.

Another hefty bonus—a success fee of $8.5 million—went to Kroll Zolfo Cooper in 2003 as compensation for bringing bus company Laidlaw International Inc. out of its twin bankruptcy filings in the U.S. and Canada.

Financial adviser Blackstone Group LP is set to earn nearly that much ($7 million) if energy company Mirant Corp. completes a reorganization or sells its assets. AlixPartners is earmarked to get a $5 million success fee for acting as crisis manager in the same case.

Rounding out the sampling is a $4 million fee due to UBS Securities LLC if healthcare financing company DVI Inc. manages to restructure its $1.6 billion in debt. For financial adviser Miller Buckfire Lewis Ying & Co., a successful restructuring of Avado Brands Inc., which operates the Don Pablo’s and Hops restaurant chains, would mean a $1.5 million fee.

—P.E.
Court weighs Enron plan

Lawyers for Enron Corp. have made their pitch for the energy company’s plan to exit bankruptcy, making the judge’s confirmation decision, expected in mid-July, the next major milestone in the landmark Chapter 11 case.

The estate of the Houston-based company filed its “findings of fact” under seal last week explaining why the reorganization plan should be confirmed. Enron’s creditors would then respond within a week.

Either way, Judge Arthur Gonzalez of the U.S. Bankruptcy Court for the Southern District of New York in Manhattan said he would rule by July 15.

On June 18, two weeks’ worth of confirmation hearings ended in which various creditors’ groups made their case as to why the plan was not confirmable. The groups included one composed of Angelo, Gordon & Co. and Appaloosa Management Co., two of the main critics of the reorganization plan.

Enron said it had 25 objections that remain unresolved from the 98 it faced entering the hearings that began on June 3 in the Manhattan court. Enron attorney Martin Bienenstock of Weil, Gotshal & Manges LLP told the Associated Press that progress had been made.

Enron’s reorganization plan would offer its major creditor groups roughly 20 cents on the dollar on their claims, of which 92% would be in cash. The rest would be equity in Prisma International Inc., Enron’s last foreign asset.

The actual recovery amount will not be known for some time, though, pending the outcome of a couple of asset sales and how much money two litigation trusts can recoup.

The next step comes in September when Enron’s domestic pipelines division is set to be auctioned off. (See related story, page 6.) An investment consortium has placed a $2.35 billion bid for those assets. ■ —Jonathan Berke

Ampam nears confirmation

Noteholders and lenders, having settled a key dispute over the reorganization of American Plumbing and Mechanical Inc., will seek bankruptcy court approval of their new pact at a confirmation hearing rescheduled for July 8.

The plan, hammered out during contentious confirmation hearings in San Antonio, would give bondholders 49% of the plumbing contractor’s new equity. That’s a big improvement from their distribution of warrants under the previous plan. Management would keep the other 51% of the new stock, says an attorney involved in the case who requested anonymity.

Senior lenders Cerberus Capital Partners LP, Harbert Capital Management Corp., and Ableco Finance LLC, would no longer receive preferred stock, but would get first liens on all the company’s assets, the lawyer says.

Ampam will outline the agreement in a third amended reorganization plan before it appears in court July 8 for a rescheduled confirmation hearing, the attorney says. The Round Rock, Texas, company will ask at that time for Judge Leif Clark in U.S. Bankruptcy Court for the Western District of Texas in San Antonio to approve the plan.

Secured creditors had been due to receive $66.3 million in new notes issued by Ampam and its affiliates, along with $12.2 million in convertible preferred stock, common stock and warrants in Ampam and its affiliates, under the second plan backed by the debtor and senior lenders. All unsecureds were scheduled to recover warrants for 10% of the stock in the reorganized company in that proposal.

Leif approved Ampam’s disclosure statement over the committee’s objections, setting the stage for the contentious confirmation hearings. Now that the two sides have reached a consensual agreement, the committee will withdraw its objections, the attorney says. ■ —Terry Brennan

TMM offer deadline looms

In what promises to be a key test of investor confidence in Mexico’s new creditor-friendly bankruptcy code, Grupo TMM SA’s bondholders have until July 22 to decide whether they will support the transportation giant’s recent exchange offer.

If it succeeds, the offer to trade $377 million in bonds for longer-dated securities would allow TMM to avoid expensive and uncertain bankruptcy proceedings. If bondholders reject it, a court-supervised restructuring looms.

About 70% of its creditors have agreed to the swap so far, the company says. But it needs the consent of more than nine out of 10 for the offer to go through.

Under new bankruptcy laws in Mexico, it is harder for companies to dodge creditors endlessly with help from the courts, as steelmaker Ahmsa has done with its $1.8 billion in debt.

The system is far from perfect, however, and recent experience means many creditors, while benefiting from a slightly stronger hand in negotiations, still do all they can to avoid going to court.

—John Moody in Mexico City
NEW ARRIVALS  NEW FILINGS

BMC looks to Chapter 11

With a sale in its sights, eyeglass lensmaker BMC Industries Inc. has filed for Chapter 11 protection and lined up $10 million in post-petition financing.

The debtor-in-possession funds, which prepetition lender Deutsche Bank Trust Co. Americas is providing, should allow the Ramsey, Minn.-based company to keep operating until a Texas limited partnership buys its Vision-Ease subsidiary.

Once that deal goes through, BMC says it will try to find buyers for the rest of its assets.

In its filing with the U.S. Bankruptcy Court for the District of Minnesota, BMC reported total liabilities of $164.8 million and total assets of $105 million.

The company has been operating under a series of waivers from its bank lenders since falling out of compliance with financial covenants in June 2003. BMC has hired restructuring firm Chanin Capital Partners LLC to advise on strategic alternatives.

BMC employs 1,220 people worldwide and operates facilities in Ramsey and Jakarta, Indonesia.

In court filings, the company estimates that its Vision-Ease unit is the third-largest maker of eyewear lenses in North America.

BMC is about to close its Buckbee-Mears Micro-Precision Operations group, which had been the last North American supplier of television aperture masks, a component used to make picture tubes.

The company has agreed to sell Vision-Ease Lens to Insight Equity A.P. X LP as part of a Section 363 auction. No price was disclosed.

BMC plans to use the proceeds of the Vision-Ease sale to repay its DIP financing and other debts. The company said in its filing that it expects no other other proceeds or assets to be available for distribution to unsecured creditors or stockholders.

BMC seeks court permission to hire Jeff Friedman, Jeffrey Elegant and Merritt Pardini of Katten Muchin Zavis Rosenman as debtor counsel. The U.S. Trustee in the case, however, has filed an objection to this motion, arguing that Katten Muchin has a conflict of interest because it has represented four of BMC’s prepetition lenders in other, unrelated cases.

A hearing on the matter was scheduled for June 24 before Judge Robert J. Kressel.

As debtor co-counsel, BMC hopes to retain Clinton Cutter, Ryan Murphy and Heather Thayer of Fredrikson & Byron PA in Minneapolis. —Erik Moser

Bradstock brandishes 304s

Hoping to fend off U.S. creditors while its affiliates liquidate in the U.K., insurance broker Bradstock Group plc has filed two Section 304 bankruptcy petitions.

One of the two affiliates, Bradstock Blunt & Crawley Ltd., is asking the court to block creditors from moving on its assets as part of a pending U.S. lawsuit as it undergoes liquidation in the U.K., according to the entity’s U.S. counsel, Howard Seife of Chadbourne & Parke LLP.

Another affiliate, Bradstock Ltd., also filed a 304 petition but is seeking to ward off any potential action by U.S. creditors as it liquidates, Seife says. Section 304 of the Bankruptcy Code gives foreign debtors the right to protect their U.S. assets from seizure while they undergo insolvency proceedings overseas.

The two London-based companies filed their separate 304 petitions late June 22 in the U.S. Bankruptcy Court for the Southern District of New York in Manhattan. Both were assigned to Judge Allan Gropper.

The two Bradstock affiliates, along with three others, filed for liquidation Sept. 29 in the High Court of Justice of England and Wales under the Insolvency Act, records show. The court appointed Gareth Howard Hughes and Martin Fishman of Ernst & Young LLP as joint liquidators.

The two companies making the 304 filings have requested a July 14 hearing on preliminary injunctions to block creditors from seizing assets, Seife says. They then expect to request permanent injunctions on the petitions sometime in September since it could take several years to settle all the claims, he says.

Bradstock Group blames its financial problems on a revenue shortfall that began in the mid-1990s, forcing it to sell off several of its broker operations, filings show. Before shutting down operations, Bradstock’s brokering business primarily involved aviation, nonmarine reinsurance and sports personal accident business, documents show.

Seife and Francisco Vazquez are Bradstock’s U.S. counsel at Chadbourne & Parke. —Terry Brennan

• Comic book publisher CrossGen Entertainment Inc. filed for Chapter 11 in the U.S. Bankruptcy Court for the Middle District of Florida, listing total assets of between $1 million and $10 million and total debt of between $10 million and $50 million. The company, whose titles include “Kiss Kiss Bang Bang” and “Route 666,” hired Holland & Knight LLP as debtor counsel. —Peter Edmonston
• After defaulting on agreements with its senior lender, Bridge Technology Inc. has sought bankruptcy protection in the U.S. Bankruptcy Court for the Central District of California in Santa Ana. The company, whose stock was delisted from the Nasdaq last fall, supplies digital storage products. —Renata Schloss
• Sedalia Grill, a famous biker bar in Colorado, reported total assets and debt of between $100,001 and $500,000 in its Chapter 11 petition with the U.S. Bankruptcy Court for the District of Colorado in Denver. The Mexican restaurant lists the Internal Revenue Service as its largest unsecured creditor. —Erik Moser
• Italy’s Parmalat Finanziaria SpA has filed a Section 304 petition in an attempt to block ABN Amro Bank NV from moving against the U.S. assets of 22 bankrupt affiliates. The food company, which sought insolvency protection in Milan in December 2003, made previous 304 filings in January. —Terry Brennan

— Terry Brennan
Chiofaro wins round with Tishman

Boston developer Don Chiofaro’s Fort Hill Square Associates has survived a move to dismiss its Chapter 11 filing, but the move merely assures a difficult reorganization battle.

Judge Joan Feeney in U.S. Bankruptcy Court for the District of Massachusetts in Boston on June 17 rejected New York real estate titan Tishman Speyer Properties LP’s motion to discharge the bankruptcy case of the owner of the International Place towers in downtown Boston. Tishman filed the motion to dismiss soon after the May 7 filing “because no legitimate bankruptcy purpose is served by [Fort Hill’s] filing,” according to court documents.

But Feeney denied Tishman’s motion, saying that it was “flawed both factually and legally.”

Tishman was not surprised it did not win. “This was completely expected,” said Robert Popeo, Tishman’s lead counsel at Mintz Levin Cohn Ferris Glovsky and Pepeo PC. “The judge obviously wanted the debtor to file a plan.”

When Chiofaro filed for bankruptcy, his ability to service a $630 million mortgage that Tishman holds on International Place was in doubt. But he was not considered in any danger of defaulting.

Tishman was trying to prevent a bankruptcy so it could secure the full value of the mortgage, instead of the $595 million it paid to acquire the loan from Teachers Insurance and Annuity Association of America on April 2. Under the U.S. Bankruptcy Code, Tishman’s secured claim is valued at the collateral or price offered for the mortgage.

Tishman outbid Chiofaro, Blackstone Group LP and others to acquire the International Place mortgage from TIAA. Chiofaro had bid $550 million, even though in court documents he disclosed that his companies could not meet debt service.

When Fort Hill filed for bankruptcy, Chiofaro vowed to mount a spirited defense if a fight broke out with Tishman. He also made little effort to disguise his scorn for Tishman, calling the company a “gang of pirates” and alleging in court filings that it hampered his efforts to sign a lease with Boston law firm Choate, Hall & Stewart.

With this early victory, Chiofaro now has protection to reorganize his debts. But both sides recognize this is only a taste of what’s to come.

“I think it’s early and this case will be contested vigorously throughout,” says Harold Murphy, debtor counsel at Hanify & King in Boston. Fort Hill Square hired Ernst & Young Corporate Finance LLC as financial adviser.

Charles Dougherty is co-counsel for Tishman in the Boston office of Epstein Becker & Green PC. —Erik Moser

Owens judge considers examiner

Creditors asking for an examiner in Owens Corning Corp.’s bankruptcy case must wait for an answer.

Visiting Judge Judith K. Fitzgerald in the U.S. Bankruptcy Court for the District of Delaware said June 21 she would consider the request, but gave no time frame, says Isaac Pachulski of Stutman, Treister & Glatt PC. He’s one of the attorneys representing Owens creditors pushing for an examiner.

Meanwhile, Owens’ commercial creditors committee, consisting of banks and bondholders, wants a trustee. Fitzgerald has set a July 19 hearing on that issue.

“There is no reason to believe Fitzgerald would delay ruling on the [examiner] issue until the trustee motion comes up,” Pachulski says.

The creditors want an examiner to investigate whether the manufacturing company’s management breached its fiduciary duty during bankruptcy. They worry that management ceded control of developing a reorganization plan resolving its asbestos woes to plaintiffs’ lawyers.

Owens Corning recently filed a new reorganization plan with the court offering creditors—including asbestos creditors, bondholders, bank loan holders and trade creditors—a combination of cash, debt and shares valued at 39 cents on the dollar. Its previous plan offered just 26 cents on the dollar.

But because Owens’ asbestos-related legal claims are valued at $16 billion, its bonds total $1.4 billion and its bank debt is $1.5 billion, asbestos creditors stand to receive a much bigger portion of the company’s assets. —Shanon D. Murray

— Chris Nolter

- Hawaiian Airlines Inc. trustee Joshua Gotbaum has asked a bankruptcy court to approve an incentive plan for managers of the Honolulu-based airline. The request would allow 80 managers to share $3 million in bonus money for helping to turn the airline around in 2003. Separately, distressed debt investor Ranch Capital LLC said it plans to propose a reorganization plan for the airline. — Greg Johnson
- Tex-Mex eatery chain Chi-Chi’s Inc. has won preliminary approval for an agreement to sell the rights to some of its restaurants to shopping center owner Kimco Realty Corp. for at least $32.5 million. A bankruptcy judge also granted the company’s request to extend its exclusive right to file a reorganization plan until Aug. 3. — G.J.
- Bankrupt grocery distributor Fleming Cos. has reached three settlements with former workers in Wisconsin over claims related to facilities that it closed or sold. The agreements, which give the workers $10 million in cash and stock, will be incorporated into Fleming’s third amended reorganization plan. — Jonathan Berke
- U.S. Bankruptcy Judge Arthur Gonzalez said June 23 he intends to rule on a motion to disqualify KPMG LLP as the tax adviser and auditor for MCI Inc.’s bankruptcy case in the upcoming week. Several U.S. states have criticized KPMG’s tax plans for MCI, and in March they asked Gonzalez to find that the firm can’t audit its own work. Because the motion predates MCI’s April exit, it remains before the bankruptcy court. — Chris Nolter
Southern heats up Enron sale

In a bidding game of back-and-forth for Enron Corp.'s domestic pipelines that will be revisited in September, Southern Union Co. and GE Commercial Finance LLC became the official stalking-horse bidders for the business by upping their offer to $2.35 billion.

Last week's bidding for the entity bankrupt Enron has formed to own the pipelines, CrossCountry Energy Corp., has been wild and woolly.

On June 22, Southern Union and GE Commercial bested NuCoastal LLC's $2.2 billion bid with one for $55 million more.

The next day, NuCoastal increased its earlier bid by $100 million, to $2.3 billion, only to be outdone again June 24 in a "miniauction" between the two suitors in the Manhattan offices of Milbank, Tweed, Hadley & McCloy LLP, which is representing Enron's unsecured creditors.

Later that afternoon, Judge Arthur Gonzalez of the U.S. Bankruptcy Court for the Southern District of New York in Manhattan approved Southern Union and GE Commercial's latest offer as the stalking-horse bid.

In doing so, he set aside two issues. One was NuCoastal's request for up to $50 million in expense reimbursement for losing out in its effort to become CrossCountry Energy's stake in the bidding process so it could submit an offer for CrossCountry Energy's stake in Transwestern Pipeline Co.

The real auction for CrossCountry Energy will be Sept. 1, when the whole bidding process can begin again. The only difference will be that Southern Union and GE Commercial's front-running $2.35 billion bid will serve as a base line for others. Anyone who wants to enter the process will have to bid $10 million more, and subsequent offers will have to be in increments of at least that amount.

NuCoastal, a group consisting of private equity firms that was being fronted by pipeline executive Oscar Wyatt Jr., was anointed the stalking-horse bidder with a $2.2 billion offer in May.

But Enron's unsecured creditors said on June 18 that they received an offer from Southern Union and GE Commercial that was $55 million higher than NuCoastal's bid and that Enron should accept the higher offer.

Evidently, GE Commercial has had its eye on those assets for some time, having executed a confidentiality agreement with Enron on April 2, according to court documents.

The current stalking-horse bid of $2.35 billion is $779 million more than the $1.57 billion value that's been ascribed on the high end to Enron's pipeline assets.

Enron and its creditors may fetch even more, too, when the Sept. 1 auction is held, this time in the Manhattan offices of debtor counsel Weil Gotshal & Manges LLP.

& Manges LLP.

And despite Southern Union's stalking-horse status, industry analysts think the bidding will get too rich for the Wilkes Barre, Pa.-based pipeline company, since it already has a highly leveraged balance sheet. The acquisition of CrossCountry, with 9,900 miles of pipeline, would double the size of Southern Union.

The wild card, of course, is how much equity GE Commercial is willing to put into a bid.

"It remains to be seen whether they will stay in the game," says John Olson, the director of research at Houston boutique firm Sanders Morris Harris Group Inc.


NuCoastal's counsel during the bidding was John Higgins and James Matthew Vaughn of Porter & Hedges LLP, as well as Richard Hahn of Debevoise & Plimpton LLP and Paul Leake of Jones Day. ■ —Jonathan Berke

Suitor sniffs ailing Footstar unit

Hoping to widen its footprint in the sneaker retailing business, a small, Dallas-based holding company has approached bankrupt Footstar Inc. about acquiring its Just For Feet Inc. subsidiary.

Citizens Capital Corp., whose shares trade in the Pink Sheets, revealed the unsolicited bid June 23. Footstar acquired Just For Feet out of bankruptcy in 2000 and now plans to close down the troubled division.

Citizens Capital is looking to make the acquisition through its Scor Brands Inc. unit, a down-market shoe retailer. Scor Brands has no current retail outlets and an online operation that generates only a few million dollars in sales, according to Scor Brands chief executive, Billy Hawkins.

"Just For Feet is just going to be written off, but we think there's some real value in the assets there ... that would help us springboard into the $13 billion industry," Hawkins says. He estimates that Just For Feet's annual sales totaled $300 million to $400 million, with about $50 million of that online.

The bid got a “positive reception” from Footstar, Hawkins adds, but he would not be more specific.

"Although Citizens Capital didn't discuss the bid ahead of time and Footstar had previously announced in March that the Just For Feet assets would be written off, it welcomes the interest in the chain," Footstar spokeswoman Kimberly Kriger says.

Scor Brands plans to aggressively expand its business in the fourth quarter, including airing its first television advertisement. Hawkins adds that he would spin Just For Feet back onto the public market, a move that he projects could happen as soon as next year.

Footstar, the No. 3 athletic shoe retailer behind Foot Locker Inc. and Finish Line Inc., filed for bankruptcy protection in March. ■

—Matt Miller
Anixter latches onto DDI

It took seven rounds of bidding, but Anixter International Inc. finally hooked fastener maker Distribution Dynamics Inc. for $32.8 million in cash.

Anixter won the bankruptcy auction for its Eden Prairie, Minn.-based rival on June 18, outlasting Fastenal Corp., for the right to acquire the bankrupt maker of nuts, bolts and other fastening equipment, says Peter Fishman, who shopped DDI at Houlihan Lokey Howard & Zukin. DDI was scheduled to present Anixter’s offer for approval on June 21 to Judge Dennis O’Brien in U.S. Bankruptcy Court for the District of Minnesota in St. Paul, he says. The parties hoped to close the deal June 22.

“Anixter came in with a stalking-horse offer at $25 million and Fastenal then kicked off the auction with a starting price of $25.85 million,” Fishman says. “They then went through six rounds where each bid in $500,000 increments before Anixter won it with its final offer in the seventh round.”

DDI filed for Chapter 11 along with four affiliates on March 1 after failing to integrate six purchases over the past eight years.

The loss in February of Harley-Davidson Inc., its largest customer, reduced cash flow so much that DDI could not meet payments on its $29.22 million loan from Stairway Capital Management LP and Heller Financial Inc., a unit of GE Capital Corp.

“I think this shows that the 363 auction process works because we still think we can get in and out of Chapter 11 in about three months.”

The deal with Anixter consists of all of DDI’s assets at 17 locations in the U.S., Canada and Mexico with the exception of two plants in Portland, Ore., and some Houston real estate, Knopf says.

Privately held DDI supplies fasteners, screws, clamps and nuts and bolts on a just-in-time basis to original equipment manufacturers in several industries.

DDI relied on receivables to continue operations under its cash collateral motion and never locked in debtor-in-possession financing. The company is expected to file a liquidation plan that would paid secured lenders in full and provide an unspecified recovery for unsecured creditors, Knopf says.

In addition to Fishman, Stephen Spencer and Luke Beltinck in Minneapolis shopped the assets at Houlihan Lokey.

—Terry Brennan

Sale on tap for Big Buck Brewery

Big Buck Brewery & Steakhouse Inc. was lining up interviews for late week to choose a financial adviser to help sell the company.

The Gaylord, Mich.-based eatery’s assets include real estate, leases and a partnership in its Texas restaurant. Big Buck plans an auction in three or four months but is unsure who bidders might be. Its only secured creditor, Grosse Pointe, Mich.-based financial group BBAC LLC, plans to make a credit bid.

If a third party pays cash for Big Buck’s assets, BBAC would be happy, too, says its counsel, Judy B. Calton of Honigman Miller Schwartz and Cohn LLP.

Big Buck’s $12 million in debt, which BBAC bought from the Wayne County Employee Retirement System, was accumulated as it built its restaurants and then struggled to make hefty lease payments, says company chairman, president and CEO Mark Provenzano. He’s also chief restructuring officer.

Big Buck filed for bankruptcy on June 10 in the U.S. Bankruptcy Court for the Eastern District of Michigan.

Big Buck joins a spate of restaurant chains that have gone under, including Chi-Chi’s Inc. and Chevy’s Inc. But the company blamed its filing on a dispute with a landlord over leases for a restaurant in Auburn Hills, Mich., and one already closed in Grand Rapids, Mich. The landlord threatened to shut the Auburn Hills eatery if it didn’t get paid in 30 days. Big Buck filed before the period was up, Calton says. Meanwhile, the Big Buck restaurants in Gaylord and Auburn Hills are still serving up dishes.

Big Buck’s first-day motions, which were approved, included a proposal to use cash collateral, a request to continue making payroll and keeping utility service as well as approval to use its cash collateral. Big Buck also won a delay until July 17 to file forms.

While the company’s cash flow is tight, it can use its $839,000 in cash collateral, says debtor counsel Steven Gross of Lindahl Gross Lievois PC. The final hearing on the use of cash collateral is slated for July 12.

The company’s restaurant in Grapevine, Texas, is co-owned by Buck & Bass LP under a joint venture with Bass Pro Outdoor World LLC. The Grapevine eatery is not bankrupt.

In March, Big Buck shareholders approved a recap that allowed the company to go private and its stock was then delisted.

—Renata Schloss
One more try for UAL

UAL Corp. is still clinging to the hope it will get a federal loan guarantee, even though the government has rejected two of its applications in the past 18 months.

The parent of United Air Lines Inc. last week submitted a third application to the Air Transportation Stabilization Board seeking federal backing on loans its needs to make it through Chapter 11. But the airline has scaled back its loan guarantee request to $1.1 billion from $1.6 billion and vowed to repay it in five years, down from the original seven-year term, according to an industry source. UAL also pledged to find a lender to provide the $500 million gap without the promise of federal backing.

The new request came days after the ATSB, set up to help U.S. airlines after the Sept. 11 attacks, rejected UAL’s second bid for assistance. In rejecting the previous application, the ATSB said the carrier had failed to show it was a necessary part of the nation’s aviation system and hadn’t proved that it could not raise money in the capital markets.

Industry watchers discounted UAL’s chances of winning the guarantee this time, despite mounting political pressure for the government to assist the airline. Standard & Poor’s analyst Philip Baggaley says it is unclear how United’s revised bid would answer the ATSB’s concerns. “Indeed, the revised application would seem to confirm the board’s objection,” he says, noting that it calls for the airline to find $500 million in assistance outside federal funding. Regardless of the ATSB’s decision, UAL is likely to ask employees for additional cost cuts. Even if the loan guarantee application is approved, the lender that supplies the $500 million outside the program is expected to require further cost reductions. UAL could try to trim costs by eliminating flights, scaling back its hub operations or reducing employee pensions. It also could use asset sales to raise money, although analysts expect that only as a last resort.

—Lou Whiteman

Crescent wanes toward liquidation

More than two years after seeking bankruptcy protection, diversified management company Crescent Operating Inc. has removed a key obstacle to its plan to liquidate.

The Fort Worth-based company won court approval June 21 for a plan that would transfer its assets to its senior lender, Crescent Real Estate Equities Co., a real estate investment trust.

Judge D. Michael Lynn in U.S. Bankruptcy Court for the Northern District of Texas in Fort Worth confirmed the plan, which intra-company squabbling effectively stalled, says Sarah Foster, Dallas debtor counsel at Haynes and Boone LLP. The prepack echoes a 28-month-old agreement that passed Crescent Operating’s hotel and real estate interests to Crescent REIT. There were no objections.

“Crescent Operating and Crescent Real Estate reached an agreement in February 2002 on a friendly foreclosure that paid all creditors in full and gave shareholders a distribution,” she says. “The filing took so long, however, because a bankrupt Crescent Operating subsidiary unexpectedly sued its parent and we had to resolve those multiple claims.”

Crescent Operating filed its Chapter 11 prepack on March 10, 2002, one month after wholly owned subsidiary Crescent Machinery Corp. filed in the same Fort Worth court. Crescent Machinery then sued its parent, and those claims were finally resolved when the subsidiary emerged and the parent’s equity stake was completely wiped out, Foster says.

The real estate and hotel assets would now formally be transferred to Crescent REIT to satisfy about $76.2 million in secured loans and roughly $49 million in liened leases under the plan, she says.

Bank of America NA is projected to recover 100% on its $15 million secured note claim from proceeds from the sale of the debtor’s 40% interest in AmeriCold Logistics LLC, she says. The search for a buyer for the AmeriCold stake also stalled the debtor’s emergence. Crescent is negotiating with a prospective buyer and expects to meet a four-month deadline from the June 21 confirmation to close the deal.

—Terry Brennan

Judge clears RCN exit loan

After less than a month in bankruptcy, RCN Corp. has already clinched financing for its emergence.

The cable company received court approval June 22 for a $460 million exit loan from a group of banks led by Deutsche Bank AG, according to a bankruptcy professional involved in the case. RCN, based in Princeton, N.J., will use the money to pay off a prepetition loan of roughly the same amount for which J.P. Morgan Chase & Co. is agent.

RCN filed a prepackaged Chapter 11 on May 27 after months of negotiations with lenders. The company’s agreement with creditors calls for senior secured debt holders to be paid in full, while unsecured creditors, including holders of $1.1 billion in notes, would exchange their claims for all of RCN’s new equity.

RCN is one of a number of so-called “overbuilders” who install cable infrastructures in areas where other providers already dominate. These companies typically add local phone, broadband and other offerings to their portfolios.

At the time of its filing, RCN said it expected to emerge from bankruptcy in the fourth quarter. It has asked court permission to hire AlixPartners as crisis manager and Blackstone Group as financial adviser.

—Soma Biswas and Chris Nolter
ETeam cleared for sale

Though the U.S. Trustee in the case cried foul, ETeam USA LLC won court approval to sell itself out of bankruptcy.

On June 23, Judge Peter Walsh of the U.S. Bankruptcy Court for the District of Delaware in Wilmington signed off on a $984,000 stalking-horse bid from private equity-backed Professional Development Team LLC.

In doing so, Walsh rejected objections from acting U.S. Trustee Roberta A. DeAngelis, who argued that ETeam’s search for potential buyers was half-hearted and criticized how creditors would be treated under the sale agreement.

PDT submitted the only bid for substantially all the assets of the provider of technology and training services and one of its affiliates, ETeam of Philadelphia.

Before the auction, however, DeAngelis filed motions expressing her dissatisfaction with ETeam’s effort to solicit bids or expressions of interest from other sources. Noting that Avalon Equity Fund LP, which owns 70% of the membership interests in ETeam and 100% of PDT, had paid $3 million for a 49% stake in ETeam less than a year ago, DeAngelis questioned why PDT should be allowed to pay one-third of that amount for the remaining 51%.

DeAngelis also requested that the case be converted into a Chapter 7 if the court rejected the sale, but Walsh’s decision appeared to make that moot.

Thomas Way, the president of both ETeam companies, defended his soliciting efforts in a motion in response to DeAngelis and went on to criticize any Chapter 7 conversion effort because it would “undoubtedly jeopardize any potential recovery for the creditors.”

West Conshohocken, Pa.-based ETeam, whose clientele includes companies and individuals, had faced a declining cash position. Before its bankruptcy filing May 2, Eteam was operating primarily off a $500,000 loan from Avalon.

After ETeam filed for Chapter 11 protection, it received PDT’s offer comprises just $50,000 in cash, with the rest of it consisting of debt forgiveness to Avalon and PDT and the assumption of ETeam’s payments and obligations.

In her motion, DeAngelis questioned the validity of PDT’s purchase price and voiced displeasure with the terms of the PDT sale, accusing ETeam of failing to honor its “fiduciary obligation to maximize value for their creditors.”

No creditors’ committee was formed, and among the top 20 unsecured creditors, claims ranged from $71,325 to $2,985.

In response to DeAngelis’ claims, Way said that Eteam had diligently marketed its assets and that PDT had been the only potential bidder.

In an objection to the conversion motion, Way also said that the sale had been made in an effort to “maximize the ultimate pool of assets available for distribution ... before their value further deteriorates.”

—Erik Moser

Georgetown goes to ISG

Despite being outbid at auction, International Steel Group Inc. still managed to acquire bankrupt Georgetown Steel Co. after a judge decided the total value of ISG’s offer was superior.

Although Leggett & Platt Inc. won the June 15 auction with a bid of $20.9 million, Judge John Waites of the U.S. Bankruptcy Court for the District of South Carolina in Columbia later declared ISG the winner, citing the additional benefits to the community of ISG’s plan to reopen the Georgetown, S.C.-based mill, as well as a union agreement to waive $7 million in claims.

ISG said it completed the Georgetown acquisition June 21, paying $18 million plus the assumption of certain liabilities. ISG, a roll-up vehicle controlled by buyout veteran Wilbur Ross, has already snapped up the operations of LTV Corp., Bethlehem Steel and Acme Steel Co. to become North America’s largest integrated steel producer.

Georgetown Steel makes material used in steel-belted tires and upholstery springs.

Mary Elizabeth Huber in the Cleveland office of Jones Day advised ISG.

Georgetown Steel became the 42nd U.S. steelmaker to go bankrupt since 1997 when it filed for Chapter 11 on Oct. 21, 2003, in the Columbus court.

—Greg Johnson and Peter Edmonston

Air Canada taps Cerberus

After twice rebuffing the New York-based private equity firm, Air Canada has chosen Cerberus Capital Management LP to provide a C$250 million ($184 million) investment in exchange for a 9.2% stake in the restructuring carrier. Air Canada announced the long-anticipated deal with Cerberus after markets closed Wednesday. The deal, combined with an C$850 million rights offering led by Deutsche Bank AG, brings the total equity raised by Air Canada during its restructuring to C$1.1 billion, which the carrier said is among the largest equity amounts an airline has ever raised.

Shortly after Air Canada filed for protection from creditors on April 1, 2003, Cerberus said it was interested in acquiring some of the carrier’s debt but has not commented publicly on the lengthy equity solicitation process.

Cerberus lost its initial bid for an Air Canada stake late last year to Hong Kong businessman Victor Li’s Trinity Time Investments but was permitted to make a revised offer in December. The second offer was also rejected in favor of Li’s bid, which later collapsed over a dispute involving employee pensions.

Under last week’s agreement, Cerberus’ investment will be in the form of convertible preference shares that will be convertible into common shares of the restructured Air Canada.

—Laura King in Toronto

THE DEAL’S BANKRUPTCY INSIDER 9
APP revelations cloud vote at China unit

Creditors have gone to the ends of the earth to sue insolvent Asia Pulp & Paper Co. Ltd. to recovery their money, but so far to no avail. Through offshore companies, counterlawsuits and letting creditors fight among themselves, APP and the controlling Widjaja family of Indonesia have shown a knack for evading any type of comeuppance.

A June 15 revelation about how the company manipulated the holding of bonds issued by its Chinese subsidiary shows that APP has other tricks in its repertoire as well.

According to a letter and accompanying documents obtained by The Deal, Robert Apfel, the president of a New York-based bonds services company, Bondholder Communications Group, wrote a Supreme Court judge in Bermuda detailing concerns that the bondholder vote held last October to restructure $430 million of 14% guaranteed senior discount notes in APP China Group Ltd. may have been fraudulent. APP China hired Bondholder Communications to tabulate the vote.

Late last year, Bermuda High Court Judge Ian Kawaley approved the restructuring that gave bondholders virtually 100% of APP China stock. In his decision, the judge cited an affirmation last November by Indra Widjaja that “the APP controlling shareholders are not affiliated in any way to the creditors [including the supporting note holders] who voted in support of the scheme.”

That statement is now in serious doubt. A company director recently admitted that APP employees held bonds worth as much as $160 million.

In fact, in his recent letter to Kawaley, Apfel detailed his concerns that about half the note holder creditors voting on the plan “may not have been beneficial owners of the notes of APP China.” Under the restructuring terms, more than 50% of the number of creditors representing at least 75% of the value of total debt must approve the plan.

Apfel wrote that in number, more than 80% of the creditors held accounts with a single retail brokerage, Nomura Singapore Ltd. He said his company spent months without success in attempts to have these bondholders complete necessary Bermuda Monetary Authority forms, which would allow the conversion of the notes into stock.

And in May, when Bondholder Communications staff began calling the owners, all of whom listed Taiwan addresses, relatives of those named indicated the supposed owners were APP employees working in Indonesia, with no ability to afford the $1 million or $2 million holdings.

Bondholder Communications even reached eight supposed noteholders in Indonesia, who said they knew nothing about these holdings.

“We were amazed to find that the Nomura clients seemed to be totally unaware of their ‘investments’ and totally disinterested,” Apfel wrote. “Not one asked us about their money, or when they would be paid.” —Matt Miller

High court won’t hear case on lessor rights

The U.S. Supreme Court’s refusal to consider a bankruptcy case addressing a debtor’s rights as a lessor, has allowed a ruling from the Court of Appeals for the 1st Circuit to stand.

At issue was a dispute between bankrupt BankVest Capital Corp. and two of its insurers, Eagle Insurance Co., and Newark Insurance Co., both of Bethpage, N.Y.

The 1st Circuit on March 15 affirmed the right of liquidated BankVest of Marlboro, Mass., to refuse to pay damages on computer equipment leases it failed to honor before its filing for Chapter 11 protection. The ruling put the 1st Circuit at odds with a 1997 ruling by the 9th Circuit in San Francisco on a similar matter.

“I’m surprised the Supreme Court denied the petitions,” says the lawyer for Eagle and its Newark Insurance affiliate, Joseph Bodoff of Boston law firm Bodoff & Slavitt LLP.

The case is important because it determined that debtors aren’t required to cure nonmonetary defaults, such as non-delivery of goods, before assuming unexpired leases and executory contracts under Section 365 of the bankruptcy code.

“I don’t think it’s good news for anyone in the 1st Circuit, and it will create problems throughout the country because it’s a bad decision,” Bodoff says. “I think the court was wrong in [completely] excluding nonmonetary default in the requirement for cure.”

BankVest debtor counsel Jay Gottlieb of Brown Raysman Millstein Felder & Steiner LLP in New York says the ruling would further promote Chapter 11 reorganizations. “It will ensure against the forfeiture of potentially valuable assets from bankruptcy estates simply because history cannot be reversed,” he says.

Eagle and Newark signed separate computer equipment leases with BankVest on May 27, 1999. BankVest chose to continue those leases after filing for Chapter 11 protection on Jan. 25, 2000, with the U.S. District Court for the Western District of Massachusetts in Worcester.

Trouble began when BankVest failed to deliver 20 computer parts that Eagle and Newark needed to integrate into the other 170 equipment pieces that BankVest bought from Nortel Networks Corp. and then leased to the insurers.

On June 15, 2001, Eagle and Newark filed damage claims of $300,000 against BankVest for nondelivery, after Judge Joel Rosenthal of the Worcester court had confirmed the debtor’s liquidation plan May 31.

Rosenthal then ruled on Dec. 11, 2001, that BankVest wasn’t liable for the prepetition lease damage claims since Section 365 allows a debtor to assume an executory contract or an unexpired lease without first paying up those obligations. The 1st Circuit supported that interpretation of Section 365.

Gottlieb said his client is now suing to recover $1 million in back rent Eagle and Newark refused to pay given the nondelivery of the parts. —Shanon D. Murray
**DIRE STATS**

**DIP loan metrics**  
*Year-to-date, through June 23, 2004*

<table>
<thead>
<tr>
<th>Debtor</th>
<th>Loan date</th>
<th>Amount (S$mill.)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>BIGGEST DIP LOANS</strong></td>
<td></td>
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</tr>
<tr>
<td>Solutia Inc.</td>
<td>1/16/04</td>
<td>$525.0</td>
</tr>
<tr>
<td>Exide Technologies Inc.</td>
<td>2/11/04</td>
<td>500.0</td>
</tr>
<tr>
<td>KB Toys Inc.</td>
<td>1/14/04</td>
<td>350.0</td>
</tr>
<tr>
<td>Oglesby Norton Co.</td>
<td>2/23/04</td>
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</tr>
<tr>
<td>Footstar Inc.</td>
<td>3/3/04</td>
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<tr>
<td><strong>SMALLEST DIP LOANS</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tidemark Partners LLC</td>
<td>4/13/04</td>
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<tr>
<td>OnLine Power Supply Inc.</td>
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<td>TalkPoint Communications Inc.</td>
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<tr>
<td>Cognistar Corp.</td>
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<tr>
<td>Jeunique International Inc.</td>
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<td><strong>MOST RECENT DIP LOANS</strong></td>
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<tr>
<td>Kiel Bros. Oil Co.</td>
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<td>Maxim Crane Works LLC</td>
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<td>Cognistar Corp.</td>
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<td>Kitchen Etc. Inc.</td>
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<tr>
<td>New Weathervane Retail Corp.</td>
<td>6/3/04</td>
<td>6.00</td>
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**Baggage claim**  
The airline industry carries the highest average interest rates on DIP loans, Jan. 1, 2002 – June 23, 2004 (includes industries with at least three DIP loans)

<table>
<thead>
<tr>
<th>Industry</th>
<th>Average points above LIBOR (No. of DIPs in parentheses)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Airline</td>
<td>600 (3)</td>
</tr>
<tr>
<td>Energy</td>
<td>471 (5)</td>
</tr>
<tr>
<td>Food, beverage &amp; tobacco</td>
<td>375 (4)</td>
</tr>
<tr>
<td>Metals &amp; mining</td>
<td>364 (8)</td>
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<tr>
<td>Telecommunications</td>
<td>362 (4)</td>
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**Top 10 bankruptcy lender law firms**  
*By active cases, as of June 16, 2004*

<table>
<thead>
<tr>
<th>Law firm</th>
<th>No. of active cases</th>
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<tbody>
<tr>
<td>1 Latham &amp; Watkins LLP</td>
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</tr>
<tr>
<td>2 O’Melveny &amp; Myers LLP</td>
<td>21</td>
</tr>
<tr>
<td>3 Morgan, Lewis &amp; Bockius LLP</td>
<td>16</td>
</tr>
<tr>
<td>4 Shearman &amp; Sterling LLP</td>
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</tr>
<tr>
<td>5 Blank Rome LLP</td>
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<tr>
<td>6 Clifford Chance LLP</td>
<td>13</td>
</tr>
<tr>
<td>7 Kaye Scholer LLP</td>
<td>11</td>
</tr>
<tr>
<td>8 Skadden, Arps, Slate, Meagher &amp; Flom LLP</td>
<td>11</td>
</tr>
<tr>
<td>9 Winstead Sechrest &amp; Minick PC</td>
<td>11</td>
</tr>
<tr>
<td>10 Simpson Thacher &amp; Bartlett LLP</td>
<td>10</td>
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</tbody>
</table>

**Top 10 bankruptcy lender lawyers**  
*By active assignments, as of June 16, 2004*

<table>
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<tr>
<th>Lawyer</th>
<th>Law firm</th>
<th>No. of active assignments</th>
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<tbody>
<tr>
<td>1 David Heller</td>
<td>Latham &amp; Watkins LLP</td>
<td>8</td>
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<tr>
<td>2 Robert H. Scheible</td>
<td>Morgan, Lewis &amp; Bockius LLP</td>
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<tr>
<td>3 Bob White</td>
<td>O’Melveny &amp; Myers LLP</td>
<td>7</td>
</tr>
<tr>
<td>4 Josef S. Athanas</td>
<td>Latham &amp; Watkins LLP</td>
<td>6</td>
</tr>
<tr>
<td>5 Sandeep Gusha</td>
<td>O’Melveny &amp; Myers LLP</td>
<td>6</td>
</tr>
<tr>
<td>6 Douglas P. Bartner</td>
<td>Shearman &amp; Sterling LLP</td>
<td>5</td>
</tr>
<tr>
<td>7 Steve Fuhrman</td>
<td>Simpson Thacher &amp; Bartlett LLP</td>
<td>5</td>
</tr>
<tr>
<td>8 Bonnie Gantz Fatell</td>
<td>Blank Rome LLP</td>
<td>5</td>
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<tr>
<td>9 Lawrence Kotler</td>
<td>Duane Morris LLP</td>
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<td>10 Mark Liscio</td>
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<td>11 Margot Schonholtz</td>
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<td>12 Berry Spears</td>
<td>Winstead Sechrest &amp; Minick PC</td>
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<tr>
<td>13 Richard S. Toder</td>
<td>Morgan, Lewis &amp; Bockius LLP</td>
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<tr>
<td>14 Kristin C. Wigness</td>
<td>Morgan, Lewis &amp; Bockius LLP</td>
<td>5</td>
</tr>
</tbody>
</table>

*Rankings include cases in which law firm was hired as counsel to lenders*  
*Rankings include assignments in which lawyer was hired as counsel to lenders*
Scraps of paper
Lason's shares were cold comfort for its Chapter 11 creditors

When Thomas Partrick got a pile of freshly minted Lason Inc. stock certificates as part of the company's 2002 restructuring, he considered it junk mail.

"I assumed they weren't worth the paper they were written on," says Partrick, owner of The Workplace Inc., an office furniture supplier that was on the hook for about $15,000 when Lason filed Chapter 11 in December 2001.

He wasn't quite right—a buyout firm recently offered 12.5 cents apiece for Lason's outstanding shares—but Partrick's pessimism is understandable. That's because Lason's strategy, both during its bankruptcy and now after it, has been to treat its stock as something of an afterthought, cutting into creditors' already-meaager recovery.

Since it left bankruptcy on July 1, 2002, Lason hasn't registered its stock on any national market, leaving it to languish in the lightly followed, highly illiquid end of the over-the-counter market—the Pink Sheets. Lason's shares last traded on March 11 for 15 cents each, according to Yahoo! Finance.

Troy, Mich.-based Lason, a provider of outsourcing services, also exited with a debt load well above its estimated reorganization value—a capital structure that some say rendered the new stock essentially worthless.

Questions about the stock could soon be moot since Lason agreed in May to be taken private by buyout firm Charterhouse Group Inc. Trevor Brown, Lason's chief marketing officer, says the deal will bring Lason funding for new technology and acquisitions.

Still, Lason's handling of its equity—the only recovery given most of its unsecured creditors—provides a sobering lesson for anyone accepting post-Chapter 11 shares. Asked about Lason's stock, Brown deferred to Lason CEO Ronald Risher, who didn't respond by press time.

In February 1999, as Lason was finishing a three-year acquisition binge financed largely by secured debt, its stock peaked at $64.94, giving it a $990 million market capitalization. But Lason struggled to integrate its new businesses, and by 2000, earnout payments it had promised to the businesses' former owners began to come due. Then in March 2001, Lason discovered accounting woes related to its 1999 financials.

Lason filed for bankruptcy in late 2001 in U.S. Bankruptcy Court for the District of Delaware in Wilmington with a prenegotiated plan to restructure $320 million in debt. The plan called for secured lenders led by Bank One NA to exchange their $260 million in claims for $90 million in new secured notes.

The final issuance of those notes ended up closer to $50 million after proceeds of various asset sales offset the original amount. But even at $50 million, Lason's debt exceeded its $42.1 million estimated liquidation value included in its disclosure statement, according to an April 2002 court filing by the counsel to the unsecured creditors committee.

Lowenstein Sandler PC. The debt level was also well above Lason's reorganization value of $33 million, Securities and Exchange Commission filings show.

Because reorganization value represents both debt and equity interests in a company, Lason's stock actually had a negative value of $17 million.

Doing the math, the unsecureds' panel try to warn its fellow creditors, urging them to oppose Lason's plan because it "precludes any possibility that the stock interest provided to unsecured creditors will result in any significant value in the foreseeable future."

Creditors approved the plan anyway. Unsecured creditors were slated to get 87.5% of Lason's new stock, but most of it went to the banks because the $170 million haircut they took on their loans was treated as an unsecured claim. (Bank One got 15.1%, while ABN Amro NV got 8.8%) The remaining 12.5% went to a management incentive plan.

Since its exit, Lason has shifted focus to integrated outsourcing services such as handling accounts payable, Brown says. In 2003, it reported a $1.1 million profit on $167 million in sales, but swung to a $886,000 loss on sales of $35 million in 2004's first quarter.

Charterhouse's recent offer values Lason's equity at about $3.8 million, which "is probably found money for the banks," says Van Conway of Conway, MacKenzie & Dunleavy, Lason's financial adviser during the bankruptcy. He concedes that creditors who only got equity are probably disappointed. "There was a hope it would perform better than it did," he says.

But ex-creditor Partrick says such hope was abandoned long ago. "At this point, I don't think I could even find the stock certificates," he says. —Peter Edmonston

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**Timeline of Lason Bankruptcy**

- **October 1996** Raises $53 million in initial public offering
- **March 2001** Reports accounting problems to the SEC
- **December 2001** Files for bankruptcy with prenegotiated reorganization plan
- **July 2002** Emerges with lenders holding majority stake
- **May 2004** Agrees to recapitalization with Charterhouse Group

Source: The Deal