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Federal Bankruptcy Law

Automatic Stay

Bankruptcy Court Denies Motions for Class Certification and for Relief from Automatic Stay

In re Bally Total Fitness of Greater New York, Inc., No. 08-14818, 2009 BL 74574 (Bankr. S.D.N.Y. Apr. 7, 2009)

On April 7, 2009, the United States Bankruptcy Court for the Southern District of New York denied two requests for class certification, a request to file a class proof of claim, and a motion for relief from the automatic stay in order to pursue liquidation of claims in state court. Specifically, the bankruptcy court held that the plaintiffs had failed to satisfy both the

requirements of Federal Rule of Bankruptcy Procedure 7023 with respect to class certification and proofs of claim, as well as the *Sonnax* factors in connection with relief from the stay.

History of Carrera and Flores Actions

On December 30, 2005, three individuals filed an action ("Carrera Action") in California state court on behalf of themselves and all other similarly situated individuals ("Carrera Plaintiffs") as a putative class against Bally Total Fitness Corporation ("Bally Corp.") and Bally Total Fitness of California, Inc. (together with Bally Corp., "Bally"). The Carrera Action asserted claims for off-the-clock work, forfeiture of sales commissions, failure to provide meal and rest periods mandated by California law, failure to provide timely itemized wage statements, failure to provide timely and accurate paychecks, and failure to reimburse business expenses. In response to the Carrera Action, referencing mandatory arbitration agreements executed by each of the Carrera Plaintiffs at the time when they began employment, Bally filed a petition to compel arbitration and a motion to strike the class action. On April 29, 2008, the California state court denied Bally's motion, and Bally subsequently appealed the state court's decision on June 17, 2008.

Thereafter, on October 10, 2008, an individual ("Flores") filed an action ("Flores Action") in California state court on behalf of all similarly situated Bally employees, alleging claims for unpaid wages, failure to provide meal and rest periods mandated by California law, and failure to reimburse business expenses. In response, Bally filed a notice of removal to federal court, as well as a motion to compel arbitration.

Both the Carrera Action and the Flores Action were stayed on December 3, 2008 ("Petition Date") when Bally Corp. and its subsidiaries (collectively, "Debtors") filed petitions for chapter 11 bankruptcy protection. On January 23, 2009, the bankruptcy court entered a bar date order establishing March 9, 2009 as the deadline for filing proofs of claim. Notice of the bar date was mailed on or before February 12, 2009, and a notice of the bar date was published in the national editions of the Chicago Tribune and USA Today.

On January 26, 2009, Flores filed three proofs of claim: one on behalf of similarly situated fitness instructors for \$83,553,912, one on behalf of similarly situated personal trainers for \$43,459,400, and one on his own behalf for \$126,764.40.

Bankruptcy Motions of Carrera Plaintiffs and Flores

The Carrera Plaintiffs subsequently requested that the bankruptcy court allow a class proof of claim pursuant to

Federal Rules of Bankruptcy Procedure 9014 and 7023, and also that the bankruptcy court enter an order lifting the automatic stay in order to allow the Carrera Plaintiffs to proceed in state court or to certify the class under Rule 23. Flores, having filed a class proof of claim, moved only for class certification.

No Right to File Class Proof of Claim

The bankruptcy court began its analysis of the motions by first addressing the issue of class proofs of claim. Indicating that there is no absolute right to file a class proof of claim pursuant to the Bankruptcy Code, the bankruptcy court explained that courts can nonetheless, however, exercise their discretion to extend Rule 23 to permit such a class proof of claim. In this regard, the bankruptcy court noted the factors that courts utilize in making such a determination, including whether the class claimant sought to extend the application of Rule 23 to its proof of claim, whether the benefits derived from the use of the class claim are consistent with the fundamental goals of bankruptcy, and whether the claims that the proponent seeks to certify satisfy the requirements of Rule 23. Finding that the plaintiffs had not demonstrated that the requested relief was consistent with the fundamental goals of bankruptcy or that they had met the Rule 23 requirements, the bankruptcy court denied the motions seeking class proofs of claim.

To this end, the bankruptcy court found that a class proof of claim is only consistent with the essential goals of bankruptcy when a class has been certified prepetition and when there was no actual or constructive notice provided to the class members regarding the bankruptcy case and bar date. In the instant case, the bankruptcy court examined the history of both the Carrera Action and the Flores Action and found that a decision on class certification had not been made in either suit. Additionally, the court remarked that Debtors had provided sufficient notice to all current employees, as well as to former employees who were terminated between January 1, 2004 and the Petition Date. The bankruptcy court further emphasized that bankruptcy cases provide procedural advantages over civil class actions, and that class certification would function to create numerous layers of procedural and factual complexity that would reduce Debtors' resources. As such, declaring that class certification was unnecessary to protect the rights of the various members of the putative class, the bankruptcy court denied the motions to file class proofs of claim.

Plaintiffs Failed to Satisfy Rule 23 Requirements

Considering next whether the motions requesting class certification should be granted, the bankruptcy court focused on the requirements set forth in Rule 23 for class certification. Specifically, under Rule 23(a), the plaintiffs are required to demonstrate numerosity, commonality,

typicality, and adequacy of the class representative and counsel. Furthermore, as the bankruptcy court indicated, the plaintiffs must then satisfy one of the elements of Rule 23(b).

Beginning with the requirement in Rule 23(b)(3) that a class action must be superior to other available methods for handling the controversy in question, the bankruptcy court cited *In re Ephedra Products Liability Litigation*, 329 B.R. 1, 9 (S.D.N.Y. 2005), which holds that superiority has no place in a bankruptcy action because bankruptcy consolidates claims in one forum and permits the filing of proofs of claim at virtually no cost. Moreover, small claims in bankruptcy cases are typically deemed to be allowed without the burden of discovery and fact finding, which provides another advantage over civil class action litigation.

In examining the requirement for commonality of Rule 23(a), the bankruptcy court found that neither the Carrera Action nor the Flores Action fulfilled this requirement. In particular, the bankruptcy court resolved that an individual analysis for each class member would be required in order to determine whether each class member had actually performed the "hours worked," whether there was off-the-clock work occurring with respect to that member, whether Bally had failed to provide compensation for work allegedly performed by that member, whether Bally had failed to reimburse each member's business expenses, and whether the member's claims for meal and rest periods were warranted.

Because the plaintiffs in both the Carrera Action and the Flores Action were unable to demonstrate superiority under Rule 23(b) and commonality pursuant to Rule 23(a), the bankruptcy court denied the motions for class certification.

Bankruptcy Court Denies Carrera Plaintiffs' Motion for Relief from Stay

Deciding whether or not to grant the Carrera Plaintiffs' motion to lift the automatic stay in order to pursue the action in California state court, the bankruptcy court turned to the factors set forth in *Sonnax Industries, Inc. v. Tri Component Prods. Corp.*, 907 F.2d 1280, 1286 (2d Cir. 1990), which the court in the instant case ultimately found all weighed against lifting the automatic stay.

Notably, the first *Sonnax* factor that the bankruptcy court considered was whether lifting the stay would result in the partial or complete resolution of the issue in question. Declaring that extensive discovery, briefing, and a hearing would all be required if the bankruptcy court were to lift the automatic stay, the bankruptcy court determined that this factor weighed significantly against granting relief from the stay.

The bankruptcy court next looked at the second and seventh *Sonnax* factors, which involve the connection or

interference of the litigation with the bankruptcy proceeding and the prejudice against creditors that could potentially result from litigation proceeding in another forum. In addition to finding that Debtors would be less focused on their fundamental purpose of reorganizing and thus would be less likely to maximize value for other creditors, the bankruptcy court also determined that class action litigation would conflict with the bar date, which in turn would dilute timely filed claims. Furthermore, as the court remarked, granting relief from the stay could potentially open the floodgates to the filing of numerous similar motions, thereby further hindering Debtors' capacity to effectively reorganize.

Turning next to the fourth, fifth, and sixth *Sonnax* factors, the bankruptcy court found further reasons to deny the lift stay motion. To this end, the bankruptcy court asserted that there was no need for a specialized tribunal to hear the cause of action. Moreover, Debtors had no insurance coverage in connection with the claims asserted and, thus, no third party had taken on responsibility for the litigation. Finally, the action did not primarily involve third parties since Bally was the only party in an adverse position to the Carrera Plaintiffs.

Reviewing the tenth and eleventh *Sonnax* factors, which involve the question of whether the case is ready for trial and whether the stay would impede the interests of judicial economy and the economical resolution of the litigation, the bankruptcy court focused on the fact that the Carrera Action was still at an early stage and that the discovery required to determine the class certification issue had not yet been commenced. In addition to finding that the suit was not yet ready for trial, the bankruptcy court also commented that only a small amount of judicial resources had been expended on the Carrera Action before the Petition Date, and it would therefore not lead to any waste of judicial resources if the stay were to continue.

Analyzing the final *Sonnax* factor, which considers the effect of the stay and the balance of harms, the bankruptcy court discussed Debtors' limited resources and the need to maintain a certain amount of so-called breathing room to enable Debtors to restructure and preserve the value of their assets. In this regard, the bankruptcy court again highlighted the potential threat of additional motions seeking relief from the stay being filed if the Carrera Plaintiffs' motion was granted, which would substantially reduce Debtors' resources and distract Debtors from reorganizing and maximizing the value of their assets.

*Bankruptcy Court Denies Class Motions
and Motion for Relief from Stay*

Accordingly, the bankruptcy court denied the various motions to allow class proofs of claim, for class certification, and to lift the automatic stay, holding that the plaintiffs had failed to establish the necessity for class status in bankruptcy and that the Carrera Plaintiffs had failed to satisfy the *Sonnax* factors.

Motions & Trials

Bankruptcy Court Rules Debtors' Complaint for Rescission of Mortgage Based on Truth in Lending Act Violation Is Not Barred by Doctrine of Judicial Estoppel

Stout v. Aurora Loan Services (In re Stout), No. 07-14899, 2009 BL 81597 (Bankr. E.D. Pa. Apr. 16, 2009)

On April 16, 2009, the United States Bankruptcy Court for the Eastern District of Pennsylvania denied a lender's motion to dismiss the debtors' complaint seeking rescission of a mortgage for violation of the Truth in Lending Act ("TILA"), 15 U.S.C. §1601 *et seq.*, finding that the lender had failed to establish that the debtors were legally barred by the doctrine of judicial estoppel from pursuing the claims in question.

Debtors' Chapter 7 Filing

On August 8, 2007 ("Petition Date"), William Stout and his wife (collectively, "Debtors") filed a voluntary petition for chapter 7 bankruptcy protection. In their statement of intent, Debtors indicated that their intention was to retain their home and to proceed with making their regular mortgage payments to their lender, Aurora Loan Services ("Aurora"). In one of their bankruptcy schedules, Debtors further stated that they had no contingent or unliquidated claims of any kind, including counterclaims or rights of setoff. As such, after the 11 U.S.C. §341(a) meeting of creditors that was held on October 17, 2007, the appointed chapter 7 trustee ("Trustee") filed a report of no distribution, declaring that there were no assets to be administered for the benefit of creditors.

Aurora's Motion for Relief from Stay

A few weeks later, on November 8, 2007, Aurora filed a motion seeking relief from the automatic stay ("Stay Relief Motion"), which the bankruptcy court granted on November 28, 2007. In Aurora's Stay Relief Motion, Aurora alleged that Debtors had been in default on their mortgage since August 1, 2007, such that Debtors were either current on their mortgage or only one month in arrears as of the Petition Date. Thereafter, on December 18, 2007, Debtors received their bankruptcy discharge pursuant to 11 U.S.C. §727 and their case was ultimately closed on January 31, 2008.

Defendants' State Court Foreclosure Action

On February 29, 2008, Aurora and Lehman Brothers Bank (together with Aurora, "Defendants") initiated an action for foreclosure of Debtors' mortgage in state court. A few months later, on July 3, 2008, Denise Stout ("Plaintiff") responded by filing a suit in district court for rescission, which the Defendants subsequently moved to dismiss. However, instead of issuing a decision on the Defendants' motion to dismiss, the district court decided that the Plaintiff's claims would be

best handled by the bankruptcy court and thus directed the Plaintiff to file a motion to reopen Debtors' bankruptcy case in the bankruptcy court.

*Plaintiff's Complaint Seeking Rescission
of Mortgage under TILA*

After the Plaintiff complied with the district court's order and filed a motion to reopen Debtors' bankruptcy case, which motion the bankruptcy court granted, the Plaintiff then filed a complaint ("Complaint") requesting rescission of her mortgage loan and recovery of damages under the TILA. Specifically, the Plaintiff's Complaint alleged that the finance charge that had been disclosed at the closing of the Plaintiff's mortgage loan was \$5,476.98, while it should actually have been \$5,756.11, and that based on 15 U.S.C. §1635(i), the difference between these two amounts, which aggregated \$279.13, was above the "tolerance level," which applies after a foreclosure proceeding has been initiated.

In response, Aurora filed a motion to dismiss ("Motion to Dismiss"), arguing that the Complaint should be dismissed as a matter of law based on the doctrine of judicial estoppel because Debtors had willfully and purposefully failed to disclose the Plaintiff's potential TILA claim either in their bankruptcy schedules or to the Trustee during the §341(a) meeting. In turn, the Plaintiff opposed Aurora's Motion to Dismiss, contending that she could not possibly have had knowledge of her TILA claim as of the Petition Date since the claim had not arisen until after the Defendants had filed their subsequent foreclosure action.

Doctrine of Judicial Estoppel

Rendering its decision on Aurora's Motion to Dismiss, the bankruptcy court began its analysis by commenting that the doctrine of judicial estoppel is typically utilized in order to prevent parties from asserting inconsistent claims in different legal proceedings. See *Mintze v. American General Financial Services, Inc.*, 434 F.3d 222, 232 (3d Cir. 2006). The bankruptcy court further remarked that in applying the doctrine of judicial estoppel, courts should take into consideration various factors, including: (1) whether the party to be estopped has taken two positions that are "irreconcilably inconsistent"; (2) whether the change of position occurred in bad faith or was combined with the intent of "playing fast and loose" with the court; and (3) whether application of the doctrine of judicial estoppel is tailored to address the harm identified and no lesser sanction would sufficiently remedy the damage resulting from the litigant's behavior. See *Ortlieb v. Hudson Bank*, 312 F. Supp. 705, 711 (E.D. Pa. 2004).

Relevant Provisions of TILA

Additionally discussing the pertinent provisions of the TILA, the bankruptcy court explained that one of the requirements imposed on lenders by the statute is an obligation to disclose the applicable "finance charge" for mortgage loans, which is

defined as "the sum of all charges . . . imposed directly or indirectly by the creditor as an incident to the extension of credit." See 15 U.S.C. §1605(a). Notably, the bankruptcy court observed that while a lender is in violation of the TILA if the lender fails to correctly disclose the finance charge, the amount disclosed as a finance charge is nevertheless considered to be accurate if it falls within certain specific "tolerance ranges." To this end, the bankruptcy court found that before the commencement of a foreclosure action, the tolerance level range is one half of one percent or one percent of the total amount of credit extended, while the range is reduced to \$35 after the commencement of a foreclosure action. See *Sterten v. Option One Mortgage Corp.*, 546 F.3d 278, 286 (3d Cir. 2008).

*Bankruptcy Court Rules Plaintiff Had Taken Two
"Irreconcilably Inconsistent" Positions*

Applying these principles to the instant case, the bankruptcy court agreed with the Plaintiff that the tolerance level set forth in §1635(i) of the TILA is not triggered until a foreclosure action has been commenced. At the same time, however, the bankruptcy court found that this assertion alone did not establish that the Plaintiff's claim for rescission had arisen after the Defendants had filed their foreclosure action because, if the variation disclosed on the Plaintiff's mortgage loan came within the tolerance range set forth in 15 U.S.C. §1605(f)(2), then the Plaintiff's claim for rescission existed as of the Petition Date. Ultimately, the bankruptcy court was unable to determine whether the \$279.13 in Debtor's finance charge fell within this tolerance range because the Plaintiff's Complaint failed to state the "total amount of credit extended" and whether it was an original mortgage or a refinance.

Nonetheless, the bankruptcy court agreed with Aurora that even if the Plaintiff's TILA claim did not exist as of the Petition Date, Debtors should still have amended their bankruptcy schedules to disclose the existence of the Plaintiff's claim for rescission at the point in time at which Aurora filed the Stay Relief Motion. While noting that the claim for rescission had not yet been triggered pursuant to §1635(i)(2) since the Defendants had not instituted a foreclosure proceeding, the bankruptcy court resolved that the existence of the claim was still reasonably foreseeable at that particular point in time. Similarly, the bankruptcy court concluded that had Debtors amended their schedules at that time to disclose the potential claim for rescission as required, the Trustee would have had the opportunity to examine the impact of the claim, if any, on the report of no distribution. See *Krystal Cadillac-Oldsmobile GMC Truck, Inc. v. General Motors Corp.*, 337 F.3d 314, 322 (3d Cir. 2003).

Consequently, the bankruptcy court ruled that by filing the Complaint to pursue a TILA claim after having failed to amend Debtors' schedules in order to list the potential rescission claim, the Plaintiff had taken two positions that were "irreconcilably inconsistent," thereby satisfying the first element of the doctrine of judicial estoppel.

Bankruptcy Court Finds Insufficient Evidence that Plaintiff's Change of Position was in "Bad Faith"

Examining the second requirement for the doctrine of judicial estoppel, the bankruptcy court found that the only evidence regarding whether the Plaintiff's change of position was in "bad faith" or was combined with the intent of "playing fast and loose" with the court was that Debtors had initially indicated in their schedules that their intention was to continue making their mortgage payments, that Debtors were current on their mortgage as of the Petition Date, and that Debtors had subsequently defaulted on their mortgage. Additionally, other evidence involved the fact that Aurora had requested and was granted relief from the automatic stay to initiate foreclosure proceedings, that Debtors did not amend their schedules to disclose their potential rescission claim, and that after Aurora had commenced foreclosure proceedings, the Plaintiff filed her TILA action in federal court.

Based on these facts, the bankruptcy court found that there was insufficient proof to make a finding that Debtors knew or were aware of the rescission claim during their bankruptcy case and thus whether or not the Plaintiff's change of position was made in "bad faith" or was combined with the intent of "playing fast and loose" with the court. As a result, the bankruptcy court concluded that Aurora had failed to satisfy the second element of the doctrine of judicial estoppel and accordingly denied Aurora's Motion to Dismiss.

Bankruptcy Court Denies Aurora's Motion to Dismiss Without Prejudice

Consequently, the bankruptcy court ultimately decided that Aurora had failed to establish that the Plaintiff was legally barred from pursuing her TILA claim based on the doctrine of judicial estoppel and thus denied Aurora's Motion to Dismiss. However, in so ruling, the bankruptcy court declared that the denial of Aurora's Motion to Dismiss was without prejudice such that Aurora could again raise the argument going forward upon providing additional proof concerning whether the \$279.13 came within the tolerance range provided by §1605(f)(2) and whether Debtors' failure to list their rescission claim on their schedules and the Plaintiff's subsequent commencement of her TILA action had occurred in "bad faith" or for the purpose of "playing fast and loose" with the court.

Jurisdiction & Venue

District Court Transfers Plaintiffs' Action Back to Bankruptcy Court to Determine Whether Abstention Was Appropriate under §§1334(c)(1) and (c)(2)

Podkolzin v. Amboy Bus Co., Inc., No. 08-3210, 2009 BL 51713 (E.D.N.Y. Mar. 13, 2009)

On March 13, 2009, the United States District Court for the Eastern District of New York denied the plaintiffs' motion to

remand a personal injury action to state court and instead transferred the matter back to the bankruptcy court, finding that the bankruptcy court was required to make a determination in the first instance regarding whether abstention was appropriate under 28 U.S.C. §§1334(c)(1) and (c)(2).

Podkolzins' Personal Injury Action

On June 18, 2001, Oleg Podkolzin ("Podkolzin") was in an automobile accident with a school bus that was owned and operated by Amboy Bus Co., Inc. ("Amboy") and Vincent Paladino (collectively, "Defendants"). Notably, the accident occurred in Brooklyn, New York and all parties were residents of New York. Thereafter, on January 16, 2002, Podkolzin and his wife, Irina Podkolzin (together, "Plaintiffs"), initiated an action in state court against the Defendants seeking recovery for personal injuries and for loss of services resulting from the accident.

Bankruptcy Court Approves Claims Process Program for Personal Injury Actions against Debtors

On August 16, 2002, Amboy and various of its affiliates (collectively, "Debtors") filed petitions for chapter 11 bankruptcy protection in the United States Bankruptcy Court for the Southern District of New York. By entry of an order on March 27, 2003, the bankruptcy court granted Debtors' motion to modify the automatic stay such that personal injury and property damages actions against Debtors could be dealt with through the Claims Process Program ("CPP"), which provided alternative dispute resolution methods in order to quicken the process of resolving claims. By utilizing the CPP, plaintiffs would be entitled to recover the full amount of their damages despite the pendency of Debtors' bankruptcy. In further support of its order modifying the automatic stay, the bankruptcy court appointed Security Insurance Company of Hartford Fire and Casualty Insurance Company of Connecticut ("Royal Sun Insurers") to administer the CPP and to make all recovery payments. In accordance with the terms of the CPP, if the dispute was not resolved through alternative dispute resolution processes, plaintiffs would have a right to pursue their claim in the bankruptcy court. Once they had exercised this right, the bankruptcy court would then be required to determine the court in which the disputed claim should be considered.

Bankruptcy Court Transfers Plaintiffs' Case to District Court to Determine Issue of Venue

In accordance with the bankruptcy court's order, the Plaintiffs submitted their claims to the CPP. However, after assessing their submissions, Royal Sun Insurers denied their claims. As such, the Plaintiffs proceeded to submit their claims for mediation. When mediation efforts were subsequently unsuccessful, the Plaintiffs then asked the bankruptcy court to permit the matter to proceed in state court. At a March 13, 2008 hearing on the issue, the bankruptcy court, instead of issuing a decision, transferred the case to the district court to decide

the appropriate venue for the Plaintiffs' action. Furthermore, on June 19, 2008, the bankruptcy court issued an order, pursuant to 11 U.S.C. §362(d), 28 U.S.C. §157(b)(5), and the CPP, authorizing either Podkolzin or Royal Sun Insurers to remove the case to the district court.

*Plaintiffs' Motion to Remand Case
to State Court*

Pursuant to the bankruptcy court's order and directions at oral argument, the Plaintiffs filed a notice to remove their suit to the district court. The Plaintiffs then sought to remand the case to the state court ("Motion to Remand"), contending that under the doctrine of mandatory abstention set forth in §1334(c)(2), the district court was required to remand the case to the state court. Alternatively, the Plaintiffs asked the district court to remand the case pursuant to the doctrine of discretionary abstention set forth in §1334(c)(1). Opposing the Plaintiffs' requests, the Defendants claimed that §157(b)(5) requires the district court to make a determination with respect to the case. Additionally, the Defendants asserted that by participating in the CPP, which contained a forum selection clause, the Plaintiffs had agreed to have their action heard before the district court.

*District Court Rules that Motion to Remand
Was Not Properly Before Court*

Rendering its decision on the Motion to Remand, the district court began its analysis by considering the threshold question of whether the matter was properly before the court. To this end, the district court observed that under the terms of the CPP, in the event that mediation was unsuccessful and that plaintiffs decided to proceed to trial, the bankruptcy court was required to determine the court in which the disputed claim should be evaluated. In addition, the district court resolved that in the event that the bankruptcy court ultimately concluded that the personal injury action should be heard in federal court, the terms of §157(b)(5) require that the district court in which the bankruptcy court was pending was required to make an evaluation concerning the issue of venue. *See In re United States Lines, Inc.*, 216 F.3d 228, 234 (2d Cir. 2000).

Declaring that the bankruptcy court had failed to follow either of these procedures, the district court emphasized the fact that the bankruptcy court had declined to make the initial determination concerning whether the Plaintiffs' action should proceed in state court as required by the CPP, and had instead transferred the case to the district court to make that determination. Even assuming that the bankruptcy court had held that the Plaintiffs' action should continue in federal court, the district court further found that the bankruptcy court had failed to follow the directions of §157(b)(5) indicating that the case must be transferred to the district court in which the bankruptcy case was pending, namely the United States District Court for the Southern District of New York, in order to rule regarding the issue of proper venue. *See Murray v. Pan Am. World Airways, Inc.*, 16 F.3d 513, 516 (2d Cir. 1994).

Accordingly, the district court declared that the Plaintiffs' Motion to Remand was not properly before the court and transferred the Plaintiffs' action back to the bankruptcy court to decide in the first instance whether the case should proceed in a federal court. In the event that the bankruptcy court ultimately determined that the case should proceed in a federal court, the district court declared that the case would then be transferred to the United States District Court for the Southern District of New York, as the district court in which Debtors' bankruptcy case was pending.

*District Court Finds Discretionary
Abstention Was Warranted*

Although finding that the Plaintiffs' case was not correctly before the court, the district court went on to provide its opinion that discretionary abstention seemed to be merited under §1334(c)(1). In this regard, the district court established that the doctrine of discretionary abstention allows a district court, in the interests of justice, or in the interest of comity with the state court or respect for state law, from abstaining from hearing a particular proceeding under title 11 or arising in or related to a case under title 11. In applying this doctrine, the district court further commented that the courts typically utilize a 12 factor test or some variation of the 12 factor test, as well as the principles of comity, in making this determination. *See In re Twin Labs, Inc.*, 300 B.R. 836, 841 (S.D.N.Y. 2003).

Resolving that the majority of the factors at issue cut significantly in favor of abstention, the district court noted that the Plaintiffs' personal injury action was governed solely by state law, that hearing the case in state court would have no effect on Debtors' restructuring, and that except for Debtors' bankruptcy proceeding, there was no jurisdictional basis for the action to remain in federal court. Similarly, the district court determined that the Defendants' desire to have the suit heard in federal court was motivated, at least in part, by purposes of forum shopping since the Defendants had acknowledged that their intention was to take advantage of additional expert discovery that was not authorized in state court. Furthermore, the district court remarked that Paladino was not a debtor, that the Plaintiffs' claims could be timely adjudicated in a state court, and that the length of the proceeding would be approximately the same in either state or federal court. Finally, applying the principles of comity, the district court concluded that the parties were all New York residents and that New York had a significant interest in having its tort laws utilized.

In so deciding, the district court acknowledged the legislative presumption in favor of removing personal injury actions relating to a bankruptcy case to a federal court in order to centralize the administration of the estate and do away with the multiplicity of forums for the adjudication of the bankruptcy proceeding. Nonetheless, the bankruptcy court decided that this rationale was not applicable in the instant case because continuing with the case in state court would have little effect, if any, on Debtors' restructuring. To this end, the district court declared that under the CPP,

Royal Sun Insurers was required to cover any damages that the Plaintiffs might recover and that Royal Sun Insurers was in fact defending the suit on Debtors' behalf. Similarly, the district court found it to be significant that the Plaintiffs were willing to stipulate that they would attempt to recover only from Royal Sun Insurers and not from the Defendants. Finally, the district court stated that the bankruptcy court would not have any problems with lawsuits pending against Debtors in multiple forums, given that it had previously allowed various cases to proceed in state court while simultaneously removing other cases to federal court.

As such, while finding that venue was ultimately a decision for the bankruptcy court to make in accordance with the terms of the CPP, the district court concluded that the considerations

favoring abstention appeared to outweigh the legislative presumption to hear such cases in federal court.

District Court Transfers Plaintiffs' Suit to Bankruptcy Court to Decide Whether Abstention Was Appropriate

Ultimately, the district court transferred the Plaintiffs' case to the bankruptcy court to determine whether abstention was appropriate under either §1334(c)(1) or (c)(2). In the event that the bankruptcy court decided to remove the case to a federal court, the district court directed that the case should be transferred to the United States District Court for the Southern District of New York, as the district court in which Debtors' bankruptcy was pending, to decide the issue of proper venue.

Debtors

Chapter 11 Filings

Filed May 7, 2009 through May 13, 2009

Debtor	Bankruptcy Court	Case Number	Filing Date	Judge
223 Wittmann, LLC	District of Arizona	09-bk-09709	May 7, 2009	Sarah Sharer Curley
MT Development, LLC	District of Arizona	09-bk-09770	May 7, 2009	James M. Marlar
Deep Sea Creations, LLC	Central District of California	09-bk-19569	May 7, 2009	Richard M. Neiter
1st Key Management Inc.	Central District of California	09-bk-20997	May 7, 2009	Ernest M. Robles
RHM Industrial / Specialty Foods, Inc.	Eastern District of California	09-bk-29161	May 7, 2009	Robert S. Bardwil
SK Foods, LP	Eastern District of California	09-bk-29162	May 7, 2009	Robert S. Bardwil
JL Family Planning, LLC	District of Connecticut	09-bk-50902	May 7, 2009	Alan H.W. Shiff
2 Tucker 2, LLC	District of Connecticut	09-bk-50903	May 7, 2009	Alan H.W. Shiff
White Energy Holding Co., LLC	District of Delaware	09-bk-11600	May 7, 2009	Christopher S. Sontchi
White Energy, Inc.	District of Delaware	09-bk-11601	May 7, 2009	Christopher S. Sontchi
WE Hereford, LLC	District of Delaware	09-bk-11602	May 7, 2009	Christopher S. Sontchi
Plainview BioEnergy, LLC	District of Delaware	09-bk-11603	May 7, 2009	Christopher S. Sontchi
US Energy Partners, LLC	District of Delaware	09-bk-11604	May 7, 2009	Christopher S. Sontchi
Cutter Power Equipment, Inc.	Middle District of Florida	09-bk-09461	May 7, 2009	Michael G. Williamson
Copans Motors, Inc.	Southern District of Florida	09-bk-18807	May 7, 2009	Raymond B. Ray
Bright Sky Holdings, LLC	Northern District of Georgia	09-bk-72060	May 7, 2009	C. Ray Mullins
Bunker, Inc.	Southern District of Indiana	09-bk-06384	May 7, 2009	Frank J. Otte
Fresh-N-Lite 2, LLC	District of Kansas	09-bk-21445	May 7, 2009	Dale L. Somers
Louisiana Hospital Center, LLC	Eastern District of Louisiana	09-bk-11346	May 7, 2009	Jerry A. Brown
Heider Construction, Inc.	District of Massachusetts	09-bk-41776	May 7, 2009	Joel B. Rosenthal
PGI Cos., Inc.	District of Minnesota	09-bk-42883	May 7, 2009	Dennis D. O'Brien
PGI Fulfillment, Inc.	District of Minnesota	09-bk-42884	May 7, 2009	Dennis D. O'Brien
Southern Landfill Management, Inc.	Southern District of Mississippi	09-bk-01620	May 7, 2009	Edward Ellington
Blake Road Partners, Inc.	District of New Hampshire	09-bk-11693	May 7, 2009	J. Michael Deasy

Debtor	Bankruptcy Court	Case Number	Filing Date	Judge
Designline Construction Services, Inc.	District of New Jersey	09-bk-21745	May 7, 2009	Kathryn C. Ferguson
B and C Hospitality, LLC	Southern District of New York	09-bk-12924	May 7, 2009	Martin Glenn
Palmetto Greens Development Co., LLC	Eastern District of North Carolina	09-bk-03779	May 7, 2009	J. Rich Leonard
Crow Creek Tribal Farms, Inc.	District of South Dakota	09-bk-30021	May 7, 2009	Charles L. Nail, Jr.
Skyline Cosmetic Dentistry, LLC	District of Arizona	09-bk-09917	May 8, 2009	Eileen W. Hollowell
Froggie's Full Sun, LLC	Eastern District of Arkansas	09-bk-13287	May 8, 2009	Audrey R. Evans
The Original California Car Duster Co., Inc.	Central District of California	09-bk-15494	May 8, 2009	Geraldine Mund
Club Sushi, Inc.	Central District of California	09-bk-21187	May 8, 2009	Vincent P. Zurzolo
Pacific Prepay Telecom, Inc.	Northern District of California	09-bk-53506	May 8, 2009	Roger L. Efremsky
DBSI 2008 Development Opportunity Fund LLC	District of Delaware	09-bk-11624	May 8, 2009	Peter J. Walsh
Hotel Enterprises of Port Charlotte, Inc.	Middle District of Florida	09-bk-09554	May 8, 2009	Alexander L. Paskay
Hotel Management of Port Charlotte, Inc.	Middle District of Florida	09-bk-09555	May 8, 2009	Alexander L. Paskay
Momentum Hospitality II, LLC	Middle District of Florida	09-bk-09557	May 8, 2009	Alexander L. Paskay
Diamond Phoenix, LLC	Middle District of Florida	09-bk-09558	May 8, 2009	Catherine Peek McEwen
Mutts A Million, Inc.	Middle District of Florida	09-bk-09559	May 8, 2009	Michael G. Williamson
Momentum Hospitality III, LLC	Middle District of Florida	09-bk-09560	May 8, 2009	Alexander L. Paskay
A Hilltop Taxi, LLC	Eastern District of Kentucky	09-bk-21138	May 8, 2009	William S. Howard
Beird Co., Ltd.	Middle District of Louisiana	09-bk-10651	May 8, 2009	Douglas D. Dodd
Mid-Town Auto Body, Inc.	District of Massachusetts	09-bk-14238	May 8, 2009	Henry J. Boroff
November 2005 Land Investors, LLC	District of Nevada	09-bk-17474	May 8, 2009	Mike K. Nakagawa
JJM-63 Restaurant Corp.	Eastern District of New York	09-bk-73310	May 8, 2009	Robert E. Grossman
Basell Capital Corp.	Southern District of New York	09-bk-12940	May 8, 2009	Robert E. Gerber
Basell Impact Holding Co.	Southern District of New York	09-bk-12942	May 8, 2009	Robert E. Gerber
Equistar Bayport, LLC	Southern District of New York	09-bk-12943	May 8, 2009	Robert E. Gerber
Equistar Polypropylene, LLC	Southern District of New York	09-bk-12944	May 8, 2009	Robert E. Gerber
Lyondell General Methanol Co.	Southern District of New York	09-bk-12945	May 8, 2009	Robert E. Gerber
Lyondell Intermediate Holding Co.	Southern District of New York	09-bk-12947	May 8, 2009	Robert E. Gerber
Lyondell Bayport, LLC	Southern District of New York	09-bk-12949	May 8, 2009	Robert E. Gerber
Lyondell Chemical Holding Co.	Southern District of New York	09-bk-12950	May 8, 2009	Robert E. Gerber
Quantum Pipeline Co.	Southern District of New York	09-bk-12951	May 8, 2009	Robert E. Gerber
Lyondell Chemical Wilmington, Inc.	Southern District of New York	09-bk-12952	May 8, 2009	Robert E. Gerber
LPC Partners, Inc.	Southern District of New York	09-bk-12953	May 8, 2009	Robert E. Gerber
SCM Chemicals Inc.	Southern District of New York	09-bk-12955	May 8, 2009	Robert E. Gerber
Equistar Funding Corp.	Southern District of New York	09-bk-12956	May 8, 2009	Robert E. Gerber
Sencorp.	Southern District of Ohio	09-bk-12869	May 8, 2009	J. Vincent Aug, Jr.
Sentron Medical, Inc.	Southern District of Ohio	09-bk-12872	May 8, 2009	J. Vincent Aug, Jr.
Gregg Laboratories, Inc.	Southern District of Ohio	09-bk-12875	May 8, 2009	J. Vincent Aug, Jr.
TyRex, LLC	Southern District of Ohio	09-bk-12876	May 8, 2009	J. Vincent Aug, Jr.

Debtor	Bankruptcy Court	Case Number	Filing Date	Judge
SenSource Global Sourcing, LLC	Southern District of Ohio	09-bk-12877	May 8, 2009	J. Vincent Aug, Jr.
Senco International, Inc.	Southern District of Ohio	09-bk-12880	May 8, 2009	J. Vincent Aug, Jr.
Omnifast, LLC	Southern District of Ohio	09-bk-12881	May 8, 2009	J. Vincent Aug, Jr.
Nexicor, LLC	Southern District of Ohio	09-bk-12883	May 8, 2009	J. Vincent Aug, Jr.
Senco Products, Inc.	Southern District of Ohio	09-bk-12884	May 8, 2009	J. Vincent Aug, Jr.
Senco Export, Inc.	Southern District of Ohio	09-bk-12886	May 8, 2009	J. Vincent Aug, Jr.
Global Fastening Solutions, LLC	Southern District of Ohio	09-bk-12887	May 8, 2009	J. Vincent Aug, Jr.
Agrifast, LLC	Southern District of Ohio	09-bk-12890	May 8, 2009	J. Vincent Aug, Jr.
S C Financial, Inc.	Southern District of Ohio	09-bk-12891	May 8, 2009	J. Vincent Aug, Jr.
Phoenix Electronic Mfg. Services, LLC	District of South Carolina	09-bk-03549	May 8, 2009	John E. Waites
Mujica Electronics, LLC	District of South Carolina	09-bk-03563	May 8, 2009	David R. Duncan
Sean Patrick's sm, LLC	Western District of Texas	09-bk-11219	May 8, 2009	Craig A. Gargotta
FJK Enterprises Ltd. Co.	Western District of Texas	09-bk-51739	May 8, 2009	Leif M. Clark
TML Development LLC	Western District of Washington	09-bk-14478	May 8, 2009	Karen A. Overstreet
Tekena USA, LLC	Northern District of Illinois	09-bk-16969	May 9, 2009	A. Benjamin Goldgar
Value Giant Stores, Inc.	Northern District of Texas	09-bk-32942	May 9, 2009	Barbara J. Houser
High Plains Real Estate Group, LLC	District of Utah	09-bk-24765	May 9, 2009	Judith A. Boulden
Southern Access, Inc.	Southern District of Alabama	09-bk-12132	May 10, 2009	William S. Shulman
ITE-Innovative Truck & Equipment, Inc.	Middle District of Alabama	09-bk-31239	May 11, 2009	Dwight H. Williams, Jr.
Rosie T., LLC	District of Arizona	09-bk-10039	May 11, 2009	Eileen W. Hollowell
Capital Corp. of the West	Eastern District of California	09-bk-14298	May 11, 2009	W. Richard Lee
Morgan Trailer & Transport, LLC	District of Colorado	09-bk-18809	May 11, 2009	A. Bruce Campbell
Interior Services Network, Inc.	District of Colorado	09-bk-18859	May 11, 2009	Elizabeth E. Brown
Adare Homes Potomac Farms 2, LLC	District of Colorado	09-bk-18864	May 11, 2009	Sidney B. Brooks
Olympia Club Fitness Center, LLC	District of Connecticut	09-bk-50922	May 11, 2009	Alan H.W. Shiff
Badanco Acquisition LLC	District of Delaware	09-bk-11638	May 11, 2009	Christopher S. Sontchi
Randa Luggage Inc.	District of Delaware	09-bk-11639	May 11, 2009	Christopher S. Sontchi
Randa Luggage Holdings Corp.	District of Delaware	09-bk-11640	May 11, 2009	Christopher S. Sontchi
Hayes Lemmerz International, Inc.	District of Delaware	09-bk-11655	May 11, 2009	Mary F. Walrath
Hayes Lemmerz Finance LLC	District of Delaware	09-bk-11656	May 11, 2009	Mary F. Walrath
Hayes Lemmerz Finance LLC - Luxembourg S.C.A.	District of Delaware	09-bk-11657	May 11, 2009	Mary F. Walrath
Hayes Lemmerz International Import, Inc.	District of Delaware	09-bk-11659	May 11, 2009	Mary F. Walrath
Hayes Lemmerz International - California, Inc.	District of Delaware	09-bk-11660	May 11, 2009	Mary F. Walrath
Hayes Lemmerz International - Commerical Highway, Inc.	District of Delaware	09-bk-11661	May 11, 2009	Mary F. Walrath
Hayes Lemmerz International - Georgia, Inc.	District of Delaware	09-bk-11662	May 11, 2009	Mary F. Walrath

Debtor	Bankruptcy Court	Case Number	Filing Date	Judge
Hayes Lemmerz International - Howell, Inc.	District of Delaware	09-bk-11664	May 11, 2009	Mary F. Walrath
Hayes Lemmerz International - Huntington, Inc.	District of Delaware	09-bk-11665	May 11, 2009	Mary F. Walrath
Hayes Lemmerz International - Kentucky, Inc.	District of Delaware	09-bk-11666	May 11, 2009	Mary F. Walrath
Hayes Lemmerz International - Laredo, Inc.	District of Delaware	09-bk-11667	May 11, 2009	Mary F. Walrath
Hayes Lemmerz International - New York, Inc.	District of Delaware	09-bk-11668	May 11, 2009	Mary F. Walrath
Hayes Lemmerz International - Sedalia, Inc.	District of Delaware	09-bk-11669	May 11, 2009	Mary F. Walrath
Hayes Lemmerz International - Technical Center, Inc.	District of Delaware	09-bk-11670	May 11, 2009	Mary F. Walrath
Hayes Lemmerz International - Wabash, Inc.	District of Delaware	09-bk-11671	May 11, 2009	Mary F. Walrath
HLI Brakes Holding Co., Inc.	District of Delaware	09-bk-11672	May 11, 2009	Mary F. Walrath
HLI Commercial Highway Holding Co., Inc.	District of Delaware	09-bk-11673	May 11, 2009	Mary F. Walrath
HLI Netherlands Holdings, Inc.	District of Delaware	09-bk-11674	May 11, 2009	Mary F. Walrath
HLI Operating Co., Inc.	District of Delaware	09-bk-11675	May 11, 2009	Mary F. Walrath
HLI Parent Co., Inc.	District of Delaware	09-bk-11676	May 11, 2009	Mary F. Walrath
HLI Powertrain Holding Co., Inc.	District of Delaware	09-bk-11677	May 11, 2009	Mary F. Walrath
HLI Realty, Inc.	District of Delaware	09-bk-11678	May 11, 2009	Mary F. Walrath
HLI Services Holding Co., Inc.	District of Delaware	09-bk-11679	May 11, 2009	Mary F. Walrath
HLI Suspension Holding Co., Inc.	District of Delaware	09-bk-11680	May 11, 2009	Mary F. Walrath
HLI Wheels Holding Co., Inc.	District of Delaware	09-bk-11681	May 11, 2009	Mary F. Walrath
Tile with Style, Inc.	Northern District of Georgia	09-bk-72298	May 11, 2009	James Massey
Sanderson Industries, Inc.	Northern District of Georgia	09-bk-72311	May 11, 2009	Margaret Murphy
River Woods, LLC	District of Idaho	09-bk-01263	May 11, 2009	Jim D. Pappas
TRF, N.A., LLC	Northern District of Illinois	09-bk-17065	May 11, 2009	Jacqueline P. Cox
Hensaal Management Group, Inc.	Northern District of Illinois	09-bk-17084	May 11, 2009	Carol A. Doyle
Trolley's LLC	District of Kansas	09-bk-21475	May 11, 2009	Robert D. Berger
Trolley's Overland Park, LLC	District of Kansas	09-bk-21476	May 11, 2009	Robert D. Berger
Trolley's Real Estate Holdings, LLC	District of Kansas	09-bk-21478	May 11, 2009	Robert D. Berger
DHD, LLC	Eastern District of Michigan	09-bk-32535	May 11, 2009	Daniel S. Opperman
Northfield Trucking Co., Inc.	Eastern District of Michigan	09-bk-54938	May 11, 2009	Walter Shapero
Blair Farms, Inc.	District of Minnesota	09-bk-60504	May 11, 2009	Dennis D. O'Brien
CMATT, LLC	District of New Jersey	09-bk-21992	May 11, 2009	Kathryn C. Ferguson
Oceanfront Coffee, LLC	District of New Jersey	09-bk-22037	May 11, 2009	Michael B. Kaplan
Parklex Associates Inc.	Southern District of New York	09-bk-12996	May 11, 2009	Martin Glenn
Parklex Associates LP	Southern District of New York	09-bk-12997	May 11, 2009	Martin Glenn
244 East LLC	Southern District of New York	09-bk-13000	May 11, 2009	Martin Glenn
LD Development I LLC	Southern District of New York	09-bk-13001	May 11, 2009	Martin Glenn
LD Development II LLC	Southern District of New York	09-bk-13002	May 11, 2009	Martin Glenn
FAL Associates LLC	Southern District of New York	09-bk-13004	May 11, 2009	Martin Glenn
Management Associates LLC	Southern District of New York	09-bk-13005	May 11, 2009	Martin Glenn
Collateral Acquisitions Corp.	Southern District of New York	09-bk-13006	May 11, 2009	Martin Glenn

Debtor	Bankruptcy Court	Case Number	Filing Date	Judge
Collateral Acquisitions LLC	Southern District of New York	09-bk-13007	May 11, 2009	Martin Glenn
32nd Street Associates LLC	Southern District of New York	09-bk-13008	May 11, 2009	Martin Glenn
Citisites Inc.	Southern District of New York	09-bk-13009	May 11, 2009	Martin Glenn
Seahawk Properties, LLC	Eastern District of North Carolina	09-bk-03869	May 11, 2009	J. Rich Leonard
Scuba Tech, Inc.	Eastern District of North Carolina	09-bk-03877	May 11, 2009	Randy D. Doub
Islamorada, LLC	Eastern District of North Carolina	09-bk-03881	May 11, 2009	J. Rich Leonard
Roma Foods of Oklahoma, Inc.	Western District of Oklahoma	09-bk-12488	May 11, 2009	Richard L. Bohanon
Hestia Holdings, LLC	Western District of Oklahoma	09-bk-12497	May 11, 2009	Niles L. Jackson
Eateries, Inc.	Western District of Oklahoma	09-bk-12499	May 11, 2009	Richard L. Bohanon
Best Restaurants, LLC	Western District of Oklahoma	09-bk-12501	May 11, 2009	Niles L. Jackson
Best Restaurants II, LLC	Western District of Oklahoma	09-bk-12502	May 11, 2009	T.M. Weaver
Fiesta Holdings, Inc.	Western District of Oklahoma	09-bk-12503	May 11, 2009	Richard L. Bohanon
Fiesta Holdings, LLC	Western District of Oklahoma	09-bk-12505	May 11, 2009	Niles L. Jackson
Fiesta Fulton Ranch, LLC	Western District of Oklahoma	09-bk-12506	May 11, 2009	Richard L. Bohanon
Garcia's-Mills, LLC	Western District of Oklahoma	09-bk-12507	May 11, 2009	T.M. Weaver
GRP of Fayetteville, LLC	Western District of Oklahoma	09-bk-12510	May 11, 2009	T.M. Weaver
GRP of Ft. Smith, LLC	Western District of Oklahoma	09-bk-12511	May 11, 2009	Niles L. Jackson
GRP of Harrisburg, LLC	Western District of Oklahoma	09-bk-12512	May 11, 2009	Niles L. Jackson
GRP of Muskogee, LLC	Western District of Oklahoma	09-bk-12513	May 11, 2009	Richard L. Bohanon
Eateries of MD, LLC	Western District of Oklahoma	09-bk-12514	May 11, 2009	Richard L. Bohanon
Eateries, Inc. of West Virginia	Western District of Oklahoma	09-bk-12516	May 11, 2009	T.M. Weaver
Wilson & Brown Enterprises LLC	Western District of Tennessee	09-bk-25085	May 11, 2009	Jennie D. Latta
P & T Brown Enterprises LLC	Western District of Tennessee	09-bk-25091	May 11, 2009	George W. Emerson, Jr.
ProSystems, Inc.	Northern District of West Virginia	09-bk-01054	May 11, 2009	Patrick M. Flatley
Dennis Ellis Used Cars, Inc.	Southern District of Alabama	09-bk-12157	May 12, 2009	Margaret A. Mahoney
Advanced Executive Group Corp.	Middle District of Florida	09-bk-06463	May 12, 2009	Arthur B. Briskman
Tallahassee Center Commercial Properties, LLC	Northern District of Florida	09-bk-40411	May 12, 2009	Lewis M. Killian, Jr.
1300 North Wood LLC	Northern District of Illinois	09-bk-17206	May 12, 2009	Thomas E. Carlson
Rockwell Place, LLC	Northern District of Illinois	09-bk-17260	May 12, 2009	Carol A. Doyle
Valnet LLC	District of Kansas	09-bk-11420	May 12, 2009	Robert E. Nugent
Louisiana Valve & Machine Works, Inc.	Middle District of Louisiana	09-bk-10664	May 12, 2009	Douglas D. Dodd
Midnight Pass Inc.	District of Massachusetts	09-bk-14300	May 12, 2009	Joan N. Feeney
Bella Highlands, LLC	District of Nevada	09-bk-17699	May 12, 2009	Linda B. Riegle
Pebble Creek, LLC	District of Nevada	09-bk-17700	May 12, 2009	Mike K. Nakagawa
DeCoro USA, Ltd.	Middle District of North Carolina	09-bk-10846	May 12, 2009	Randolph Baxter
Canfield Investment Co.	Northern District of Ohio	09-bk-41718	May 12, 2009	Kay Woods
Keith Bullard's Auto Liquidation Center, Inc.	Western District of Pennsylvania	09-bk-23503	May 12, 2009	M. Bruce McCullough
World Engineering Solutions Corp.	District of Puerto Rico	09-bk-03842	May 12, 2009	Brian K. Tester
Traditions Transitional Living Inc.	District of Arizona	09-bk-10267	May 13, 2009	Charles G. Case II
Sunwisc, LLC	Eastern District of Arkansas	09-bk-13384	May 13, 2009	Audrey R. Evans

Debtor	Bankruptcy Court	Case Number	Filing Date	Judge
Adriana Elderly Care Homes Inc.	Central District of California	09-bk-14477	May 13, 2009	Not yet assigned
Two Doheny LLC	Central District of California	09-bk-14478	May 13, 2009	Not yet assigned
Padilla Properties, LLC	Central District of California	09-bk-21587	May 13, 2009	Ellen Carroll
Natural Cleaners, LLC	District of Colorado	09-bk-19031	May 13, 2009	Howard R. Tallman
Nanogen, Inc.	District of Delaware	09-bk-11696	May 13, 2009	Kevin J. Carey
Epoch Biosciences, Inc.	District of Delaware	09-bk-11697	May 13, 2009	Kevin J. Carey
Nanotronics, Inc.	District of Delaware	09-bk-11698	May 13, 2009	Kevin J. Carey
Rolling Oaks Utilities, Inc.	Middle District of Florida	09-bk-03861	May 13, 2009	Jerry A. Funk
AAA Wireless, Inc.	Northern District of Indiana	09-bk-32243	May 13, 2009	Harry C. Dees, Jr.
Intown Properties, LLC	District of Maine	09-bk-20692	May 13, 2009	James B. Haines, Jr.
Munjoy Hill Properties, LLC	District of Maine	09-bk-20693	May 13, 2009	James B. Haines, Jr.
53-54 Palisades Hudson Associates, LLC	District of New Jersey	09-bk-22269	May 13, 2009	Novalyn L. Winfield
Lyneve Restaurant, Inc.	Eastern District of New York	09-bk-73459	May 13, 2009	Alan S. Trust
Testwell, Inc.	Southern District of New York	09-bk-22796	May 13, 2009	Robert D. Drain
Concept Investment Holdings, LLC	Western District of North Carolina	09-bk-40402	May 13, 2009	George R. Hodges
Pavlidis Corp.	Eastern District of Pennsylvania	09-bk-13563	May 13, 2009	Eric L. Frank
54 Troy Street Building Co., LLC	District of Rhode Island	09-bk-11883	May 13, 2009	Arthur N. Votolato
Energytec, Inc.	Eastern District of Texas	09-bk-41477	May 13, 2009	Brenda T. Rhoades
Comanche Well Services Corp.	Eastern District of Texas	09-bk-41478	May 13, 2009	Brenda T. Rhoades
RR Valve, Inc.	Southern District of Texas	09-bk-33345	May 13, 2009	Karen K. Brown
Pepe Properties, LLC	Western District of Texas	09-bk-51775	May 13, 2009	Ronald B. King

Noteworthy Airline Bankruptcy Filings

Debtor	Bankruptcy Court	Case Number	Filing Date	Judge
Sunset Aviation, Inc.	District of Delaware	09-bk-10778	Mar. 6, 2009	Christopher S. Sontchi
Regal Jets, LLC	District of Delaware	09-bk-10648	Feb. 25, 2009	Peter J. Walsh
Global Aircraft Solutions, Inc.	District of Arizona	09-bk-01655	Jan. 30, 2009	James M. Marlar
Eclipse Aviation Corp.	District of Delaware	08-bk-13031	Nov. 25, 2008	Mary F. Walrath
Alitalia-Linee Aeree Italiane, S.p.A.	Southern District of New York	08-bk-14321	Oct. 31, 2008	Burton R. Lifland
MN Airlines, LLC	District of Minnesota	08-bk-35197	Oct. 6, 2008	Robert J. Kressel
United West Airlines, Inc.	Southern District of Florida	08-bk-20714	Jul. 31, 2008	Paul G. Hyman, Jr.
TradeWinds Airlines, Inc.	Southern District of New York	08-bk-20394	Jul. 25, 2008	A. Jay Cristol
Eos Airlines, Inc.	Southern District of New York	08-bk-22581	Apr. 28, 2008	Adlai S. Hardin, Jr.
Frontier Airlines Holdings, Inc.	Southern District of New York	08-bk-11298	Apr. 10, 2008	Robert D. Drain
Skybus Airlines, Inc.	District of Delaware	08-bk-10637	Apr. 5, 2008	Christopher S. Sontchi
ATA Airlines, Inc.	Southern District of Indiana	08-bk-03675	Apr. 2, 2008	Basil H. Lorch III
Aloha Airlines, Inc.	District of Hawaii	08-bk-00337	Mar. 20, 2008	Lloyd King
MAXjet Airways, Inc.	District of Delaware	07-bk-11912	Dec. 24, 2007	Peter J. Walsh

Noteworthy Automotive Industry Bankruptcy Filings

Debtor	Bankruptcy Court	Case Number	Filing Date	Judge
Hayes Lemmerz International, Inc. and its affiliated debtors	District of Delaware	09-bk-11655	May 11, 2009	Mary F. Walrath
Chrysler LLC and its affiliated debtors	Southern District of New York	09-bk-50002	Apr. 30, 2009	Arthur J. Gonzalez
Noble International Ltd.	Eastern District of Michigan	09-bk-51720	Apr. 15, 2009	Marci B. Mclvor
Rexhall Industries, Inc.	Central District of California	09-bk-11737	Feb. 18, 2009	Kathleen Thompson
Foamex International Inc.	District of Delaware	09-bk-10560	Feb. 18, 2009	Kevin J. Carey
Fluid Routing Solutions, Inc.	District of Delaware	09-bk-10385	Feb. 6, 2009	Christopher S. Sontchi
Country Coach LLC	District of Oregon	09-bk-60419	Feb. 6, 2009	Albert E. Radcliffe
Checker Motors Corp.	Western District of Michigan	09-bk-00358	Jan. 16, 2009	James D. Gregg
Micro-Heat, Inc.	Eastern District of Michigan	08-bk-65060	Oct. 13, 2008	Thomas J. Tucker
Cadence Innovation LLC	District of Delaware	08-bk-11973	Aug. 26, 2008	Kevin Gross
Intermet Corp.	District of Delaware	08-bk-11859	Aug. 12, 2008	Kevin Gross
DynAmerica Manufacturing LLC	District of Delaware	08-bk-11515	Jul. 18, 2008	Kevin Gross
Progressive Molded Products Inc.	District of Delaware	08-bk-11253	Jun. 20, 2008	Kevin J. Carey
BHM Technologies Holdings, Inc.	Western District of Michigan	08-bk-04413	May 19, 2008	Scott W. Dales
Lexington Precision Corp.	Southern District of New York	08-bk-11153	Apr. 1, 2008	Martin Glenn
Blue Water Automotive System, Inc.	Eastern District of Michigan	08-bk-43196	Feb. 12, 2008	Marci B. Mclvor
Plastech Engineered Products, Inc.	Eastern District of Michigan	08-bk-42417	Feb. 1, 2008	Phillip J. Shefferly
Johnson Rubber Co., Inc.	Northern District of Ohio	07-bk-19391	Dec. 11, 2007	Randolph Baxter
Blackhawk Automotive Plastics, Inc.	Northern District of Ohio	07-bk-42671	Oct. 22, 2007	Kay Woods
Remy Worldwide Holdings, Inc.	District of Delaware	07-bk-11481	Oct. 8, 2007	Kevin J. Carey
Citation Corp.	Northern District of Alabama	07-bk-01153	Mar. 12, 2007	Tamara O. Mitchell
Pine River Plastics, Inc.	Eastern District of Michigan	07-bk-42051	Feb. 1, 2007	Phillip J. Shefferly

Noteworthy Retailer Bankruptcy Filings

Debtor	Bankruptcy Court	Case Number	Filing Date	Judge
Z Gallerie	Central District of California	09-bk-18400	Apr. 10, 2009	Vincent P. Zurzolo
Al Baskin Co.	Northern District of Illinois	09-bk-09825	Mar. 23, 2009	Carol A. Doyle
Sportsman's Warehouse, Inc.	District of Delaware	09-bk-10990	Mar. 20, 2009	Christopher S. Sontchi
Drug Fair Group, Inc.	District of Delaware	09-bk-10897	Mar. 18, 2009	Brendan Linehan Shannon
Dial-A-Mattress Operating Corp.	Eastern District of New York	09-bk-41966	Mar. 17, 2009	Dennis E. Milton
Hartmarx Corp.	Northern District of Illinois	09-bk-02046	Jan. 23, 2009	Bruce W. Black
Goody's, LLC	District of Delaware	09-bk-10124	Jan. 13, 2009	Christopher S. Sontchi
Circuit City Stores, Inc.	Eastern District of Virginia	08-bk-35653	Nov. 10, 2008	Kevin R. Huennekens
Harold's Stores, Inc.	Western District of Oklahoma	08-bk-15027	Nov. 7, 2008	T.M. Weaver
Value City Holdings, Inc.	Southern District of New York	08-bk-14197	Oct. 26, 2008	James M. Peck
Gold & Honey, Ltd.	Eastern District of New York	08-bk-75240	Sept. 23, 2008	Dorothy Eisenberg
Oskar Huber Fine Furniture Inc.	District of New Jersey	08-bk-28136	Sept. 22, 2008	Judith H. Wizmur

Debtor	Bankruptcy Court	Case Number	Filing Date	Judge
Sports Collectibles Acquisition Corp.	District of Delaware	08-bk-12170	Sept. 21, 2008	Mary Walrath
Marty Shoes Holdings, Inc.	District of Delaware	08-bk-12129	Sept. 12, 2008	Kevin J. Carey
Barbeques Galore, Inc.	Central District of California	08-bk-16036	Aug. 15, 2008	Maureen Tighe
Boscov's, Inc.	District of Delaware	08-bk-11637	Aug. 4, 2008	Kevin Gross
Burnside Avenue Lot Stores, Inc.	Southern District of New York	08-bk-12988	Jul. 31, 2008	James M. Peck
Mervyn's Holdings, LLC	District of Delaware	08-bk-11586	Jul. 29, 2008	Kevin Gross
Yazmin Enterprises, Inc.	District of Puerto Rico	08-bk-04614	Jul. 16, 2008	Enrique S. Lamoutte Inclan
Shoe Pavilion Corp.	Central District of California	08-bk-14941	Jul. 15, 2008	Maureen Tighe
CMT America Corp.	District of Delaware	08-bk-11434	Jul. 13, 2008	Christopher S. Sontchi
Steve & Barry's Manhattan LLC	Southern District of New York	08-bk-12579	Jul. 9, 2008	Allan L. Gropper
Room Source LLC	Eastern District of California	08-bk-28487	Jun. 25, 2008	Michael S. McManus
Whitehall Jewelers Holdings, Inc.	District of Delaware	08-bk-11261	Jun. 23, 2008	Kevin Gross
Goody's Family Clothing, Inc.	District of Delaware	08-bk-11133	Jun. 9, 2008	Christopher S. Sontchi
Dawahare's of Lexington, LLC	Eastern District of Kentucky	08-bk-51381	May 30, 2008	Joseph M. Scott, Jr.
Bag 'n Baggage, Ltd.	Northern District of Texas	08-bk-32096	May 4, 2008	Stacey G. Jernigan
Linens Holding Co.	District of Delaware	08-bk-10832	May 2, 2008	Christopher S. Sontchi
Home Interiors & Gifts, Inc.	Northern District of Texas	08-bk-31961	Apr. 29, 2008	Barbara J. Houser
RedEnvelope, Inc.	Northern District of California	08-bk-30659	Apr. 17, 2008	Dennis Montali
Fred Leighton Holding Inc.	Southern District of New York	08-bk-11363	Apr. 15, 2008	Robert D. Drain
Hoop Holdings, LLC	District of Delaware	08-bk-10544	Mar. 26, 2008	Brendan Linehan Shannon
Lillian Vernon Corp.	District of Delaware	08-bk-10323	Feb. 20, 2008	Brendan Linehan Shannon
Sharper Image Corp.	District of Delaware	08-bk-10322	Feb. 19, 2008	Kevin Gross
Fortunoff Fine Jewelry and Silverware, LLC	Southern District of New York	08-bk-10353	Feb. 4, 2008	James M. Peck

Noteworthy Homebuilder Bankruptcy Filings

Debtor	Bankruptcy Court	Case Number	Filing Date	Judge
Opus South Corp.	District of Delaware	09-bk-11390	April 22, 2009	Mary F. Walrath
Meruelo Maddux Properties, Inc.	Central District of California	09-bk-13356	Mar. 27, 2009	Kathleen Thompson
Anderson Homes, Inc.	Eastern District of North Carolina	09-bk-02062	Mar. 16, 2009	A. Thomas Small
Fleetwood Holdings Inc.	Central District of California	09-bk-14255	Mar. 10, 2009	Sheri Bluebond
Manasseh Building Group, Inc.	Central District of California	09-bk-12507	Mar. 9, 2009	Geraldine Mund
WL Homes LLC	District of Delaware	09-bk-10571	Feb. 19, 2009	Brendan Linehan Shannon
Fulton Homes Corp.	District of Arizona	09-bk-01298	Jan. 27, 2009	George B. Nielsen, Jr.
Royce International Investment Co.	Central District of California	09-bk-11224	Jan. 26, 2009	Sheri Bluebond
Mercedes Homes of Texas Holding Corp.	Southern District of Florida	09-bk-11191	Jan. 26, 2009	Paul G. Hyman, Jr.

Debtor	Bankruptcy Court	Case Number	Filing Date	Judge
Wall Homes Texas LLC	Northern District of Texas	09-bk-30363	Jan. 17, 2009	Harlin DeWayne Hale
Palmdale Hills Property, LLC	Central District of California	08-bk-17206	Nov. 6, 2008	Erithe A. Smith
Jancor Cos., Inc.	District of Delaware	08-bk-10159	Oct. 30, 2008	Mary F. Walrath
Land Resource, LLC	Middle District of Florida	08-bk-10159	Oct. 30, 2008	Arthur B. Briskman
Namwest, LLC	District of Delaware	08-bk-13935	Oct. 9, 2008	Charles G. Case
Patriot Homes, Inc.	Northern District of Indiana	08-bk-33347	Sept. 29, 2008	Harry C. Dees, Jr.
Renaissance Custom Homes, LLC	District of Oregon	08-bk-35023	Sept. 25, 2008	Trish M. Brown
Lincoln Logs Ltd.	Northern District of New York	08-bk-13079	Sept. 19, 2008	Robert E. Littlefield, Jr.
Eagle Crest Homes, LLC	Eastern District of Virginia	08-bk-10195	Aug. 21, 2008	Robert G. Mayer
Taro Properties Arizona I, LLC	District of Arizona	08-bk-10427	Aug. 13, 2008	Charles G. Case II
Seacoast Communities, Inc.	District of South Carolina	08-bk-04735	Aug. 6, 2008	John E. Waites
WCI Communities Inc.	District of Delaware	08-bk-11643	Aug. 4, 2008	Kevin J. Carey
Lafferty Homes Inc.	Northern District of California	08-bk-43808	Jul. 21, 2008	Edward D. Jellen
LandSource Communities Development LLC	District of Delaware	08-bk-11111	Jul. 21, 2008	Kevin J. Carey
Crosswinds at Rocky River, LLC	Western District of North Carolina	08-bk-31357	Jun. 30, 2008	George R. Hodges
Caruso Homes, Inc.	District of Maryland	08-bk-18254	Jun. 23, 2008	James F. Schnieder
M.W. Johnson Construction, Inc.	District of Minnesota	08-bk-32874	Jun. 13, 2008	Robert J. Kressel
Matrix Development Corp.	District of Oregon	08-bk-32798	Jun. 10, 2008	Trish M. Brown
GT Architecture Contractors Corp.	District of Georgia	08-bk-69440	May 20, 2008	Margaret Murphy
Kimball Hill, Inc.	Northern District of Illinois	08-bk-10095	Apr. 23, 2008	Susan Pierson Sonderby
Randall Martin Home Higley Park, LLC	District of Arizona	08-bk-03097	Mar. 25, 2008	Sarah Sharer Curley
Masters Developments Properties, LLC	District of Arizona	08-bk-03050	Mar. 24, 2008	Sarah Sharer Curley
R&B Construction, Inc.	Northern District of Georgia	08-bk-62023	Feb. 4, 2008	C. Ray Mullins
TOUSA, Inc.	Southern District of Florida	08-bk-10928	Jan. 29, 2008	John K. Olson
Maryland Development Co. LLC	District of Maryland	08-bk-10938	Jan. 22, 2008	Paul Mannes

Distressed Debt

Credit Ratings Downgraded

Company	Date	Rating Type	Agency	Current	Last	Industry Type
Athilon Capital Corp.	5/7/2009	Senior Subordinate	Moody's	Caa2	B3	Diversified Financial Services
Centro NP LLC	5/7/2009	Senior Unsecured Debt	Moody's	Caa2	Caa1*-	REITS - Shopping Centers
Fairpoint Communications Inc.	5/7/2009	LT Foreign Issuer Credit	S&P	CCC+*	B	Telecom Services
Fairpoint Communications Inc.	5/7/2009	LT Local Issuer Credit	S&P	CCC+*	B	Telecom Services
First Data Corp.	5/7/2009	Senior Unsecured Debt	Moody's	Caa1	B3*-	Data Processing / Management

Company	Date	Rating Type	Agency	Current	Last	Industry Type
Hawker Beechcraft Services Inc.	5/7/2009	LT Local Issuer Credit	S&P	CC*-	B-	Aerospace / Defense
Hawker Beechcraft Services Inc.	5/7/2009	LT Foreign Issuer Credit	S&P	CC*-	B-	Aerospace / Defense
New Plan Realty Trust / NY	5/7/2009	Senior Unsecured Debt	Moody's	Caa2	Caa1*-	REITS - Shopping Centers
Panoram Industries International Inc.	5/7/2009	Bank Loan Debt	Moody's	Caa3	Caa2	Building & Construction Products - Miscellaneous
Clayton Williams Energy Inc.	5/8/2009	Senior Unsecured Debt	Moody's	Caa1	B3*-	Oil Company - Exploration & Production
Gaylord Entertainment Co.	5/8/2009	Senior Unsecured Debt	Moody's	Caa2	Caa1	Hotels & Motels
Integra Telecom Inc.	5/8/2009	LT Foreign Issuer Credit	S&P	CC*-	CCC	Satellite Telecommunications
Integra Telecom Inc.	5/8/2009	LT Local Issuer Credit	S&P	CC*-	CCC	Satellite Telecommunications
US Airways Group Inc.	5/8/2009	Senior Unsecured Debt	Fitch	C	CC	Airlines
Clayton Williams Energy Inc.	5/8/2009	Senior Unsecured Debt	Moody's	Caa1	B3*-	Oil Company - Exploration & Production
Gaylord Entertainment Co.	5/8/2009	Senior Unsecured Debt	Moody's	Caa2	Caa1	Hotels & Motels
Integra Telecom Inc.	5/8/2009	LT Foreign Issuer Credit	S&P	CC*-	CCC	Satellite Telecom
Integra Telecom Inc.	5/8/2009	LT Local Issuer Credit	S&P	CC*-	CCC	Satellite Telecom
US Airways Group Inc.	5/8/2009	Senior Unsecured Debt	Fitch	C	CC	Airlines
Dana Holding Corp.	5/11/2009	LT Foreign Issuer Credit	S&P	CC	B	Auto / Truck Parts & Equipment - Original
Dana Holding Corp.	5/11/2009	LT Local Issuer Credit	S&P	CC	B	Auto / Truck Parts & Equipment - Original
MGM Mirage	5/11/2009	Senior Unsecured Debt	Fitch	C	CC	Casino Hotels
Manitowoc Co. Inc.	5/11/2009	Senior Unsecured Debt	Moody's	Caa1	B2	Machinery - General Industry
PMI Group Inc.	5/11/2009	Senior Unsecured Debt	Fitch	CC	CCC	Financial Guarantee Insurance
PMI Group Inc.	5/11/2009	LT Issuer Default Rating	Fitch	CC	CCC	Financial Guarantee Insurance
Radio One Inc.	5/11/2009	LT Corp Family Rating	Moody's	Caa1	B3	Radio
Radio One Inc.	5/11/2009	Subordinated Debt	Moody's	Caa3	Caa2	Radio
iStar Financial Inc.	5/11/2009	Senior Unsecured Debt	Moody's	Caa1	B2	REITS - Mortgage
AMF Bowling Worldwide Inc.	5/12/2009	LT Local Issuer Credit	S&P	CC*-	B-	Recreational Centers
AMF Bowling Worldwide Inc.	5/12/2009	LT Foreign Issuer Credit	S&P	CC*-	B-	Recreational Centers
Advanta Bank Corp.	5/12/2009	LT Foreign Issuer Credit	S&P	CC	B-	Commercial Banks - Western US
Advanta Bank Corp.	5/12/2009	LT Local Issuer Credit	S&P	CC	B-	Commercial Banks - Western US
Advanta Corp.	5/12/2009	LT Foreign Issuer Credit	S&P	CC	CCC	Finance - Credit Cards

Company	Date	Rating Type	Agency	Current	Last	Industry Type
Advanta Corp.	5/12/2009	LT Local Issuer Credit	S&P	CC	CCC	Finance - Credit Cards
American Axle & Manufacturing Holdings Inc.	5/12/2009	LT Corp Family Rating	Moody's	Ca	Caa1*-	Auto / Truck Parts & Equipment - Original
American Axle & Manufacturing Holdings Inc.	5/12/2009	Senior Unsecured Debt	Moody's	Ca	Caa2*-	Auto / Truck Parts & Equipment - Original
American Axle & Manufacturing Inc.	5/12/2009	Senior Unsecured Debt	Moody's	Ca	Caa2*-	Auto / Truck Parts & Equipment - Original
American Axle & Manufacturing Inc.	5/12/2009	Bank Loan Debt	Moody's	Caa2	B2*-	Auto / Truck Parts & Equipment - Original
HLI Operating Co. Inc.	5/12/2009	Bank Loan Debt	Moody's	Caa3	Caa2*-	Auto / Truck Parts & Equipment - Original
HLI Operating Co. Inc.	5/12/2009	LT Corp Family Rating	Moody's	Ca	Caa3*-	Auto / Truck Parts & Equipment - Original
HLI Operating Co. Inc.	5/12/2009	Bank Loan Debt	Fitch	C	CC	Auto / Truck Parts & Equipment - Original
Hayes Lemmerz International Inc.	5/12/2009	LT Local Issuer Credit	S&P	D	CC	Auto / Truck Parts & Equipment - Original
Hayes Lemmerz International Inc.	5/12/2009	LT Foreign Issuer Credit	S&P	D	CC	Auto / Truck Parts & Equipment - Original
Office Depot Inc.	5/12/2009	Senior Unsecured Debt	Moody's	Caa1	B3*-	Retail - Office Supplies
Oriental Trading Co.	5/12/2009	LT Foreign Issuer Credit	S&P	CCC	CCC+	Toys
Oriental Trading Co.	5/12/2009	LT Local Issuer Credit	S&P	CCC	CCC+	Toys
Accuride Corp.	5/13/2009	LT Local Issuer Credit	S&P	CCC	B-	Auto / Truck Parts & Equipment - Original
Accuride Corp.	5/13/2009	LT Foreign Issuer Credit	S&P	CCC	B-	Auto / Truck Parts & Equipment - Original
Momentive Performance Materials Inc.	5/13/2009	LT Local Issuer Credit	S&P	CC*-	CCC*-	Chemicals - Specialty
Momentive Performance Materials Inc.	5/13/2009	LT Foreign Issuer Credit	S&P	CC*-	CCC*-	Chemicals - Specialty

Cross-Border Insolvency

2009 Chapter 15 Proceedings

Proceeding	Contested or Uncontested	Place of Original Proceeding	Status
<i>In re Madoff Securities International Ltd.</i> , No. 09-12998 (Bankr. S.D.N.Y. May 8, 2009)	Uncontested	United Kingdom	Pending
<i>In re Spansion Japan Ltd.</i> , No. 09-11480 (Bankr. D. Del. Apr. 30, 2009)	Uncontested	Japan	Pending
<i>In re Lehman Brothers Bankhaus AG (in Insolvenz)</i> , No. 09-12704 (Bankr. S.D.N.Y. Apr. 29, 2009)	Uncontested	Germany	Pending
<i>In re Oilexo North Sea Ltd.</i> , No. 09-12641 (Bankr. S.D.N.Y. Apr. 28, 2009)	Uncontested	United Kingdom	Pending
<i>In re CLICO (Bahamas) Ltd.</i> , No. 09-17829 (Bankr. S. D. Fla. Apr. 28, 2009)	Uncontested	Commonwealth of Bahamas	Pending

Proceeding	Contested or Uncontested	Place of Original Proceeding	Status
<i>In re Abitibi-Consolidated Inc.</i> , No. 09-11348 (Bankr. D. Del. Apr. 17, 2009)	Uncontested	Canada	Pending
<i>In re Abitibi-Consolidated Co. of Canada</i> , No. 09-11349 (Bankr. D. Del. Apr. 17, 2009)	Uncontested	Canada	Pending
<i>In re Evergreen Gaming Corp.</i> , No. 09-13567 (Bankr. W.D. Wash. Apr. 15, 2009)	Uncontested	Canada	Pending
<i>In re Washington Gaming, Inc.</i> , No. 09-13568 (Bankr. W.D. Wash. Apr. 15, 2009)	Uncontested	Canada	Pending
<i>In re Big Nevada, Inc.</i> , No. 09-13569 (Bankr. W.D. Wash. Apr. 15, 2009)	Uncontested	Canada	Pending
<i>In re Little Nevada II, Inc.</i> , No. 09-13570 (Bankr. W.D. Wash. Apr. 15, 2009)	Uncontested	Canada	Pending
<i>In re Little Nevada III, Inc.</i> , No. 09-13572 (Bankr. W.D. Wash. Apr. 15, 2009)	Uncontested	Canada	Pending
<i>In re Silver Dollar Mill Creek, Inc.</i> , No. 09-13573 (Bankr. W.D. Wash. Apr. 15, 2009)	Uncontested	Canada	Pending
<i>In re Golden Nugget Tukwila, Inc.</i> , No. 09-13574 (Bankr. W.D. Wash. Apr. 15, 2009)	Uncontested	Canada	Pending
<i>In re Shoreline Gaming Inc.</i> , No. 09-13576 (Bankr. W.D. Wash. Apr. 15, 2009)	Uncontested	Canada	Pending
<i>In re Little Nevada, Inc.</i> , No. 09-13577 (Bankr. W.D. Wash. Apr. 15, 2009)	Uncontested	Canada	Pending
<i>In re Snohomish Gamin, Inc.</i> , No. 09-13578 (Bankr. W.D. Wash. Apr. 15, 2009)	Uncontested	Canada	Pending
<i>In re Hollydrift Gaming, Inc.</i> , No. 09-13579 (Bankr. W.D. Wash. Apr. 15, 2009)	Uncontested	Canada	Pending
<i>In re Royal Casino Holdings, Inc.</i> , No. 09-13580 (Bankr. W.D. Wash. Apr. 15, 2009)	Uncontested	Canada	Pending
<i>In re Gameco, Inc.</i> , No. 09-13581 (Bankr. W.D. Wash. Apr. 15, 2009)	Uncontested	Canada	Pending
<i>In Gaming Management Inc.</i> , No. 09-13583 (Bankr. W.D. Wash. Apr. 15, 2009)	Uncontested	Canada	Pending
<i>In re Gaming Consultants, Inc.</i> , No. 09-13584 (Bankr. W.D. Wash. Apr. 15, 2009)	Uncontested	Canada	Pending
<i>In re Shoreline Holdings, Inc.</i> , No. 09-13585 (Bankr. W.D. Wash. Apr. 15, 2009)	Uncontested	Canada	Pending
<i>In re Mill Creek Gaming Inc.</i> , No. 09-13586 (Bankr. W.D. Wash. Apr. 15, 2009)	Uncontested	Canada	Pending
<i>In re Madoff Securities International Ltd.</i> , No. 09-16751 (Bankr. S.D. Fla. Apr. 14, 2009)	Uncontested	United Kingdom	Transferred
<i>In re Sunaone Pty. Ltd.</i> , No. 09-04842 (Bankr. S.D. Cal. Apr. 14, 2009)	Uncontested	Australia	Pending
<i>In re GMC Worldwide Pty. Ltd.</i> , No. 09-04679 (Bankr. S.D. Cal. Apr. 9, 2009)	Uncontested	Australia	Pending
<i>In re GMCAT Pty. Ltd.</i> , No. 09-04680 (Bankr. S.D. Cal. Apr. 9, 2009)	Uncontested	Australia	Pending
<i>In re Kumkang Valve Co., Ltd.</i> , No. 09-32474 (Bankr. S.D. Tex. Apr. 8, 2009)	Uncontested	Korea	Pending

Proceeding	Contested or Uncontested	Place of Original Proceeding	Status
<i>In re Chemokine Therapeutics Corp.</i> , No. 09-11189 (Bankr. D. Del. Apr. 3, 2009)	Uncontested	Canada	Recognized as a foreign main proceeding
<i>In re Castle Holdco 4, Ltd.</i> , No. 09-11761 (Bankr. S.D.N.Y. Apr. 2, 2009)	Uncontested	United Kingdom	Recognized as a foreign main proceeding
<i>In re Balanus Ltd.</i> , No. 09-11762 (Bankr. S.D.N.Y. Apr. 2, 2009)	Uncontested	United Kingdom	Recognized as a foreign main proceeding
<i>In re Countrywide Estate Agents</i> , No. 09-11763 (Bankr. S.D.N.Y. Apr. 2, 2009)	Uncontested	United Kingdom	Recognized as a foreign main proceeding
<i>In re Securemove Property Services 2005 Ltd.</i> , No. 09-11764 (Bankr. S.D.N.Y. Apr. 2, 2009)	Uncontested	United Kingdom	Recognized as a foreign main proceeding
<i>In re Countrywide Estate Agents FS Ltd.</i> , No. 09-11765 (Bankr. S.D.N.Y. Apr. 2, 2009)	Uncontested	United Kingdom	Recognized as a foreign main proceeding
<i>In re Slater Hogg Mortgages Ltd.</i> , No. 09-11766 (Bankr. S.D.N.Y. Apr. 2, 2009)	Uncontested	United Kingdom	Recognized as a foreign main proceeding
<i>In re Countrywide Estate Agents (South) Ltd.</i> , No. 09-11767 (Bankr. S.D.N.Y. Apr. 2, 2009)	Uncontested	United Kingdom	Recognized as a foreign main proceeding
<i>In re Countrywide Franchising Ltd.</i> , No. 09-11768 (Bankr. S.D.N.Y. Apr. 2, 2009)	Uncontested	United Kingdom	Recognized as a foreign main proceeding
<i>In re Countrywide plc</i> , No. 09-11769 (Bankr. S.D.N.Y. Apr. 2, 2009)	Uncontested	United Kingdom	Recognized as a foreign main proceeding
<i>In re Countrywide Property Lawyers Ltd.</i> , No. 09-11770 (Bankr. S.D.N.Y. Apr. 2, 2009)	Uncontested	United Kingdom	Recognized as a foreign main proceeding
<i>In re Countrywide Surveyors Ltd.</i> , No. 09-11771 (Bankr. S.D.N.Y. Apr. 2, 2009)	Uncontested	United Kingdom	Recognized as a foreign main proceeding
<i>In re Varig Logistica S.A.</i> , No. 09-15717 (Bankr. S.D. Fla. Mar. 31, 2009)	Uncontested	Brazil	Pending
<i>In re SageCrest Ltd.</i> , No. 09-50546 (Bankr. D. Conn. Mar. 27, 2009)	Uncontested	Bermuda	Pending
<i>In re Lockhart Ltd.</i> , No. 09-16561 (Bankr. D.N.J. Mar. 18, 2009)	Uncontested	British Virgin Islands	Pending
<i>In re Naven Investments Sp. z.o.o.</i> , No. 09-16562 (Bankr. D. N.J. Mar. 18, 2009)	Uncontested	British Virgin Islands	Pending
<i>In re Lockhart Corp. I</i> , No. 09-16563 (Bankr. D.N.J. Mar. 18, 2009)	Uncontested	British Virgin Islands	Pending
<i>In re Shelby Overseas Invest & Trade Ltd.</i> , No. 09-16564 (Bankr. D.N.J. Mar. 18, 2009)	Uncontested	British Virgin Islands	Pending
<i>In re Samsun Logix Corp.</i> , No. 09-11109 (Bankr. S.D.N.Y. Mar. 11, 2009)	Uncontested	Korea	Recognized as a foreign main proceeding

Proceeding	Contested or Uncontested	Place of Original Proceeding	Status
<i>In re Independencia S.A.</i> , No. 09-10903 (Bankr. S.D.N.Y. Feb. 27, 2009)	Uncontested	Brazil	Recognized as a foreign main proceeding
<i>In re Lehman Brothers Finance AG</i> , No. 09-10583 (Bankr. S.D.N.Y. Feb. 10, 2009)	Uncontested	Switzerland	Dismissed
<i>In re Railpower Hybrid Technologies Corp.</i> , No. 09-10198 (Bankr. W.D. Pa. Feb. 5, 2009)	Uncontested	Canada	Recognized as a foreign main proceeding
<i>In re Gold & Honey, Ltd.</i> , No. 09-70463 (Bankr. E.D.N.Y. Jan. 28, 2009)	Uncontested	Israel	Pending
<i>In re Gold & Honey (1995) LP</i> , No. 09-70464 (Bankr. E.D.N.Y. Jan. 28, 2009)	Uncontested	Israel	Pending
<i>In re Atlas Shipping A/S</i> , No. 09-10314 (Bankr. S.D.N.Y. Jan. 23, 2009)	Uncontested	Denmark	Recognized as a foreign main proceeding
<i>In re Atlas Bulk Shipping AS</i> , No. 09-10315 (Bankr. S.D.N.Y. Jan. 23, 2009)	Uncontested	Denmark	Recognized as a foreign main proceeding
<i>In re Nortel Networks Corp.</i> , No. 09-10164 (Bankr. D. Del. Jan. 14, 2009)	Uncontested	Canada	Recognized as a foreign main proceeding
<i>In re Nortel Networks Ltd.</i> , No. 09-10166 (Bankr. D. Del. Jan. 14, 2009)	Uncontested	Canada	Recognized as a foreign main proceeding
<i>In re Nortel Networks Technology Corp.</i> , No. 09-10167 (Bankr. D. Del. Jan. 14, 2009)	Uncontested	Canada	Recognized as a foreign main proceeding
<i>In re Nortel Networks Global Corp.</i> , No. 09-10168 (Bankr. D. Del. Jan. 14, 2009)	Uncontested	Canada	Recognized as a foreign main proceeding
<i>In re Nortel Networks International Corp.</i> , No. 09-10169 (Bankr. D. Del. Jan. 14, 2009)	Uncontested	Canada	Recognized as a foreign main proceeding
<i>In re CPI Plastics Group Ltd.</i> , No. 09-20175 (Bankr. E.D. Wis. Jan. 8, 2009)	Uncontested	Canada	Recognized as a foreign main proceeding
<i>In re Crila Investments Inc.</i> , No. 09-20177 (Bankr. E.D. Wis. Jan. 8, 2009)	Uncontested	Canada	Recognized as a foreign main proceeding
<i>In re Crila Plastics Industries Inc.</i> , No. 09-20179 (Bankr. E.D. Wis. Jan. 8, 2009)	Uncontested	Canada	Recognized as a foreign main proceeding
<i>In re CPI Plastics Group Inc.</i> , No. 09-20180 (Bankr. E.D. Wis. Jan. 8, 2009)	Uncontested	Canada	Recognized as a foreign main proceeding
<i>In re CPI Plastics Plastics Group (Canada) Ltd.</i> , No. 09-20181 (Bankr. E.D. Wis. Jan. 8, 2009)	Uncontested	Canada	Recognized as a foreign main proceeding
<i>In re Armada (Singapore) Pte. Ltd.</i> , No. 09-10105 (Bankr. S.D.N.Y. Jan. 7, 2009)	Uncontested	Republic of Singapore	Pending

For previous significant chapter 15 bankruptcy filings, see {BALR <GO>}.

Bankruptcy News

Bill Rochelle Daily Bankruptcy News Wrap-Up May 11 (Bloomberg) —

A minority of secured creditors calling themselves the non-TARP lenders withdrew their opposition to the proposal by Chrysler LLC to spin off plants into a new company in which Italy's Fiat SpA initially would hold a 20 percent stake. Tom Lauria, a lawyer for lenders who held \$295 million of \$6.9 billion in first-lien claims, said the group threw in the towel because they didn't "have critical mass to withstand the enormous pressure and machinery of the U.S. government." The group called themselves the non-TARP lenders because they were investors in Chrysler debt who received none of the government bailout given financial institutions under the Troubled Assets Relief Program. The majority of secured creditors agreed to take \$2 billion in return for the plants being transferred to the new company. The non-TARP creditors objected because they would only see a 29 percent recovery while billions of dollars in claims of unsecured creditors are to be paid in full by the new company. OppenheimerFunds Inc. and Stairway Capital Management LP are among the minority of secured lenders who gave up the fight. Lauria unsuccessfully opposed the sale process at a May 5 hearing where he argued that the end result violates fundamental principles of bankruptcy law. The bankruptcy judge signed an order formally scheduling a May 27 hearing to approve transferring the core businesses to "new" Chrysler. Anyone who has an objection to the sale must file papers by May 19. The eight-day headroom between the objection deadline and the sale-approval hearing gives Chrysler time to work out objections that may be filed by other creditors. In bankruptcy sales, there are often technical objections filed by creditors who are parties to contracts that are being sold to the purchaser. The bankruptcy judge scheduled a May 14 hearing to decide whether an official committee should be appointed to represent retirees. The U.S. government is to get 8 percent of the stock in new Chrysler in return for providing a \$6 billion secured loan to support the business after the sale. A trust to provide health-care benefits for retirees will be a 55 percent shareholder. The government also is providing a \$4.5 billion loan for the reorganization. After the sale is completed, the government will supply a \$200 million loan to finance the liquidation of the remainder of the assets. Cerberus Capital Management LP and a group of investors acquired Chrysler from Daimler AG in 2007 for \$7.4 billion. Cerberus and Daimler will have no ownership of new Chrysler. Chrysler, the smallest U.S. automaker, listed assets for \$39.3 billion and debt totaling \$55.2 billion. Revenue in 2008 was \$48.5 billion.

The case is *In re Chrysler LLC*, 09-50002, U.S. Bankruptcy Court, Southern District of New York (Manhattan).

Staple and Nail-Machine Maker Sencorp Files for Sale

Sencorp, a manufacturer of pneumatic and battery-powered staplers, nailers and screw systems, filed a chapter 11 petition on May 8 in its Cincinnati hometown with an agreement to sell the business for \$43 million cash plus debt assumption to Wynnchurch Capital Ltd. Sencorp said in a court filing that Wynnchurch requires a "relatively expedited sale process" where the deadline for court approval is July 7. The company is therefore asking the bankruptcy judge to require other bids by June 19, followed by a June 24 auction and a June 26 hearing for approval of the sale. The company wants the bankruptcy judge to hold a May 22 hearing to set up sale procedures. At filing, Sencorp owed \$23 million to secured lenders on a revolving credit and term loan. Bank of America NA is agent for the lenders. The lenders are to provide financing for the chapter 11 case by rolling over their pre-bankruptcy loans into post-bankruptcy secured debt. Sencorp said the business was unable to continue without resort to chapter 11 as a result of high steel prices last year and the effects of the decline in construction. The petition said assets and debt both exceed \$50 million.

The case is *In re Sentron Medical Inc.*, 09-12872, U.S. Bankruptcy Court, Southern District of Ohio (Cincinnati).

Florida Porsche Audi Dealer Files in Fort Lauderdale

Champion Motors of Pompano Beach, Florida, filed for bankruptcy reorganization on May 7 in Fort Lauderdale. Champion calls itself the world's largest Porsche dealer. The dealership also sells Audis from two locations. The petition says assets and debt are both from \$10 million to \$50 million.

The case is *In re Copans Motors Inc.*, 09-18807, U.S. Bankruptcy Court, Southern District Florida (Fort Lauderdale).

Designline, New Jersey General Contractor, Files in Trenton

Designline Construction Services Inc., a contractor based in Eatontown, New Jersey, filed for chapter 11 reorganization on May 7 in Trenton, saying assets and debt both exceed \$10 million. The company, a general contractor on commercial projects, owes \$2.4 million to secured lender PNC Bank NA. A court filing says another \$15 million is owed to unsecured creditors. Designline resorted to chapter 11 as a consequence of what a court filing called the "severe downturn in the economy" resulting in "liquidity pressures." The company filed papers on the first day in bankruptcy asking the bankruptcy judge to prevent subcontractors from filing liens on projects where they hadn't been paid. Designline said that owners of the projects would throw the company off the jobs if liens are filed. Designline says it has 26 continuing projects in 26 states.

The case is *In re Designline Construction Services Inc.*, 09-21745, U.S. Bankruptcy Court, District of New Jersey (Trenton).

Eve-of-Foreclosure Filing Is Bad Faith, Fifth Third Says

The chapter 11 reorganization begun May 6 by VP Phase IV Ltd. won't last long if lender Fifth Third Bank has anything to say in the matter. The Cincinnati-based bank obtained a judgment from a Florida court allowing foreclosure of a \$15.3 million mortgage on the partially completed commercial condominium in Orlando, Florida. Only one condominium unit out of 50 has been sold. VP Phase IV filed bankruptcy the afternoon before the scheduled foreclosure sale, thus automatically blocking the bank from taking away title the next day. The bank says the bankruptcy filing was in "bad faith" and should be dismissed. In case the judge doesn't buy the bad-faith-filing idea, Fifth Third wants the so-called automatic stay to be terminated so it can complete foreclosure. The bank contends foreclosure is appropriate because an appraisal says the building is only worth \$10 million. The building is part of the Veranda Park development in the Metro West section of Orlando.

The case is *In re VP Phase IV Ltd.*, 09-06253, U.S. Bankruptcy Court, Middle District of Florida (Orlando).

Orlando Condo Developer Files in Hometown Owing \$38 Million

KA & JM Development Inc., the developer of a 176-unit residential condominium project in Orlando, Florida, filed a chapter 11 petition on May 6 in its hometown. The development owes \$38.2 million to the secured lender SunTrust Bank. No units have been sold, a court filing says. The property is in a project known as Villas at Lake Eve.

The case is *In re KA & JM Development Inc.*, 09-06245, U.S. Bankruptcy Court, Middle District Florida (Orlando).

PGI, Direct-Mail Provider, Files in Minneapolis

PGI Cos., a direct-mail services provider from Hopkins, Minnesota, filed a chapter 11 petition on May 7 in Minneapolis, saying assets are less than \$10 million while debt exceeds \$10 million.

The case is *In re PGI Cos.*, 09-42883, U.S. Bankruptcy Court, District of Minnesota (Minneapolis).

Tomato Processor SK Headed for Chapter 11 Involuntarily

Creditors filed an involuntary chapter 11 petition last week in Sacramento, California, against tomato grower and processor SK Foods LP and affiliate RHM Supply/Specialty Foods Inc. Monterey, California-based SK said it was preparing to file voluntarily in chapter 11 when lenders filed the involuntary petition. The company employs 2,500 workers during the processing season.

The cases are *In re SK Foods LP* and *In re RHM Supply/Specialty Foods Inc.*, 09-28955 and 09-28956, both in U.S. Bankruptcy Court, Eastern District California (Sacramento).

W.R. Grace & Co., the specialty-chemical manufacturer in bankruptcy reorganization for more than eight years, was acquitted by a federal court jury in Missoula, Montana, on all criminal charges arising from asbestos contamination in a Montana town named Libby. Former Grace executives also were acquitted on May 8 after an 11-week trial. The bankruptcy court in Delaware has approved Grace's disclosure statement allowing creditors to vote on a reorganization plan in anticipation of the final phase of plan confirmation hearings culminating in September. The chapter 11 plan is based a settlement from April 2008 resolving all present and future asbestos personal injury claims and asbestos property damage claims. Columbia, Maryland-based Grace and 61 subsidiaries filed chapter 11 petitions in April 2001 to deal with asbestos claims. Grace rose \$3.43 on May 8 to \$13.06 in New York Stock Exchange. The stock, which bottomed out at \$4.07 on March 5, recorded a two-year high of \$30.65 on Oct. 12, 2007. The stock was trading around \$26 as recently as August.

The case is *In re W.R. Grace & Co.*, 01-01139, U.S. Bankruptcy Court, District of Delaware (Wilmington).

The trustee for Bernard L. Madoff Investment Securities Inc., the largest Ponzi scheme in history, announced the creation of a program for expedited review and approval of claims of customers facing hardships such as the need to file bankruptcy or inability to pay living or medical expenses. An approved claim can receive up to \$500,000 from the fund administered by the Securities Investor Protection Corp. The creation of the hardship program comes a day after the trustee sued Gabriel Capital LP and its managing partner Ezra Merkin saying they withdrew more than \$500 million of "non-existent" principal on behalf of investment funds when people within their own organization suspected a fraud was being conducted. Bernard Madoff, the firm's founder, was arrested in December and pleaded guilty in March to defrauding investors of as much as \$65 billion. He faces a prison term of as much as 150 years. The Madoff firm's liquidation in U.S. Bankruptcy Court began in December when the trustee was appointed under the Securities Investor Protection Act. Madoff went into an involuntary chapter 7 liquidation in April. The trustee for the firm is now seeking to consolidate Madoff's individual chapter 7 bankruptcy into the SIPA liquidation of the broker.

The SIPA case is *Securities Investor Protection Corp. v. Bernard L. Madoff Investment Securities Inc.*, 08-01789, U.S. Bankruptcy Court, Southern District of New York (Manhattan). Madoff's individual chapter 7 bankruptcy is *In re Bernard Madoff*, 09-11893, U.S. Bankruptcy Court, Southern District of New York (Manhattan).

Stock Building Supply Holdings LLC, the building materials supplier that entered chapter 11 last week to complete the sale of 51 percent ownership to investor Gores Group LLC, received bankruptcy court approval for an interim \$60 million loan provided by Wolseley Plc, which had been the 100 percent owner. The final financing hearing, where

the loan is scheduled for an increase to \$100 million, will be held May 28. The petition was accompanied by a chapter 11 plan proposing to pay all secured and unsecured creditors in full other than U.K.-based Wolseley. Gores is to invest \$75 million in preferred equity while providing a \$125 million revolving credit.

The case is *In re Stock Building Supply Holdings LLC*, 09-11554, U.S. Bankruptcy Court, District of Delaware (Wilmington).

Thornburg Mortgage Inc., the jumbo mortgage-loan maker that filed a chapter 11 petition on May 1, has an official creditors' committee with seven members, including three indenture trustees, three investors or their advisers, and the DuPont Pension Trust. Thornburg said it will either liquidate or sell the assets while allowing lenders to take possession of their collateral. The petition listed assets of \$24.4 billion and debt totaling \$24.7 billion as of Jan. 31, including \$304 million owing on 8 percent senior unsecured notes, \$1.3 billion on senior subordinated notes, and \$214 million on junior subordinated notes. The Santa Fe, New Mexico-based company listed assets and debt both exceeding \$26 billion on the Sept. 31 balance sheet.

The case is *In re Thornburg Mortgage Inc.*, 09-17787, U.S. Bankruptcy Court, District of Maryland (Baltimore).

The question of who will provide new financing for shopping mall owner General Growth Properties Inc. was undecided at the conclusion of a hearing on May 8. The chapter 11 filing by General Growth and its affiliates on April 16 was the largest real estate bankruptcy in U.S. history. The balance sheet of Chicago-based General Growth had assets of \$29.6 billion and \$27.3 billion in total liabilities as of Dec. 31. It owns some 200 shopping mall properties.

The case is *In re General Growth*, 09-11977, Bankruptcy Court, U.S. District Court, Southern District of New York (Manhattan).

Crucible Materials Corp., a steelmaker for the auto and aerospace industries, received permission from the bankruptcy court last week to continue receiving secured loans from the pre-bankruptcy lenders. The final hearing on financing will be held May 28. The maximum credit, initially \$69.4 million, will begin decreasing after May 29. Syracuse, New York-based Crucible filed in chapter 11 on May 6 in Delaware. The petition said assets and debt both exceed \$100 million, with \$64.5 million owing to the secured lenders. Crucible is owned by its 1,000 employees. It has two plants and 12 regional service centers.

The case is *In re Crucible Materials Corp.*, 09-11582, U.S. Bankruptcy Court, District of Delaware (Wilmington).

Frontier Airlines Inc. made a third request to extend so-called exclusivity. If the bankruptcy court goes along at a May 27

hearing, no one could file a competing chapter 11 plan before Oct. 9. Frontier believes it will emerge from bankruptcy reorganization this year. To do so requires the negotiation of an exit financing package, the exclusivity motion says. With 62 aircraft serving 70 destinations when it began reorganizing in April 2008, Frontier now has 51 mainline aircraft and 10 regional jets serving 50 destinations. It has reduce capacity by 20 percent in the last year. Frontier is the second-largest carrier operating from Denver, where it competes with United Airlines Inc. The petition listed assets of \$1.1 billion against liabilities totaling \$546 million. Debt includes \$454 million in secured claims and \$89 million in unsecured claims. Among seven passenger airlines seeking bankruptcy protection since late 2007, Frontier and Sun Country Airlines Inc. are the only ones still operating.

The case is *In re Frontier Airlines Holdings Inc.*, 08-11298, U.S. Bankruptcy Court, Southern District of New York (Manhattan).

Chemtura Corp., a specialty chemical manufacturer, reported a \$94 million net loss in the first quarter on \$517 million revenue, compared with \$909 million in sales during the first quarter of 2008. The operating loss for the quarter was \$29 million. Chemtura has \$400 million in financing for the reorganization begun in March. The committee said it was prepared to file a lawsuit knocking out the security interest the lenders were given within 90 days before bankruptcy. The petition by Middlebury, Connecticut-based Chemtura listed assets of \$3.06 billion against debt totaling \$2.6 billion, including \$1.02 billion owing on three issues of notes and debentures. Sales in 2008 were \$3.5 billion. The subsidiaries outside of the U.S. did not file.

The case is *In re Chemtura Corp.*, 09-11233, U.S. Bankruptcy Court, Southern District New York (Manhattan).

Ritz Camera Centers Inc., whose 800 locations made it the largest chain of camera stores in the U.S. when it entered chapter 11 on Feb. 22, filed an operating report showing a \$14 million net loss from the beginning of the case through March 31 on sales of \$55.3 million. Before an income tax benefit, the net loss was \$23.1 million. Ritz is closing 400 stores in addition to all 129 Boater's World Marine Centers. The debt of Bettsville, Maryland-based Ritz includes \$54.5 million on a secured revolving credit agreement, for which Wachovia Bank NA serves as agent, and \$13.1 million owed on subordinated debentures. The petition said assets and debt are both less than \$500 million.

The case is *In re Ritz Camera Centers Inc.*, 09-10617, U.S. Bankruptcy Court, District of Delaware (Wilmington).

Business consultant BearingPoint Inc. announced the completion of the sale of the public-services group to Deloitte LLP. The price was \$350 million. BearingPoint's commercial services business goes up for auction May 27, with bids due May 25. On filing for reorganization in February, BearingPoint

intended a traditional reorganization by handing out new stock to unsecured creditors and holders of \$690 million in subordinated notes. By March, the company decided to sell the businesses. Once the consulting arm of KPMG LLP, BearingPoint was spun off in 2000 and went public in 2001. The petition listed assets of \$1.76 billion against debt totaling \$2.23 billion.

The case is *In re BearingPoint Inc.*, 09-10691, U.S. Bankruptcy Court, Southern District New York (Manhattan).

May 12 (Bloomberg) —

Auto-parts maker Hayes Lemmerz International Inc. is back in bankruptcy after emerging from chapter 11 with a confirmed reorganization plan in May 2003. In the new reorganization begun late yesterday in Delaware, the Northville, Michigan-based company intends only to restructure the balance by reducing debt and giving substantially all of the stock to existing lenders who are providing a new \$100 million loan for the chapter 11 effort. Hayes Lemmerz, a manufacturer of aluminum and steel wheels, has 23 facilities in 12 countries. With one exception, the non-U.S. affiliates aren't in bankruptcy. Revenue was \$2.2 billion for the fiscal year ended in January. The petition listed \$1.34 billion in assets against debt totaling \$1.4 billion, including \$670 million in funded debt. Obligations on loans include \$125 million on a revolving credit, \$19.1 million on letters of credit, and 130 million euros (\$178 million) in unsecured notes. Confirmation of the prior chapter 11 plan concluded a 16-month reorganization that dealt with \$2.6 billion in debt. Secured creditors received \$453.5 million in cash, \$25 million in new notes, and 53.1 percent of the new equity. Senior noteholders took \$13 million in cash plus 44.9 percent of the new stock. Unsecured creditors got 2 percent of the new stock. Hayes Lemmerz hadn't generated an annual profit since emerging from bankruptcy. It blamed the new filing on the decline in auto production and the contraction in the credit markets.

The case is *In re Hayes Lemmerz International Inc.*, 09-11655, U.S. Bankruptcy Court, District of Delaware (Wilmington).

Chrysler's Utilities Demand More Protection from Non-Payment

The proposal by Chrysler LLC to deposit \$6 million to cover an estimated two weeks' reduced usage of utilities isn't sufficient, power companies argued to the bankruptcy court in New York. Even with plants closed down, the power companies contend that two weeks of utility usage costs more than \$8 million. Congress changed bankruptcy law in 2005 by requiring companies in reorganization to make deposits or post letters of credit to prevent utilities from suffering losses if the business in chapter 11 can't pay its bills. Verizon Communications Inc. wants a deposit of

more than \$4 million, representing two months' usage of communications services. Nicor Gas says it's entitled to \$2.5 million for itself, while Chrysler is proposing only \$13,000. The bankruptcy court in New York will sort out the utility deposit question at a May 14 hearing. The bankruptcy judge in New York will hold a hearing on May 27 to consider approving a transaction in which the core of Chrysler's business will be transferred to a new company initially owned 20 percent by Italy's Fiat SpA, 55 percent by a trust to provide health-care benefits for retirees, and 8 percent by the U.S. government. A group of investors who owned a portion of Chrysler's \$6.9 billion in debt last week withdrew their opposition to the transfer in which their security interests in the assets being transferred would be satisfied by a \$2 billion payment. Cerberus Capital Management LP and a group of investors acquired Chrysler from Daimler AG in August 2007 for \$7.4 billion. Cerberus and Daimler will have no ownership of new Chrysler. Chrysler, the smallest U.S. automaker, listed assets for \$39.3 billion and debt totaling \$55.2 billion in the chapter 11 petition filed April 30. Revenue in 2008 was \$48.5 billion.

The case is *In re Chrysler LLC*, 09-50002, U.S. Bankruptcy Court, Southern District of New York (Manhattan).

Madoff Chapter 15 Case Moved to New York From Florida

The chapter 15 case filed in Florida in mid-April by the U.K. liquidator of Madoff Securities International Ltd., a U.K.-based affiliate of Bernard L. Madoff Investment Securities Inc., was moved last week to New York. Creditors filed a change-of-venue motion in April. The chapter 15 case, not a full-blown bankruptcy, was intended to help the U.K. liquidators collect assets in the U.S. belonging to the U.K. affiliate. The chapter 15 case was transferred to New York because the U.K. company and the U.S. parent are affiliates. When one company among affiliates is already in bankruptcy court, the judge with the older case is entitled to decide whether newly filed bankruptcies should be heard in the court where the first-filed case is pending. In this instance, the bankruptcy judge in New York ruled last week that all of the Madoff cases should be in his court. Bernard Madoff, the firm's founder, was arrested in December and pleaded guilty in March to defrauding investors of as much as \$65 billion. He faces a prison term of as long as 150 years. The Madoff firm's liquidation in U.S. Bankruptcy Court began in December, when the trustee was appointed under the Securities Investor Protection Act. Madoff went into an involuntary chapter 7 liquidation in April. The trustee for the firm is now seeking to consolidate Madoff's individual chapter 7 bankruptcy into the SIPA liquidation of the broker.

The SIPA case is *Securities Investor Protection Corp. v. Bernard L. Madoff Investment Securities Inc.*, 08-01789, U.S. Bankruptcy Court, Southern District of New York (Manhattan). Madoff's individual chapter 7 bankruptcy is *In re Bernard Madoff*, 09-11893, U.S. Bankruptcy Court, Southern District of New York (Manhattan).

Nortel Networks Reports \$507 Million Quarterly Loss

Nortel Networks Corp. reported a \$507 million first-quarter net loss on revenue of \$1.73 billion. Sales were down 37 percent from the same quarter in 2008. The net loss in the first quarter last year was \$138 million. Nortel agreed to sell two buildings and land in Calgary to the city government for C\$97 million (\$83 million). The property is known as the Westwinds Facility. The Toronto-based Nortel companies, North America's largest telecommunications-equipment providers, filed for bankruptcy reorganization on Jan. 14 in the U.S., Canada and the U.K. Among all of the Nortel companies together, there are \$11.6 billion in consolidated assets, against debt totaling \$11.8 billion as of Sept. 30. Revenue was \$9.7 billion in 2007. For the first nine months of 2008, sales were \$6.8 billion.

The chapter 11 case is *In re Nortel Networks Inc.*, 09-10138, and the parent's chapter 15 case is *In re Nortel Networks Corp.*, 09-10164, both in U.S. Bankruptcy Court, District of Delaware (Wilmington).

Greenbrier Hotel Scheduled for May 19 Dismissal Hearing

After Greenbrier Hotel Corp. announced last week that the non-bankrupt company owning the hotel had been sold for \$20 million to West Virginia businessman James C. Justice II, the historic resort in White Sulphur Springs, West Virginia, filed a motion to dismiss the chapter 11 reorganization begun March 19. Since all third-party debt will be paid in full, the hotel says that remaining in chapter 11 only adds expense and drives away customers while providing no practical benefit. Justice agreed to return the deposit and pay the breakup fee owed to Marriott International Inc., which had a contract to buy the property through the bankruptcy process. The dismissal motion says the breakup fee is the only damages that Marriott may seek as a consequence of not being able to complete the purchase. Justice agreed to maintain operations for at least two years. He also acquired the debt the hotel owes to its previous owner, CSX Corp. For its part, CSX assumed the hotel's pension obligations. The motion for dismissal will be the subject of a May 19 hearing in U.S. Bankruptcy Court in Richmond, Virginia. The resort has no secured debt. The hotel owed \$91 million to CSX, representing unsecured loans made over the years to cover losses. The Greenbrier has 700 rooms, three golf courses, tennis courts and a spa.

The case is *In re Greenbrier Hotel Corp.*, 09-31703, U.S. Bankruptcy Court, Eastern District of Virginia (Richmond).

Smurfit-Stone Reports First-Quarter Operating Loss

Smurfit-Stone Container Corp., the corrugated container and containerboard maker that entered chapter 11 in January, reported a first-quarter operating loss of \$6 million on revenue of \$1.37 billion. In the same quarter last year, the operating profit was \$20 million on \$1.8 billion in revenue. For the quarter

ended March 31, Smurfit-Stone had a net loss of \$217 million, compared with a \$16 million net loss in last year's quarter. The latest quarter's costs included \$54 million in reorganization items. The chapter 11 petition by the Chicago-based company listed assets of \$7.45 billion against debt totaling \$5.58 billion as of Sept. 30. Debt includes \$1.2 billion under secured revolving credit and term-loan agreements, five issues of unsecured notes totaling \$2.275 billion, \$388 million under an accounts receivable securitization facility and \$284 million owed on tax-exempt bonds.

The case is *In re Smurfit-Stone Container Corp.*, 09-10235, U.S. Bankruptcy Court, District of Delaware (Wilmington).

For National Dry Cleaners, Some to Convert, Some to Confirm

Two affiliates of National Dry Cleaners Inc., Pride Cleaners Inc. and DCI Management Group Inc., filed their own liquidating chapter 11 plan, obtained the bankruptcy judge's approval of the disclosure statement and scheduled a hearing for May 29, when the judge will be asked to approve the plan by signing a confirmation order. The plan was made possible by a settlement with the secured lender that gives 6.25 percent of sale proceeds to unsecured creditors. Even with the settlement, 10 of the affiliated companies decided it would be impossible for them to confirm even a liquidating plan and therefore filed a motion for conversion of their cases to liquidations in chapter 7. The conversion motion also is scheduled for hearing on May 29. Unsecured creditors of the two companies with the plan are expected to receive less than 10 percent on their claims totaling about \$5 million. Assets sales for the two companies generated more than \$6.2 million. The plan was proposed by the companies and the official creditors' committee. The two companies were part of a group of 231 dry-cleaning stores in nine states. Court papers say \$34.6 million was owed to the secured lender. National operated under the names Tuchman Cleaners, DryClean USA, Pride Cleaners and Al Phillips the Cleaner. The company once generated more than \$70 million in sales.

The case originally was *In re National Dry Cleaners Inc.*, 08-11382, U.S. Bankruptcy Court, District of Delaware (Wilmington). After the 10 cases are converted to chapter 7, the remaining companies in chapter 11 will be *In re DCI Management Group Inc.*, 08-11392, in the same court.

Shearin Litigating With Unit Purchasers Over Status

Shearin Family Investments LLC, owner of the Nautical Club condominiums in North Carolina's Outer Banks, is litigating with two groups of purchasers who paid in full for condominium units. The buyers contend they are entitled vote as secured creditors on the pending reorganization plan. The buyers say the money they paid is in a so-called constructive trust, thus giving them the status of secured creditors. The company disagrees and believes they are

unsecured creditors. Meanwhile, the company's lawyer said she will modify the plan that was originally scheduled for a confirmation hearing in April. The original plan was intended to pay secured creditors in full from the proceeds of unit sales. Secured claims total more than \$35 million. The disclosure statement says unsecured creditors with claims totaling more than \$11.5 million will split up \$100,000. The company listed assets of \$46.3 million against debt totaling \$49.3 million in its chapter 11 petition.

The case is *In re Shearin Family Investments LLC*, 08-07082, U.S. Bankruptcy Court, Eastern District of North Carolina (Wilson).

Luggage Marketer Randa Files in Delaware, Seeks Asset Sale

Randa Luggage Inc., a luggage marketer based in Totowa, New Jersey, filed a chapter 11 petition yesterday in Delaware for what it called a "prompt sale" of assets to the first-lien lender, Adnar Finance LLC. Court papers say Adnar is owed \$23 million on the first-lien financing, while another \$16.9 million is outstanding on second-lien debt. Randa manufactures, distributes and markets luggage, bags, backpacks and briefcases under brand names including Tommy Bahama, Nautica, Diane von Furstenberg, Perry Ellis and Liz Claiborne. A court filing says trade suppliers and unsecured creditors are owed less than \$1 million. Assets on the filing date include \$5.2 million cash and inventory with a book value of \$12 million. Sales in 2008 were \$56 million. Randa says it was forced to use bankruptcy for selling the assets as a result of lower consumer spending and reductions in travel. Adnar is to provide \$16 million in financing for the chapter 11 effort. Randa was previously known as Badanco Enterprises Inc.

The case is *In re Badanco Acquisition LLC*, 09-11638, U.S. Bankruptcy Court, District of Delaware (Wilmington).

High Plains Real Estate Files in Salt Lake With Mostly Debt

High Plains Real Estate Group LLC of Salt Lake City filed a chapter 11 petition on May 9 in its hometown, listing secured creditors with claims totaling \$5.5 million. The petition says assets are less than \$50,000 while debt exceeds \$100 million.

The case is *In re High Plains Real Estate Group LLC*, 09-24765, U.S. Bankruptcy Court, District of Utah (Salt Lake City).

Idaho Residential Developer Files Chapter 11 in Boise

River Woods LLC, the developer of a riverfront property in Cascade, Idaho, with 120 residential lots, filed a chapter 11 petition yesterday in Boise. The petition listed debt totaling \$16 million, with almost all owed to the Federal Deposit Insurance Corp. as receiver for Silver State Bank. The project is some 80 miles from Boise. So far, 72 lots were

developed, court papers say. The property was listed with a value of \$12 million.

The case is *In re River Woods LLC*, 09-01263, U.S. Bankruptcy Court, District of Idaho (Boise).

Dana Tenders to Purchase Term Loan at Deep Discount

Auto parts maker Dana Holding Corp. announced a Dutch auction tender offer in which it will purchase as much as 10 percent of its existing \$1.26 billion term loan at prices between 40 percent and 44 percent of face value. Even if the tender offer is successful, Standard & Poor's said yesterday that there is a "risk" of violating loan covenants later this year when they tighten, "if industry conditions worsen." S&P said its "preliminary expectation" is that the corporate rating won't climb above B if the offer is successful. In a Dutch auction, the holder of the security specifies the price it will accept within a range. The company selects the lowest offers. Dana emerged from bankruptcy reorganization in February 2008. The plan gave creditors with \$3 billion in claims a projected recovery between 72 percent and 86 percent through distribution of new common stock. The projected recovery was based on an assumption the new stock had a midpoint estimated value of \$22.03 a share. The stock closed yesterday at \$2.02, down 22 cents a share in over-the-counter trading. Toledo, Ohio-based Dana filed under chapter 11 in March 2006, listing assets of \$7.9 billion and \$6.8 billion in debt.

The chapter 11 case was *In re Dana Corp.*, 06-10354, U.S. Bankruptcy Court, Southern District of New York (Manhattan).

Marc Dreier, the founder of the law firm bearing his name, pleaded guilty yesterday to charges of money laundering, conspiracy, securities fraud and wire fraud in a scheme that cost victims \$400 million, prosecutors alleged. Dreier, who had no plea agreement, faces a possible life sentence. His lawyer will seek leniency for Dreier's cooperation with prosecutors and the bankruptcy trustee. He will be sentenced July 13. For now, he remains under house arrest with a \$10 million bond. The firm he founded, Dreier LLP, once had 250 lawyers. It is being liquidated in bankruptcy court under chapter 11. Dreier himself is now in a chapter 7 liquidation.

The chapter 11 case for the firm is *In re Dreier LLP*, 08-15051, U.S. Bankruptcy Court, Southern District New York (Manhattan). The criminal case is *U.S. v. Dreier*, 08-mag-2676, U.S. District Court, Southern District of New York (Manhattan). The civil case is *SEC v. Dreier*, 08-cv-10617, U.S. District Court, Southern District of New York (Manhattan). Dreier's individual chapter 7 case is 09-10371, U.S. Bankruptcy Court, Southern District New York (Manhattan).

Morton Industrial Group Inc., a manufacturer of engineered components and subassemblies for construction and agricultural equipment that filed for bankruptcy reorganization on March 22, has a buyer willing to pay \$33 million for

the assets and serve as the so-called stalking horse at the previously scheduled auction on May 15. Other bids are due May 13. The hearing for approval of the sale is set for May 21. The Morton, Illinois-based company has five plants that generated \$208 million in sales during 2008. Debt includes \$14.4 million on a secured revolving credit, \$33.3 million on a secured term loan and \$27.4 million on subordinated notes. Another \$14.8 million is owing to trade suppliers.

The case is *In re MMC Precision Holdings Corp.*, 09-10998, U.S. Bankruptcy Court, District of Delaware (Wilmington).

Ritz Camera Centers Inc., once the largest chain of camera stores in the U.S. with 800 locations, will hold a May 27 auction to sell leases at the 400 shops it's closing. Bids are due May 21. The sale-approval hearing is scheduled for June 23. Ritz filed under chapter 11 in February. It previously closed all 129 Boater's World Marine Centers. The debt of Beltsville, Maryland-based Ritz includes \$54.5 million on a secured revolving credit agreement where Wachovia Bank NA serves as agent. There is also \$13.1 million owing on subordinated debentures. The petition said that assets and debt are both less than \$500 million.

The case is *In re Ritz Camera Centers Inc.*, 09-10617, U.S. Bankruptcy Court, District of Delaware (Wilmington).

Foothills Resources Inc., an independent oil and natural gas exploration and production company that entered chapter 11 in February, filed a motion asking the bankruptcy court in Delaware for a four-month extension of the exclusive right to submit a chapter 11 plan. Exclusivity, as it is known, currently will expire on June 11. Given the complexity of the business, Foothills said it's not feasible to promulgate a plan in the first four months of the bankruptcy reorganization. Foothills has agreement with the lender, Regiment Capital Special Situations Fund III LP, for a five-month extension of \$2.5 million in financing that was to mature May 19. The petition and a regulatory filing listed assets of \$89.5 million and debt totaling \$78.8 million as of Sept. 30, with \$71.2 million owed to secured creditors on term loan and revolving credit agreements. Foothills' properties are on the Texas Gulf Coast, in Northern California and in western Oklahoma. Foothills attempted unsuccessfully to sell assets before the chapter 11 filing.

The case is *In re Foothills Texas Inc.*, 09-10452, U.S. Bankruptcy Court, District of Delaware (Wilmington).

May 13 (Bloomberg) —

R.R. Donnelley & Sons Co. made a proposal yesterday to buy Quebecor World Inc. for \$1.35 billion in cash and stock. Donnelley says its offer is superior to the chapter 11 plan filed in April by Quebecor, the second-largest commercial printer in the U.S. Donnelley's offer was in a letter stating a non-binding "indication of interest." Donnelley's offer includes

\$700 million cash plus 15 percent of Donnelley's stock worth \$394 million at the May 11 closing price. Donnelley would also pay for the \$257 million cash Quebecor is expected to have on hand when a plan confirms. Chicago-based Donnelley, a commercial printer and provider of related services, said it's prepared to buy the business before or in connection with confirmation of a reorganization plan. Quebecor's plan calls for giving unsecured creditors notes for 50 percent of their claims so long as claims in the class don't exceed \$150 million in total. The revolving credit lenders, owed \$735 million, and equipment financing lenders, owed \$184 million, are to receive a combination of cash, common stock, and preferred stock, for a recovery estimated to be worth between 85 percent and 88 percent. The revolving credit includes \$135.6 million that's a secured claim. New common stock and warrants would go to the holders of \$1.45 billion in unsecured notes to produce a dividend estimated to be worth 10 percent to 15 percent. The plan was negotiated with the creditors' committee. A hearing is scheduled for May 15 to consider approving the disclosure statement explaining the Quebecor plan. The Quebecor parent is being reorganized in Canada alongside the U.S. subsidiaries' chapter 11 reorganizations in the U.S. In addition, the parent filed a chapter 15 petition at the end of September in the U.S. to gain assistance from the U.S. Court for its Canadian reorganization. The bankruptcy reorganizations began in January 2008.

The chapter 11 case in New York is *In re Quebecor World (USA) Inc.*, 08-10152, U.S. Bankruptcy Court, Southern District New York (Manhattan). The chapter 15 case is *In re Quebecor World Inc.*, 08-13814, in the same court.

Credit Suisse's Yellowstone Loan Shocks Court's Conscience

The actions of Credit Suisse Group AG in making a \$375 million secured loan to Yellowstone Mountain Club LLC were "so far overreaching and self-serving that they shocked the conscience of the Court," U.S. Bankruptcy Judge Ralph B. Kirscher ruled in an opinion yesterday where he told Credit Suisse that the recovery on its secured loan must come after payment to unsecured creditors. Kirscher, a bankruptcy judge in Butte, Montana, said the facts supported his conclusion that "equitable subordination is an appropriate remedy." Credit Suisse sold the loan to Yellowstone, a private ski and golf resort for the ultra-wealthy in Big Sky, Montana, so the developer, Timothy Blixseth, could take out his profit up front, Kirscher said. A key feature of the loan, according to Kirscher, was a plan for Blixseth to transfer \$209 million to himself immediately after the loan was made to the company. After the loan, the judge said creditors "bore all the risk of loss" because Yellowstone was "too thinly capitalized to survive." At that point, according to Kirscher, the project was "doomed to failure." "We are disappointed in this ruling and disagree with the court's findings," Duncan King, a Credit Suisse spokesman, said in a phone interview. "We are weighing our options at this time." Kirscher issued a second opinion yesterday ruling that Credit Suisse's collateral is worth \$232 million. If Credit Suisse

elects to participate at today's auction, it must bid enough cash to pay other creditors' claims in full as a consequence of being equitably subordinated. May 18 is the date for a hearing on confirmation of Yellowstone's chapter 11 plan. The plan contemplates a sale of the facility to private-equity investor CrossHarbor Capital Partners LLC for \$100 million, consisting of \$30 million cash and a note for \$70 million. To insure the CrossHarbor offer is the best, Kirscher directed that an auction be held. The club is a 13,600-acre property just outside Yellowstone National Park.

The case is *In re Yellowstone Mountain Club LLC*, 08-61570, U.S. Bankruptcy Court, District of Montana (Butte).

Asarco Disclose Statement Approved, No Voting Just Yet

Arizona copper producer Asarco LLC succeeded in having the bankruptcy court approve a disclosure statement yesterday, although creditors won't be voting right away on the chapter 11 plan it explains. Asarco's parent Grupo Mexico SAB has until May 15 to file a competing reorganization plan under a time scheduled previously set down by U.S. Bankruptcy Judge Richard Schmidt in Corpus Christi, Texas. The judge in an order signed yesterday said he would consider approving a joint disclosure statement if Grupo Mexico files a plan. Voting on the plan must also await another motion Asarco will file to set up procedures. Creditors may end up having more than two plans from which to choose. Glencore Ltd. filed papers saying it made a proposal to parties in the case on April 21 about a plan it would sponsor. In addition, Harbinger Capital Partners Master Fund I Ltd. together with Citigroup Global Markets Inc., which say they together own two-thirds of Asarco's bonds and debentures, likewise said they had a discussion with the creditors' committee about sponsoring a plan to be funded by their purchase of the business. Harbinger and Citigroup made a run at buying Asarco this time last year and lost out to an offer from Sterlite Industries (India) Ltd., which later received the bankruptcy court's authorization to purchase the business for \$2.6 billion. Asarco was scheduled to confirm a plan in November until the sale fell though when Sterlite refused to complete the acquisition. Sterlite is a subsidiary of India's Vedanta Resources Plc. The bankruptcy judge in April authorized Asarco to sign a new contract with Sterlite for a price of \$1.1 billion cash and a non-interest bearing nine-year note for \$600 million. The lower price required changes in the plan and the accompanying disclosure statement the court approved yesterday. Sterlite will be the buyer unless someone makes higher offer at an auction in connection with the plan confirmation process. The new plan pays creditors less than the prior version Asarco couldn't confirm last year. Where unsecured creditors and bondholders originally were to have full payment on their claims that might have totaled almost \$1 billion, the entire body of unsecured creditors with claims possibly reaching \$2.4 billion are slated to receive between 60 percent and 75 percent under Asarco's modified plan. Unsecured creditors are to receive a combination of cash and collections from lawsuits prosecuted by a litigation trust. Under the revised plan, asbestos personal injury claimants,

with claims totaling between \$1.3 billion and \$2.1 billion, are likewise to receive between 60 percent and 75 percent. Grupo Mexico, which acquired Asarco for \$1.2 billion in stock in 1999, lost control in December 2005 when the bankruptcy judge set up a board of three, giving Grupo Mexico only one seat. Phoenix-based Asarco filed under chapter 11 in August 2005 to deal with asbestos claims.

The chapter 11 case is *In re Asarco LLC*, 05-21207, U.S. Bankruptcy Court, Southern District of Texas (Corpus Christi).

Madoff Trustee Sues Harley on Should Have Known Theory

The trustee for Bernard L. Madoff Investment Securities Inc. sued Harley International (Cayman) Ltd. yesterday demanding the return of more than \$1 billion in "non-existent principal and other investors' money" that was paid out over six year before the bankruptcy filing. The trustee for the largest Ponzi scheme in history charged in his complaint that Harley "knew or should have known that its account statements" did "not reflect legitimate trading activity and that Madoff was engaged in fraud." The trustee says there were 148 instances where Harley's account statement reflected securities transactions "outside the daily price range." Harley invested more than \$2 billion with Madoff between 1996 and the bankruptcy in 2008, the complaint says. Last week the trustee sued Gabriel Capital LP and its managing partner, Ezra Merkin. The Merkin suit contained allegations that employees for the investor had suspicions that a fraud was being conducted. The Harley complaint lacks similar allegations. As the Harley complaint is framed, it appears to rest on the theory that a sophisticated investor should have seen enough red flags to investigate whether there was a fraud. The complaint says that "many" banks and advisers "flatly refused" to invest with Madoff based on "serious concern" that the operation was not legitimate. The Harley complaint says \$1.073 billion was paid back in six years before bankruptcy. A six-year look-back is based on New York fraudulent transfer law. The complaint alleges that the transfers included \$1.066 billion within two years of bankruptcy and thus are recoverable under federal bankruptcy law as a fraudulent transfer. Finally, the complaint contends that \$425 million was sent back to Harley within 90 days of bankruptcy. The trustee is attempting to recover the 90-day payment as a so-called preference for which the trustee's burden of proof is easier still. Although the law in this area isn't crystal clear, some theories say an investor in a Ponzi scheme can be required to pay back fictitious profits even if the investor had no reason to believe a fraud was being conducted. A companion theory holds that an investor also can be compelled to return repayment of principal if the investor knew there was a fraud or had seen enough red flags to suspect that a fraud was being perpetrated. Bernard Madoff, the firm's founder, was arrested in December, pleaded guilty in March to defrauding investors of as much as \$65 billion and faces a prison term of up to 150 years. The Madoff firm's liquidation in U.S. Bankruptcy Court began in December, when the trustee was appointed under the Securities Investor Protection Act. Madoff went into an involuntary chapter 7

liquidation in April. The trustee for the firm now is seeking to consolidate Madoff's individual chapter 7 bankruptcy into the SIPA liquidation of the broker.

The SIPA case is *Securities Investor Protection Corp. v. Bernard L. Madoff Investment Securities Inc.*, 08-01789, U.S. Bankruptcy Court, Southern District of New York (Manhattan). Madoff's individual chapter 7 bankruptcy is *In re Bernard Madoff*, 09-11893, U.S. Bankruptcy Court, Southern District of New York (Manhattan).

Caruso Homes Files Plan for Owner to Retain Control

Caruso Homes Inc., a Maryland and Virginia homebuilder with 30 projects when it filed under chapter 11 in June 2008, submitted a proposed reorganization plan and disclosure statement that explains how the principal, Jeffrey V. Caruso, will retain ownership by making contributions allowing the business to continue after bankruptcy. So the company can continue building and selling homes, Caruso is to forgive the \$1.3 million he loaned the company during reorganization while funding the emerging company with \$750,000. Unsecured creditors, whose claims are estimated to total almost \$110 million, are expected to receive 2 percent to 5 percent paid in installments over time. The hearing for approval of the disclosure statement is set for July 15. Caruso filed alongside 24 affiliates, listing assets of \$16.1 million against debt totaling \$116 million. Debt includes \$110 million owed to secured creditors.

The case is *In re Caruso Homes Inc.*, 08-18254, U.S. Bankruptcy Court, District of Maryland (Baltimore).

Crusader Energy in the Money on Swap with JPMorgan

Crusader Energy Group Inc., an oil and gas exploration and production company, had a swap agreement with JPMorgan Chase Bank NA in which Crusader was owed more than \$3.1 million when the bank declared the swap terminated in March. Crusader and the New York-based bank agreed that half of the proceeds from the swap will go toward repayment of the financing for the chapter 11 effort. Crusader will receive the remainder for the operation of the business, even though it represents collateral for the secured lenders' claims. Oklahoma City-based Crusader filed in Dallas under chapter 11 on March 30, listing assets of \$750 million against debt totaling \$326 million. Debt includes \$30 million owed to the first-lien creditor and \$250 million to second-lien debt holders. Unsecured claims are about \$49 million, a court filing says. Crusader said the options in bankruptcy include a sale of "all or substantially all" of the assets.

The case is *In re Crusader Energy Group Inc.*, 09-31797, U.S. Bankruptcy Court, Northern District of Texas (Dallas).

Holding Company for Bank of Merced Files Chapter 11

Capital Corp. of the West, the holding company for County Bank of Merced, California, filed for chapter 11 protection on

May 11 in Fresno as a consequence of the bank's takeover in February by regulators. Capital Corp. had received a notice of default from the indenture trustee for \$25.8 million in floating rate junior subordinated debentures due 2037 alleging that the bank takeover was an event of default. At the time, the company said it wasn't because the receivership was not begun by a court. When the bank was shut down, the Federal Deposit Insurance Corp. was appointed receiver. The deposits were moved by the FDIC to another bank. Capital Corp. was exercising its right to defer interest payments on the subordinated debt since the second quarter of 2008. The petition listed assets of \$6.8 million against debt totaling \$68.1 million. There is no secured debt, court papers say.

The case is *In re Capital Corp. of the West*, 09-14298, U.S. Bankruptcy Court, Eastern District of California (Fresno).

Dealers and customers of Chrysler LLC will be eligible for financing from auto lender GMAC LLC under an agreement tentatively approved yesterday by the bankruptcy judge after creditors' objections were worked out. Chrysler has a pivotal hearing on May 27 for approval of a transaction in which the core of Chrysler's business will be transferred to a new company initially owned 20 percent by Italy's Fiat SpA, 55 percent by a trust to provide health-care benefits for retirees, and 10 percent by the U.S. and Canadian governments. A group of investors who owned less than \$300 million of Chrysler's \$6.9 billion in debt last week withdrew their opposition to the transfer. Cerberus Capital Management LP and a group of investors acquired Chrysler from Daimler AG in August 2007 for \$7.4 billion. Cerberus and Daimler will have no ownership of new Chrysler. Chrysler, the smallest U.S. automaker, listed assets of \$39.3 billion and debt totaling \$55.2 billion in the chapter 11 petition filed April 30. Revenue in 2008 was \$48.5 billion.

The case is *In re Chrysler LLC*, 09-50002, U.S. Bankruptcy Court, Southern District of New York (Manhattan).

Business consultant BearingPoint Inc. didn't receive permission from the bankruptcy judges yesterday to turn over \$100 million in proceeds from the sale of the Japanese business to secured lenders. The judge told the company to think up a new structure that would avoid paying taxes in Japan while not giving all the proceeds to the secured lenders, in response to objections from creditors. BearingPoint's commercial services business goes up for auction on May 27, with bids due May 25. The public services group went to Deloitte LLP for \$350 million. On filing for reorganization in February, BearingPoint intended a traditional reorganization by handing out new stock to unsecured creditors and holders of \$690 million in subordinated notes. By March, the company decided to sell the businesses. Once the consulting arm of KPMG LLP, BearingPoint was spun off in 2000 and went public in 2001. The petition listed assets of \$1.76 billion against debt totaling \$2.23 billion.

The case is *In re BearingPoint Inc.*, 09-10691, U.S. Bankruptcy Court, Southern District New York (Manhattan).

Pilgrim's Pride Corp., the world's largest chicken processor, will hold an auction on May 18 to learn whether anyone will beat the \$80 million offer for a processing plant in Farmerville, Louisiana, along with two hatcheries and a feed mill. The buyer is competitor Foster Farms. Other bids are due May 15. The hearing for approval of the sale is May 19. The plant is one of three that Pilgrim's Pride said it was closing. Pittsburg, Texas-based Pilgrim's Pride entered chapter 11 in December listing assets of \$3.75 billion and debt of \$2.72 billion. In 2007 it completed a \$1.1 billion, debt financed acquisition of Gold Kist, Inc., the country's third-largest poultry producer. Previously, it purchased the chicken business from ConAgra Foods Inc.

The case is *In re Pilgrim's Pride Corp.*, 08-45664, U.S. Bankruptcy Court, Northern District of Texas (Fort Worth).

When the parent LyondellBasell Industries AF SCA joined the previously pending chapter 11 reorganization of subsidiaries Lyondell Chemical Co. and Equistar Chemicals LP by filing its own chapter 11 petition in April, the parent asked for all existing bankruptcy court rulings to apply to the parent. Creditor ConocoPhillips objected, saying there was no need and there could be unintended consequences. Including the parent and European subsidiaries, the assets were \$40 billion on Sept. 30. Total revenue in 2007 was \$44 billion. The Lyondell Chemical petition says its assets are \$27.1 billion against \$19.3 billion in debt, while Equistar's listed assets and debt were \$9 billion each. The parent filed under chapter 11 on April 24.

The case is *In re Lyondell Chemical Co.*, 09-10023, U.S. Bankruptcy Court, Southern District of New York (Manhattan).

Halfway through the trial that ended in an acquittal on all criminal counts against the company and former executives, the specialty chemical manufacturer W.R. Grace & Co. said it had already spent \$146 million on defense costs. Grace has been in bankruptcy reorganization for more than eight years. The criminal charges related to asbestos contamination in Libby, Montana. The bankruptcy court in Delaware has approved Grace's disclosure statement permitting creditors to vote on a reorganization plan to culminate in final confirmation hearings to begin in September. The chapter 11 plan is based a settlement from April 2008 resolving all present and future asbestos personal-injury claims and asbestos property-damage claims. Columbia, Maryland-based Grace and 61 subsidiaries filed chapter 11 petitions in April 2001 to deal with asbestos claims. The company's shares fell 40 cents to \$12.10 yesterday in New York Stock Exchange composite trading. The stock, which bottomed out at \$3.01 on Nov. 20, set a two-year high of \$30.65 on Oct. 12, 2007, and was trading above \$26 as recently as August.

The case is *In re W.R. Grace & Co.*, 01-01139, U.S. Bankruptcy Court, District of Delaware (Wilmington).

Strauss Discount Auto, an 86-store auto-parts retailer formally named Autobacs Strauss Inc., is asking for a first extension of the exclusive right to propose a chapter 11 plan. If approved at a May 29 hearing, no one else could file a plan before Sept. 2. Strauss closed some stores and is analyzing whether others should be shuttered. The chapter 11 case is Strauss's third. The preceding reorganization ended with confirmation of a chapter 11 plan in April 2007, when the company was named R&S Parts & Service Inc. The stores are in New York, New Jersey and Pennsylvania. The new petition listed assets of \$75 million against debt totaling some \$72 million. The current owner is Japan's Autobacs Seven Co. Debt includes \$42.4 million owed to the parent under loan agreements, \$9.6 million to suppliers and \$12 million to landlords and other unsecured creditors. There was no secured debt before bankruptcy. The new case is *In re Autobacs Strauss Inc.*, 09-10358, U.S. Bankruptcy Court, District of Delaware (Wilmington).

The previous case was *In re 1945 Route 23 Associates*, 06-17474, U.S. Bankruptcy Court, District of New Jersey (Newark).

Shane Co., a 23-store jewelry retailer when it filed under chapter 11 in January, received an extension until Aug. 10 for its exclusive right to propose a reorganization plan. The Centennial, Colorado-based company filed formal lists showing assets for \$130 million and debt totaling \$103 million, including \$31.4 million owing on secured claims.

The case is *In re Shane Co.*, 09-10367, U.S. Bankruptcy Court, District of Colorado (Denver).

May 14 (Bloomberg) —

The reorganization plan for Pliant Corp. hit a roadblock in the form of what the creditors' committee believes to be a superior offer from Apollo Management LP. Pliant, a manufacturer of flexible packaging and plastic films, filed under chapter 11 in February with a reorganization plan proposing to give all the new stock to the holders of \$393 million in first-lien notes. Other creditors, including the holders of \$262 million in second-lien notes, would receive warrants to buy new stock. According to the committee, New York-based Apollo made a non-binding proposal to sponsor a plan in which the first-lien lenders would realize the value of their collateral by receiving \$75 million cash and \$156 million in new first-lien notes. For unsecured creditors, Apollo is proposing 17.5 percent paid in cash. Second-lien noteholders would receive common stock including the right to force the company to buy the equity. Apollo would backstop the so-called put with \$175 million. The committee says the Apollo plan outline is "vastly better" for all stakeholders. Apollo, according to the committee, has arranged \$150 million in exit financing. Pliant also has \$26.3 million in subordinated notes. The secured \$167 million credit agreement is to be paid in full under

the company's plan. The company plan is supported by holders of more than two-thirds of the first-lien notes. At the request of the committee, a hearing to have been held yesterday for approval of Pliant's disclosure statement was pushed back to June 11. The committee is also asking for termination of Pliant's exclusive right to propose a plan so the Apollo reorganization can be brought forward. Pliant is in chapter 11 a second time. It confirmed a chapter 11 reorganization plan in June 2006 that left the second-lien notes in place without reducing the amount of the debt. The company plan this time almost would wipe out the second-lien notes. The petition listed assets of \$689 million against debt of \$1.03 billion as of Sept. 30. Revenue for the first nine months of 2008 was \$881 million. In 2007, sales were \$1.1 billion. Schaumburg, Illinois-based Pliant has 21 plants.

The new case is *In re Pliant Corp.*, 09-10443, U.S. Bankruptcy Court, District of Delaware (Wilmington).

Madoff Trustee Sues Jeffrey Picower for \$6.7 Billion

The trustee for Bernard L. Madoff Investment Securities Inc. sued Jeffrey M. Picower along with investment funds and philanthropies he controls in a complaint seeking the return of \$6.7 billion paid since 1995, with at least \$5 billion representing "fictitious profits" made possible by using "other people's money." The trustee's complaint alleges that Picower or people working for him knew about the fraud by having the Madoff firm backdate transactions to create annual profits as high as 950 percent for some accounts. The trustee says that, for certain accounts, the annual return for the years 1996 through 1999 ranged from 120 percent to 550 percent. To justify seeking to recover principal investments, the trustee says Picower and his entitles "knew or should have known they were profiting from fraud because of implausibly high rates of return." The trustee cites an instance in which there were 57 trades in an account "before the account was opened or funded." The trustee is seeking to recover the entire \$6.7 billion on the theory the money was the property of the bankrupt estate and should be returned. Relying on New York State fraudulent transfer law, the trustee intends to recover \$2.4 billion paid within six years of bankruptcy. The six-year payments include \$251 million withdrawn within two years that the trustee wants back under federal bankruptcy law. Finally, there were \$6.85 million in payments within 90 days of bankruptcy that the trustee is attempting to claw back as a so-called preference. The suit against Picower was filed May 12, the same day as a separate \$1 billion complaint by the trustee against Harley International (Cayman) Ltd. Bernard Madoff, the firm's founder, was arrested in December, pleaded guilty in March to defrauding investors of as much as \$65 billion, and faces a prison term of as long as 150 years. The firm's liquidation in U.S. Bankruptcy Court started in December with the appointment of the trustee under the Securities Investor Protection Act. Madoff went into an involuntary

chapter 7 liquidation in April. The trustee for the firm is now seeking to consolidate Madoff's individual chapter 7 bankruptcy into the SIPA liquidation of the broker.

The SIPA case is *Securities Investor Protection Corp. v. Bernard L. Madoff Investment Securities Inc.*, 08-01789, U.S. Bankruptcy Court, Southern District of New York (Manhattan). Madoff's individual chapter 7 bankruptcy is *In re Bernard Madoff*, 09-11893, U.S. Bankruptcy Court, Southern District of New York (Manhattan).

Charter Communications Stops DirecTV Bankruptcy Advertisements

Charter Communications Inc., the fourth-largest cable-TV operator in the U.S., sued on May 11 in U.S. District Court in St. Louis, its hometown, seeking to stop competitor DirecTV Inc. from running advertisements saying Charter won't be able to provide customers with the latest technology. At a hearing yesterday, Charter won a temporary restraining order stopping DirecTV from running ads saying Charter won't or probably can't give its customers the latest technology. The judge will hold another hearing on May 20 to consider extending the temporary injunction. The judge didn't block continuing publication of some advertisements DirecTV had been running. El Segundo, California-based DirecTV said companies "have wide latitude to include puffery in their advertisements." It also said that all its statements of fact are correct. Charter negotiated a chapter 11 reorganization before entering bankruptcy, received court approval of the disclosure statement explaining the plan and has a plan confirmation hearing set for July 20. The plan is based on the reinstatement of \$11.8 billion in debt. Some of the secured lenders oppose the plan, saying the debt can't be reinstated. The chapter 11 filing on March 27 was accompanied by the previously negotiated agreement designed to cancel \$8 billion in debt, reduce annual interest expense by \$830 million and reinstate \$11.8 billion in debt obligations. The plan is to be funded with \$2 billion in new equity, a \$1.2 billion refinancing and \$276 million generated through the sale of new notes. St. Louis-based Charter has 5.5 million customers in 27 states. The company's financial statements for Dec. 31 show assets of \$13.9 billion and \$21.5 billion in long-term debt. The proposed plan cancels existing stock and pays trade suppliers in full while giving out new stock, new notes, cash, and warrants.

The case is *In re Charter Communications Inc.*, 09-11435, U.S. Bankruptcy Court, Southern District of New York (Manhattan).

Midway Committee Sues Redstone for Loss of Tax Benefits

The creditors' committee of Midway Games Inc. sued the company's former owner Sumner Redstone and companies he controls, contending his November 2008 sale of the stock of the creator of Mortal Kombat and other video games was a fraudulent transfer, corporate waste and a breach of fiduciary

duty. The committee was authorized to sue Redstone in April when the bankruptcy judge in Delaware gave Midway final approval to use cash. Redstone sold his 87 percent controlling stock interest for \$100,000 to Mark Thomas and companies affiliated with Thomas. Selling control “swiftly generated over \$700 million in tax losses for the Redstone defendants,” the complaint alleges. The committee contends that the sale also “caused Midway irretrievably to lose the ability to take advantage of its accumulated net operating losses.” Chicago-based Midway filed under chapter 11 in February, listing assets of \$168 million and debt of \$281 million. Including the balance sheets of foreign subsidiaries not in bankruptcy, the asset and liability totals are \$178 million and \$337 million. Midway’s debt includes \$150 million in convertible notes, \$29 million on a secured term loan and revolving credit, \$40 million on a secured loan facility and \$20 million on a subordinated loan. Unsecured claims by suppliers total \$96 million, the company said in a court filing.

The case is *In re Midway Games Inc.*, 09-10465, U.S. Bankruptcy Court, District of Delaware (Wilmington).

Tronox Sues Kerr-McGee, Anadarko for Environmental Claims

Tronox Inc., the world’s third-largest producer of a white pigment called titanium dioxide, carried out a promise it made when it entered chapter 11 in January by filing a lawsuit against Kerr-McGee Corp. to recover environmental remediation costs it was given when spun off in March 2006. Tronox also sued Anadarko Petroleum Corp., which acquired Kerr-McGee for \$18.4 billion in August 2006. The complaint describes how Kerr-McGee accumulated “massive” environmental and retiree liabilities during its 70 years in business. To shed the actual and contingent debt, Kerr-McGee first transferred what the complaint calls “clean” businesses into a new company, leaving behind what would later be known as Tronox. The leftovers were then spun off, leaving Kerr-McGee with its oil and gas properties. Within 90 days of the spinoff, Anadarko made the buyout offer, according to the complaint. The complaint says Tronox after the spinoff was “grossly undercapitalized and without sufficient assets to pay its debts.” Meanwhile, the Kerr-McGee executives realized what the complaint calls “windfalls profits.” The complaint seeks damages for what Tronox calls a fraudulent transfer with “actual intent to hinder, delay or defraud the creditors or future creditors of the Tronox entities.” Tronox is accelerating the process of selling the business and received an extension until Sept. 15 of the exclusive right to propose a chapter 11 plan. The chapter 11 petition listed assets of \$1.56 billion against debt totaling \$1.22 billion. Debt includes \$213 million on a secured term loan and revolving credit, \$350 million in 9.5 percent senior notes and a \$40.7 million accounts receivable securitization facility. Tronox’s products are used in paints, coatings, plastics, paper and consumer products. The operations outside of the U.S. didn’t file.

The case is *In re Tronox Inc.*, 09-10156, U.S. Bankruptcy Court, Southern District of New York (Manhattan).

Emaar, Parent of WL Homes, Intends to Buy Assets

WL Homes LLC, the California-based homebuilder also known as John Laing Homes, is proposing to sell assets to Emaar Properties PJSC, the Dubai-based parent, for cash, debt and the assumption of liabilities. WL Homes has a hearing set for May 19 in which the U.S. Bankruptcy Court in Delaware will decide on bidding and sale procedures. The company wants other offers by June 15 and an auction on June 18. Emaar signed a letter of intent describing a purchase in which it will pay \$7 million in cash, assume almost \$41 million in debt and subordinate its \$408 million claim so unsecured creditors could be paid first. Emaar also would receive a release of any claims that could be the foundation for a lawsuit by creditors. The creditors’ committee is asking for conversion of the case to a chapter 7 liquidation based on the argument that the reorganization is “solely at the behest and for the benefit of” Emaar, which acquired WL in 2006 for \$1.05 billion in cash. Emaar is offering to provide \$30.9 million in financing for the reorganization effort. WL’s chapter 11 petition filed in February listed assets of \$1.3 billion and debt totaling \$977 million as of Nov. 30. Emaar affiliates have a secured claim for \$5.9 million and claims for more than \$408 million on unsecured notes. The company said revenue of \$948 million in 2007 fell by half in 2008.

The case is *In re WL Homes LLC*, 09-10571, U.S. Bankruptcy Court, District of Delaware (Wilmington).

Gladstone Questions Good Faith on Randa Bankruptcy, Sale

Gladstone Capital Corp., a second-lien lender to Randa Luggage Inc., says there should be an investigation into whether the luggage marketer from Totowa, New Jersey, filed under chapter 11 this week in good faith. Gladstone asserts that Randa, the first-lien lender owed \$23 million and the proposed buyer are all controlled by the same individual. McLean, Virginia-based Gladstone also says that the senior lender, Adnar Finance LLC, accelerated its debt to precipitate “an artificial crisis” so it could buy the business. Randa filed for reorganization in Delaware to carry out what it called a “prompt sale” to Adnar. Court papers say \$16.9 million is outstanding on second-lien debt. Randa manufactures, distributes and markets luggage, bags, backpacks and briefcases under brand names including Tommy Bahama, Nautica, Diane von Furstenberg, Perry Ellis and Liz Claiborne. A court filing says trade suppliers and unsecured creditors are owed less than \$1 million. Assets on the filing date include \$5.2 million cash and inventory with a book value of \$12 million. Sales in 2008 were \$56 million. Adnar is offering to provide \$16 million in financing for the chapter 11 effort. Randa was previously known as Badanco Enterprises Inc.

The case is *In re Badanco Acquisition LLC*, 09-11638, U.S. Bankruptcy Court, District of Delaware (Wilmington).

Lyondell and Chemtura, Sharing Judge, Face Off Over Contract

Lyondell Chemical Co. and Chemtura Corp. are both chemical producers and are both undergoing bankruptcy reorganization in New York in front of the same bankruptcy judge. Lyondell closed a plant in Lake Charles, Louisiana, where a portion of the premises is leased to Chemtura. In connection with the lease, Lyondell is obligated to provide services to Chemtura. Lyondell says it loses \$6.5 million a year on the arrangement. Ordinarily, Lyondell could eliminate the loss by filing a motion in bankruptcy court asking for authorization to terminate the contracts to provide services. With Chemtura in bankruptcy, the so-called automatic stay precludes Lyondell from filing the motion to reject the contracts. To remedy the situation, Lyondell filed a motion this week in Chemtura's case seeking a modification of the automatic stay so it could file a motion in its case to end the services contract. The so-called lift stay motion will come up for hearing in the Chemtura case on June 2. Lyondell said it is reserving its right at a later time to attempt to terminate the lease.

The Lyondell case is *In re Lyondell Chemical Co.*, 09-10023, U.S. Bankruptcy Court, Southern District of New York (Manhattan), and the Chemtura case is *In re Chemtura Corp.*, 09-11233, in the same court.

Auto Parts Maker Internet Sets Auction for June 22

Internet Corp., a Fort Worth, Texas-based manufacturer of cast metal auto parts, was authorized to hold an auction for the assets, although on a schedule about two weeks slower than it originally intended. The first-lien lenders, using their debt instead of cash, are to make the first bid for the assets. If there is an offer from someone other than a lender, the price must be at least \$23 million cash. Under court-approved sale procedures, other bids must be submitted by June 19, followed by a June 22 auction and a hearing on July 14 for approval of the sale. Internet originally wanted other bids by June 1 and a June 8 auction. The company already has agreements with its labor unions on modifications to the existing collective-bargaining agreements. Internet filed for chapter 11 reorganization in August, with the first-lien lenders owed almost \$53 million including contingent liabilities on letters of credit. The third-lien lenders are owed \$97.4 million. CapitalSource Finance LLC is the agent for the revolving credit lenders.

The case is *In re Internet Corp.*, 08-11859, U.S. Bankruptcy Court, District of Delaware (Wilmington).

Credit Suisse Must Bid \$57.3 Million Cash for Yellowstone

Yesterday's auction for Yellowstone Mountain Club LLC was hung up over a dispute about how much cash secured lender Credit Suisse Group AG is required to bid as a consequence of a ruling by the bankruptcy judge on May 12 that Credit Suisse's conduct required equitably subordinating the secured claim resulting from its \$375 million loan. U.S. Bankruptcy Judge Ralph B. Kirscher held an emergency hearing yesterday. To cover unsecured

claims that are to be senior to Credit Suisse, the judge ruled that the lender must bid \$43 million cash and put up a secured note for \$14.3 million. Kirscher subordinated Credit Suisse's secured claim based on a finding that the lender's conduct was "so far overreaching and self-serving that they shocked the conscience of the Court." The auction is being held in advance of a May 18 hearing for confirmation of Yellowstone's reorganization plan. Unless Credit Suisse or someone else makes a better offer, plan calls for selling the facility to private-equity investor CrossHarbor Capital Partners LLC for \$100 million, consisting of \$30 million cash and a note for \$70 million. The club is a 13,600-acre property just outside Yellowstone National Park.

The case is *In re Yellowstone Mountain Club LLC*, 08-61570, U.S. Bankruptcy Court, District of Montana (Butte).

Incentive Plan Approved for Morton Industrial Executives

Morton Industrial Group Inc. entered bankruptcy reorganization on March 22, filed a motion four days later to pay management bonuses and had its request granted this week by the bankruptcy judge in Delaware. Out of collateral belonging to the secured lenders, as much as \$2.47 million can be paid if the sale of the assets realizes more than \$40 million. The chief executive stands to take home \$1.1 million. Morton found a buyer willing to pay \$33 million for the assets and serve as the so-called stalking horse at the auction taking place tomorrow. The hearing for approval of the sale is set for May 21. The Morton, Illinois-based company has five plants that generated \$208 million in sales during 2008. Debt includes \$14.4 million on a secured revolving credit, \$33.3 million on a secured term loan, and \$27.4 million on subordinated notes. Another \$14.8 million is owing to trade suppliers.

The case is *In re MMC Precision Holdings Corp.* 09-10998, U.S. Bankruptcy Court, District of Delaware (Wilmington).

Wireless Device Maker Focus Enhancements Implements Plan

Focus Enhancements Inc., a manufacturer of wireless audio and video products that filed under chapter 11 in September, implemented a reorganization plan approved by the bankruptcy court in San Jose, California, in late April. The plan gives the stock to investors in return for waiving a \$2.5 million loan given for the reorganization. Unsecured creditors with claims of as much as \$5.7 million are to split up \$240,000 cash. The Campbell, California-based company listed assets of \$9.7 million against debt totaling \$37.4 million.

The case is *In re Focus Enhancements Inc.*, 08-55216, U.S. Bankruptcy Court, Northern District of California (San Jose).

Kirk, Chicago Homebuilder, Files to Continue Operations

Kirk Corp., a Chicago-area homebuilder, filed for chapter 11 reorganization on May 12 in its hometown, listing assets of \$96.8 million against debt totaling \$64.5 million. Debt

includes \$48.1 million owing to the secured bank lender. A statement accompanying the petition says Kirk intends to continue building, marketing and selling homes. The company has 10 residential projects in development. Revenue in 2008 was \$24.7 million, compared with more than \$100 million in the two preceding years. Last year, 78 homes were sold, in contrast to more than 300 annually in prior years. Kirk is owned by its employees.

The case is *In re Kirk Corp.*, 09-17236, U.S. Bankruptcy Court, Northern District Illinois (Chicago).

Professionals working on the liquidation of Lehman Brothers Holdings Inc. decided to form a special committee to review fee requests that total more than \$100 million from the beginning of the case to the end of January. Lehman's lawyers from Weil Gotshal & Manges LLP are seeking \$55 million. In the meantime, a hearing to have been held yesterday for fee approval was pushed back. The committee will consist of representatives from Lehman, the creditors' committee, and the U.S. Trustee. The Lehman holding company filed under chapter 11 in New York on Sept. 15 while the brokerage operations went into liquidation on Sept. 19 in the same court under the Securities Investor Protection Act. The brokerage is under the supervision of a trustee selected by the Securities Investor Protection Corp.

The Lehman holding company chapter 11 case is *In re Lehman Brothers Holdings Inc.*, 08-13555, while the liquidation proceeding under the Securities Investor Protection Act for the brokerage operations is *Securities Investors Protection Corp. v. Lehman Brothers Inc.*, 08-01420, U.S. Bankruptcy Court, Southern District of New York (Manhattan).

Farallon Capital Management LLC ended up with the best offer to provide \$400 million replacement financing for shopping mall owner General Growth Properties Inc. Farallon's financing proposal, which was approved by the bankruptcy judge yesterday, beat out William Ackman's Pershing Square Capital Management LP, the provider of the original \$375 million reorganization loan. The chapter 11 filing by General Growth and its affiliates on April 16 was the largest real estate bankruptcy in U.S. history. The balance sheet of Chicago-based General Growth had assets of \$29.6 billion and \$27.3 billion in total liabilities as of Dec. 31. It owns some 200 shopping mall properties.

The case is *In re General Growth Properties Inc.*, 09-11977, Bankruptcy Court, U.S. District Court, Southern District of New York (Manhattan).

A two-day hearing began yesterday in the bankruptcy reorganization of petroleum product transporter and marketer SemGroup LP pitting producers against SemGroup's secured lenders. The producers claim they must be paid ahead of secured lenders under state laws in Texas, Oklahoma and Kansas allowing them to trace proceeds from the product they sold to SemGroup. SemGroup filed

under chapter 11 in July, listing assets of \$3.6 billion against debt totaling \$4.7 billion. It has two official committees in addition to an examiner. For affiliate SemCrude LP, the listed assets were \$1.6 billion while debt was \$4.5 billion. SemGroup Energy Partners LP, the publicly traded affiliate, is not in bankruptcy.

The case is *In re SemCrude LP*, 08-11525, U.S. Bankruptcy Court, District of Delaware (Wilmington).

Tribune Co., the second-largest newspaper publisher in the U.S., was authorized this week to adopt a \$12.2 million bonus program for some 670 managers, excluding the top 10 executives. Tribune also received a green light for making \$1.1 million in additional bonuses available for local managers. The bankruptcy judge didn't approve severance payments for workers fired before the bankruptcy. Tribune filed under chapter 11 in December 2008 after being acquired in December 2007 in a \$13.8 billion leveraged buyout led by Sam Zell. It listed \$13 billion in debt for borrowed money and assets of \$7.6 billion. Tribune owns the Chicago Tribune, Los Angeles Times, six other newspapers and 23 television stations, in addition to the Chicago Cubs professional baseball team and Wrigley Field in Chicago, where the team plays. Neither the team nor the field is in bankruptcy.

The case is *In re Tribune Co.*, 08-13141, U.S. Bankruptcy Court, District Delaware (Wilmington).

Circuit City Stores Inc., the liquidated 721-store electronics stores, was authorized yesterday to sell its Internet domain name and trademarks for \$14 million to Systemax Inc. The original \$6.5 million bid from Systemax increased at auction. The chapter 11 petition, filed Nov. 10 in Circuit City's Richmond, Virginia, hometown listed assets of \$3.4 billion and debt totaling \$2.3 billion as of Aug. 31. Papers list \$898 million owing to the secured revolving credit lenders. Unsecured trade suppliers are owed another \$650 million, the company said in a court filing.

The case is *In re Circuit City Stores Inc.*, 08-35653, U.S. Bankruptcy Court, Eastern District of Virginia (Richmond).

Mortgage Lenders Network USA Inc., once the 15th-largest subprime lender in the U.S., received preliminary bankruptcy court approval to pay \$2.7 million in settlement of a class-action suit on behalf of workers who were fired without the 60-days' notice required under U.S. labor law. Lawyers for the workers are to receive \$975,000 from the settlement amount for their fees. The company's liquidating chapter 11 plan was approved in a February confirmation order. Middletown, Connecticut-based Mortgage Lenders Network entered chapter 11 in February 2007, later listing assets of \$465 million against debt totaling \$556 million.

The case is *In re Mortgage Lenders Network USA*, 07-10146, U.S. Bankruptcy Court, District of Delaware (Wilmington).

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