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fiduciary duties that apply when a corporation is in financial distress, as well as the applicable legal standards when a company is in bankruptcy. Gaining this understanding is particularly important due to recent significant changes to much of the applicable case law and statutes. Moreover, these principles have become even more complex because they must be applied to corporate governance methods and situations that did not necessarily exist when the concepts of director and officer fiduciary duties were established.

This article will describe the recent case law and statutory amendments relating to the fiduciary duties of directors and officers of distressed and/or bankrupt companies, including cases discussing to whom a director or officer owes duties. It also will address what types of activities may constitute a cognizable breach, as well as explore the potential impact of recent amendments to the Bankruptcy Code. Finally, the article will suggest specific actions that can be taken in light of the governing legal framework, including an attempt to reconcile the applicable laws with the modern framework of director and officer composition.

To Whom Does a Director or Officer Owe Fiduciary Duties

The default rule of corporate governance regarding fiduciary duties is that the board of directors and senior management owe fiduciary duties to a corporation and its shareholders.² This rule has been firmly embedded within U.S. law for more than 100 years,³ and the Delaware Supreme Court has reaffirmed this rule relatively recently.⁴ This is based on the principle that “the corporate contract makes managers the agents of the equity investors”⁵ because equity investors are residual claimants, and unlike most creditors, “[t]hey receive few explicit promises. Instead, they get the right to vote and the protection of fiduciary principles.”⁶

Despite this basic rule, case law of the past several years has discussed the expansion of a director's duties to include creditors as beneficiaries if a corporation exhibits some level of financial distress.⁷ Although this concept existed for some time if the corporation was in fact insolvent,⁸ it was expanded over the past several years to include not only corporations that were insolvent, but also those that were within the so called “zone of insolvency.”⁹ This concept presumably began with the now infamous footnote from an unpublished 1991 decision in the Delaware Court of Chancery:

Such directors will recognize that in managing the business affairs of a solvent corporation in the vicinity of insolvency, circumstances may arise when the right (both the efficient and the fair) course to follow for

Featured Article

Key Developments Regarding Fiduciary Duties of Directors and Officers of Distressed Companies

Article contributed by:

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As an increasing number of companies face the prospect of financial difficulties and possibly bankruptcy, it is imperative that a corporation's directors and officers,¹ as well as the corporation's shareholders and creditors, understand the

the corporation may diverge from the choice that the stockholders (or the creditors, or the employees, or any single group interested in the corporation) would make if given the opportunity to act.¹⁰

Although it is unclear whether Chancellor Allen, the author of the above language, intended this result,¹¹ it was read by many to create a creditor-initiated cause of action where creditors could assert fiduciary duty claims against directors.¹² This created a difficult situation for directors of corporations facing any sort of financial distress, who now would be potentially liable to two separate constituencies with potentially divergent interests, particularly in a distressed situation where creditors are more likely to prefer more conservative business initiatives and, in some instances, would prefer a simple liquidation, which would likely leave nothing for shareholders.¹³ Moreover, it was unclear whether the traditional limits on shareholder actions against directors (e.g., the business judgment rule,¹⁴ statutory exculpation for basic “duty of care” claims,¹⁵ the requirement to bring claims derivatively) applied to these judicially created lawsuits.

However, the Delaware Supreme Court has clarified somewhat the extent of fiduciary duties owed by directors to creditors of corporations that are either insolvent or within the zone of insolvency.¹⁶ Specifically, the court stated that creditors may only assert derivative (as opposed to direct) claims against directors when alleging a breach of fiduciary duty and further clarified that they may only assert such claims, if at all, when a corporation is in fact insolvent (i.e., no claim if the company is merely in the zone of insolvency).¹⁷

Although the *Gheewalla* decision clearly was perceived as a positive development for directors,¹⁸ there are still unresolved issues. For example, the line between insolvent and nearly insolvent (and the corresponding beneficiary of fiduciary duties) is not always clear,¹⁹ and even if a company is clearly insolvent under applicable standards, there is at least some case law to suggest some sort of residual director duty to shareholders in addition to creditors.²⁰ Finally, although courts in other jurisdictions look to Delaware case law for guidance on treating corporations incorporated in their own state, there are few cases citing to *Gheewalla*, and several of these cases (including in New York) do not clearly indicate the adoption of *Gheewalla*’s holding for non Delaware corporations.²¹ Accordingly, directors and officers of corporations in financial distress must act in a reasonable and diligent manner and be aware that their actions may be subject to scrutiny, or possible litigation attack, from divergent constituencies.

What Types of Actions Can be Exculpated

Moreover, recent case law has compounded the problems associated with directors having to serve potentially conflicting constituencies. Two recent decisions from Delaware courts (one federal and one state) have created uncertainty regarding the continued effectiveness of the exculpation provisions typically available under Delaware law to protect

directors.²² Specifically, although Delaware law and general corporate law impose on directors both a duty of care and a duty of loyalty (along with other possible duties), Delaware law allows corporations to limit directors’ (but not officers’) personal liability for breaches of the duty of care (but not breaches of the duty of loyalty), provided, among other things, that there was no improper personal benefit and that there were no acts or omissions that were not in good faith.²³ In *Bridgeport*, the directors of a corporation sold a substantial portion of the company’s assets, with the apparent consent of the corporation’s secured lenders, one day prior to filing for bankruptcy after consulting with restructuring advisors that they had hired at the request of the lenders. Based on, among other things, possible flaws in the sale process (including a delay in initiating the sale, insufficient efforts to locate additional bidders, etc.) that were caused in part by director inaction, the court refused to dismiss claims alleging that such mistakes were sufficient to constitute a breach of the duty of loyalty, as opposed to merely the duty of care, despite not finding that the directors were either self interested or not independent. Relatedly, the court also held that the allegations of lack of good faith were sufficient to defeat the corporate exculpation provisions applicable to claims alleging violation of the duty of care, at least at the summary judgment stage.

Similarly, in a case pending before the Delaware Court of Chancery that involved a sale process dominated by a CEO (i.e., the board took a very passive role), the court refused to dismiss claims against directors or to hold, prior to trial, that the exculpation protections of Delaware law would apply.²⁴ In *Lyondell*, the potential acquirer had made U.S. Securities and Exchange Commission filings indicating its intent to pursue a purchase, but the target’s board expended little or no effort in response and took no steps to locate other bidders. Nonetheless, it appears that the target CEO made substantial efforts to negotiate a sale with the purchaser, which was then approved by the board after receiving a fairness opinion from a respected bank. The *Lyondell* case is potentially more troubling to directors than *Bridgeport* because although it is possible that the directors were not active enough in the sale process, the process itself appeared to be reasonable and, if nothing else, resulted in a favorable sale price under the circumstances.²⁵

Bankruptcy Law Amendments

In addition to the body of case law creating possible fiduciary duties of directors and officers to divergent constituencies, as well as possibly exposing directors to liability for activities previously covered by exculpation provisions, several recent amendments to the Bankruptcy Code also appear to create issues for a director of a distressed corporation, to the extent that a company files for bankruptcy. Although a corporation’s directors and management typically retain control of a corporation even if it files for bankruptcy, a bankruptcy court may appoint a trustee, which essentially usurps the role of the board and the management.²⁶ Although this is not always a bad thing, the 2005 amendments to the Bankruptcy Code

now require (rather than permit) that representatives from the U.S. Trustee (the division of the U.S. Department of Justice that oversees bankruptcy cases) seek the appointment of a trustee if there are “reasonable grounds to suspect” that members of the board or certain high ranking corporate officers participated in fraud, dishonesty, or criminal conduct.²⁷ Although the standard itself for appointing a trustee appears to remain the same under the revised statute, these changes seemingly increase the instances when boards of bankrupt corporations will have to respond to efforts to appoint trustees, rather than focusing on initiatives directly related to assisting the corporation through the bankruptcy process. Additionally, recent amendments to the Bankruptcy Code placed limits on the ability of directors to compensate executive officers and to provide incentive retention plans.²⁸

Lessons Learned

The primary lesson from this article should be the importance of directors and officers taking seriously their obligations to play an active and unbiased role in the management of their corporations for the benefit of their entire corporations. Further, they should document their efforts to be proactive and well informed, as well as their efforts to consult with advisors regarding important management decisions. However, they should not simply delegate decision making to third party advisors. This is true regardless of the constituency (shareholders or creditors) that is owed these duties and regardless of the director’s method of appointment (i.e., general election by shareholders or contractual right to appointment by particular constituency).²⁹ Otherwise, directors and officers risk losing control of a corporation in bankruptcy through the appointment of a trustee, as well as jeopardizing the benefits of legal protections and defenses typically available to directors, including the allowance under Delaware law for corporate waiver of directors’ personal monetary liability for breaches of the duty of care. Moreover, if a corporation is about to file for bankruptcy, it should strongly consider delaying any substantial initiatives until after the filing to imbue such decisions with the power of court approval.

Of course, because of the increased risk of personal liability in light of the recent *Bridgeport*, *Lyondell*, and *Gantler* decisions, directors and officers should ensure that there is an existing insurance policy covering their duties, particularly because the directors and officers (or their insurance) may be the only source of recovery for potential plaintiffs in a bankruptcy situation, due to defenses available to other potential defendants (such as outside advisors) in an insolvency situation.³⁰ Moreover, due to the unique treatment of insurance policies in bankruptcy, it is critical that directors and officers consult with appropriate coverage counsel to determine whether the insurance policies in question will be available to them if the corporation does file for bankruptcy.³¹

Finally, if feasible, corporations could consider changing to a different form of entity (limited liability company, etc.), which often permits the elimination of fiduciary duties for directors

and officers,³² or if this is not feasible, petitioning the legislature for greater statutory clarity and protection.

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¹ The Delaware Supreme Court just explicitly confirmed the previously implied rule that corporate officers are subject to the same fiduciary duties of care and loyalty as directors. See *Gantler v. Stephens*, No. 132, 2008, 2009 BL 18055 (Del. Jan. 27, 2009).

² See, e.g., *Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.*, 506 A.2d 173, 179 (Del. 1986).

³ See *Koehler v. Black River Falls Iron Co.*, 67 U.S. (2 Black) 715, 720–21 (1862) (“[Directors] hold a place of trust, and by accepting the trust are obliged to execute it with fidelity, not for their own benefit, but for the common benefit of the stockholders of the corporation.”).

⁴ *N. Am. Catholic Educ. Programming Found., Inc. v. Gheewalla*, 930 A.2d 92, 99 (Del. 2007) (“It is well established that the directors owe their fiduciary obligations to the corporation and its shareholders.”). Although not the focus of this article, this principle also exists in other common law jurisdictions, expressed as a general duty of fiduciaries to a corporation that includes present and future shareholders. See, e.g., Andrew Keay & Hao Zhang, *Incomplete Contracts, Contingent Fiduciaries and a Director's Duty to Creditors*, 32 Melb. U.L. Rev. 141, 144–45 n.20 (2008) (citing *Percival v. Wright* (1902) 2 Ch. 421, *Multinational Gas & Petrochemical Co. v. Multinational Gas & Petrochemical Servs. Ltd.* (1983) Ch. 258, and *Gaiman v. Nat'l Ass'n for Mental Health* (1971) Ch. 317, 330 (Megarry, J.)).

⁵ Frank H. Easterbrook & Daniel R. Fischel, *The Economic Structure of Corporate Law* 91 (1991). It is worth noting that the reference to protecting “equity investors” and “residual claimants” is consistent with the holding of *Gheewalla* discussed below.

⁶ *Id.*

⁷ As discussed herein, recent Delaware case law has clarified somewhat precisely “how much” distress.

⁸ See *Geyer v. Ingersoll Publ'ns Co.*, 621 A.2d 784, 787 (Del. Ch. 1992).

⁹ See *Prod. Res. Group, L.L.C. v. NCT Group, Inc.*, 863 A.2d 772 (Del. Ch. 2004) (discussing expansion of doctrine); *Official Comm. of Unsecured Creditors of Grumman Olson Indus., Inc. v. McConnell (In re Grumman Olson Indus., Inc.)*, 329 B.R. 411, 426–27 (Bankr. S.D.N.Y. 2005) (implicitly recognizing “zone of insolvency” under New York law).

¹⁰ *Credit Lyonnais Bank Nederland, N.V. v. Pathe Commc'ns Corp.*, Civ. A. No. 12150, 1991 BL 23, at *83 n.55 (Del. Ch. Dec. 30, 1991).

¹¹ In *Credit Lyonnais*, the concept of directors considering other constituencies was used defensively to dismiss a shareholder suit.

¹² See, e.g., *Official Comm. of Unsecured Creditors of Verestar, Inc. v. Am. Tower Corp. (In re Verestar, Inc.)*, 343 B.R. 444, 471–72 (Bankr. S.D.N.Y. 2006); *Roselink Investors, L.L.C. v. Shenkman*, 386 F. Supp. 2d 209, 215 (S.D.N.Y. 2004); *Official Comm. of Unsecured Creditors of Buckhead Am. Corp. v. Reliance Capital Group, Inc. (In re Buckhead America Corp.)*, 178 B.R. 956, 968 (D. Del. 1994); *Grumman Olson Indus.*, 329 B.R. at 426–27. But see *Prod. Res. Group*, 863 A.2d at 789 (discussing concept critically).

¹³ This line of cases and analysis was particularly troubling to directors when read together with the cases that allow the “deepening of insolvency” as a measure of damages because a director who proposes bold actions in an attempt to recover value for shareholders is likely risking exactly that. *Miller v. McCown de Leeuw & Co. (In re The Brown Schools)*, 386 B.R. 37, 48–49 (Bankr. D. Del. 2008) (allowing continuing viability of deepening insolvency as a theory of damages).

¹⁴ Delaware law creates a presumption against breaches of the duty of care and defers to the “business judgment” of directors if “the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.” *Gantler*, No. 132, 2008, 2009 BL 18055, at *19 (citation omitted); see also *Sinclair Oil Corp. v. Levien*, 280 A.2d 717, 720 (Del. 1971).

¹⁵ Del. Gen. Corp. Law §102(b)(7), Del. Code Ann. tit. 8, §102(b)(7). This protection is discussed at length below.

¹⁶ *Gheewalla*, 930 A.2d 92.

¹⁷ *Id.* at 100–03.

¹⁸ See, e.g., Michael W. Peregrine and Michael S. Hughes, *New Guidance for Directors of Financially Distressed Hospitals*. Reprint from American Health Lawyers Association (2008).

¹⁹ This confusion is magnified because Delaware courts have accepted two separate tests for insolvency. Most analyze “balance sheet” insolvency (i.e., liabilities exceed assets), see, e.g., *Geyer*, 621 A.2d at 789, but some also determine whether a company can pay current debts as they become due (which might be merely in the “zone” of insolvency under a balance sheet analysis), see, e.g., *Geyer*; *La Salle Nat'l. Bank v. Perelman*, 82 F. Supp. 2d 279, 290 (D. Del. 2000). The *Gheewalla* decision suggests that either test may still be used. See *Gheewalla*, 930 A.2d at 97–99.

²⁰ See, e.g., *Blackmore Partners, L.P. v. Link Energy LLC*, 31 Del. J. Corp. L. 672 (Del. Ch. 2005) (“During insolvency, the directors owe fiduciary duties to both the creditors and the [shareholders].”); see also *In re Bear Stearns Litig.*, 870 N.Y.S.2d 709, 736–37 (Sup. Ct. 2008) (post *Gheewalla*). Based on this confusion, some commentators have suggested a “bright-line” test that directors never owe any duties to creditors until the formal filing of a bankruptcy petition. Henry T.C. Hu & Jay Lawrence Westbrook, *Abolition of the Corporate Duty to Creditors*, 107 Colum. L. Rev. 1321 (2007). As others have noted, however, the obvious problem

with that solution is that directors would then have a tremendous disincentive to file for bankruptcy protection, even if the creditors would clearly benefit from the bankruptcy. See Douglas G. Baird & M. Todd Henderson, *Other People's Money*, 60 Stan. L. Rev. 1309, 1312 n.18 (2008).

²¹ See *Bear Stearns*, 870 N.Y.S.2d 709 (Delaware corporation); *Buchwald v. Renco Group, Inc. (In re Magnesium Corp. of Am.)*, No. 01-B-14312 (REG) (Bankr. S.D.N.Y. Jan. 16, 2009) (Delaware corporations). Interestingly, although citing to *Gheewalla*, the *Bear Stearns* decision also still briefly refers to “the duties owed to the creditors near or after insolvency.” *Bear Stearns*, 870 N.Y.S.2d at 737; see also *Interstate Foods, Inc. v. Lehmann*, No. 06-cv-13469, 2008 BL 231559 (S.D.N.Y. Sept. 25, 2008) (applying New York law and referring to the “zone of insolvency” with no citation to *Gheewalla*; minimal analysis because dismissed on other grounds).

²² *Bridgeport Holdings, Inc. Liquidating Trust v. Boyer (In re Bridgeport Holdings, Inc.)*, 388 B.R. 548 (Bankr. D. Del. 2008) and *Ryan v. Lyondell Chemical Co.*, C.A. No. 3176, 2008 BL 206119 (Del. Ch. Aug. 29, 2008).

²³ Del. Gen. Corp. Law §102(b)(7), Del. Code Ann. Tit. 8, §102(b)(7). However, the Delaware Supreme Court just confirmed that corporations may not use this statute to protect officers in their charters from duty of care claims. See *Gantler v. Stephens*, No. 132, 2008, 2009 BL 18055 (Del. Jan. 27, 2009).

²⁴ *Ryan v. Lyondell Chemical Co.*, C.A. No. 3176, 2008 BL 206119 (Del. Ch. Aug. 29, 2008).

²⁵ The sale price was a 45 percent premium over the stock price prior to the purchaser's filing of its intent to purchase, and a 20 percent premium over the price prior to announcement of the merger agreement. *Id.* at *17 (reference to “blowout” premium).

²⁶ 11 U.S.C. §1104.

²⁷ 11 U.S.C. §1104(e).

²⁸ 11 U.S.C. §503(c).

²⁹ Delaware law makes clear that the standards for determining breach of fiduciary duties have not changed, even for the relatively new phenomenon of so called “constituency directors”—directors appointed either directly or indirectly by one particular constituency of a corporation (e.g., private investor, hedge funds, preferred shareholders, etc.). See, e.g., *Phillips v. Insituform of N. Am., Inc.*, No. 9173 (Del. Ch. Aug. 27, 1987) (“[T]he law demands of directors . . . fidelity to the corporation and all of its shareholders and does not recognize a special duty on the part of directors elected by a special class to the class electing them.”). See generally *In re Walt Disney Co. Derivative Litig.*, 907 A.2d 693, 697 (Del. Ch. 2005) (“Unlike ideals of corporate governance, a fiduciary's duties do not change over time.”).

³⁰ See generally Tanvir Alam, *Fraudulent Advisors Exploit Confusion in the Bankruptcy Code: How in Pari Delicto Has Been Perverted to Prevent Recovery for Innocent Creditors*, 77 Am. Bankr. L.J. 305 (2003).

³¹ For a discussion of some of the issues to consider, see, e.g., Kirk Pasich, *Directors, Officers May Face Challenges Protecting Insurance When Company Files for Chapter 11*, Daily Bankruptcy Review (June 8, 2005).

³² See, e.g., Del. Code Ann. tit. 6, §18-1101(c) (permitting elimination of fiduciary duties for LLCs).

³³ The authors would like to thank our colleague Shaya Berger for reviewing and contributing to the article, and Professor Nancy Rapoport, who is the Gordon Silver Professor of Law at the William S. Boyd School of Law at the University of Nevada, Las Vegas, for her insights and for providing significant assistance with the research that led to this article.

Federal Bankruptcy Law

Securities Law

Bankruptcy Court Grants Motion to Dismiss Complaint against Bernard L. Madoff Investment Securities LLC Seeking Return of Funds in SIPA Liquidation

Securities Investor Protection Corp. v. Bernard L. Madoff Investment Securities LLC, No. 08-01789, 2009 BL 36463 (Bankr. S.D.N.Y. Feb. 24, 2009)

On February 24, 2009, the United States Bankruptcy Court for the Southern District of New York granted a motion to dismiss a plaintiff's complaint seeking the return of funds wired to an investment firm account ten days before the commencement of a liquidation proceeding involving the investment firm was initiated pursuant to the Securities Investor Protection Act of 1970, 15 U.S.C. §78aaa *et seq.* ("SIPA").

Events Preceding Filing of Complaint

On December 11, 2008, Bernard L. Madoff ("Madoff") was arrested and charged with securities fraud in violation of 15 U.S.C. §§78j(b), 78ff and 17 C.F.R. §240.10b-5 for his perpetration of a Ponzi scheme through Bernard L. Madoff Investment Securities LLC ("BMIS"). On the same day, the Securities and Exchange Commission ("SEC") filed a civil complaint ("Civil Action") in the United States District Court for the Southern District of New York alleging that Madoff and BMIS had operated a Ponzi scheme through BMIS' investment activities.

As a broker-dealer registered with the SEC, BMIS was also a member of the Securities Investor Protection Corporation ("SIPC"). On December 15, 2008, the SIPC filed a motion in the Civil Action seeking a decree adjudicating that customers of BMIS were in need of the protections afforded under SIPA. Subsequently, the district court granted the SIPC's request and entered an order ("Protective Order") placing BMIS' customers under the protections of SIPA. Notably, the Protective Order appointed Irving Picard as the trustee ("Trustee") for the liquidation of BMIS and removed the SIPA liquidation proceeding to the bankruptcy court pursuant to 15 U.S.C. §§78eee(b)(3) and (b)(4).

Rosenman Complaint

Shortly thereafter, in January 2009, Rosenman Family LLC ("Rosenman"), a limited liability company, filed a complaint ("Complaint") seeking the immediate return of \$10 million that Rosenman had wired to a BMIS account with JP Morgan Chase Bank, N.A. ("Chase Account") ten days prior to the commencement of the SIPA liquidation proceeding. In the Complaint, Rosenman alleged that on December 3, 2008, its managing director had spoken with Madoff about

possibly investing in BMIS and that Madoff had advised that the fund was closed until January 1, 2009. According to the Complaint, Madoff stated that Rosenman could wire funds to the Chase Account, where they would remain until the BMIS fund reopened. The Complaint further asserted that on December 5, 2008, Rosenman wired \$10 million to the Chase Account and received a confirmation that Rosenman had "shorted" \$10 million in treasury bills. Significantly, in its Complaint, Rosenman stated that the trade was never authorized and had never occurred.

In response, the Trustee filed a motion to dismiss ("Motion to Dismiss") the Complaint, contending that the Complaint violated the stays imposed by 11 U.S.C. §362(a)(3) and 15 U.S.C. §78eee(b)(2)(B)(ii). In addition, the Trustee argued that the Complaint failed to state a claim upon which relief could be granted pursuant to Federal Rule of Civil Procedure 12(b)(6). The SIPC joined in the Trustee's Motion to Dismiss.

Securities Investor Protection Act of 1970

Beginning its analysis of the matter, the bankruptcy court explained that Congress enacted SIPA in order to protect investors against financial losses related to the failure of their brokerage firms and in order to reestablish confidence in capital markets. See *Security Investor Protection Corp. v. Barbour*, 421 U.S. 412, 415 (1975); *SEC v. S.J. Salmon & Co.*, 375 F.Supp. 867, 871 (S.D.N.Y. 1974). The bankruptcy court noted that SIPA sets forth procedures for liquidating distressed SIPC members and affords claimants who qualify as customers ("Customer" or "Customers") under 15 U.S.C. §78lll(2) priority status over customer property ("Customer Property"), as defined in 15 U.S.C. §78lll(4).

Reviewing the liquidation process under SIPA, the bankruptcy court indicated that a SIPA proceeding is initiated when the SIPC files an application requesting a protective decree adjudicating the Customers of a SIPC member in need of the protections provided under SIPA. See 15 U.S.C. §78eee(a)(3). The bankruptcy court clarified that the filing of such an application occurs after the SIPC determines that a member of the SIPC has failed or is in danger of failing to meet its Customer obligations and that one or more conditions set forth in 15 U.S.C. §78eee(b)(1) has been satisfied. Once a protective order is issued, the court must appoint a trustee to liquidate the SIPC member's business and distribute Customer Property pro rata to Customers. See §§78eee(b)(3), 15 U.S.C. 78fff-2(b), (c).

Next, the bankruptcy court instructed that in a SIPA liquidation, unsecured creditors are typically classified as either Customers or general unsecured creditors of the SIPC member. See *In re Adler Coleman Clearing Corp.*, 195 B.R. 266, 270 (Bankr. S.D.N.Y. 1996). Moreover, the bankruptcy court remarked that in a SIPA proceeding, two estates are usually established, with general unsecured claims being paid from one estate and Customer claims being paid from a Customer estate. To this end, the bankruptcy court explained

that the Customer estate is a fund consisting of Customer Property and functions to pay only Customer claims. See *In re Adler, Coleman Clearing Corp.*, 216 B.R. 719, 722 (Bankr. S.D.N.Y. 1998). Accordingly, the bankruptcy court observed that Customers receive priority and special protections under SIPA. See *In re New Times Secs. Services, Inc.*, 463 F.3d 125, 127 (2d Cir. 2006).

Rosenman as BMIS Customer

Considering whether Rosenman was a BMIS Customer, as defined by SIPA, the bankruptcy court pointed out that §78III(2) defines a Customer as any person “who has deposited cash with the debtor for the purpose of purchasing securities.” Utilizing this definition, the bankruptcy court determined that the act of entrusting cash to a debtor for the purpose of investing in securities triggers Customer status. See *In re ESM Gov. Securities, Inc.*, 812 F.2d 1374, 1376 (11th Cir. 1987). Noting that Rosenman had wired funds to the Chase Account for the purpose of investing in the BMIS fund, the bankruptcy court resolved that Rosenman thus qualified as a BMIS Customer and, as such, could share in the Customer Property.

In reaching its determination, the bankruptcy court rejected Rosenman’s assertion that it was not a Customer because it had not entrusted funds to BMIS to invest in securities, but instead had wired the funds with the understanding that Rosenman could decide whether to actually invest once the fund reopened. On the contrary, the bankruptcy court clarified that because the funds were wired and held for the specific purpose of investing them in securities once the fund reopened, the issue of whether the money was invested immediately or upon Rosenman’s approval was irrelevant. Instead, the bankruptcy court explained that like the other BMIS Customers, Rosenman had surrendered control over the funds once the wire transfer was effectuated. Declaring that the documents effecting the transfer did not reflect a conditional delivery of the money, the bankruptcy court concluded that the investment purpose required to trigger Customer status was satisfied once the funds had reached the Chase Account.

Funds Wired by Rosenman Constituted Customer Property

Lastly, the bankruptcy court considered whether the funds transferred to the Chase Account constituted Customer Property, as defined by SIPA. In this regard, the bankruptcy court stated that under §78III(4), Customer Property is defined as all property that was or should have been set aside for Customers, including bank accounts holding Customer funds. Declaring that the funds held in the Chase Account fell within this definition and that Rosenman qualified as a BMIS Customer, the bankruptcy court held that the funds transferred constituted Customer Property. Accordingly, the bankruptcy court determined that the \$10 million could not be returned to Rosenman but instead would be distributed *pro rata* to qualifying Customers pursuant to §78fff-2(c)(1)(B).

Bankruptcy Court Grants Trustee’s Motion to Dismiss

Consequently, while understanding and sympathetic about Rosenman’s misfortune, the bankruptcy court declared that other than transferring funds immediately before the commencement of the SIPA liquidation proceeding, Rosenman’s circumstances were indistinguishable from other BMIS Customers. Furthermore, concluding that the timing of the transfer was irrelevant for the purposes of determining Customer status and Customer Property, the bankruptcy court granted the Trustee’s Motion to Dismiss.

Jurisdiction & Venue

Bankruptcy Court Invokes Permissive Abstention and Remands Breach of Contract Action to State Court

Tougher Industries, Inc. v. Dormitory Authority of the State of New York (In re Tougher Industries, Inc.), No. 07-90017, 2009 BL 31048 (Bankr. N.D.N.Y. Feb. 17, 2009)

On February 17, 2009, the United States Bankruptcy Court for the Northern District of New York permissively abstained from hearing a breach of contract action and related counterclaims pursuant to 28 U.S.C. §1334(c)(1), granting a third party defendant’s motion to remand the matter to state court.

Breach of Contract Action and Related Counterclaims

Prior to filing for bankruptcy, Tougher Industries, Inc. (“Tougher” or “Debtor”) had been chosen as the successful bidder for a subcontractor position offered by the Dormitory Authority of the State of New York (“Dormitory Authority”). Pursuant to the subcontract executed by the parties in May 2001, Tougher agreed to serve as the Dormitory Authority’s subcontractor in connection with the extensive renovation of an office building.

Ultimately, Tougher incurred \$2 million in cost overruns with respect to the construction project. As a result, in May 2006, Tougher initiated an action (“State Court Action”) in Albany state court against the Dormitory Authority for breach of contract, quantum meruit, unjust enrichment, and interference with the performance of a contract. Specifically, Tougher alleged that the Dormitory Authority was liable for the cost overruns in light of the Dormitory Authority’s actions, failures to act, and inadequate planning in connection with the construction project.

In response, the Dormitory Authority filed various counterclaims, seeking approximately \$559,000 against Tougher for breach of contract. At the same time, the Dormitory Authority filed a third party complaint against Crandell Associates, Architects and Facility Planners, P.C. (“Crandell”), the architect that had been hired with respect to the construction project. Contending that Crandell had improperly designed the building, thereby

causing damages to the Dormitory Authority and resulting in the filing of the State Court Action, the Dormitory Authority sought \$741,000 from Crandell for negligence, indemnity, and breach of contract. Thereafter, in August 2006, Crandell counterclaimed against the Dormitory Authority, requesting \$900,000 in unpaid fees based on breach of contract, quantum meruit, and unjust enrichment. Notably, neither Crandell nor Tougher asserted causes of action against each other.

Removal of Litigation and Motion to Remand

In November 2006, Tougher filed a petition for chapter 11 bankruptcy protection and, in February 2007, removed the litigation involving the Dormitory Authority, Crandell, and itself to the bankruptcy court pursuant to 28 U.S.C. §§1452(a) and 1334. In response, Crandell objected to the removal and to the bankruptcy court's entry of a final judgment. At the same time, during the pendency of Debtor's bankruptcy proceedings, the bankruptcy court had approved the sale of all of Debtor's assets. In August 2008, following various failed attempts at mediation, Crandell filed a second motion ("Motion to Remand") requesting that the bankruptcy court abstain from considering the State Court Action and related litigation, and that the bankruptcy court remand the actions to state court. In particular, Crandell argued that the bankruptcy court was mandated to abstain pursuant to 28 U.S.C. §1334(c)(2) or, alternatively, that the bankruptcy court could choose to abstain under §1334(c)(1).

Debtor opposed Crandell's Motion to Remand, claiming that mandatory abstention was inappropriate insofar as Crandell had not timely filed its abstention motion, the matter had arisen under the Bankruptcy Code or in Debtor's bankruptcy proceeding, and Crandell had failed to establish that the matter could be timely adjudicated in state court. Additionally, Debtor argued that permissive abstention was not warranted because the bankruptcy court's retention of jurisdiction would result in the effective administration of the case, the state law claims were not difficult in nature to evaluate, and Debtor had not engaged in forum shopping.

Bankruptcy Court's Jurisdiction

As a preliminary matter, the bankruptcy court explained that 28 U.S.C. §§1334(a) and (b) grant original and exclusive jurisdiction over all title 11 cases to the district courts, as well as original jurisdiction over all civil proceedings arising under title 11, or arising in or related to cases under title 11. The bankruptcy court further added that under §1334(c), a court is either mandated or permitted to abstain from hearing a matter arising in a bankruptcy case, related to a bankruptcy case, or arising under the Bankruptcy Code.

Mandatory Abstention

Conducting its analysis, the bankruptcy court first discussed mandatory abstention under §1334(c)(2). In this regard, the court indicated that a court is required to abstain from hearing

a matter if the abstention motion has been timely filed, the action is based on a state law claim, the action is "related to" a bankruptcy proceeding as opposed to arising under the Bankruptcy Code or arising in a bankruptcy proceeding, §1334 is the sole jurisdictional basis for the action, the action has been commenced in state court, and the state court action can be timely adjudicated. *Deep v. Boies*, No. 05-1187 (N.D.N.Y. 2007).

Permissive Abstention

Next, turning to permissive abstention under §1334(c)(1), the bankruptcy court explained that a court may choose to abstain from hearing a matter arising under title 11 or arising in or related to a bankruptcy case. See *In re S.G. Phillips Constructors, Inc.*, 45 F.3d 702, 708 (2d Cir. 1995). The bankruptcy court further stated that in determining whether to abstain, courts consider several factors, including: (1) the impact on the efficient administration of the estate; (2) the extent to which state law issues predominate over bankruptcy issues; (3) the difficulty of the applicable state law; (4) whether a related proceeding is pending in state court; (5) the existence of any jurisdictional basis other than §1334; (6) the degree of relatedness of the action to the main bankruptcy case; (7) the substance of an asserted core proceeding; (8) the feasibility of severing state law claims from core bankruptcy matters in order to allow judgments to be entered in state court but enforced by the bankruptcy court; (9) the burden on the court's docket; (10) the likelihood that the filing of the action in a bankruptcy court involves forum shopping by one of the parties; (11) the existence of a right to a jury trial; and (12) the involvement of non debtor parties in the proceeding. See *In re WorldCom, Inc. Securities Litigation*, 293 B.R. 308, 332 (S.D.N.Y. 2003); *In re Masterwear Corp.*, 241 B.R. 511, 520 (Bankr. S.D.N.Y. 1999).

Factors Supporting Permissive Abstention

Applying the *WorldCom* factors to the instant case, the bankruptcy court concluded that because Debtor's assets had already been sold, the adjudication of the litigation in state court would have no impact on the bankruptcy estate or the bankruptcy proceeding other than to increase or decrease the amount of funds available to pay creditors' claims. Moreover, the bankruptcy court explained that the related contract actions involved issues governed exclusively by state law. Aside from §1334, the court observed that no jurisdictional basis existed for the matters to be heard by the bankruptcy court. The court also remarked that while the contractual disputes were potentially complex, the applicable state law was not difficult or unsettled. In fact, the bankruptcy court commented that the commercial division of the Albany state court had been established for the precise purpose of handling contractual disputes. As such, the bankruptcy court declared that addressing the State Court Action in the bankruptcy court would unnecessarily dilute the bankruptcy court's limited resources, which could be better spent deciding issues relevant to bankruptcy matters.

Finally, the bankruptcy court indicated that the instant matter involved both Debtor's claim against the Dormitory Authority, a third party to the bankruptcy case, as well as the Dormitory Authority's claim against Crandell, another third party. Recognizing that neither Debtor nor Crandell had filed actions against each other, the bankruptcy court nevertheless noted that their causes of action were closely related, insofar as the Dormitory Authority's claim against Crandell sought indemnification for any successful claim made by Debtor against it. As a result, the bankruptcy court resolved that Debtor's claims against the Dormitory Authority were directly related to the Dormitory Authority's claims against Crandell. As such, the bankruptcy court realized that severing Crandell's

claim from the State Court Action would result in duplicative litigation and a waste of the bankruptcy court and state court's time and resources. Accordingly, the bankruptcy court decided that the State Court Action and related proceedings would be better handled in state court.

*Bankruptcy Court Grants Crandell's
Motion to Remand*

Hence, granting Crandell's Motion to Remand, the bankruptcy court permissively abstained from hearing the State Court Action and related proceedings, remanding the matters to the Albany state court.

Debtors

Chapter 11 Filings

Filed Mar. 12, 2009 through Mar. 18, 2009

Debtor	Bankruptcy Court	Case Number	Filing Date	Judge
Selma ZX1, LLC	Northern District of Alabama	09-bk-70622	Mar. 12, 2009	C. Michael Stilson
Team Resurrection Inc.	Central District of California	09-bk-12093	Mar. 12, 2009	Erithe A. Smith
M & R Car Wash Properties, Inc.	Central District of California	09-bk-12755	Mar. 12, 2009	Geraldine Mund
Global Real Estate and Development, LLC	Central District of California	09-bk-14610	Mar. 12, 2009	Richard M. Neiter
Auburn Multi-Family I, LLC	Eastern District of California	09-bk-24175	Mar. 12, 2009	Thomas Holman
Via Sierra LLC	Northern District of California	09-bk-51741	Mar. 12, 2009	Marilyn Morgan
Floor Factory Outlet - Palatka, LLC	Middle District of Florida	09-bk-01786	Mar. 12, 2009	Paul M. Glenn
Clective GA, Inc.	Northern District of Georgia	09-bk-66475	Mar. 12, 2009	C. Ray Mullins
Commercial Driver License Training School, LLC	Eastern District of Michigan	09-bk-47235	Mar. 12, 2009	Marci B. McIvor
DTS Inc.	Eastern District of Michigan	09-bk-47272	Mar. 12, 2009	Steven W. Rhodes
Bender Corp., Inc.	Eastern District of Michigan	09-bk-47278	Mar. 12, 2009	Marci B. McIvor
Douglas R. Wilbur, Inc.	Eastern District of Michigan	09-bk-47293	Mar. 12, 2009	Marci B. McIvor
Lusitano Wine Imports, Inc.	District of New Jersey	09-bk-15979	Mar. 12, 2009	Morris Stern
Global Outreach, S.A.	District of New Jersey	09-bk-15985	Mar. 12, 2009	Donald H. Steckroth
Heritage Center, Inc.	District of New Jersey	09-bk-16019	Mar. 12, 2009	Gloria M. Burns
UNEQ, Inc.	Northern District of Ohio	09-bk-50895	Mar. 12, 2009	Marilyn Shea-Stonum
Robin Associates, LLC	Western District of Pennsylvania	09-bk-21717	Mar. 12, 2009	M. Bruce McCullough
North American Wire, LLC	Western District of Pennsylvania	09-bk-21734	Mar. 12, 2009	Judith K. Fitzgerald
SB Wire, LP	Western District of Pennsylvania	09-bk-21735	Mar. 12, 2009	Judith K. Fitzgerald
Agave Azul, Inc.	Southern District of Texas	09-bk-50078	Mar. 12, 2009	Wesley W. Steen
Grupo Victoria Corp., Inc.	Southern District of Texas	09-bk-50079	Mar. 12, 2009	Wesley W. Steen
SNH Aerospace Services Inc.	Western District of Texas	09-bk-50920	Mar. 12, 2009	Ronald B. King
Buffalo Run, LLC	District of Utah	09-bk-22233	Mar. 12, 2009	William T. Thurman
SV 261, LLC	Eastern District of Washington	09-bk-01291	Mar. 12, 2009	Patricia C. Williams
Aspen Development, LLC	District of Wyoming	09-bk-20184	Mar. 12, 2009	Peter J. McNiff

Debtor	Bankruptcy Court	Case Number	Filing Date	Judge
PSI Sales, Inc.	Southern District of Alabama	09-bk-11187	Mar. 13, 2009	William S. Shulman
Arizona Environmental Recycling, LLC	District of Arizona	09-bk-04665	Mar. 13, 2009	Randolph J. Haines
N-Route, LLC	District of Arizona	09-bk-04668	Mar. 13, 2009	Sarah Sharer Curley
Gallery Heights Partners LLC	Central District of California	09-bk-14639	Mar. 13, 2009	Thomas B. Donovan
Gallery Traditions Partners II, LLC	Central District of California	09-bk-14643	Mar. 13, 2009	Thomas B. Donovan
Rolsafe International, LLC	Middle District of Florida	09-bk-04714	Mar. 13, 2009	Alexander L. Paskay
Termano, LLC	Northern District of Illinois	09-bk-08457	Mar. 13, 2009	Carol A. Doyle
Affordable Dental Group, Inc.	Western District of Missouri	09-bk-60455	Mar. 13, 2009	Arthur B. Federman
Twilite LLC	District of Montana	09-bk-60339	Mar. 13, 2009	Not yet assigned
Pacific Sun Tanning Co., LLC	District of Nevada	09-bk-50667	Mar. 13, 2009	Gregg W. Zive
Bradley Corrugated Box Co., Inc.	District of New Jersey	09-bk-16126	Mar. 13, 2009	Rosemary Gambardella
L&D Contracting, Inc.	Eastern District of North Carolina	09-bk-02009	Mar. 13, 2009	J. Rich Leonard
Raleigh Durham e-Suites, LLC	Eastern District of North Carolina	09-bk-02023	Mar. 13, 2009	A. Thomas Small
Excavation Specialists, Inc.	Western District of North Carolina	09-bk-10283	Mar. 13, 2009	George R. Hodges
Hathaway Land & Cattle, Inc.	Middle District of Tennessee	09-bk-02873	Mar. 13, 2009	Marian F. Harrison
Cornerstone Health Systems, LLC	Middle District of Tennessee	09-bk-02915	Mar. 13, 2009	George C. Paine II
ACP Ameri-Tech Acquisition, LLC	Eastern District of Texas	09-bk-90082	Mar. 13, 2009	Bill Parker
Americas Flags & Poles, Inc.	Northern District of Texas	09-bk-41516	Mar. 13, 2009	D. Michael Lynn
Harry C. White Housemovers, Inc.	District of Maryland	09-bk-14290	Mar. 15, 2009	Duncan W. Keir
Core States Management, Inc.	Western District of Wisconsin	09-bk-11497	Mar. 15, 2009	Thomas S. Utschig
Tuscaloosa ZX1, LLC	Northern District of Alabama	09-bk-70646	Mar. 16, 2009	C. Michael Stilson
Fresh Air Dispatch, LLC	District of Arizona	09-bk-04804	Mar. 16, 2009	Sarah Sharer Curley
Unique Premium Metals, Inc.	Central District of California	09-bk-15849	Mar. 16, 2009	Barry Russell
Monterey Capitola, LLC	Northern District of California	09-bk-51826	Mar. 16, 2009	Roger L. Efremsky
Trio Display & Fixture, Inc.	Southern District of California	09-bk-03216	Mar. 16, 2009	Louise DeCarl Adler
Masonite Corp.	District of Delaware	09-bk-10844	Mar. 16, 2009	Peter J. Walsh
Premdor Finance LLC	District of Delaware	09-bk-10845	Mar. 16, 2009	Peter J. Walsh
Eger Properties	District of Delaware	09-bk-10846	Mar. 16, 2009	Peter J. Walsh
WMW, Inc.	District of Delaware	09-bk-10847	Mar. 16, 2009	Peter J. Walsh
Woodlands Millwork I, Ltd.	District of Delaware	09-bk-10848	Mar. 16, 2009	Peter J. Walsh
Masonite Primeboard Inc.	District of Delaware	09-bk-10849	Mar. 16, 2009	Peter J. Walsh
Masonite Corp. Foreign Holdings Ltd.	District of Delaware	09-bk-10850	Mar. 16, 2009	Peter J. Walsh
Masonite Holding Co. Ltd.	District of Delaware	09-bk-10851	Mar. 16, 2009	Peter J. Walsh
Florida Made Door Co.	District of Delaware	09-bk-10852	Mar. 16, 2009	Peter J. Walsh
Cutting Edge Tooling, Inc.	District of Delaware	09-bk-10853	Mar. 16, 2009	Peter J. Walsh
Pintu Acquisition Co., Inc.	District of Delaware	09-bk-10854	Mar. 16, 2009	Peter J. Walsh
Masonite Air LLC	District of Delaware	09-bk-10855	Mar. 16, 2009	Peter J. Walsh
Door Installation Specialist Corp.	District of Delaware	09-bk-10856	Mar. 16, 2009	Peter J. Walsh

Debtor	Bankruptcy Court	Case Number	Filing Date	Judge
Masonite International Corp.	District of Delaware	09-bk-10857	Mar. 16, 2009	Peter J. Walsh
Masonite Holding Corp.	District of Delaware	09-bk-10858	Mar. 16, 2009	Peter J. Walsh
Masonite International Inc.	District of Delaware	09-bk-10859	Mar. 16, 2009	Peter J. Walsh
Primus Telecommunications Group, Inc.	District of Delaware	09-bk-10867	Mar. 16, 2009	Kevin Gross
Primus Telecommunications Holding, Inc.	District of Delaware	09-bk-10868	Mar. 16, 2009	Kevin Gross
Primus Telecommunications IHC, Inc.	District of Delaware	09-bk-10869	Mar. 16, 2009	Kevin Gross
Primus Telecommunications International, Inc.	District of Delaware	09-bk-10870	Mar. 16, 2009	Kevin Gross
U.S. Acquisitions & Oil, Inc.	District of Delaware	09-bk-10875	Mar. 16, 2009	Kevin Gross
Midwest Oil of Wisconsin, LLC	District of Delaware	09-bk-10877	Mar. 16, 2009	Kevin Gross
Midwest Oil of Minnesota, LLC	District of Delaware	09-bk-10878	Mar. 16, 2009	Kevin Gross
Midwest Oil of Shawano, LLC	District of Delaware	09-bk-10879	Mar. 16, 2009	Kevin Gross
Midwest Properties of Shawano, LLC	District of Delaware	09-bk-10880	Mar. 16, 2009	Kevin Gross
Midwest Hotels & Motels of Shawano, LLC	District of Delaware	09-bk-10881	Mar. 16, 2009	Kevin Gross
Wood Treaters, LLC	Middle District of Florida	09-bk-01895	Mar. 16, 2009	Paul M. Glenn
Marine Gasket, LLC	Middle District of Florida	09-bk-04824	Mar. 16, 2009	Caryl E. Delano
750 Jefferson Avenue LLC	Southern District of Florida	09-bk-14451	Mar. 16, 2009	Laurel M. Isicoff
Andrews Capital Holding Corp.	Southern District of Florida	09-bk-14456	Mar. 16, 2009	John K. Olson
Doral Financial Center, LLC	Southern District of Florida	09-bk-14477	Mar. 16, 2009	Robert A. Mark
Best Value, Inc.	Northern District of Iowa	09-bk-00591	Mar. 16, 2009	Paul J. Kilburg
JTJ, LLC	Middle District of Louisiana	09-bk-10324	Mar. 16, 2009	Douglas D. Dodd
B & K Property Investments, Inc.	Western District of Missouri	09-bk-60477	Mar. 16, 2009	Arthur B. Federman
K2 Restaurant Concepts, Inc.	Western District of Missouri	09-bk-60481	Mar. 16, 2009	Arthur B. Federman
Skin City Tattoo, Inc.	Western District of Missouri	09-bk-60482	Mar. 16, 2009	Arthur B. Federman
Martinsville Commercial Condo, LLC	District of New Jersey	09-bk-16292	Mar. 16, 2009	Michael B. Kaplan
GreyStone Healthcare Staffing of Central Jersey, LLC	Eastern District of New York	09-bk-71717	Mar. 16, 2009	Robert E. Grossman
GreyStone Healthcare Staffing of NY, LLC	Eastern District of New York	09-bk-71719	Mar. 16, 2009	Robert E. Grossman
GreyStone Staffing of Central Jersey, LLC	Eastern District of New York	09-bk-71720	Mar. 16, 2009	Alan S. Trust
Bridgewater Land Resource, LLC	Eastern District of North Carolina	09-bk-02067	Mar. 16, 2009	A. Thomas Small
Land Resource Group of Raleigh, Inc.	Eastern District of North Carolina	09-bk-02069	Mar. 16, 2009	A. Thomas Small
Vanguard Homes, Inc.	Eastern District of North Carolina	09-bk-02071	Mar. 16, 2009	A. Thomas Small
Forum Health	Northern District of Ohio	09-bk-40795	Mar. 16, 2009	Kay Woods
Forum Health Rehabilitative Services Co.	Northern District of Ohio	09-bk-40796	Mar. 16, 2009	Kay Woods

Debtor	Bankruptcy Court	Case Number	Filing Date	Judge
Forum Health Diagnostics Co.	Northern District of Ohio	09-bk-40797	Mar. 16, 2009	Kay Woods
Forum Health Enterprises Co.	Northern District of Ohio	09-bk-40798	Mar. 16, 2009	Kay Woods
Forum Health Outreach Laboratories, Inc.	Northern District of Ohio	09-bk-40799	Mar. 16, 2009	Kay Woods
Western Reserve Health Foundation	Northern District of Ohio	09-bk-40800	Mar. 16, 2009	Kay Woods
Forum Health Ventures Co.	Northern District of Ohio	09-bk-40801	Mar. 16, 2009	Kay Woods
Forum Health Pharmacy Services Co.	Northern District of Ohio	09-bk-40802	Mar. 16, 2009	Kay Woods
Forum Health Services Co.	Northern District of Ohio	09-bk-40803	Mar. 16, 2009	Kay Woods
Western Reserve Care System	Northern District of Ohio	09-bk-40804	Mar. 16, 2009	Kay Woods
Dacas Nursing Support Systems, Inc.	Northern District of Ohio	09-bk-40805	Mar. 16, 2009	Kay Woods
Dacas Nursing Systems, Inc.	Northern District of Ohio	09-bk-40806	Mar. 16, 2009	Kay Woods
Beeghly Oaks	Northern District of Ohio	09-bk-40807	Mar. 16, 2009	Kay Woods
Trumbull Memorial Hospital	Northern District of Ohio	09-bk-40808	Mar. 16, 2009	Kay Woods
Trumbull Memorial Hospital Foundation	Northern District of Ohio	09-bk-40809	Mar. 16, 2009	Kay Woods
Comprehensive Psychiatry Specialists, Inc.	Northern District of Ohio	09-bk-40810	Mar. 16, 2009	Kay Woods
PrideCare, Inc.	Northern District of Ohio	09-bk-40811	Mar. 16, 2009	Kay Woods
Visiting Nurse Association and Hospice of Northeast Ohio	Northern District of Ohio	09-bk-40812	Mar. 16, 2009	Kay Woods
RLADH Properties LLC	Southern District of Ohio	09-bk-11383	Mar. 16, 2009	Jeffery P. Hopkins
DCNC North Carolina I, LLC	Eastern District of Pennsylvania	09-bk-11825	Mar. 16, 2009	Eric L. Frank
Guffey Brothers, Inc.	Western District of Pennsylvania	09-bk-21830	Mar. 16, 2009	Judith K. Fitzgerald
HighQ BPO, LLC	Western District of Texas	09-bk-30511	Mar. 16, 2009	Leif M. Clark
Stuart Property, LLC	Eastern District of Virginia	09-bk-11907	Mar. 16, 2009	Robert G. Mayer
AJH Restaurant Group, LLC	District of Arizona	09-bk-04910	Mar. 17, 2009	Charles G. Case II
Circle East Manor Apartments, LLC	District of Colorado	09-bk-14304	Mar. 17, 2009	A. Bruce Campbell
Pacific Partners Ltd.	District of Colorado	09-bk-14317	Mar. 17, 2009	Howard R. Tallman
Sangeeta Hotels, LLC	Northern District of Georgia	09-bk-66879	Mar. 17, 2009	Margaret Murphy
Munoz-Garcia Enterprises, Inc.	Northern District of Illinois	09-bk-08932	Mar. 17, 2009	Jack B. Schmetterer
Armstrong Family LP	District of Maine	09-bk-20320	Mar. 17, 2009	James B. Haines, Jr.
Penn Shop, LLC	District of Maryland	09-bk-14469	Mar. 17, 2009	James F. Schneider
Hawks Watch, LLC	District of Maryland	09-bk-14492	Mar. 17, 2009	Robert A. Gordon
Modern Industries, Inc.	Eastern District of Michigan	09-bk-31333	Mar. 17, 2009	Daniel S. Opperman
BJM Construction, Inc.	District of New Jersey	09-bk-16398	Mar. 17, 2009	Rosemary Gambardella
Morning Star Restaurant Group, LLC	Southern District of New York	09-bk-11189	Mar. 17, 2009	Allan L. Gropper
Duemilla, Inc.	Western District of Pennsylvania	09-bk-21839	Mar. 17, 2009	Bernard Markovitz
Brown's Grading & Grinding, Inc.	District of South Carolina	09-bk-01975	Mar. 17, 2009	Helen E. Durris

Debtor	Bankruptcy Court	Case Number	Filing Date	Judge
Tri City Homes Inc.	Western District of Tennessee	09-bk-22965	Mar. 17, 2009	Paulette J. Delk
Indiana Data, Inc.	Western District of Texas	09-bk-30516	Mar. 17, 2009	Leif M. Clark
Pohick Valley Real Estate LLC	Eastern District of Virginia	09-bk-11946	Mar. 17, 2009	Robert G. Mayer
B&D Excavating Inc.	Western District of Virginia	09-bk-50359	Mar. 17, 2009	Ross W. Krumm
Word of Faith Missionary Baptist Church, Inc.	Northern District of Alabama	09-bk-81105	Mar. 18, 2009	Jack Caddell
San Carlos Court, LLC	Northern District of California	09-bk-51915	Mar. 18, 2009	Roger L. Efremsky
Star Acquisition VII, LLC	District of Colorado	09-bk-14425	Mar. 18, 2009	A. Bruce Campbell
Good Earth Technologies, Inc.	District of Connecticut	09-bk-50473	Mar. 18, 2009	Alan H. W. Shiff
Drug Fair Group, Inc.	District of Delaware	09-bk-10897	Mar. 18, 2009	Brendan Linehan Shannon
CDI Group, Inc.	District of Delaware	09-bk-10898	Mar. 18, 2009	Brendan Linehan Shannon
The Fairchild Corp.	District of Delaware	09-bk-10899	Mar. 18, 2009	Christopher S. Sontchi
A10 Inc.	District of Delaware	09-bk-10900	Mar. 18, 2009	Christopher S. Sontchi
Aero International, Inc.	District of Delaware	09-bk-10901	Mar. 18, 2009	Christopher S. Sontchi
Banner Aerospace Holding Co. I, Inc.	District of Delaware	09-bk-10902	Mar. 18, 2009	Christopher S. Sontchi
Fairchild France, Inc.	District of Delaware	09-bk-10903	Mar. 18, 2009	Christopher S. Sontchi
Banner Aerospace Holding Co. II, Inc.	District of Delaware	09-bk-10904	Mar. 18, 2009	Christopher S. Sontchi
Fairchild Holding Corp.	District of Delaware	09-bk-10905	Mar. 18, 2009	Christopher S. Sontchi
Banner Aerospace Services, Inc.	District of Delaware	09-bk-10906	Mar. 18, 2009	Christopher S. Sontchi
Fairchild International, Inc.	District of Delaware	09-bk-10907	Mar. 18, 2009	Christopher S. Sontchi
Banner Aerospace-Singapore, Inc.	District of Delaware	09-bk-10908	Mar. 18, 2009	Christopher S. Sontchi
Fairchild Realty, LLC	District of Delaware	09-bk-10909	Mar. 18, 2009	Christopher S. Sontchi
Banner Capital Ventures, Inc.	District of Delaware	09-bk-10910	Mar. 18, 2009	Christopher S. Sontchi
Fairchild Retiree Medical Services, Inc.	District of Delaware	09-bk-10911	Mar. 18, 2009	Christopher S. Sontchi
Banner Energy Corp. of Kentucky, Inc.	District of Delaware	09-bk-10912	Mar. 18, 2009	Christopher S. Sontchi
Banner Industrial Distribution, Inc.	District of Delaware	09-bk-10913	Mar. 18, 2009	Christopher S. Sontchi
Fairchild Sports USA, Inc.	District of Delaware	09-bk-10914	Mar. 18, 2009	Christopher S. Sontchi
Meow, Inc.	District of Delaware	09-bk-10915	Mar. 18, 2009	Christopher S. Sontchi
Fairchild Sports, Inc.	District of Delaware	09-bk-10916	Mar. 18, 2009	Christopher S. Sontchi
Banner Industrial Products, Inc.	District of Delaware	09-bk-10917	Mar. 18, 2009	Christopher S. Sontchi
Fairchild Switzerland, Inc.	District of Delaware	09-bk-10918	Mar. 18, 2009	Christopher S. Sontchi
NASAM Inc.	District of Delaware	09-bk-10919	Mar. 18, 2009	Christopher S. Sontchi
BAR DE, Inc.	District of Delaware	09-bk-10920	Mar. 18, 2009	Christopher S. Sontchi
Fairchild Technologies IP, Inc.	District of Delaware	09-bk-10921	Mar. 18, 2009	Christopher S. Sontchi
PB Herndon Aerospace, Inc.	District of Delaware	09-bk-10922	Mar. 18, 2009	Christopher S. Sontchi
Fairchild Titanium Technologies, Inc.	District of Delaware	09-bk-10923	Mar. 18, 2009	Christopher S. Sontchi
Plymouth Leasing Co.	District of Delaware	09-bk-10924	Mar. 18, 2009	Christopher S. Sontchi
Fairchild Trading Corp.	District of Delaware	09-bk-10925	Mar. 18, 2009	Christopher S. Sontchi
DAC International, Inc.	District of Delaware	09-bk-10926	Mar. 18, 2009	Christopher S. Sontchi

Debtor	Bankruptcy Court	Case Number	Filing Date	Judge
Professional Aircraft Accessories, Inc.	District of Delaware	09-bk-10927	Mar. 18, 2009	Christopher S. Sontchi
Professional Aviation Associates, Inc.	District of Delaware	09-bk-10928	Mar. 18, 2009	Christopher S. Sontchi
Faircraft Sales, Ltd.	District of Delaware	09-bk-10929	Mar. 18, 2009	Christopher S. Sontchi
Recoil Australia Holdings, Inc.	District of Delaware	09-bk-10930	Mar. 18, 2009	Christopher S. Sontchi
Dallas Aerospace, Inc.	District of Delaware	09-bk-10931	Mar. 18, 2009	Christopher S. Sontchi
GCCUS, Inc.	District of Delaware	09-bk-10932	Mar. 18, 2009	Christopher S. Sontchi
Recoil Holdings, Inc.	District of Delaware	09-bk-10933	Mar. 18, 2009	Christopher S. Sontchi
DEM Mairoll, LLC	District of Delaware	09-bk-10934	Mar. 18, 2009	Christopher S. Sontchi
Recoil Inc.	District of Delaware	09-bk-10935	Mar. 18, 2009	Christopher S. Sontchi
Gobble Gobble, Inc.	District of Delaware	09-bk-10936	Mar. 18, 2009	Christopher S. Sontchi
Discontinued Aircraft, Inc.	District of Delaware	09-bk-10937	Mar. 18, 2009	Christopher S. Sontchi
Recycling Investments II, Inc.	District of Delaware	09-bk-10938	Mar. 18, 2009	Christopher S. Sontchi
Recycling Investments III, Inc.	District of Delaware	09-bk-10939	Mar. 18, 2009	Christopher S. Sontchi
Discontinued Services, Inc.	District of Delaware	09-bk-10940	Mar. 18, 2009	Christopher S. Sontchi
Intersport Fashions West, Inc.	District of Delaware	09-bk-10941	Mar. 18, 2009	Christopher S. Sontchi
Republic Thunderbolt North, LLC	District of Delaware	09-bk-10942	Mar. 18, 2009	Christopher S. Sontchi
Jenkins Coal Dock Co., Inc.	District of Delaware	09-bk-10943	Mar. 18, 2009	Christopher S. Sontchi
Republic Thunderbolt West, LLC	District of Delaware	09-bk-10944	Mar. 18, 2009	Christopher S. Sontchi
Euro MLS, Inc.	District of Delaware	09-bk-10945	Mar. 18, 2009	Christopher S. Sontchi
Mairoll, Inc.	District of Delaware	09-bk-10946	Mar. 18, 2009	Christopher S. Sontchi
Marcliff Corp.	District of Delaware	09-bk-10947	Mar. 18, 2009	Christopher S. Sontchi
Republic Thunderbolt, LLC	District of Delaware	09-bk-10948	Mar. 18, 2009	Christopher S. Sontchi
Marson Creative Fastener, Inc.	District of Delaware	09-bk-10949	Mar. 18, 2009	Christopher S. Sontchi
RHI Holdings, Inc.	District of Delaware	09-bk-10950	Mar. 18, 2009	Christopher S. Sontchi
Fairchild Data Corp.	District of Delaware	09-bk-10951	Mar. 18, 2009	Christopher S. Sontchi
Sheepdog, Inc.	District of Delaware	09-bk-10952	Mar. 18, 2009	Christopher S. Sontchi
Matrix Aviation, Inc.	District of Delaware	09-bk-10953	Mar. 18, 2009	Christopher S. Sontchi
Sovereign Air Ltd.	District of Delaware	09-bk-10954	Mar. 18, 2009	Christopher S. Sontchi
Fairchild Fasteners Corp.	District of Delaware	09-bk-10955	Mar. 18, 2009	Christopher S. Sontchi
Suchomimous Terensis, Inc.	District of Delaware	09-bk-10956	Mar. 18, 2009	Christopher S. Sontchi
Aircraft Tire Corp.	District of Delaware	09-bk-10957	Mar. 18, 2009	Christopher S. Sontchi
Swimming Upstream LLC	District of Delaware	09-bk-10958	Mar. 18, 2009	Christopher S. Sontchi
The Rooster, Inc.	District of Delaware	09-bk-10959	Mar. 18, 2009	Christopher S. Sontchi
International Sign & Design Corp.	Middle District of Florida	09-bk-04953	Mar. 18, 2009	Michael G. Williamson
JJ's Auto Center of SW Florida, Inc.	Middle District of Florida	09-bk-04977	Mar. 18, 2009	Alexander L. Paskay
Recycle USA, Inc.	Middle District of Georgia	09-bk-10513	Mar. 18, 2009	James D. Walker, Jr.
Gill Family, LLC	District of Maryland	09-bk-14597	Mar. 18, 2009	Robert A. Gordon
Homeland Office Furniture, Inc.	District of Massachusetts	09-bk-12225	Mar. 18, 2009	Henry J. Boroff
Britt's Furniture Gallery, LLC	Southern District of Mississippi	09-bk-50529	Mar. 18, 2009	Neil P. Olack
Qualia Clinical Service, Inc.	District of Nebraska	09-bk-80629	Mar. 18, 2009	Timothy J. Mahoney

Debtor	Bankruptcy Court	Case Number	Filing Date	Judge
Turtle Holding, LLC	Eastern District of New York	09-bk-42015	Mar. 18, 2009	Dennis E. Milton
Napoli & Sons Meat, Inc.	Eastern District of New York	09-bk-42016	Mar. 18, 2009	Elizabeth Stong
The Hampton Clam Bake & Catering Co., Inc.	Eastern District of New York	09-bk-71750	Mar. 18, 2009	Alan S. Trust
Chemtura Corp.	Southern District of New York	09-bk-11233	Mar. 18, 2009	Robert E. Gerber
A&M Cleaning Products, LLC	Southern District of New York	09-bk-11234	Mar. 18, 2009	Robert E. Gerber
ASCK, Inc.	Southern District of New York	09-bk-11235	Mar. 18, 2009	Robert E. Gerber
ASEPSIS, Inc.	Southern District of New York	09-bk-11236	Mar. 18, 2009	Robert E. Gerber
BioLab Co. Store, LLC	Southern District of New York	09-bk-11237	Mar. 18, 2009	Robert E. Gerber
BioLab Franchise Co., LLC	Southern District of New York	09-bk-11238	Mar. 18, 2009	Robert E. Gerber
Bio-Lab, Inc.	Southern District of New York	09-bk-11239	Mar. 18, 2009	Robert E. Gerber
BioLab Textile Additives, LLC	Southern District of New York	09-bk-11240	Mar. 18, 2009	Robert E. Gerber
CNK Chemical Realty Corp.	Southern District of New York	09-bk-11241	Mar. 18, 2009	Robert E. Gerber
Crompton Colors Inc.	Southern District of New York	09-bk-11242	Mar. 18, 2009	Robert E. Gerber
Crompton Holding Corp.	Southern District of New York	09-bk-11244	Mar. 18, 2009	Robert E. Gerber
Crompton Monochem, Inc.	Southern District of New York	09-bk-11245	Mar. 18, 2009	Robert E. Gerber
GLCC Laurel, LLC	Southern District of New York	09-bk-11246	Mar. 18, 2009	Robert E. Gerber
Great Lakes Chemical Corp.	Southern District of New York	09-bk-11247	Mar. 18, 2009	Robert E. Gerber
Great Lakes Chemical Global, Inc.	Southern District of New York	09-bk-11249	Mar. 18, 2009	Robert E. Gerber
GT Seed Treatment, Inc.	Southern District of New York	09-bk-11250	Mar. 18, 2009	Robert E. Gerber
HomeCare Labs, Inc.	Southern District of New York	09-bk-11251	Mar. 18, 2009	Robert E. Gerber
ISCI, Inc.	Southern District of New York	09-bk-11252	Mar. 18, 2009	Robert E. Gerber
Kem Manufacturing Corp.	Southern District of New York	09-bk-11253	Mar. 18, 2009	Robert E. Gerber
Laurel Industries Holdings, Inc.	Southern District of New York	09-bk-11254	Mar. 18, 2009	Robert E. Gerber
Monochem, Inc.	Southern District of New York	09-bk-11255	Mar. 18, 2009	Robert E. Gerber
Naugatuck Treatment Co.	Southern District of New York	09-bk-11256	Mar. 18, 2009	Robert E. Gerber
Recreational Water Products, Inc.	Southern District of New York	09-bk-11257	Mar. 18, 2009	Robert E. Gerber
Uniroyal Chemical Co. Ltd. (Delaware)	Southern District of New York	09-bk-11258	Mar. 18, 2009	Robert E. Gerber
Weber City Road LLC	Southern District of New York	09-bk-11259	Mar. 18, 2009	Robert E. Gerber
WRL of Indiana, Inc.	Southern District of New York	09-bk-11260	Mar. 18, 2009	Robert E. Gerber
Highland Contractors, LLC	Middle District of Pennsylvania	09-bk-01925	Mar. 18, 2009	Mary D. France
Making the Dough, Inc.	Middle District of Pennsylvania	09-bk-01944	Mar. 18, 2009	Mary D. France
International Food Management, Inc.	District of Puerto Rico	09-bk-02023	Mar. 18, 2009	Sara E. De Jesus Kellogg
PMC Marketing Corp.	District of Puerto Rico	09-bk-02048	Mar. 18, 2009	Gerardo Carlo Altieri
Ymas Inventory Management Corp.	District of Puerto Rico	09-bk-02049	Mar. 18, 2009	Gerardo Carlo Altieri
The Beaver Group, Inc.	District of South Carolina	09-bk-02005	Mar. 18, 2009	David R. Duncan
S.T.O. Industries, Inc.	Western District of Washington	09-bk-12521	Mar. 18, 2009	Thomas T. Glover

Significant Lehman Brothers Bankruptcy Filings

Date	Event	Proceeding	Links
Mar. 16, 2009	Various statements of financial affairs and schedules were filed in the United States Bankruptcy Court for the Southern District of New York on behalf of Lehman Brothers Holdings Inc.	<i>In re Lehman Brothers Holdings Inc.</i> , No. 08-13355 (Bankr. S.D.N.Y. Mar. 16, 2009)	Statements of Financial Affairs and Schedules
Mar. 13, 2009	The United States District Court for the Southern District of New York issued an opinion and order affirming the September 20, 2008 sale order and incorporation order signed by the United States Bankruptcy Court for the Southern District of New York.	<i>In re Lehman Brothers Holdings Inc.</i> , No. 08-13355 (Bankr. S.D.N.Y. Mar. 13, 2009)	Opinion and Order
Mar. 13, 2009	The United States Bankruptcy Court for the Southern District of New York entered an order granting Lehman Brothers Holdings Inc.'s motion for authorization to enter into a master repurchase agreement with Lehman Brothers Bank.	<i>In re Lehman Brothers Holdings Inc.</i> , No. 08-13355 (Bankr. S.D.N.Y. Mar. 13, 2009)	Order
Mar. 13, 2009	Numerous statements of financial affairs were filed in the United States Bankruptcy Court for the Southern District of New York on behalf of Lehman Brothers Holdings Inc.	<i>In re Lehman Brothers Holdings Inc.</i> , No. 08-13355 (Bankr. S.D.N.Y. Mar. 13, 2009)	Statements of Financial Affairs
Mar. 12, 2009	Numerous schedules were filed in the United States Bankruptcy Court for the Southern District of New York on behalf of Lehman Brothers Holdings Inc.	<i>In re Lehman Brothers Holdings Inc.</i> , No. 08-13355 (Bankr. S.D.N.Y. Mar. 12, 2009)	Schedules
Mar. 12, 2009	The United States Bankruptcy Court for the Southern District of New York entered an order dismissing the chapter 11 case of Lehman Brothers Finance AG, a/k/a Lehman Brothers Finance SA.	<i>In re Lehman Brothers Holdings Inc.</i> , No. 08-13355 (Bankr. S.D.N.Y. Mar. 12, 2009)	Order
Mar. 12, 2009	Lehman Brothers Holdings Inc. and its affiliated debtors filed a motion in the United States Bankruptcy Court for the Southern District of New York for authorization to enter into a master repurchase agreement with Lehman Brothers Bank.	<i>In re Lehman Brothers Holdings Inc.</i> , No. 08-13355 (Bankr. S.D.N.Y. Mar. 12, 2009)	Motion
Mar. 12, 2009	The United States Bankruptcy Court for the Southern District of New York entered an order authorizing Lehman Brothers Holdings Inc. and its affiliated debtors to retain and employ Huron Consulting Group as tax service providers <i>nunc pro tunc</i> to January 23, 2009.	<i>In re Lehman Brothers Holdings Inc.</i> , No. 08-13355 (Bankr. S.D.N.Y. Mar. 12, 2009)	Order
Mar. 12, 2009	Certain minibond investors, on behalf of themselves and all others similarly situated, filed a class action complaint for declaratory and injunctive relief regarding confirmation of the minibond investors' title and ownership rights in collateral supporting the minibonds and for damages.	<i>Wong v. HSBC USA, Inc.</i> (<i>In re Lehman Brothers Holdings Inc.</i>), No. 09-01120 (Bankr. S.D.N.Y. Mar. 12, 2009)	Complaint
Mar. 11, 2009	The United States Bankruptcy Court for the Southern District of New York entered an order approving Lehman Brothers Holdings Inc. and Lehman Commercial Paper Inc.'s assumption or rejection of open trade confirmations.	<i>In re Lehman Brothers Holdings Inc.</i> , No. 08-13355 (Bankr. S.D.N.Y. Mar. 11, 2009)	Order

Date	Event	Proceeding	Links
Mar. 11, 2009	The United States Bankruptcy Court for the Southern District of New York entered an order authorizing Lehman Brothers Holdings Inc. and its affiliated debtors to maintain, close, and open new bank accounts located at unauthorized depositories and accounts located at U.S. Trustee authorized depositories, to implement investment guidelines, and for a waiver of 11 U.S.C. §345(b).	<i>In re Lehman Brothers Holdings Inc.</i> , No. 08-13355 (Bankr. S.D.N.Y. Mar. 11, 2009)	Order
Mar. 11, 2009	The United States Bankruptcy Court for the Southern District of New York entered an order authorizing Lehman Brothers Holdings Inc. and its affiliated debtors to grant first priority liens in cash collateral posted in connection with the hedging transactions that the debtors enter into through certain futures and prime brokerage accounts.	<i>In re Lehman Brothers Holdings Inc.</i> , No. 08-13355 (Bankr. S.D.N.Y. Mar. 11, 2009)	Order
Mar. 11, 2009	Lehman Brothers Holdings Inc. and Lehman Commercial Paper Inc. filed a motion in the United States Bankruptcy Court for the Southern District of New York for authority to transfer agents' funds in connection with resignations from agency positions.	<i>In re Lehman Brothers Holdings Inc.</i> , No. 08-13355 (Bankr. S.D.N.Y. Mar. 11, 2009)	Motion

For previous significant Lehman Brothers bankruptcy filings, see {BALR <GO>}.

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
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

Debtor	Bankruptcy Court	Case Number	Filing Date	Judge
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. McIvor
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
Drug Fair Group, Inc.	District of Delaware	09-bk-10897	Mar. 18, 2009	Brendan Linehan Shannon
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
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

Debtor	Bankruptcy Court	Case Number	Filing Date	Judge
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
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.
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

Debtor	Bankruptcy Court	Case Number	Filing Date	Judge
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
Standard Pacific Corp.	3/12/2009	Senior Subordinate	Fitch	C	CCC	Bldg - Resident / Commercial
Standard Pacific Corp.	3/12/2009	Senior Unsecured Debt	Fitch	CC	B-	Bldg - Resident / Commercial
Standard Pacific Corp.	3/12/2009	LT Issuer Default Rating	Fitch	CCC	B-	Bldg - Resident / Commercial
Source Interlink Cos. Inc.	3/12/2009	LT Foreign Issuer Credit	S&P	CCC	B- *-	Commercial Services
Source Interlink Cos. Inc.	3/12/2009	LT Local Issuer Credit	S&P	CCC	B- *-	Commercial Services
Beazer Homes USA Inc.	3/12/2009	LT Issuer Default Rating	Fitch	CCC	B-	Bldg - Resident / Commercial
Beazer Homes USA Inc.	3/12/2009	Junior Subordinated Debt	Fitch	C	CCC-	Bldg - Resident / Commercial
Beazer Homes USA Inc.	3/12/2009	Senior Unsecured Debt	Fitch	CC	CCC+	Bldg - Resident / Commercial
Six Flags Theme Parks Inc.	3/13/2009	Bank Loan Debt	Moody's	Caa1	B2	Resorts / Theme Parks
Six Flags Operations Inc.	3/13/2009	Senior Unsecured Debt	Moody's	Ca	Caa2	Resorts / Theme Parks
Six Flags Inc.	3/13/2009	LT Corp Family Rating	Moody's	Ca	Caa2	Resorts / Theme Parks
Six Flags Inc.	3/13/2009	Senior Unsecured Debt	Moody's	C	Caa3	Resorts / Theme Parks
RH Donnelley Inc.	3/13/2009	Bank Loan Debt	Fitch	CC	B-	Advertising Services
RH Donnelley Inc.	3/13/2009	LT Issuer Default Rating	Fitch	C	CCC	Advertising Services
RH Donnelley Corp.	3/13/2009	LT Issuer Default Rating	Fitch	C	CC	Publishing - Periodicals
Peach Holdings Inc.	3/13/2009	LT Corp Family Rating	Moody's	Caa2 *-	B2	Finance - Other Services
Peach Holdings Inc.	3/13/2009	Bank Loan Debt	Moody's	Caa2 *-	B2	Finance - Other Services
MGIC Investment Corp.	3/13/2009	LT Local Issuer Credit	S&P	CCC	BB+ *-	Financial Guarantee Ins.

Company	Date	Rating Type	Agency	Current	Last	Industry Type
Local Insight Regatta Holdings Inc.	3/13/2009	Subordinated Debt	Moody's	Caa3	Caa1	Publishing - Books
Local Insight Regatta Holdings Inc.	3/13/2009	LT Corp Family Rating	Moody's	Caa1	B2	Publishing - Books
Interstate Hotels & Resorts Inc.	3/13/2009	LT Local Issuer Credit	S&P	CCC+	B *-	Hotels & Motels
Interstate Hotels & Resorts Inc.	3/13/2009	LT Foreign Issuer Credit	S&P	CCC+	B *-	Hotels & Motels
Energy Future Competitive Holdings Co.	3/13/2009	Senior Unsecured Debt	Fitch	CCC	CCC+	Electric - Integrated
Dex Media West Inc.	3/13/2009	Senior Unsecured Debt	Fitch	CC	B	Publishing - Periodicals
Dex Media West Inc.	3/13/2009	LT Issuer Default Rating	Fitch	C	CCC	Publishing - Periodicals
Dex Media Inc.	3/13/2009	LT Issuer Default Rating	Fitch	C	CC	Publishing - Periodicals
Dex Media East LLC	3/13/2009	Bank Loan Debt	Fitch	CCC	B-	Publishing - Periodicals
Dex Media East LLC	3/13/2009	LT Issuer Default Rating	Fitch	CC	CCC	Publishing - Periodicals
Brigham Exploration Co.	3/13/2009	LT Corp Family Rating	Moody's	Caa3	Caa1	Oil Comp - Explor & Prodn
Brigham Exploration Co.	3/13/2009	Senior Unsecured Debt	Moody's	Ca	Caa2	Oil Comp - Explor & Prodn
American Airlines Inc.	3/13/2009	LT Issuer Default Rating	Fitch	CCC	B-	Airlines
AMR Corp.	3/13/2009	Senior Unsecured Debt	Fitch	C	CCC	Airlines
AMR Corp.	3/13/2009	LT Issuer Default Rating	Fitch	CCC	B-	Airlines
Six Flags Theme Parks Inc.	3/16/2009	LT Issuer Default Rating	Fitch	C	CC	Resorts / Theme Parks
Six Flags Theme Parks Inc.	3/16/2009	Bank Loan Debt	Fitch	CCC	B-	Resorts / Theme Parks
Six Flags Operations Inc.	3/16/2009	LT Issuer Default Rating	Fitch	C	CCC *-	Resorts / Theme Parks
Six Flags Inc.	3/16/2009	LT Issuer Default Rating	Fitch	C	CC	Resorts / Theme Parks
Sequa Corp.	3/16/2009	LT Corp Family Rating	Moody's	Caa1 *-	B3	Aerospace / Defense - Equip
Sequa Corp.	3/16/2009	Senior Unsecured Debt	Moody's	Caa2 *-	Caa2	Aerospace / Defense - Equip
Meristar H&R Operating Partnership LP	3/16/2009	Bank Loan Debt	Moody's	Caa1 *-	B2	Hotels & Motels
MGIC Investment Corp.	3/16/2009	Junior Subordinated Debt	Moody's	Caa2	B3	Financial Guarantee Ins
Interstate Hotels & Resorts Inc.	3/16/2009	LT Corp Family Rating	Moody's	Caa1 *-	B2	Hotels & Motels
International Coal Group Inc.	3/16/2009	LT Corp Family Rating	Moody's	Caa2	Caa1	Coal
International Coal Group Inc.	3/16/2009	Senior Unsecured Debt	Moody's	Caa3	Caa2	Coal
Hovnanian Enterprises Inc.	3/16/2009	LT Issuer Default Rating	Fitch	CCC	B-	Bldg - Resident / Commercial
Hovnanian Enterprises Inc.	3/16/2009	Senior Unsecured Debt	Fitch	CC	B-	Bldg - Resident / Commercial
Hovnanian Enterprises Inc.	3/16/2009	Senior Subordinate	Fitch	C	CCC	Bldg-Residential / Commercial
Energy Partners Ltd.	3/16/2009	LT Foreign Issuer Credit	S&P	CCC-	CCC+	Oil Comp - Explor & Prodn

Company	Date	Rating Type	Agency	Current	Last	Industry Type
Energy Partners Ltd.	3/16/2009	LT Local Issuer Credit	S&P	CCC-	CCC+	Oil Comp - Explor & Prodn
BLB Management Services Inc.	3/16/2009	LT Corp Family Rating	Moody's	Ca	Caa3	Specified Purpose Acquis
BLB Management Services Inc.	3/16/2009	Bank Loan Debt	Moody's	Caa3	Caa2	Specified Purpose Acquis
Aventine Renewable Energy Holdings Inc.	3/16/2009	LT Corp Family Rating	Moody's	Ca	Caa2	Energy - Alternate Sources
Aventine Renewable Energy Holdings Inc.	3/16/2009	Senior Unsecured Debt	Moody's	C	Caa3	Energy - Alternate Sources
Saks Inc.	3/17/2009	Senior Unsecured Debt	Moody's	Caa1	B2 *-	Retail - Major Dept Store
Nexstar Finance Holdings LLC / Nexstar Finance Holdings Inc.	3/17/2009	LT Corp Family Rating	Moody's	Caa1	B3	Broadcast Serv / Program
Nexstar Finance Holdings LLC / Nexstar Finance Holdings Inc.	3/17/2009	Senior Unsecured Debt	Moody's	Ca	Caa2	Broadcast Serv / Program
Nexstar Broadcasting Inc.	3/17/2009	Senior Subordinate	Moody's	Ca	Caa1	Broadcast Serv / Program
Neiman Marcus Group Inc.	3/17/2009	Senior Unsecured Debt	Moody's	Caa2	B3 *-	Retail - Regional Dept Store
Neiman Marcus Group Inc.	3/17/2009	Senior Subordinate	Moody's	Caa3	B3 *-	Retail - Regional Dept Store
Neiman Marcus Group Inc.	3/17/2009	LT Corp Family Rating	Moody's	Caa1	B1 *-	Retail - Regional Dept Store
Momentive Performance Materials Inc.	3/17/2009	LT Foreign Issuer Credit	S&P	CCC *-	B-	Chemicals - Specialty
Momentive Performance Materials Inc.	3/17/2009	LT Local Issuer Credit	S&P	CCC *-	B-	Chemicals - Specialty
Harrah's Operating Co Inc.	3/17/2009	Bank Loan Debt	Moody's	Caa1 *-	Caa1	Casino Hotels
Harrah's Operating Co Inc.	3/17/2009	Senior Unsecured Debt	Moody's	Ca *-	Ca	Casino Hotels
Harrah's Entertainment Inc.	3/17/2009	LT Corp Family Rating	Moody's	Caa3 *-	Caa3	Casino Hotels
General Growth Properties Inc.	3/17/2009	LT Foreign Issuer Credit	S&P	D	CC	REITS - Regional Malls
General Growth Properties Inc.	3/17/2009	LT Local Issuer Credit	S&P	D	CC	REITS - Regional Malls
Dayton Superior Corp.	3/17/2009	LT Foreign Issuer Credit	S&P	CCC-	CCC	Bldg Prod - Cement / Aggreg
Dayton Superior Corp.	3/17/2009	LT Local Issuer Credit	S&P	CCC-	CCC	Bldg Prod - Cement / Aggreg
Caesars Entertainment Inc.	3/17/2009	Senior Subordinate	Moody's	Ca *-	Ca	Casino Hotels
Brigham Exploration Co.	3/17/2009	LT Local Issuer Credit	S&P	CCC+	B-	Oil Comp - Explor & Prodn
Brigham Exploration Co.	3/17/2009	LT Foreign Issuer Credit	S&P	CCC+	B-	Oil Comp - Explor & Prodn
ArvinMeritor Inc.	3/17/2009	Senior Unsecured Debt	Moody's	Caa2	B3 *-	Auto / Trk Prts & Equip - Orig

Company	Date	Rating Type	Agency	Current	Last	Industry Type
ArvinMeritor Inc.	3/17/2009	LT Corp Family Rating	Moody's	Caa1	B2 *-	Auto / Trk Prts & Equip - Orig
Witco Corp.	3/18/2009	Senior Secured Debt	Moody's	Caa3	B3 *-	Chemicals - Specialty
True Temper Sports Inc.	3/18/2009	LT Local Issuer Credit	S&P	D	CCC	Golf
True Temper Sports Inc.	3/18/2009	LT Foreign Issuer Credit	S&P	D	CCC	Golf
Six Flags Theme Parks Inc.	3/18/2009	LT Foreign Issuer Credit	S&P	CCC	CCC+	Resorts / Theme Parks
Six Flags Theme Parks Inc.	3/18/2009	LT Local Issuer Credit	S&P	CCC	CCC+	Resorts / Theme Parks
Six Flags Inc.	3/18/2009	LT Foreign Issuer Credit	S&P	CCC	CCC+	Resorts / Theme Parks
Six Flags Inc.	3/18/2009	LT Local Issuer Credit	S&P	CCC	CCC+	Resorts / Theme Parks
MTR Gaming Group Inc.	3/18/2009	Senior Subordinate	Moody's	Caa2	Caa1	Casino Hotels
Great Lakes Chemical Corp.	3/18/2009	Senior Unsecured Debt	Moody's	Caa3	B3 *-	Chemicals - Specialty
Freedom Communications Inc.	3/18/2009	Bank Loan Debt	Moody's	Caa3	Caa1 *-	Publishing - Newspapers
Freedom Communications Inc.	3/18/2009	LT Corp Family Rating	Moody's	Caa3	Caa1 *-	Publishing - Newspapers
Chemtura Corp.	3/18/2009	LT Corp Family Rating	Moody's	Ca	B3 *-	Chemicals
Chemtura Corp.	3/18/2009	Senior Unsecured Debt	Moody's	Caa3	B3 *-	Chemicals
Aventine Renewable Energy Holdings Inc.	3/18/2009	LT Local Issuer Credit	S&P	CC *-	CCC+ *-	Energy - Alternate Sources
Aventine Renewable Energy Holdings Inc.	3/18/2009	LT Foreign Issuer Credit	S&P	CC *-	CCC+ *-	Energy - Alternate Sources

Cross-Border Insolvency

2009 Chapter 15 Proceedings

Proceeding	Contested or Uncontested	Place of Original Proceeding	Status
<i>In re Bilrite Rubber (1984) Inc.</i> , No. 09-31423 (N.D. Ohio Mar. 12, 2009)	Uncontested	Canada	Pending
<i>In re Independencia S.A.</i> , No. 09-10903 (Bankr. S.D.N.Y. Feb. 27, 2009)	Uncontested	Brazil	Pending
<i>In re Lehman Brothers Finance AG</i> , No. 09-10583 (Bankr. S.D.N.Y. Feb. 10, 2009)	Uncontested	Switzerland	Pending
<i>In re Railpower Hybrid Technologies Corp.</i> , No. 09-10198 (Bankr. W.D. Pa. Feb. 5, 2009)	Uncontested	Canada	Pending
<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	Pending
<i>In re Atlas Bulk Shipping AS</i> , No. 09-10315 (Bankr. S.D.N.Y. Jan. 23, 2009)	Uncontested	Denmark	Pending
<i>In re Nortel Networks Corp.</i> , No. 09-10164 (Bankr. D. Del. Jan. 14, 2009)	Uncontested	Canada	Pending
<i>In re Nortel Networks Ltd.</i> , No. 09-10166 (Bankr. D. Del. Jan. 14, 2009)	Uncontested	Canada	Pending

Proceeding	Contested or Uncontested	Place of Original Proceeding	Status
<i>In re Nortel Networks Technology Corp.</i> , No. 09-10167 (Bankr. D. Del. Jan. 14, 2009)	Uncontested	Canada	Pending
<i>In re Nortel Networks Global Corp.</i> , No. 09-10168 (Bankr. D. Del. Jan. 14, 2009)	Uncontested	Canada	Pending
<i>In re Nortel Networks International Corp.</i> , No. 09-10169 (Bankr. D. Del. Jan. 14, 2009)	Uncontested	Canada	Pending
<i>In re CPI Plastics Group Ltd.</i> , No. 09-20175 (Bankr. E.D. Wis. Jan. 8, 2009)	Uncontested	Canada	Pending
<i>In re Crila Investments Inc.</i> , No. 09-20177 (Bankr. E.D. Wis. Jan. 8, 2009)	Uncontested	Canada	Pending
<i>In re Crila Plastics Industries Inc.</i> , No. 09-20179 (Bankr. E.D. Wis. Jan. 8, 2009)	Uncontested	Canada	Pending
<i>In re CPI Plastics Group Inc.</i> , No. 09-20180 (Bankr. E.D. Wis. Jan. 8, 2009)	Uncontested	Canada	Pending
<i>In re CPI Plastics Plastics Group (Canada) Ltd.</i> , No. 09-20181 (Bankr. E.D. Wis. Jan. 8, 2009)	Uncontested	Canada	Pending
<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

March 16 (Bloomberg) —

Masonite International Corp., a manufacturer of doors and door components with operations in 18 countries, filed a bankruptcy reorganization petition this morning in the Ontario Superior Court of Justice while the Tampa, Florida-based U.S. subsidiaries filed chapter 11 petitions in Delaware. The court reorganizations will implement a balance sheet restructuring announced March 3 to reduce debt by about \$2 billion. The plan is supported by 75 percent of the senior secured creditors owed \$1.47 billion and by the holders of 83 percent of the \$770 million senior subordinated notes of 2015. The petition listed assets of \$1.5 billion against debt totaling \$2.6 billion. The senior secured lenders are to receive a combination of \$200 million in a new secured term loan, \$100 million in a second-lien facility that will pay interest with more debt, and 97.5 percent of the new stock. Subordinated noteholders are to have the other 2.5 percent of the equity and warrants for 17.5 percent more. Trade suppliers are to be paid in full. The plan is intended to reduce debt to approximately \$300 million while cutting annual interest expenses by \$145 million. Under the agreement with creditors for their support of the reorganization, the disclosure statement explaining the plan must be approved within 40 days, and the plan itself must be approved in a confirmation order 40 days later. Masonite has 65 facilities in 18 countries that generated \$1.82 billion

revenue in 2008. Sales in 2007 were \$2.2 billion. In 2008, earnings before interest, taxes, depreciation and amortization were \$162.4 million, according to a court filing by Chief Financial Officer Anthony D. DiLucente. Masonite blamed its bankruptcy filing on the decline in the housing and construction markets. The parent company, based in Mississauga, Ontario, is reorganizing under Canada's Companies' Creditors Arrangement Act. Masonite violated loan covenants for the quarters ended June 30 and Sept. 30 and was blocked by the senior lenders from making a \$42 million interest payment due Oct. 15 on the subordinated debt. KKR & Co. acquired Masonite for about C\$3 billion (\$2.4 billion) in April 2005.

The case is *In re Masonite Corp.*, 09-10844, U.S. Bankruptcy Court, District of Delaware (Wilmington).

Asarco Settles Most Remaining Environmental Claims

Arizona copper producer Asarco LLC agreed to settle what it describes as the "vast majority" of its unresolved environmental claims. The five settlements covering 54 sites together make up what Asarco called "the largest environmental settlement in history." State and federal environmental regulators will have approved unsecured claims totaling \$836 million, plus a separate \$14 million claim to be paid in full as an expense of the chapter 11 case. In addition, Asarco will turn over title to non-operating properties to a custodial trust and will fund the trust with \$275 million cash to pay for cleanups. Earlier this month, Asarco announced reaching agreement for the sale of the business to Sterlite Industries (India) Ltd., a subsidiary of India's Vedanta Resources Plc, for \$1.1 billion cash and a

non-interest bearing nine-year note for \$600 million. Originally, Sterlite was under contract to buy Asarco for \$2.6 billion cash. Sterlite refused to complete the prior contract. The new contract must be approved by the bankruptcy court after an auction and won't become effective until Asarco confirms a chapter 11 plan. Grupo Mexico SAB acquired Asarco for \$1.2 billion in stock in 1999. It 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).

BearingPoint Cash Use Modified on Committee Objection

BearingPoint Inc., the business consulting firm, was scheduled last week for final approval of the right to use cash representing collateral for secured lenders' claims. Facing objection from the official creditors' committee, the company sought to reschedule the hearing for March 30. The committee objected to a delay in the hearing if cash were used in the meantime under the terms initially approved Feb. 19, one day after the chapter 11 filing. The committee succeeded in part. Although the hearing was reset for March 30 as requested, some of the objectionable provisions in the cash-use arrangement were modified. Among them, the lenders can't cut off use of cash without 24 hours' notice and can't exercise any remedies unless the bankruptcy court modifies the so-called automatic stay. A hearing already is scheduled for March 30 on approval of the disclosure statement explaining the reorganization plan negotiated before the chapter 11 filing. If all goes according to schedule, the confirmation hearing for approval of the plan would be May 7. The plan would roll over secured debt, allowing unsecured creditors and holders of \$690 million in subordinated notes to become the new shareholders. The proposed disclosure statement says that secured creditors should recover between 93 percent and 100 percent on their \$295 million in claims. The senior noteholders would see nothing to 28 percent by taking new stock in exchange for their \$240 million in notes. General unsecured creditors owed up to \$110 million could see as much as 10 percent through new stock. Junior noteholders would see nothing for their \$450 million in debt. 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 of New York (Manhattan).

Vallejo Has Right to Terminate Union Contracts, Judge Rules

Vallejo, the California municipality that filed for chapter 9 reorganization in May, has the right to terminate contracts with labor unions, the bankruptcy judge in Sacramento ruled

on March 13. U.S. Bankruptcy Judge Michael S. McManus filed an opinion saying that California law doesn't prevent municipalities in bankruptcy reorganization from terminating labor contracts. He held it would violate the U.S. Constitution if state law attempted to prevent a city from utilizing any of the rights afforded by chapter 9, which contains the reorganization provision in bankruptcy law applicable to governmental units. McManus also concluded that the more cumbersome provisions for terminating labor contracts that are applicable to companies in chapter 11 don't apply to municipalities. The city filed a motion in June to reject contracts with four unions. The trial on contract rejection was held in early February. Compromises were reached with two unions. Being told that negotiations are continuing with the last two unions, McManus stopped short of terminating the contracts with the holdouts so both sides would have more time for discussions. McManus also listed additional evidence he will need to be shown when the trial continues, if there is no settlement. McManus previously ruled that the city meets the requirements for being in chapter 9. Vallejo, with a population of 117,000, is the largest California city to seek bankruptcy protection. The petition filed in May said assets are more than \$500 million while debt is less than \$500 million. Orange County, California, filed under chapter 9 in 1994 after speculation on interest-rate futures created losses.

The case is *In re City of Vallejo*, 08-26813, U.S. Bankruptcy Court, Eastern District of California (Sacramento).

Nailite Has Financing and April 8 Auction

Nailite International Inc., the manufacturer of artificial wood and masonry siding that filed under chapter 11 on Feb. 12, was given final approval last week for \$3 million in financing. An auction will be held April 8 to test whether anyone will beat the offer for the business being made by Premier Exteriors LLC, an Aurora, Illinois-based siding and window installer. Premier will buy the business in exchange for \$8 million of an existing loan. Premier purchased the first-lien secured debt in January and is providing the financing. Initial bids are due April 6. The hearing for approval of the sale will take place April 13. Nailite said it has \$32 million in secured debt and owes \$4.1 million to trade suppliers. Assets include inventory of \$3.2 million and accounts receivable totaling \$1.5 million. Nailite is wholly-owned by Granham Partners, a private equity investor from Wayne, Pennsylvania.

The case is *In re Nailite International Inc.*, 09-10526, U.S. Bankruptcy Court, District of Delaware (Wilmington).

With Inventory Liquidated, Goody's Proposes Bonuses

Goody's LLC, the 282-store moderately priced family apparel retailer, survived only three months after confirming a reorganization plan, filed chapter 11 again in January to conduct going-out-of-business sales, liquidated the inventory, and is now asking the bankruptcy judge for authority to pay bonuses to executives and other employees.

Goody's is proposing to make five executives eligible for a total of \$291,000 in bonuses if thresholds are achieved in maximizing asset recoveries and minimizing expenses. Another 19 non-executives would be eligible to participate in a \$200,000 bonus pool with no one receiving more than \$24,000. The non-executives would receive their payments if they remain on the job until their assignments are completed between late March and July. The motion regarding bonuses is on the Delaware bankruptcy court calendar for March 30. The executives eligible for the program are the chief financial officer, the inside general counsel, the vice president for systems, the controller, and the vice president for technology. The motion discloses that the chief financial officer is also being given a separate incentive bonus by Prentice Capital Management, which bought the chain in January 2006 and kept all the stock in the prior reorganization in exchange for the second- and third-lien loans. Goody's confirmed the prior chapter 11 plan in October, told creditors in December it couldn't pay the bills, and filed chapter 11 again on Jan. 13. The new petition listed assets of \$206 million against debt totaling \$202 million. Goody's had already begun liquidating the inventory when the new chapter 11 began. In the second case, debt for the Knoxville, Tennessee-based company includes a \$29 million secured revolving credit along with second-, third- and fourth-lien term loans for \$10 million, \$20 million and \$15 million respectively.

The first case is *In re Goody's Family Clothing Inc.*, 08-11133, and the new case is *Goody's LLC*, 09-10124, both in U.S. Bankruptcy Court, District of Delaware (Wilmington).

Mirabilis Settles Forfeiture With U.S. Government

Mirabilis Ventures Inc. was authorized to settle with the U.S. government, ending a dispute over whether a forfeiture action against the company's property was automatically halted when it filed bankruptcy. Mirabilis wanted the government held in contempt of the bankruptcy court for continuing a forfeiture action aimed at taking away the company's property based on a fraud the U.S. Attorney says was perpetrated by Frank Amodeo, the principal of the private-equity fund from Orlando, Florida. The settlement divided property between what will go to the government in forfeiture and what the company will retain. The settlement obliges Mirabilis to set up a liquidating trust in which the government will have an oversight role. The trust is to receive and distribute money collected in the chapter 11 case. In addition, the government has an approved unsecured claim for \$200 million in the bankruptcy. Amodeo was indicted in August and later pleaded guilty to four counts. The government describes him as having conducted a "systematic and pervasive theft of payroll taxes" amounting to \$182 million. The formal lists of assets and debt show property on the books for \$27.1 million against liabilities of \$21.1 million.

The case is *In re Mirabilis Ventures Inc.*, 08-04327, U.S. Bankruptcy Court, Middle District of Florida (Orlando).

Lehman Permitted to Repo With Bank Subsidiary

Lehman Brothers Holdings Inc. was authorized by the bankruptcy judge on March 13 to enter into a \$325 million repurchase agreement with a non-bankrupt subsidiary named Lehman Brothers Bank FSB. The transaction will give the Lehman bank the financing it needs to avoid defaulting obligations and in the process enables the Lehman parent to preserve its \$467 million equity in the bank. Lehman was authorized in February to inject \$272 million of capital into a Utah bank it owns named Woodlands Commercial Bank. The chapter 11 case of a European subsidiary named Lehman Brothers Finance AG was dismissed last week with the Lehman parent's consent. The dismissal allows the Swiss liquidators to liquidate the subsidiary primarily in a court in Switzerland. The Swiss proceedings for the subsidiary were recognized in a chapter 15 case in New York as the "foreign main proceeding" for the subsidiary. The Lehman holding company filed under chapter 11 in New York on Sept. 15 and sold office buildings and the North American investment banking business one week later. The Lehman brokerage operations went into liquidation on Sept. 19 in the same court. The brokerage is in the control of a trustee appointed under the Securities Investor Protection Act.

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 New York (Manhattan).

Bilrite Rubber Files in Canada and Toledo

Bilrite Rubber Inc. and its Canadian parent filed chapter 15 petitions on March 12 in Toledo, Ohio, the same day they filed for protection from creditors in the Ontario Superior Court of Justice under Canada's Companies' Creditors Arrangement Act. They want the Canadian court recognized as having the "foreign main proceeding." Bilrite manufactures complex rubber compounds from plants in Canada and the U.S. Headquarters are in Toronto. The companies owe \$17.2 million to the secured creditor Royal Bank of Canada. The bank is providing an over-advance of \$1.5 million to support the reorganization. The monitor appointed in the Canadian case intends to sell the business as a going concern. The monitor is requiring initial bids by April 17. The company was forced to resort to bankruptcy when a sale-and-lease back transaction fell through. The chapter 15 petition said assets and debt are both less than \$50 million. chapter 15 isn't a full-blown reorganization like chapter 11. If the U.S. bankruptcy judge decides that the company's nerve center is in Canada, the Canadian judge will take the leading role. The U.S. court will preclude creditors from taking action in the U.S., in the process forcing even creditors in the U.S. to hash out their problems in front of the judge in Canada.

The case is *In re Bilrite Rubber (1984) Inc.*, 09-31423, U.S. Bankruptcy Court, Northern District of Ohio (Toledo).

St. Lawrence Homes Inc., a homebuilder based in Raleigh, North Carolina, believes that selling homes is the ordinary course of business not requiring bankruptcy court authorization. To provide comfort for nervous buyers, the company wants the bankruptcy judge to give blanket authorization to sell a home free of mortgages so long as no secured creditor objects, even though the lienholder may not be paid in full. St. Lawrence listed assets on the books for \$158.2 million against debt totaling \$115.9 million, including \$107.7 million in secured claims. Almost all of the property value is in real estate. St. Lawrence filed under chapter 11 in February in Wilson, North Carolina.

The case is *In re Lawrence Homes Inc.*, 09-00775, U.S. Bankruptcy Court, Eastern District of North Carolina (Wilson).

Hawaiian Telcom Communications Inc. asked for an extension of the exclusive right to propose a reorganization plan until July 30. What it got last week from the bankruptcy court was an extension to June 30. Hawaiian Telcom is the 10th-largest incumbent local exchange carrier in the U.S. It originally filed for chapter 11 reorganization on Dec. 1 in Delaware and moved the case to Hawaii under pressure from creditors. The petition listed assets of \$1.35 billion against debt totaling \$1.27 billion. Liabilities include \$574.5 million secured by all the assets, senior unsecured notes of \$350 million, \$150 million in subordinated notes, and \$40 million owing to trade suppliers. Hawaiian Telcom was created in May 2005 from a leveraged buyout where Carlyle Group bought the Hawaiian operations from Verizon Communications Inc. in a \$1.6 billion transaction.

The case is *In re Hawaiian Telcom Communications Inc.*, 08-02005, U.S. Bankruptcy Court, District of Hawaii (Honolulu).

Fleetwood Enterprises Inc., the producer of manufactured housing and recreational vehicles that filed in chapter 11 on March 10, was sued in a class action the very same day on behalf of workers who were fired without the 60-days' notice required by federal law. Two other class-action suits were also filed last week on the same grounds. Fleetwood, based in Riverside, California, listed asset of \$560 million against debt totaling \$624 million. Fleetwood said it intends to use chapter 11 for selling "one or more of its divisions." Fleetwood has 19 manufacturing facilities in 11 states. In 2007, it was the second-largest manufactured housing maker in the U.S. and the largest maker of recreational vehicles over 30 feet in length.

The case is *In re Fleetwood Enterprises Inc.*, 09-14254, U.S. Bankruptcy Court, Central District of California (Riverside).

The four publishers who filed an involuntary chapter 7 petition on March 2 against Knoxville, Tennessee-based book and

magazine wholesaler Anderson News LLC failed in their effort at having the bankruptcy judge appoint an interim trustee, according to court documents. The publishers said Anderson shut down and was selling \$200 million in inventory to pay down a \$60 million secured loan from Sun Trust Bank. The creditors, saying they are owed \$37.5 million combined, are Hachette Book Group Inc., Harper Collins Publishers LLC, Simon & Schuster Inc., and Random House Inc.

The case is *In re Anderson News LLC*, 09-10695, U.S. Bankruptcy Court, District of Delaware (Wilmington).

The pressmen's union followed the bankruptcy judge's advice and settled on March 13 with Minneapolis Star Tribune on contract concessions the newspaper said it needed to say in business. The terms of the settlement won't be released until the membership ratifies the new contract. The Star Tribune was looking for \$3.5 million in savings. The settlement came at the end of a week's trial on the newspaper's motion to terminate the contract. The company filed the motion on Feb. 19 asking the bankruptcy judge in New York to terminate the existing contract and in the process allow the company to impose new wages and work rules. If the members don't ratify, the judge will hear closing arguments on the contract rejection motion. The company's three other unions all agreed to concessions. Based in Minneapolis, the Star Tribune began the chapter 11 reorganization on Jan. 15, two years after a \$530 million acquisition by private-equity investor Avista Capital Partners. The petition listed assets of \$493 million and debt totaling \$661 million as of Dec. 31. Debt includes \$393 million owing on a first-lien term loan and revolving credit.

The case is *In re Minneapolis Star Tribune*, 09-10244, U.S. Bankruptcy Court for the Southern District of New York (Manhattan).

S&K Famous Brands Inc., the 136-store men's-wear retailer that filed for bankruptcy reorganization in February, is closing 30 stores in going-out-of-business sales with help from a liquidator. Before bankruptcy, the company shut 78 stores. The petition listed assets of \$41.4 million against debt totaling \$35.5 million. Liabilities include \$7.5 million owing to the secured lender Wells Fargo Retail Finance LLC. Another \$13 million is owing to trade suppliers, a court filing says.

The case is *In re S&K Famous Inc.*, 09-30805, U.S. Bankruptcy Court, Eastern District of Virginia (Richmond).

March 17 (Bloomberg) —

Primus Telecommunications Group Inc., a telecommunications provider with 2.4 million customers, filed a chapter 11 petition yesterday with three affiliates and a reorganization plan reducing \$575 million of funded debt obligations by \$315 million. The McLean, Virginia-based holding company said it reached agreement before filing with "significant majorities" of the holders of the second-lien secured notes,

the \$23.3 million of 5 percent exchangeable senior notes, and the \$186 million in 8 percent senior notes of 2014. The plan calls for giving the second-lien noteholders, owed \$173.2 million, half of the new stock plus \$123.4 million in new second-lien debt. The holders of the 8 percent senior notes and the 5 percent exchangeable notes are to have the other half of the new stock plus warrants. The holders of the \$34.2 million of 3.75 percent convertible senior notes, the \$8.6 million in step-up convertible debentures, and the \$14.2 million of 12.75 percent senior notes are to receive warrants. Existing stockholders are in line for what are called "contingent value rights" that could be exchanged for 15 percent of the new stock when the value of the company rises sufficiently. Primus also has a \$96.25 million first-lien term loan that will be reinstated under the reorganization plan. The Primus and its three affiliates in chapter 11 are all holding companies. None of the operating companies filed. Primus's balance sheet for Sept. 30 listed assets of \$393 million and total liabilities of \$827 million. Thomas R. Kloster, the chief financial officer, said in a court filing that earnings before interests, taxes, depreciation, and amortization were about \$30 million a year short of being able to service the current debt load. Kloster said that the chapter 11 filing was precipitated by the high value of the dollar given that 80 percent of revenue is generated in other currencies. Also, the global economic crisis contributed to the need for reorganization along with \$24 million in debt maturing in the last half of 2009. Moody's Investors Service had predicted in December that Primus would "not be able to repay or refinance" \$24 million maturing between June and October. A proposed chapter 11 plan and explanatory disclosure statement were filed yesterday along with the petition. Kloster says the companies intend on emerging from reorganization in less than 120 days.

The case is *In re Primus Telecommunications Group Inc.*, 09-10867, U.S. Bankruptcy Court, District of Delaware (Wilmington).

Tribune Aims at Stopping ERISA Suit Against Officers

Three months before Tribune Co. filed in chapter 11, several former and current employees filed a class-action suit in U.S. District Court in Illinois contending that the second-largest newspaper publisher in the U.S. violated federal employment law governing the employee ownership plan trust involved in the \$13.8 billion leveraged buyout led by Sam Zell in December 2007. Although the plaintiffs say they are no longer continuing the suit against Tribune, the company filed papers in bankruptcy court last week contending the Illinois lawsuit nonetheless is in violation of the so-called automatic stay resulting from the chapter 11 filing. In addition to Tribune Co., defendants in the suit include Zell and other Tribune executives. Even if the Illinois suit is not automatically halted, Tribune wants the bankruptcy judge in Delaware to bring it to a stop even as to the executives. Tribune says the suit is a distraction keeping executives away from the important chore of reorganizing the company. Although Tribune has an insurance policy that covers the suit, the publisher says the

billions in damages the plaintiffs seek far exceeds coverage. Tribune wants the bankruptcy judge to stop the Illinois suit on a preliminary basis before making a final decision on whether it should halt. Tribune filed under chapter 11 in December, listing \$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).

Tronox Has Official Shareholders' Committee

In addition to the committee representing unsecured creditors, Tronox Inc., the world's third-largest producer of a white pigment called titanium dioxide, now has an official committee representing stockholders. Official shareholders' committees usually aren't appointed unless there is some chance existing stockholders might be entitled to a distribution under a chapter 11 plan. Having an official committee gives stockholders the right to hire a lawyer whose fees will be paid by Tronox. Oklahoma City-based Tronox filed under chapter 11 in January, saying at the time it intended to sue Kerr-McGee Corp. to recover environmental remediation costs it was given when spun off in March 2006. Anadarko Petroleum Corp. acquired Kerr-McGee for \$18.4 billion in August 2006. 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).

Special Devices May Face Patent-Infringement Trial

Special Devices Inc., a manufacturer of actuators that make automobile air bags deploy, wants the bankruptcy court in Delaware to keep a lid on a patent-infringement lawsuit in California it says "could result in the total loss of the debtor's mining and blasting business." Before the chapter 11 filing, Orica Explosives Technology Pty sued Special Devices and three unaffiliated companies. Orica in papers filed in February said the suit is "poised for trial" and that cross-motions for summary judgment have been filed. Orica on March 20 is scheduled to ask the bankruptcy judge for freedom to pursue the suit against Special Devices, so that it isn't required to hold a trial with the other three defendants and conduct a separate trial later in bankruptcy court against Special Devices. Special Devices, the creditors' committee and Wayzata Opportunities Fund LLC, one of the pre-bankruptcy lenders, all oppose the idea of allowing the suit to proceed in the California district

court. Moorpark, California-based Special Devices, which filed under chapter 11 in December, also makes products for the mining and aerospace industries. The company is controlled by affiliates of private-equity investor J.F. Lehman & Co.

The case is *In re Special Devices Inc.*, 08-13312, U.S. Bankruptcy Court, District of Delaware (Wilmington).

Committee Opposes Ritz's Financing as Benefiting Lenders

The official creditors' committee of Ritz Camera Centers Inc., the largest chain of camera stores in the U.S., argues that the proposed \$85 million in financing only "provides a phantasm of increased availability" and serves no purpose "other than to fund a platform for the rapid liquidation" in a "process controlled entirely by the DIP lenders." The committee's papers were filed in anticipation of a March 19 hearing for final approval of financing. The committee's papers contend the financing improperly allows the lenders to "convert their pre-petition debt into post-petition debt, while forcing the debtor to liquidate its assets, at lightening speed, for their sole benefit after taking their \$1.7 million fee." Ritz was already given authorization to hold an auction today for the assets of the 130-store Boater's World Marine Centers. The hearing for approval of the sale will also be on March 19. The company previously said it intends to close 400 camera stores in addition. If the judge concurs at the March 19 hearing, the auction where liquidators can bid for the right to conduct going-out-of-business sales will be held April 1. Beltsville, Maryland-based Ritz filed under chapter 11 on Feb. 22. Financing of \$80 million comes from existing secured lenders. The main business is the 800 photo stores in 40 states. With letters of credit, debt 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).

Swimsuit Retailer Needs Loan and Sale Quickly

Everything But Water LLC, the largest U.S. retailer of women's swimwear with 70 stores in 26 states, is in bankruptcy court today defending its financing and procedures for the sale of the business. Secured lender D.B. Zwirn Special Opportunities Fund LP hopes to be the buyer by exchanging \$19 million of secured debt. Just after the chapter 11 filing on Feb. 25, the company received authority to borrow \$5 million and today wants borrowing power upped to \$11 million. The official creditors' committee wants the sale process slowed down by a month. Everything But says the business is in extremis and it does "not have the luxury" of slowing down the sale. It also says the May 4 maturity of the loan is all it could negotiate. The company, based in Orlando, Florida, listed \$58 million in assets and debt totaling \$35 million, including \$25 million in a secured term loan and revolving credit owing to Zwirn, a

minority shareholder. Revenue in fiscal 2008 was \$52.2 million, down from \$54.3 million in fiscal 2007. The company was acquired in April 2006 by a subsidiary of Bear Stearns Cos. which since was taken over by JPMorgan Chase & Co.

The case is *In re Everything But Water LLC*, 09-10649, U.S. Bankruptcy Court, District Delaware (Wilmington).

Three Ohio Hospitals File in Youngstown

Nonprofit Forum Health and three Ohio hospitals it operates filed chapter 11 petitions yesterday in Youngstown, saying assets and debt are both less than \$500 million. Debt includes \$139 million owing on hospital revenue bonds. The facilities that Forum owns include Trumbull Memorial Hospital and Hillside Rehabilitation Hospital in Warren, Ohio, and Northside Medical Center in Youngstown.

The case is *In re Forum Health*, 09-40795, U.S. Bankruptcy Court, Northern District of Ohio (Youngstown).

North Carolina Homebuilder Files in Wilson

Anderson Homes Inc., a homebuilder based in Raleigh, North Carolina, filed a chapter 11 petition yesterday in Wilson, North Carolina, along with affiliates. The companies listed assets of \$17.2 million against debt totaling \$13.7 million, including \$10.8 million owing to secured creditors. Anderson is building homes or condominiums in 20 projects.

The case is *In re Anderson Homes Inc.*, 09-02062, U.S. Bankruptcy Court, Eastern District of North Carolina (Wilson).

Portable Building Manufacturer Files in Texas

Ameri-Tech Building Systems, formally named ACP Ameri-Tech Holding LLC, filed a chapter 11 petition on March 11 in Lufkin, Texas, 55 miles from its home base in Center, Texas. The company, which makes portable storage buildings, said assets are less than \$10 million while debt exceeds \$10 million. The company has four plants in Texas and Louisiana and 57 sales locations in those states along with New Mexico and Oklahoma.

The case is *In re ACP Ameri-Tech Holding LLC*, 09-90078, U.S. Bankruptcy Court, Eastern District Texas (Lufkin).

The sale in September of the Lehman Brothers Holdings Inc. North American investment banking business was upheld on appeal. U.S. District Judge Denise L. Cote ruled that the bankruptcy judge was not in error when he found that the buyer, Barclays Plc, was a purchaser in good faith. Consequently, bankruptcy law does not permit unraveling a sale to a good faith purchaser even if the sale were otherwise improper. The Lehman holding company filed under chapter 11 in New York on Sept. 15 and sold office buildings and the North American investment banking business one week later.

The Lehman brokerage operations went into liquidation on Sept. 19 in the same court. The brokerage is in the control of a trustee appointed under the Securities Investor Protection Act.

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 New York (Manhattan).

The trustee liquidating Bernard L. Madoff Investment Securities Inc. is hiring a lawyer in Gibraltar to chase down customers' assets that may be in the British territory at the tip of Spain. Madoff on March 12 pleaded guilty to defrauding investors of as much as \$65 billion and faces a prison term up to 150 years. His bail was revoked and he went immediately to jail. The Madoff firm's liquidation in U.S. Bankruptcy Court commenced in December with the appointment of the trustee under the Securities Investor Protection Act. Madoff, the firm's founder, was arrested in December and charged in civil and criminal proceedings with running a Ponzi scheme.

The SIPA case is *Securities Investor Protection Corp. v. Bernard L. Madoff Investment Securities Inc.*, 08-01789, U.S. Bankruptcy Court, Southern District New York (Manhattan).

Carl Icahn and other secured creditors intend to bid for the casino in Atlantic City, New Jersey, owned by Tropicana Entertainment LLC. The Atlantic City property is under the control of a conservator appointed by the state court when the New Jersey casino license was lifted. For that reason the Atlantic City property is technically not under the control of the bankruptcy judge in Tropicana's chapter 11 case. Tropicana's creditors are voting on two reorganization plan, one covering Atlantic City and the other governing the casinos elsewhere including Nevada. The confirmation hearing is to begin April 27. The plan will give over ownership to secured creditors. The takeover of the Atlantic City property by the conservator began a series of events that ended with the company's filing under chapter 11 in May.

The case is *In re Tropicana Entertainment LLC*, 08-10856, U.S. Bankruptcy Court for the District of Delaware (Wilmington).

Turning aside objections from creditors, the bankruptcy judge at a hearing yesterday gave Aleris International Inc. final approval for a secured \$1.075 billion loan to finance reorganization of the producer of rolled and extruded aluminum products. Acquired by TPG Inc. at the end of 2006 in a \$2.3 billion transaction, Aleris filed under chapter 11 on Feb. 13, listing assets of \$4.2 billion against debt totaling \$4 billion. Debt owing by the Beachwood, Ohio-based company includes \$472 million on revolving credit and related facilities, plus more than \$1.1 billion on secured term loans. In addition, there are \$1.1 billion in unsecured notes.

The case is *In re Aleris International*, 09-10478, U.S. Bankruptcy Court, District of Delaware (Wilmington).

Although Polaroid Corp. won't hold a hearing until March 31 for approval of the sale of the assets, former Chief Executive Officer Michael O'Shaughnessy says the property can't be sold without first paying him \$7.2 million under an earn-out agreement. At the auction on March 30, the opening bid of \$42 million will come from private-equity investor Genii Capital SA. Other bids are due March 26. Polaroid filed formal lists of assets and debt showing property with a value of \$28.5 million against liabilities totaling \$302 million, including \$72.8 million in secured claims. Minnetonka, Minnesota-based Polaroid, which filed under chapter 11 in December, was the latest victim of the fraud indictment against Thomas Petters, whose companies bought Polaroid for \$426 million in early 2005. Sun Country Airlines Inc., a low-cost carrier, was another Petters investment also now in bankruptcy. Petters along with other investors acquired Sun Country in November 2006, after it had been purchased out of bankruptcy in 2002. The receiver for Petters and his companies put Petters Group Worldwide and Petters Co. into their own chapter 11 cases in October five days after the Sun Country filing. The bankruptcy was Sun Country's second.

The Polaroid case is *In re Polaroid Corp.*, 08-46617, U.S. Bankruptcy Court, District of Minnesota (Minneapolis). The Sun Country chapter 11 case is *In re MN Airlines Inc.*, 08-35197, U.S. Bankruptcy Court, District of Minnesota (St. Paul). The chapter 11 cases for the two Petters companies are *In re Petters Co.* and *In re Petters Group Worldwide LLC*, 08-45257 and 08-45258, in the same court. The criminal case is *U.S. v. Thomas Joseph Petters*, 08-364, U.S. District Court, District of Minnesota (Minneapolis).

There being no competing bids at auction, Precision Parts International Services Corp., the auto-parts maker that filed under chapter 11 in December, was authorized last week to sell the business to Cerion LLC for \$18.5 million. The Rochester Hills, Michigan-based company has six plants in North America. It makes metal formed components for the auto and aerospace industries and owes more than \$85 million on bank loans to Golub Capital and Norwest Mezzanine Partners II LP. Court papers say debt includes \$184.5 million in secured and unsecured loan obligations plus \$30 million owing to trade suppliers. The revolving credit and term loans are \$89 million while there is an \$88.5 million mezzanine loan. First Atlantic Capital Ltd. acquired control of the company in 2005.

The case is *In re PPI Holdings Inc.*, 08-13289, U.S. Bankruptcy Court, District of Delaware (Wilmington).

Mercedes Homes Inc., a Melbourne, Florida-based homebuilder, filed a chapter 11 petition in January and now has listed assets on the books for \$309 million against debt of \$280 million. Claims include \$224 million owing to secured

creditors. The housing projects are in 13 markets in Florida, Texas, North Carolina and South Carolina. Revenue for the first 11 months of fiscal 2009 was \$407 million.

The case is *In re Mercedes Homes Inc.*, 09-11191, U.S. Bankruptcy Court, Southern District of Florida (West Palm Beach).

WCI Communities Inc., a specialist in building high-end master planned communities in Florida, filed an operating report for January showing a net loss of \$18.8 million on revenue of \$27.9 million, including affiliates not in bankruptcy. WCI ended the month with \$108.5 million cash. The petition listed \$1.9 billion debt and assets on the books for \$2.2 billion as of June 30. Debt includes \$760 million in secured debt and \$815 million in subordinated debt. Secured debt includes a \$489 million revolving credit. WCI has 40 projects encompassing 12,000 acres and enabling the construction of 15,000 units. Carl Icahn is the chairman and largest investor in the Bonita Springs, Florida-based company.

The case is *In re WCI Communities Inc.*, 08-11643, U.S. Bankruptcy Court, District of Delaware (Wilmington).

Although Cornerstone-Orlando LLC was unable to confirm the proposed chapter 11 plan when a necessary tenant couldn't be found for its 149,000-square-foot office and condominium complex in Orlando, Florida, the bankruptcy judge extended the company's exclusive right to propose a reorganization until June 5. The plan that didn't work was designed to pay unsecured creditors in full, with half in cash when the plan became effective and the other half six months later. Under the original plan, the secured creditor owed \$24 million was to receive \$500,000 cash while continuing to receive payments called for in the mortgage. The chapter 11 petition was filed in November along with an agreement to sell the property and avert foreclosure of the mortgage. Orlando Medical Exchange LLC, the erstwhile buyer willing to pay \$2 million for the property, was to be responsible for paying the mortgage after the plan became effective. The petition listed assets of \$20 million and debt totaling \$26.2 million.

The case is *In re Cornerstone-Orlando LLC*, 08-10595, U.S. Bankruptcy Court, Middle District of Florida (Orlando).

Mirabilis Ventures Inc., which provided management services for small and medium-sized companies, has an extension until May 31 of the exclusive right to propose a chapter 11 plan. This month, the company received approval for settlement of a forfeiture suit brought by the U.S. government. The settlement divided property between what will go to the government in forfeiture and what the company will retain. The government in addition has an approved unsecured claim for \$200 million in the bankruptcy. Frank Amodeo, the principal of the private-equity fund based in Orlando, Florida, was indicted in August and later pleaded guilty to four counts. The government described him as having conducted a "systematic and pervasive theft of payroll taxes" amounting to \$182 million.

The formal lists of assets and debt show property on the books for \$27.1 million against liabilities of \$21.1 million.

The case is *In re Mirabilis Ventures Inc.*, 08-04327, U.S. Bankruptcy Court, Middle District of Florida (Orlando).

Fleetwood Enterprises Inc., the producer of manufactured housing and recreational vehicles that filed in chapter 11 on March 10, was given temporary authority three days later to use cash representing collateral for secured lenders' claims until March 29. Another hearing on cash use will be held March 26. Based in Riverside, California, Fleetwood listed assets of \$560 million against debt totaling \$624 million and said it intends to sell "one or more of its divisions." Fleetwood has 19 manufacturing facilities in 11 states. In 2007 it was the second-largest manufactured housing maker in the U.S. and largest manufacturer of recreational vehicles more than 30 feet in length.

The case is *In re Fleetwood Enterprises Inc.*, 09-14254, U.S. Bankruptcy Court, Central District California (Riverside).

March 18 (Bloomberg) —

Frontier Airlines Inc. sued the pilots' union in bankruptcy court this week, contending the pilots are reneging on \$7 million in the concessions given to the company early this year. Some of the pilots take the position Frontier remains liable to make matching contributions to 401(k) plans. The airline says it's a strained reading of the modified contract calling for no matching contributions beginning in June 2008 until they are gradually restored after January 2010. Frontier says the waiver of matching contributions was "heavily negotiated," has saved the airline \$1.7 million so far, and will bring a \$7 million savings for the life of the contract. The pilots ratified the concessionary contract in December. It was approved by the U.S. Bankruptcy Court in New York in January. The pilots were the last worker group to agree on concessions or have them imposed by the court. 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 is the second-largest carrier operating from Denver, where it competes with United Airlines Inc. Frontier 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).

Donald Trump Takes Round One With Noteholders

Donald Trump came out on top yesterday in bankruptcy court in a dispute with an ad hoc group of holders of 8.5 percent

senior secured notes. The dispute concerned payment of the noteholders' professional fees in the case of Trump Entertainment Resorts Inc., the owner of three casinos in Atlantic City that filed in chapter 11 again on Feb. 17. The company in its application for use of secured lenders' cash proposed paying attorneys' fees for the noteholders. Although the bankruptcy judge gave interim approval to use cash at the outset of the case, Donald Trump, individually, filed papers arguing it was in violation of bankruptcy law. Donald Trump contended in court filings that secured creditors are entitled to payment of professional fees only if the collateral is worth more than the lenders' debt. In this case, he said, it's conceded the property isn't worth so much as the noteholders' debt. The noteholders argued that the company could use its business judgment to pay a secured lenders' fees when bankruptcy law doesn't otherwise permit. The bankruptcy judge at a hearing yesterday took sides with Mr. Trump and ruled that the payments wouldn't be allowed, according to court records. Before filing, Trump Entertainment had an agreement with the secured lenders owed \$489 million to use their cash collateral to finance operations. The petition listed consolidated assets of \$2.06 billion against debt totaling \$1.74 billion. In addition to \$1.25 billion in second-lien notes, debt includes \$489 million in first-lien bank debt with Beal Bank as agent. There is \$33.2 million in trade debt and \$6 million in liabilities on leases, according to a court filing. The companies own the Trump Taj Mahal Casino Resort, the Trump Plaza Hotel and Casino, and the Trump Marina Hotel Casino. The casinos' new filings came less than four years after emerging from a prior bankruptcy reorganization.

The case is *In re TCI 2 Holdings LLC*, 09-13654, U.S. Bankruptcy Court, District of New Jersey (Camden).

Landsbanki Sues Deutsche Bank for \$10 Million

Landsbanki Islands hf, one of the three major banks nationalized by the government of Iceland in October, sued Deutsche Bank AG New York Branch, claiming it refused to pay Landsbanki's approximately \$10 million share of a loan repayment. The complaint, filed March 16 in U.S. Bankruptcy Court in New York, explains that Landsbanki was among a group of lenders led by Deutsche Bank that made a loan of some \$1.1 billion to Huntsman International LLC. When Huntsman repaid the loan, Landsbanki says it wasn't repaid its share of some \$10 million. Landsbanki made several demands for its share of the loan repayment, the complaint says. Thomas Salerno, a lawyer with Squire Sanders & Dempsey LLP representing Landsbanki, said in an interview that Deutsche Bank "hasn't given us a reason" for the refusal to make the payment. The New York bankruptcy court in January granted Landsbanki protection in the U.S. under chapter 15 by concluding that Iceland is home to the "foreign main proceeding." The ruling stopped all creditor actions in the U.S. and provided the bank with a forum it could use to recover certain types of assets. A call to Deutsche Bank for comment wasn't returned. Landsbanki filed under chapter 15 in December in Manhattan. Glitnir Banki HF, another of the failed Icelandic banks, filed for chapter 15 protection in November.

The chapter 15 case is *In re Landsbanki Islands hf*, 08-14921, and the Glitnir case is *In re Glitnir Banki HF*, 08-14757, both in U.S. Bankruptcy Court, Southern District New York (Manhattan).

Valero Only Cash Buyer for VeraSun Ethanol Plants

Valero Energy Corp., an oil refiner and marketer, was the successful bidder at a March 16 auction for seven plants belonging to VeraSun Energy Corp., the Sioux Falls, South Dakota-based ethanol producer. San Antonio-based Valero will pay \$477 million. By bidding secured claims rather than cash, lenders were the successful bidders for the remaining nine plants. VeraSun is in bankruptcy court today seeking approval for the sales. Financing agreements for VeraSun's reorganization contained sale deadlines in March and April. Production was discontinued at 12 plants. VeraSun's plants in eight states are able to produce 1.64 billion gallons of ethanol annually. Secured debt includes \$81.7 million on a revolving credit and \$210 million in secured senior notes. The so-called ASA facilities, acquired in August 2007, have a \$267 million senior secured credit facility, while the plants from last year's US BioEnergy purchase have \$555 million in secured obligations. Unsecured debt includes \$450 million in senior unsecured notes. VeraSun filed in chapter 11 at the end of October after losing as much as \$103 million on corn hedging and a \$100 million stock offering failed.

The case is *In re VeraSun Energy Corp.*, 08-12606, U.S. Bankruptcy Court, District of Delaware (Wilmington).

Pilgrim's Pride Should Sell, Not Close, 3 Plants, Cities Say

Pilgrim's Pride Corp., the world's largest chicken producer, should sell rather than close the three plants slated to be shut down, chicken growers and local governments said. One locality filed an emergency motion asking the bankruptcy judge to stop the shutdown it says is already underway. Pilgrim's Pride previously said that selling the three plants, out of its total of 32, wouldn't remove production from the market and thus wouldn't help solve the company's financial problems. The growers and the cities say shutting the plants will devastate local economies and cause bankruptcies among farmers. Pilgrim's Pride previously filed motions to close the plants and terminate contracts with the affected growers, who claimed the action was based on racial discrimination, not sound business judgment. U.S. Bankruptcy Judge D. Michael Lynn ruled last month that once the company shows a sound business reason for ending the contracts, the growers may present evidence proving there are alternatives giving Pilgrim's Pride equal economic relief. Also, the growers could show the company used irrational criteria such as racial discrimination to underpin decisions about whose contracts to end. The hearing is currently scheduled to continue March 24. Some of the localities want the hearing delayed so they can garner additional evidence. Pittsburg, Texas-based Pilgrim's Pride filed under chapter 11 in December listing assets of \$3.75 billion and debt of \$2.72 billion.

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

TallyGenicom Authorized to Sell, Appeal Filed

TallyGenicom LP, the provider of industrial-class printers that filed in chapter 11 on Jan. 27, was authorized by the bankruptcy judge on March 16 to sell the business to Printronix Inc. for \$36.6 million, including the assumption of \$23 million in secured debt, \$6.75 million in warranty claims and \$4 million in accounts payable. The auction was canceled when there were no other bids. The German liquidator for affiliate TallyGenicom AG filed papers in the U.S. District Court the same day as the sale-approval hearing asking to hold up completion of the sale pending an appeal. The German liquidator disputes the right of the U.S. side of the company to sell some of the property. The lender providing financing required a quick sale and agreed not to bid for the assets using its claim rather than cash. The petition by the Chantilly, Virginia-based company listed assets of \$34 million against debt totaling \$62 million. Debt includes \$37.7 million owing on a secured revolving credit and term loan, and \$8 million on a second-lien loan. Unsecured claims are approximately \$16 million, a court filing says. The second-lien lender and equity sponsor is Arsenal Capital Partners LP and affiliates, according to a court filing.

The case is *In re TallyGenicom LP*, 09-10266, U.S. Bankruptcy Court, District of Delaware (Wilmington).

Two Internet Unions Oppose End of Pension and Retiree Benefits

Internet Corp., a Fort Worth, Texas-based manufacturer of cast-metal components for automakers, shouldn't be allowed to modify labor contracts, according to two unions that are the target of the motion to be heard March 23 in U.S. Bankruptcy Court in Delaware. Saying there is no dispute that the wages and work rules aren't above market levels, the Service Workers International Union focuses on Internet's demand for a termination of the defined benefit pension plan and retiree health benefits. The union says the motion must fail because the company unjustifiably refused to go along with modest counterproposals. First, the union requested that retiree benefits be extended only one month beyond the proposed May termination. The union argues that one month more of health benefits for retirees will cost less than the bonuses the company is proposing to pay to managers. In place of the pension plan, the union wants what it calls a "modest profit-sharing plan" allowing workers to share some of the "upside" if Internet prospers. The union says not having profit-sharing is unfair since the company is retaining two pension plans for non-union workers. Finally, the union wants a so-called successorship clause, under which a buyer of the business would be obliged to continue employing the workers under the modified union contract with Internet. The second target of the motion, the Glass, Molders, Pottery, Plastics and Allied Workers International Union, takes a different tack. The GMU, as it calls itself, says Internet hasn't complied with bankruptcy

law on the rejection of union contracts because it demanded an expansive confidentiality agreement as a condition for access to financial information. The union says the company was obliged to bargain over confidentiality. Internet's motion contends the company is in "extreme financial distress" and the prospects for being viable "remain bleak." The International Association of Machinists already agreed to concessions. Internet's chapter 11 reorganization began 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).

Boscov's Disclosure Statement Up for Approval March 20

Boscov's Inc., now formally known as BSCV Inc. following the sale of the department stores, filed an amendment to the disclosure statement that comes up for approval at a March 20 hearing at U.S. Bankruptcy Court in Delaware. The plan described by the disclosure statement is projected to result in a 6.3 percent to 14.4 percent recovery for unsecured creditors with claims totaling between \$140 million and \$160 million. The disclosure statement projects there will be as much as \$20.1 million available for distribution to unsecured creditors, assuming a \$7 million income tax refund comes in as anticipated. The plan was made possible by the sale of the remaining stores in December to the controlling Boscov and Lakin families. They took over the first- and second-lien loans while paying \$11 million cash in part to cover specified expenses of the chapter 11 case. Boscov's had 39 stores still operating after shutting down 10 immediately after the chapter 11 filing in August. Court papers listed assets for \$318.9 million against debt totaling \$412.8 million. Secured creditors were owed \$196.2 million. The stores are mostly Pennsylvania and generated \$1.3 billion in annual sales.

The case is *In re BSCV Inc.*, 08-11637, U.S. Bankruptcy Court, District of Delaware (Wilmington).

Fleetwood Enterprises Inc., a producer of manufactured housing and recreational vehicles, is operating the business until March 29 with temporary authority to use cash representing collateral for secured lenders' claims. The company, which filed in chapter 11 on March 10, said in a court filing this week that it hopes to have negotiated a secured financing arrangement "as early as next week." Another hearing on cash use will be held March 26. Based in Riverside, California, Fleetwood listed assets of \$560 million against debt totaling \$624 million and said it intends to sell "one or more of its divisions." Fleetwood has 19 manufacturing facilities in 11 states. In 2007 it was the second-largest manufactured housing maker in the U.S. and largest manufacturer of recreational vehicles over 30 feet in length.

The case is *In re Fleetwood Enterprises Inc.*, 09-14254, U.S. Bankruptcy Court, Central District California (Riverside).

Masonite International Corp., the door manufacturer that filed a prepackaged chapter 11 reorganization on March 16, will hold a hearing before the creditors' April 25 deadline for approval of the disclosure statement explaining the plan. The exact date is yet to be officially determined. The pre-bankruptcy agreement with creditors requires the plan be approved in a confirmation order within 40 days of disclosure statement approval. Masonite is simultaneously reorganizing in the Ontario Superior Court of Justice. The reorganization of the Tampa, Florida-based U.S. subsidiaries will reduce debt by about \$2 billion. Masonite has 65 facilities in 18 countries that generated \$1.82 billion revenue in 2008. KKR & Co. acquired Masonite for about C\$3 billion (\$2.4 billion) in April 2005.

The case is *In re Masonite Corp.*, 09-10844, U.S. Bankruptcy Court, District of Delaware (Wilmington).

DBSI Inc., a seller and servicer of fractional interests in commercial real estate, will be investigated by an examiner, thanks to a motion made in January by the State of Idaho Department of Finance referring to "numerous fraudulent securities transactions that have defrauded hundreds of creditors." In a statement announcing the ruling on the examiner by the U.S. Bankruptcy Court in Delaware, the Idaho authorities said that DBSI's business "mirrors a Ponzi scheme." Court records as of late yesterday afternoon didn't reflect the examiner's appointment or the scope of the investigation. The Idaho Finance Department said the scheme involved "\$2 billion in allegedly fraudulent securities transactions." DBSI filed under chapter 11 in November along with almost 150 affiliates. A dozen more filed later. Based in Meridian, Idaho, the company claimed it manages real estate valued at more than \$2.65 billion and raised \$1.5 billion in capital since inception 29 years ago. Investors have interests in more than 200 properties.

The case is *In re DBSI Inc.*, 08-12687, U.S. Bankruptcy Court, District of Delaware (Wilmington).

The members of the pressmen's union ratified contract concessions negotiated last week at the urging of the bankruptcy judge presiding over the chapter 11 reorganization of Minneapolis Star Tribune. The newspaper said it needed \$3.5 million in savings from the pressmen to stay in business. The settlement occurred at the end of a week's trial on the newspaper's motion to terminate the contract. Based in Minneapolis, the Star Tribune began the chapter 11 reorganization on Jan. 15, two years after a \$530 million acquisition by private-equity investor Avista Capital Partners. The petition listed assets of \$493 million and debt totaling \$661 million as of Dec. 31. Debt includes \$393 million owing on a first-lien term loan and revolving credit.

The case is *In re Minneapolis Star Tribune*, 09-10244, U.S. Bankruptcy Court, Southern District of New York (Manhattan).

Philadelphia Newspapers LLC, the parent company of the Philadelphia Inquirer and the Philadelphia Daily News, on March 16 received a third extension of temporary authorization to use secured lenders' cash collateral. To deal with objections, the final hearing is set for March 31. Creditors contend the financing is to maintain the job of Chief Executive Officer Brian Tierney, who led a group of investors that acquired the newspapers in June 2006 from McClatchy Co. for \$562 million. The newspapers filed under chapter 11 on Feb. 22 in their hometown after defaulting on a term loan and revolving credit totaling \$296.6 million and on \$98.5 million in subordinated notes. The filing says assets and debt are both less than \$500 million.

The case is *In re Philadelphia Newspapers LLC*, 09-11204, U.S. Bankruptcy Court, Eastern District of Pennsylvania (Philadelphia).

Charys Holding Co., the owner of non-bankrupt operating companies in the remediation and telecommunications infrastructure businesses, implemented the chapter 11 plan on March 12 that the bankruptcy judge approved in a Feb. 25 confirmation order. The judge turned back an effort to hold up the plan pending an appeal from the confirmation order. The plan gives the convertible-note holders 94 percent of the new stock plus \$20 million in secured notes maturing in four years and paying 15 percent interest, for a recovery estimated at 32.5 percent. Unsecured creditors with \$107 million in claims participate in collections by a liquidating trust and are expected to see nothing to 15 percent. Subordinated claims are wiped out along with existing stockholders. The petition listed assets of \$245 million against debt totaling \$255 million. Atlanta-based Charys missed an interest payment on the notes in November 2007.

The case is *In re Charys Holding Co.*, 08-10289, U.S. Bankruptcy Court, District of Delaware (Wilmington).

Steve & Barry's, the 173-store casual apparel retailer that began liquidating even before the second chapter 11 filing in November, candidly told the bankruptcy judge it may not be possible to confirm even a liquidating plan. The judge nonetheless extended the exclusive right to propose a plan until the requested date of June 17. An investor group bought the chain out of the previous bankruptcy and within three months put the stores back into chapter 11. The liquidation was completed in January. The new chapter 11 was begun when the "old" case was still liquidating. The acquiring group paid \$163 million for the business in the first bankruptcy.

The new case is *In re SH S&B Holdings LLC*, 08-14604, U.S. Bankruptcy Court, Southern District of New York (Manhattan). The old case is *Stone Barn Manhattan LLC*, 08-12579, U.S. Bankruptcy Court, Southern District of New York (Manhattan).

U.S. Bankruptcy Judge Robert Drain ruled yesterday that he wouldn't hold up enforcement of a ruling he made this month giving auto-parts maker Delphi Corp. the unilateral right to terminate health-care benefits for salaried retirees on April 1. The retirees have the right to ask a U.S. district judge to stay the order pending an appeal. In his decision allowing an end to the benefits, Drain found that the committee representing salaried retirees produced no "competent evidence" giving him the basis for stopping Delphi from ending health benefits for retirees. Despite confirming a chapter 11 plan in January 2008, Delphi remains in bankruptcy because a group led by Appaloosa Management LP wouldn't make a \$2.55 billion equity investment called for in their commitment. As a result, Delphi was unable to implement the plan last April. The plan Delphi couldn't put into effect claimed to be paying unsecured creditors in full with the distribution of new stock. Troy, Michigan-based Delphi began the chapter 11 reorganization in October 2005. The annual report for 2008 shows assets at \$10.3 billion against total liabilities of \$24.6 billion. Revenue in 2008 was \$18.1 billion. Delphi said in a recent bankruptcy court filing that the value of the business may no longer be enough to cover outstanding liabilities arising during the reorganization plus the secured debt funding the chapter 11 case.

The case is *In re Delphi Corp.*, 05-44481, U.S. Bankruptcy Court, Southern District of New York (Manhattan).

Midland Food Services LLC, the operator of 92 Pizza Hut restaurants in six states, produced a \$64,000 net profit for four weeks ended Feb. 20 on net sales of \$4.9 million. Since the chapter 11 filing in August, the cumulative net profit is \$1.6 million on net sales of \$33.2 million. Earnings before taxes, interest, depreciation and amortization during the chapter 11 case are \$1.2 million. Midland's formal lists of assets and debt show property claimed to be worth \$5.8 million against liabilities totaling \$34.6 million, including \$27.4 million in secured claims. The chapter 11 filing in August by Independence, Ohio-based Midland was the company's second in eight years. Net sales were \$64 million for the year ended July 7.

The case is *In re Midland Food Services LLC*, 08-11802, U.S. Bankruptcy Court, District of Delaware (Wilmington).

March 19 (Bloomberg) —

Chemtura Corp., a specialty chemical manufacturer and a producer of spa and pool chemicals, filed for chapter 11 reorganization along with affiliates yesterday evening in New York while listing assets of \$3.06 billion against debt totaling \$2.6 billion. Chemtura was forced into bankruptcy reorganization when its cash balance fell to \$6 million as a consequence of restricted credit from lenders and suppliers. In addition, \$370 million of notes were maturing in July. The financial problems are attributable to the global economic slowdown and reduced demand from customers, the company said in a statement. The Middlebury, Connecticut-based

company has \$1.2 billion in liabilities for borrowed money, including \$1.02 billion owing on three issues of notes or debentures. There is \$139 million outstanding on a revolving credit. Sales in 2008 were \$3.5 billion. Citibank NA, as agent for the pre-bankruptcy lenders, is offering to finance the chapter 11 effort. On an interim basis, the loan would consist of a \$25 million revolving credit and a \$165 million term loan, both to refinance existing obligations. On final approval, the \$400 million loan would include a \$250 million term loan, a \$63.5 million revolving credit, and so-called rollup of \$86.5 million of pre-bankruptcy debt. The subsidiaries outside of the U.S. didn't file.

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

Fairchild Files to Sell Aerospace Business to Insider

Fairchild Corp., whose main businesses are the distribution of aircraft parts and the sale of motorcycle apparel, filed a chapter 11 petition late yesterday afternoon in Delaware, listing assets of \$89.4 million against debt totaling \$228 million as of Jan. 31. Court papers said the filing, made with dozens of affiliates, was the result of 10 years of operating losses. Fairchild intends to sell the aircraft parts business, known as Banner Aerospace, to Phoenix Group, which has two seats on the board of directors and owns 30 percent of the Class A common stock. The sale would be subject to competitive bidding. The existing revolving credit lenders, owed \$19.4 million, are to provide \$23 million in secured financing for the reorganization. The new loan will subsume the existing credit where PNC National Bank NA is agent for the lenders. Phoenix will provide a subordinated secured loan of \$4 million for the reorganization. Fairchild is proposing that other bids for the Banner business be submitted within 40 days of the chapter 11 filing. The auction would be four days later. The price from Phoenix is to pay off the PNC financing and Phoenix's loan, plus \$1 million cash. The largest unsecured creditor of McLean, Virginia-based Fairchild is the Pension Benefit Guaranty Corp. with a claim listed at \$55 million. The second-largest is a retiree health plan owed \$18.7 million. In addition to Banner, Fairchild has 233 retail stores in Europe. Court papers show that the Banner business and 94 of the stores in Germany are profitable on a stand-alone basis. Together, Banner and the German stores produced \$225 million in annual revenue and operating income of \$18.5 million. Assets also include real estate near Republic Airport on New York's Long Island.

The case is *In re Fairchild Corp.*, 09-10899, U.S. Bankruptcy Court, District of Delaware (Wilmington).

Drug Fair Files for Sale to Walgreen

Drug Fair Group Inc., the operator of 58 drug and general merchandise stores in central and northern New Jersey, filed a chapter 11 petition yesterday in Delaware with a contract for the sale of 32 locations to Walgreen Co., the largest

drugstore chain in the U.S. Drug Fair is indirectly owned by Sun Capital Partners Inc., a private-equity investor based in Boca Raton, Florida. Drug Fair is the 11th investment by Sun Capital to file in chapter 11 since January 2006. Court papers say assets were \$90.7 million against \$120.3 million in debt as of July 31. For the fiscal year ending in July, the net loss was \$22.9 million and the operating loss was \$18 million. Debt includes \$44.1 million owing on a first-lien revolving credit where Bank of America NA serves as agent. Second-lien lenders are owed \$20.5 million on a term loan. The agent for the second-lien lenders is Fortress Credit Corp. The first-lien lenders are providing a \$40 million secured credit with a four month term. From the total, \$20 million is to be available on an interim basis. Drug Fair, based in Somerset, New Jersey, owes \$17.9 million to Cardinal Health Inc., its largest unsecured creditor. There is another \$22.1 million owing to trade suppliers, according to a court filing. Walgreen has almost 6,700 stores generating \$59 billion revenue in 2008. Drug Fair's immediate parent company, CDI Group Inc., also filed in chapter 11. Sun Capital acquired the business in December 2005.

The case is *In re Drug Fair Group Inc.*, 09-10897, U.S. Bankruptcy Court, District of Delaware (Wilmington).

Morgan & Finnegan Files to Liquidate in chapter 7

Morgan & Finnegan LLP, a New York law firm founded in 1893, closed down in February after partners defected. Morgan Finnegan filed for liquidation on March 17 in New York, listing assets of \$6.3 million and debt totaling \$10 million.

The case is *Morgan & Finnegan*, 09-11203, U.S. Bankruptcy Court, Southern District of New York (Manhattan).

Creditors Opposing Delphi's Steering Sale to GM

Creditors of auto-parts maker Delphi Corp. are rising in opposition to the sale of the global steering business to former parent General Motors Corp. that was announced early this month. The official unsecured creditors' committee said it is "deeply skeptical of any proposed future asset transfers to GM outside the context of a chapter 11 plan." To the same effect, Wilmington Trust Co., as indenture trustee for \$2 billion in senior notes, says Delphi proposes "to allow GM to obtain the assets it needs to ensure the vitality of its business without requiring a corresponding commitment to provide the funding the debtors need in order to facilitate the confirmation of an amended plan of reorganization." The noteholders oppose giving GM the steering business on account of the result loss of leverage. If Delphi were to retain the business, it could "cut off GM's supply of steering parts if GM refuses to commit to funding an acceptable plan of reorganization." The bankruptcy court has a hearing scheduled on March 24 where Delphi will seek approval of an option agreement giving GM the right to purchase the steering business. The committee says it can't go along unless and until it's seen the definitive agreement for the steering sale. In return for taking back control of the

business unit, GM promises to increase by \$100 million, to \$450 million, its previous commitment for supplying liquidity to Delphi as part of an overall settlement. Delphi said that the steering sale would provide liquidity until May. The noteholders fear Delphi will end up in liquidation, with nothing for unsecured creditors, once GM has the steering business. Despite confirming a chapter 11 plan in January 2008, Delphi was unable to implement the restructuring and emerge from bankruptcy when a group led by Appaloosa Management LP wouldn't make a \$2.55 billion equity investment in April 2008 called for in their commitment. The plan Delphi couldn't put into effect claimed to be paying unsecured creditors in full with the distribution of new stock. Troy, Michigan-based Delphi began the chapter 11 reorganization in October 2005. The annual report for 2008 has assets for \$10.3 million against total liabilities of \$24.6 billion. Revenue in 2008 was \$18.1 billion. Delphi said in a recent bankruptcy court filing that the value of the business may no longer be enough to cover outstanding liabilities arising during the reorganization plus the secured debt funding the chapter 11 case.

The case is *In re Delphi Corp.*, 05-44481, U.S. Bankruptcy Court, Southern District New York (Manhattan).

Asarco Files Amended Plan With Up to 75% for Unsecured Claims

Arizona copper producer Asarco LLC filed a revised reorganization plan and explanatory disclosure statement this week after signing a new contract for the sale of the company earlier this month. The new plan pays creditors less than the prior version Asarco couldn't confirm last year. Asarco had been scheduled for a plan confirmation hearing in November until the \$2.6 billion sale to Sterlite Industries (India) Ltd. fell through. The buyer, a subsidiary of India's Vedanta Resources Plc, refused to complete the purchase that had been approved by the bankruptcy court. This month, Asarco signed 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 necessitated changes in the plan. 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 whose claims may reach \$2.4 billion will receive between 60 percent and 75 percent under the modified plan, according to the disclosure statement. Unsecured creditors will 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. The U.S. Bankruptcy Court in Corpus Christi, Texas, will hold a hearing tomorrow scheduling procedures for approving the disclosure statement and confirming the plan. The sale to Sterlite isn't to become effective until Asarco confirms the chapter 11 plan. Grupo Mexico SAB acquired Asarco for \$1.2 billion in stock in 1999. It 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).

Bankruptcy Judge Passes on Deciding Lyondell Appeal Bond Snafu

Whether Lyondell Chemical Co. will realize a \$200 million windfall by a ministerial action taken by a state court clerk is an issue to be decided by the New Jersey appellate court, as the result of a 34-page decision handed down yesterday by U.S. Bankruptcy Judge Robert E. Gerber in New York. The root of the dispute is a \$206 million judgment that BASF Corp. obtained in New Jersey in August 2007 against Lyondell. To appeal, Lyondell posted a \$200 million bond for which it gave collateral to the insurance company. Briefs were being submitted on the appeal before Lyondell filed under chapter 11 on Jan. 6. When the New Jersey appeals court was notified of the bankruptcy and the so-called automatic stay, a clerk in the New Jersey court dismissed the appeal without prejudice to reinstatement. The terms of the \$200 million appeal bond say it becomes void if the appeal is dismissed “for any reason.” Lyondell is therefore contending that the bond went up in smoke when the appeal was dismissed by the court clerk. If Lyondell is correct, it would get back the collateral it gave the bonding company and BASF, even if it won the appeal, would only have an unsecured claim because the bond would be gone. If the bond didn’t evaporate, BASF could be paid in full by recourse to the bond. Gerber, in his opinion yesterday, said the bond was “as ambiguous a contractual instrument as I have seen in a long time.” He decided that the New Jersey court is in the best position to decide whether the bond disintegrated when the appeal was dismissed by the clerk. While sending the case to the New Jersey court to decide if the bond still exists, Gerber said he would give Lyondell time to decide whether it wishes to appeal. Lyondell presumably would decide to finish the appeal if the New Jersey court reinstates the bond. Gerber also ruled that the clerk’s dismissal of the appeal didn’t violate the automatic stay in bankruptcy. He also ruled that reinstatement of the appeal at BASF’s behest also didn’t violate the stay. The New Jersey court, before the dispute found its way to the bankruptcy court, had reinstated the bond as well. Lyondell and affiliate Equistar Chemicals LP filed under chapter 11 in January, listing assets of \$33.8 billion and debt totaling \$30.3 billion. Including parent LyondellBasell Industries AF SCA and European subsidiaries not in bankruptcy, the assets were \$40 billion on Sept. 30. Total revenue in 2007 was \$44 billion. The Lyondell petition says its assets are \$27.1 billion against \$19.3 billion in debt while Equistar’s listed assets and debt both totaling \$9 billion.

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

Civil Suit Filed Against Madoff Auditor Freihling

The auditor for Bernard L. Madoff Investment Securities Inc., David G. Freihling, was sued yesterday in Manhattan federal court by the Securities and Exchange Commission. The complaint, charging civil violations of securities laws, says that Freihling, Madoff’s auditor since 1991, “did not perform anything remotely resembling an audit.” The SEC’s complaint says Freihling was paid \$186,000 a year for his services and withdrew more than \$5.5 million from accounts he and his family held at the Madoff firm since 2000. The complaint seeks to enjoin Freihling from further violations of securities laws while compelling him to “disgorge” his “ill-gotten gains.” Madoff was arrested in December and pleaded guilty on March 12 to defrauding investors of as much as \$65 billion. He faces a prison term of as long as 150 years. His bail was revoked and he went immediately to jail following the plea. The Madoff firm’s liquidation in U.S. Bankruptcy Court commenced in December with the appointment of the trustee under the Securities Investor Protection Act.

The SIPA case is *Securities Investor Protection Corp. v. Bernard L. Madoff Investment Securities Inc.*, 08-01789, U.S. Bankruptcy Court, Southern District New York (Manhattan).

Lexington Precision Mediator to Negotiate Enterprise Value

Lexington Precision Corp., a manufacturer of rubber components for autos and medical devices, has been at loggerheads with the unsecured creditors’ committee regarding the value of the company when reorganized. U.S. Bankruptcy Judge Martin Glenn previously described how the committee “vehemently disagrees” with the company’s belief there is “substantial value for equity.” Hoping to break the impasse and avoid a long courtroom fight, Glenn appointed Seymour Preston from Goldin Associates to mediate the dispute over “enterprise value.” The parties are to begin reporting to Glenn by April 3 about their success or lack of success in mediation. The discussions in mediation are to be confidential. Lexington has the exclusive right to file a chapter 11 plan until April 30. Lexington filed in chapter 11 in April 2008 after workout negotiations failed with an ad hoc committee of holders of the senior subordinated notes. The detailed lists of assets and debt show property with a value of \$42 million against liabilities totaling \$41.3 million, including \$36.4 million in secured claims. Revenue last year was \$88.5 million. Manhattan-based Lexington has three plants and more than 650 workers.

The case is *In re Lexington Precision Corp.*, 08-11153, U.S. Bankruptcy Court, Southern District of New York (Manhattan).

Magna Claims May Trade and Tracks May be Sold

It’s become almost standard procedure in major reorganizations for the bankrupt company to prevail on the bankruptcy judge to stop large trades in stock or claims for fear of touching

off a change-in-control resulting in the loss of tax-loss carryforwards. U.S. Bankruptcy Judge Mary F. Walrath didn't go along with the proposal for tying up trading in large claims in the chapter 11 case of Magna Entertainment Corp., the Ontario-based operator of seven horseracing tracks that filed for bankruptcy reorganization in Delaware on March 5. Magna began the process of selling the seven racetracks that aren't to be purchased by an affiliate. Although Walrath in an order signed yesterday precluded trades of large block of stock, she refused to stop bondholders from selling or buying debt. Magna had wanted to preclude debt trading by anyone owning upward of 5 percent of the debt without the company's permission. This week Magna filed papers to sell the seven tracks and other assets that aren't being purchased by affiliate MI Developments Inc. Unless outbid at auction, MI would buy three tracks by paying \$44.2 million cash and an exchange of \$135.6 million in debt. The other tracks, including Santa Anita and Pimlico, would go up for auction July 30 under Magna's proposed schedule. If the bankruptcy judge agrees at an April 3 hearing, bids would be due July 8 and the hearing for approval of the sale would be Aug. 7. April 3 is also the day when Walrath will hold a hearing for procedures leading up to sale to MI. MI is angling to buy Gulfstream Park near Miami, Golden Gate Fields outside Oakland, California, and Lone Star Park west of Dallas. MI also is Magna's majority shareholder and largest unsecured creditor, owed \$372 million. Magna listed assets of \$1.05 billion and \$959 million in debt. Liabilities include \$500 million in senior and junior secured financings and \$255 million in subordinated notes. Trade debt is about \$10 million, a court paper said.

The case is *In re Magna Entertainment Corp.*, 09-10720, U.S. Bankruptcy Court, District of Delaware (Wilmington).

Landing no acceptable bids before the first scheduled auction in January, WorldSpace Inc., a Maryland-based provider of satellite radio and data broadcasting services, has a \$28 million cash offer from Yenura Pte, a company controlled by WorldSpace Chief Executive Officer Noah Samara. The auction was scheduled for yesterday afternoon, to be followed with a hearing today to approve the sale to the high bidder. An auction on Feb. 23 also bore no fruit. The petition filed in October listed assets of \$307 million and debt totaling \$309 million, not including a contingent royalty obligation that would increase debt to \$2.1 billion. Debt includes \$36.1 million on the senior secured notes and \$53.1 million on the convertible debt. WorldSpace has two geostationary satellites serving 170,000 paying customers in 10 countries outside of the U.S.

The case is *In re WorldSpace Inc.*, 08-12412, U.S. Bankruptcy Court, District of Delaware (Wilmington).

Overcoming creditors' opposition, Foamex LP, the foam product manufacturer that emerged from chapter 11 in February 2007 only to file again two years later, obtained bankruptcy court approval for \$95 million in secured financing from MatlinPatterson Global Advisers LLC, the intended

buyer of the business. The creditors' committee argued the financing was "illusory" and was "mostly to facilitate" a sale to MatlinPatterson. Some of the first-lien lenders also were in opposition. The new chapter 11 petition listed assets of \$364 million against debt totaling \$380 million. Debt includes \$39 million on a revolving credit, \$325 million on a first-lien term loan, and \$47 million owing on a second-lien term loan. In addition, there is \$41 million owing to trade suppliers. The controlling shareholder, with 72 percent of the stock, is D.E. Shaw & Co. Media, Pennsylvania-based Foamex has 31 plants in the U.S. and abroad. Revenue was \$980 million for the year ended in September.

The case is *In re Foamex International Inc.*, 09-10560, U.S. Bankruptcy Court, District of Delaware (Wilmington).

The bankruptcy judge at a hearing yesterday said he would approve the sale of seven plants belonging to VeraSun Energy Corp. to Valero Energy Corp. for \$477 million cash. The other nine plants owned by the Sioux Falls, South Dakota-based ethanol producer were sold to secured creditors in exchange for debt. VeraSun's reorganization financing required sales no later than April. VeraSun's plants in eight states theoretically are capable of producing 1.64 billion gallons of ethanol annually. Secured debt includes \$81.7 million on a revolving credit and \$210 million in secured senior notes. The so-called ASA facilities, acquired in August 2007, have a \$267 million senior secured credit facility, while the plants from last year's US BioEnergy purchase have \$555 million in secured obligations. Unsecured debt includes \$450 million in senior unsecured notes. VeraSun filed in chapter 11 at the end of October after losing as much as \$103 million on corn hedging and a \$100 million stock offering failed.

The case is *In re VeraSun Energy Corp.*, 08-12606, U.S. Bankruptcy Court, District of Delaware (Wilmington).

Strauss Discount Auto, an 86-store auto-parts retailer formally named Autobacs Strauss Inc., was authorized by the bankruptcy judge on March 17 to conduct going-out-of-business sales at 12 stores that are closing. Strauss will run the sales itself, without help from a liquidator. The company filed under chapter 11 for a third time on Feb. 4. The Strauss stores are in New York, New Jersey and Pennsylvania. The new petition listed assets of \$75 million against debt totaling some \$72 million. The preceding chapter 11 plan for the company, then formally named R&S Parts & Service Inc., was confirmed in April 2007. The current owner is Japan's Autobacs Seven Co. Debt includes \$42.4 million owing to the parent under loan agreements, \$9.6 million owing to suppliers, and \$12 million owing to landlords and other unsecured creditors. There is no secured debt. The assets include \$33 million in inventory at cost and \$23 million of real property.

The new case is *In re Autobacs Strauss Inc.*, 09-10358, U.S. Bankruptcy Court, District of Delaware (Wilmington). The prior case is *In re 1945 Route 23 Associates*, 06-17474, U.S. Bankruptcy Court, District of New Jersey (Newark).

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