

# The Daily Deal

THURSDAY  
AUGUST 2, 2012  
VOLUME 23 ISSUE 148

## IN THIS EDITION



### OAKTREE FLIES OFF WITH PROFIT IN EXIT FROM SPIRIT AIR

Lisa Ward reports that after eight years, Oaktree Capital Group exited its position in Spirit Airlines through a secondary offering, netting the Los Angeles-based private equity firm a return just shy of 2.4 times on its initial investment, a source confirmed. Late Tuesday, Oaktree said it was selling its remaining 9.4 million shares of stock it held in Miramar, Fla.-based Spirit Airlines. Oaktree had owned the company since 2004 and invested about \$183 million in it, the source said, adding that the sponsor did not take any dividends out of the company.

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## GOP moves to relax Sarbanes-Oxley audit compliance for small businesses

BY BILL MCCONNELL IN WASHINGTON

Along party lines, a House subcommittee on Wednesday approved a controversial bill to exempt more "small" companies from the Sarbanes-Oxley Act's internal controls auditing requirement.

The bill, aimed at reducing the cost of Sarbanes-Oxley compliance for biotech and other young companies, would help firms that may have substantial operations but little revenue.

Introduced in the House Financial Services Committee by Pennsylvania Republican Michael Fitzpatrick, the bill would increase from \$75 million to \$750 million the market capitalization of companies exempt from Section 404-b of the Sarbanes-Oxley Act, which requires public companies to hire outside auditors to verify the company has appropriate internal accounting controls. To qualify for the new exemption, companies must have revenue of \$100 million or less.

The bill was approved Wednesday by the committee's Capital Markets Subcommittee by an 18-15 vote. Although the bill faces little difficulty in the Republican-controlled House, there is little chance of passage in the Democrat-dominated Senate right now.

However, a strong showing in the House this year could tee up a similar bill for quick passage next year if the GOP gains control of both chambers in the November elections.

Although opposed by Democrats and a variety of investor and accounting industry groups, Fitzpatrick's bill has been endorsed by the Biotechnology Industry Organization. ■

[FULL STORY >](#)



REP. MICHAEL FITZPATRICK

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# THE DEAL PIPELINE

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## Top private equity returns on investment, year to date

### Target: Paradigm Ltd.

Acquirers:

Apax Partners LLP,  
JMI Equity Fund LP

Seller: Fox Paine & Co. LLC

Returns: 7.8 times

Deal value: \$1 billion

Announced: June 11

### Target: EAM Corp.

Acquirer: Domtar Corp.

Seller: Kinderhook Industries LLC

Returns: 5.5 times

Deal value: \$61 million

Announced: May 11

### Target: Weetabix Food Co.

Acquirer: Bright Food Group Co. Ltd.

Seller: Lion Capital LLP

Returns: 5 times

Deal value: \$1.9 billion

Announced: May 3

### Target: GlobalSpec Inc.

Acquirer: IHS Inc.

Seller: Warburg Pincus LLC

Returns: 5 times

Deal value: \$135 million

Announced: June 12

Source: *The Deal Pipeline*



### Exclusive Video

#### CastleOak's Jones on investor demand, corp. dealmakers' new debt

Excerpt: CastleOak Securities CEO David Jones tells The Deal Pipeline what corporate dealmakers need to know when taking on new debt, as well as his M&A dealflow outlook for 2012.

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- Kommunalkredit Austria AG - 07/26/2012
- Nurburgring GmbH - 07/25/2012

#### MOST RECENT BANKRUPTCY

- Louisiana Riverboat Gaming Partnership - Filing - 07/31/2012
- Financial Data Technology Corp. - Filing - 07/31/2012
- Peer Review Mediation and Arbitration Inc. - Warning - 07/31/2012

#### MOST RECENT FINANCINGS

- HD Supply Inc. - Lien - 07/30/2012
- CPM Holdings Inc. - Lien - 07/30/2012
- Siluria Technologies - VC - 07/30/2012

#### MOST RECENT M&A

- Shaw Group Inc. - 07/30/2012
- Xsigo Systems Inc. - 07/30/2012
- ZIV Aplicaciones y Tecnologia SL - 07/30/2012

## Ahead of the news

*An executive summary of events impacting the markets tomorrow*

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W. P. CAREY

This November, join us as we analyze the impact of an election year on the obstacles and opportunities for policymakers and deal professionals. Will dealmakers re-engage with a renewed sense of confidence and conviction in the financial markets and how will these new attitudes affect leading corporate, executives, investment bankers, private equity and senior advisors?

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Be on the lookout for our additional speakers, underwriters and content sessions as The Deal Economy 2013 launch gets closer.

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# TOP STORY

## GOP takes steps for more SOX relaxation

*Bill would exempt more companies from internal controls auditing*

**BY BILL MCCONNELL IN WASHINGTON**

A House subcommittee on Wednesday approved along party lines a controversial bill to exempt more “small” companies from the Sarbanes-Oxley Act’s internal controls auditing requirement.

The bill, aimed at reducing the cost of Sarbanes-Oxley compliance for biotech and other young companies, would help firms that may have substantial operations but little revenue.

The bill, introduced in the House Financial Services Committee by Pennsylvania Republican Michael Fitzpatrick, would increase from \$75 million to \$750 million the market capitalization of companies exempt from Section 404-b of the Sarbanes-Oxley Act, which requires public companies to hire outside auditors to verify the company has appropriate internal accounting controls. To qualify for the new exemption, companies must have revenue of \$100 million or less.

The bill was approved Wednesday by the

committee’s Capital Markets Subcommittee by an 18-15 vote. Although the bill faces little difficulty in the Republican-controlled House, there is little chance of passage in the Democrat-dominated Senate right now. However, a strong showing in the House this year could tee up a similar bill for quick passage next year if the GOP gains control of both chambers in the November elections.

Although opposed by Democrats and a variety of investor and accounting industry groups, Fitzpatrick’s bill has been endorsed by the Biotechnology Industry Organization. Last week Jeffrey Hatfield, chief executive of **Vitae Pharmaceuticals Inc.**, a company based in Fitzpatrick’s state, testified on behalf of his bill.

Democrats on the panel complained that Congress has already done enough to ease smaller companies’ Sarbanes-Oxley burdens.

The 2010 Dodd-Frank Act exempted companies with revenues below \$75 million

and the so-called JOBS Act enacted in April gave companies with capitalization under \$700 million and sales under \$1 billion a five-year delay in their obligation to audit internal controls.

“In the 10 years since Sarbanes-Oxley, Congress has heard from companies concerned about the compliance burden and we’ve taken adequate steps to address those concerns,” California Democrat Brad Sherman said. He said Fitzpatrick’s bill would deny investors much-needed outside assessments of high-risk companies. “The question here is whether we’re going to endanger one of this country’s most valuable assets—the belief that we have the best, the cleanest, most reliable capital markets in the world and that the stocks traded there are traded on the basis of real information and not invention,” he said.

“We need to not just say, ‘What’s the easiest way for one or two companies to access the market,’” he added. “We have to say, ‘How do we protect investors so that for

generations to come our markets will be thought of as the most reliable, the cleanest and best way to get capital.’”

The bill is opposed by the Council of Institutional Investors, the Center for Audit Quality, the **California Public Employees’ Retirement System**, and the American Institute for Certified Public Accountants.

Fitzpatrick countered that the steps taken so far aren’t enough to help companies remain in the developmental stage for many years.

“Some very healthy, investment-worthy small businesses may actually have no revenue for six, 10, or 15 years,” he said. “These companies are not unique and were not included in the JOBS Act.” ■



REP. MICHAEL FITZPATRICK



REP. BRAD SHERMAN

# PRIVATE EQUITY

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[PE AUCTION BIDDER LISTINGS](#)
[PE AUCTIONS](#)
[LATEST SELLERS-ASSETS](#)

## Oaktree flies with 2.4 times return on Spirit Air exit

*Sponsor should make about \$200 million in its latest stake sale as it exits the discount flyer*

BY LISA WARD

After eight years, **Oaktree Capital Group LLC** exited its position in **Spirit Airlines Inc.** through a secondary offering, netting the Los Angeles-based private equity firm a return just shy of 2.4 times on its initial investment, a source confirmed.

Late Tuesday, Oaktree said it was selling the remaining 9.4 million shares of stock it held in Miramar, Fla.-based Spirit Airlines. Oaktree had owned the company since 2004 and invested about \$183 million in it, the source said, adding that the sponsor did not take any dividends out of the company.

**Deutsche Bank AG** is underwriting the offering.

Spirit Airlines is a discount flyer with routes in the United States, the Caribbean and Latin America. It has a market capitalization of about \$1.3 billion and about \$1 billion in 2011 revenue.

The sale of its final 13% equity stake should earn Oaktree about \$200 million. The airline's stock opened down about 6%, at \$20.23 per share, Wednesday morning.

Oaktree has been trimming its position in Spirit Airlines since the beginning of the year, selling shares in January and then again in May, when it sold about 3.6 million shares, according to a 13D filing. With the stock price near \$20 per share during that time period, the firm likely received about

\$70 million for its holdings. In January, Oaktree sold 6.93 million shares at \$14.50 per share, receiving about \$155 million for the sale. The two block trades reduced Oaktree's equity stake in Spirit Airlines from 31% to 21.4% and then again from 18% to 13%.

Oaktree bought a majority of the carrier in 2004 for a reported \$125 million. The following year it injected roughly \$70 million of debt capital, according to news accounts.

**Indigo Partners LLC**, a Phoenix private equity firm headed up by former America West Airlines Inc. CEO Bill Franke, inject-

[CONTINUED >](#)

Will you be on the podium this quarter?

The Deal Pipeline's Q2 2012

## BANKRUPTCY LEAGUE TABLES

See who made the cut **August 30**, only on The Deal Pipeline.

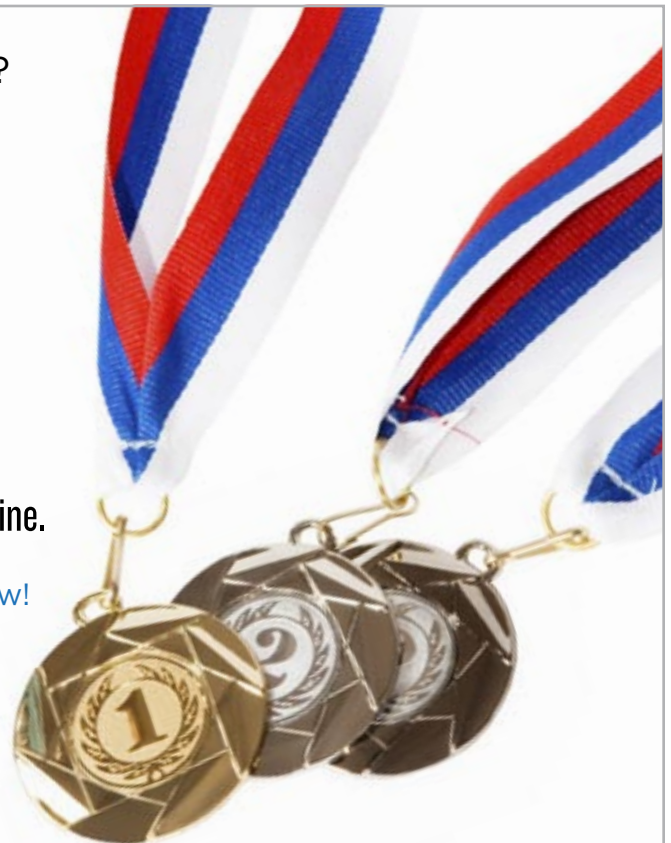
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# SENSE OF THE MARKETS

## Annie's feeds the coffers of its PE sponsor

*With the organic mac and cheese maker's stock soaring, Solera Capital cashes out*

BY VYVYAN TENORIO

Almost exactly 10 years ago, New York private equity firm **Solera Capital LLC** took a fancy to a rabbit logo on a purple-colored box of macaroni and bought the company behind it—**Annie's Inc.** Solera, then something of a startup private equity outfit itself, would not have known that the bunny mascot, named after founder Annie Withey's pet rabbit Bernie, would inspire a runaway moneymaker now worth about \$700 million.

Since the Berkeley, Calif.-based natural and organic foodmaker went public in late March, perhaps the splashiest nontech offering this year, its shares have doubled. Its stock priced at \$19 and now hovers around \$40, roughly 33 times adjusted Ebitda for the fiscal year ended March 31.

After unloading about 4.05 million shares in the initial public offering, Solera and other minority shareholders plan to sell another 3.17 million shares in a secondary share sale. The company on Wednesday priced the offering at \$39.25 apiece, just below Tuesday's \$40.75 close.

For Solera Capital, with just a handful of investments to show for its 12-year history, it's a vindication, albeit one that, by PE standards, was a long time coming. The firm has raised one fund, which invested in five portfolio companies, including **Latin Media Ventures LLC**, parent of popular *Latina Magazine*, and **Little Clinic LLC**, operator of walk-in clinics in **Kroger Co.** grocery stores.

Of these, Annie's appears to be the solitary home run.

Net sales for the mac and cheese purveyor, now churning out some 125 organic products ranging from fruit snacks to crackers to frozen pizza, has roughly doubled in four years, to \$141.3 million in 2012, from \$76.8 million in 2008. Adjusted Ebitda, accounting for management fees and other items, rose from \$9.3 million in 2010 to \$21.3

million in 2012.

Its IPO most likely benefited from pent-up demand for growth stories and Annie's limited float of about 5 million shares. Even though the bulk of the IPO proceeds went to Solera, along with CEO John Foraker and minority shareholder **Najeti Ventures LLC**, investors evidently saw promise in Annie's "Rabbit of Approval"-stamped brands.

Given Annie's sleeper success so far and the strong stock performance, Solera now



appears to be in a rush to head for the door. And why not? With pundits pointing to Annie's as an attractive shorting target, timing is of the essence.

It can now sell again at any time because, effective Tuesday, its underwriters, **Credit Suisse Securities** and **JPMorgan Securities LLC**, said they would waive a lockup restriction with respect to about 3.6 million shares of the company's stock held by certain stockholders of the company.

It's important to note, as an amended filing dated Monday did, that an affiliate of JPMorgan Securities holds an ownership stake of approximately 10% in Solera Partners LP, the selling stockholder in the offering, and will receive 5% or more of the net proceeds from the offering.

Not counting any underwriters' option exercise, Solera Capital's profit-taking from the secondary sale represents realized and unrealized profits of roughly 6 times cost, based on the secondary sale pricing and Wednesday afternoon trading at \$40.

That should mollify Solera's institutional backers—**California Public Employees' Retirement System** and Oregon State Treasury among them—that might be otherwise unhappy with the fund's less-than-sterling report card. Solera's fund, which raised \$250 million in 2002, was showing a 7.4% net internal rate of return in December; it got a boost by the end of March, presumably from Annie's IPO, rising to 9.7%, according to public disclosures.

Little else is known of Solera's portfolio fund performance. Kroger acquired Nashville-based Little Clinic in February 2010 for a reported \$86 million, after exercising an option to buy the business in its entirety. (The firm did not return calls requesting comment.)

Solera, a mostly female buyout shop, was launched in 1999 by ex-JPMorgan leveraged buyout executive Molly Ashby and two others, Lori Koffman, formerly with **CIBC Capital Partners**, and Karen Mills, founder of private equity adviser MMP Group Inc. Mills was later appointed as administrator of the Small Business Administration in 2009. Koffman was ordained a rabbi in 2010 after spending 19 years on Wall Street, leaving Ashby as sole managing partner.

With Annie's bestowing its blessings in kind, Solera should stand a better chance among institutional investors if and when it decides to raise another fund. ■

### < PREVIOUS

ed \$70 million of equity and debt in Spirit in 2006. Indigo supplanted Oaktree as majority owner, and Franke became Spirit's chairman. Oaktree sank \$81.7 million into Spirit loans when Indigo took its stake.

When the company went public in May 2011, Oaktree's investment stood at \$181.7 million. The company used \$21 million of the total \$171 million it raised from the initial public offering to retire debt and preferred stock held by Oaktree. ■

—David Carey contributed to this report.

## THE DAILY DEALS

Aug. 1, 2012 4:00 p.m.

TARGET	ACQUIRER	SPREAD		%	CHANGE F/ PREVIOUS DAY	5 days ago	10 days ago	Annualized return	Est. close
		\$	with dividends						
Amerigroup Corp.	WellPoint Inc.	1.97	1.97	2.19	0.15	1.99	1.99	4.3	2/1/13
Amylin Pharmaceuticals Inc.	Bristol-Myers Squibb Co.	0.05	0.05	0.16	0.16	0.20	0.20	6.6	8/10
Ariba Inc.	SAP AG	0.48	0.48	1.08	0.09	0.63	0.53	6.5	10/1
Astral Media Inc.	BCE Inc.	C\$0.81	C\$0.81	1.65	C\$0.01	C\$0.85	C\$0.85	5.0	11/30
AuthenTech Inc.	Apple Inc.	-0.28	-0.28	-3.42	-0.12	2.90	3.08	-13.7	10/31
Benihana Inc.	Angelo, Gordon & Co.	0.08	0.08	0.49	0.00	0.00	0.00	2.0	10/31
Brightpoint Inc.	Ingram Micro Inc.	0.01	0.01	0.11	0.02	0.02	0.03	0.4	10/31
Calvalley Petroleum Inc.	DNO International ASA	-C\$0.17	-C\$0.17	-6.88	-C\$0.01	-C\$0.03	C\$0.05	N/A	N/A
CH Energy Group Inc.	Fortis Inc.	-0.05	0.51	0.78	0.02	0.00	-0.22	1.4	2/15/13
Collective Brands Inc.	Wolverine World Wide Inc.	0.20	0.20	0.90	0.04	0.20	0.23	7.3	9/15
Cooper Industries plc	Eaton Corp.	1.21	1.21	2.77	0.02	1.20	1.22	13.5	10/15
Dollar Thrifty Automotive Group Inc.	Hertz Global Holdings Inc.	-5.33	-5.33	-7.37	-1.85	-6.32	-11.99	N/A	N/A
Edelman Financial Group Inc.	Lee Equity Partners LLC	0.19	0.19	2.19	-0.01	0.24	0.16	57.2	8/15
Elster Group SE	Melrose plc	0.06	0.06	0.29	0.02	0.10	0.02	3.6	8/31
Extorre Gold Mines Ltd.	Yamana Gold Inc.	C\$0.03	C\$0.03	0.75	-C\$0.01	C\$0.03	C\$0.04	11.4	8/25
FX Alliance Inc.	Thomson Reuters Corp.	-0.04	-0.04	-0.18	-0.06	0.00	0.00	-2.1	9/1
GenOn Energy Inc.	NRG Energy Inc.	0.03	0.03	1.10	0.00	0.01	0.36	1.1	8/1/13
GeoEye Inc.	DigitalGlobe Inc.	0.66	0.66	2.66	0.15	1.31	5.22	6.4	12/31
Interline Brands Inc.	Goldman Sachs Capital Partners LP	0.10	0.10	0.39	0.02	0.14	0.14	3.2	9/15
Kenneth Cole Productions Inc.	Kenneth D. Cole	0.30	0.30	2.01	-0.09	0.20	0.15	12.0	10/1
LeCroy Corp.	Teledyne Technologies Inc.	0.01	0.01	0.07	0.00	0.04	0.03	6.4	8/5
Lincare Holdings Inc.	Linde Group AG	0.08	0.08	0.19	0.02	0.15	0.15	10.1	8/8

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N/A = not available

Spreads, including deals with collars that are not yet in the pricing period, are calculated using stock figures available at market close. The final terms for deals with collars may be different. When estimations for pricing periods are not available, the spread is determined by the acquirer's share price at the market close. The close date is estimated. Spreads do not include dividend payments that have not been announced.

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# THE DAILY DEALS

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TARGET	ACQUIRER	SPREAD			CHANGE F/ PREVIOUS DAY	5 days ago	10 days ago	Annualized return	Est. close
		\$	with dividends	%					
MModal Inc.	One Equity Partners LLC	-0.26	-0.26	-1.82	-0.06	-0.37	-0.42	N/A	N/A
Nexen Inc.	Cnooc Ltd.	2.15	2.20	8.68	-0.05	1.75	10.23	34.8	10/31
Pacific Capital Bancorp	Mitsubishi UFJ Financial Group Inc.	0.32	0.32	0.70	0.06	-31.99	-31.94	4.3	10/1
Par Pharmaceutical Cos.	TPG Capital	-0.01	-0.01	-0.02	0.05	0.00	-0.06	-0.1	10/31
Peet's Coffee & Tea Inc.	Joh. A. Benckiser	-1.66	-1.66	-2.21	-0.24	-1.50	18.92	-8.9	10/31
PLX Technology Inc.	Integrated Device Technology Inc.	0.58	0.58	10.44	-0.10	0.70	0.36	3808.9	8/2
Presidential Life Corp.	Athene Holding Ltd.	0.10	0.10	0.72	0.01	-9.65	-9.70	1.7	12/31
Progress Energy Resources Corp.	Petronas Carigali Canada Ltd.	-C\$0.60	-C\$0.60	-2.65	-C\$0.16	C\$1.94	C\$1.90	-17.6	9/25
Quest Software Inc.	Dell Inc.	0.07	0.07	0.25	-0.01	0.10	0.13	1.5	9/30
RailAmerica Inc.	Genesee & Wyoming Inc.	0.07	0.07	0.26	0.00	0.21	2.46	0.6	12/31
Rona Inc.	Lowes Cos.	C\$0.75	C\$0.75	5.45	C\$0.25	C\$3.38	C\$3.38	N/A	N/A
ShangPharma Corp.	TPG Star Charisma Ltd.	0.84	0.84	10.97	-0.01	0.68	0.53	N/A	N/A
Shaw Group Inc.	Chicago Bridge & Iron Co. NV	6.49	6.49	16.60	0.17	20.92	19.87	30.6	2/15/13
Standard Microsystems Corp.	Microchip Technology Inc.	0.01	0.01	0.03	0.08	0.16	0.13	0.2	9/30
Sun Healthcare Group Inc.	Genesis HealthCare LLC	0.14	0.14	1.67	0.00	0.17	0.14	10.2	9/30
Sunoco Inc.	Energy Transfer Partners LP	0.80	0.53	1.10	0.03	0.79	0.87	6.7	9/30
Talbots Inc.	Sycamore Partners LLC	0.01	0.01	0.36	0.00	0.02	0.11	133.2	8/2
Tudou Holdings Ltd.	Youku Inc.	0.70	0.70	2.70	0.06	0.63	0.92	51.9	8/20
Venoco Inc.	Management	3.36	3.36	36.69	-0.12	3.95	2.76	304.3	9/14
Viterra Inc.	Glencore International plc	C\$0.18	C\$0.18	1.12	C\$0.01	C\$0.21	C\$0.13	13.2	9/1
Vulcan Materials Co.	Martin Marietta Materials Inc.	-0.46	-0.46	-1.22	-0.71	-1.41	-2.52	N/A	N/A
Winnebago Industries Inc.	North Street Capital LP	0.93	0.93	9.24	-0.06	0.89	0.10	N/A	N/A
Zhongpin Inc.	Xianfu Zhu	3.12	3.12	30.06	0.08	3.26	3.38	N/A	N/A

N/A = not available

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# ARBITRAGE

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## Dollar Thrifty says ‘put up or shut up’

*With no action from Hertz or Avis, a plea for the limbo to end*

BY SCOTT STUART

**Dollar Thrifty Automotive Group Inc.** said Wednesday that the lingering uncertainty of a potential merger proposal from **Hertz Global Holdings Inc.** has hampered its business and it is time for Hertz to put forward a compelling acquisition proposal.

The remarks came with Dollar Thrifty's second-quarter earnings release. Dollar Thrifty said that neither Hertz nor any other company (read: **Avis Budget Group Inc.**) has made an acquisition offer during 2012. The value car rental company also said that reports that Hertz has been in discussion with the Federal Trade Commission to di-

vest certain of Dollar Thrifty's assets in the context of a hypothetical transaction has led to difficulties in negotiating business partnerships and a loss of employees. Dollar Thrifty said it has communicated its concerns regarding these reported divestiture commitments to senior officials at the FTC.

The FTC declined to comment.

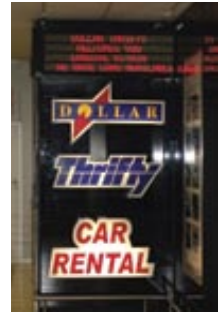
After three years of merger-related activity and speculation, Dollar Thrifty said it is time for a compelling offer to be made or for this process to come to a close.

Hertz declined to comment on the remarks.

On its conference call Tuesday, Hertz

said that it continued to engage with the FTC regarding the antitrust clearance to potentially acquire Dollar Thrifty, but for regulatory reasons it could not comment further.

What regulatory restrictions the company is under are uncertain. The FTC would not restrict the company's ability to communicate with investors and Hertz does not have a tender offer or other live filing with the Securities and Exchange Commission. It is possible that communications, particu-



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# MOVERS & SHAKERS

COMPILED BY BAZ HIRALAL

**Credit Suisse Group** co-chairman of mergers and acquisitions, **Steve Koch**, will become deputy mayor of Chicago under Mayor **Rahm Emanuel**, effective Sept. 4. **David DeNunzio** becomes global chairman of the M&A group, while **Scott Lindsay** is chairman of the group. Koch, who has worked on more than \$1 trillion worth of deals, joined Credit Suisse in 1985, became a managing director in 1989 and ran the global M&A business from 1993 to 2000, later becoming global co-chairman of the group. He also played a major role in recruiting and in the managing director review process. Koch is chairman of the board of trustees of the Sinai Health System in Chicago and is a board member of the Greater Chicago Food Depository. He is also a member of the Green Ribbon Committee of the Chicago Climate Action Plan and the board of trustees of Francis W. Parker School.

DeNunzio joined the firm in 1989 after nine years at Kidder, Peabody & Co. He has been head of investment banking for the Eastern U.S. region and Canada and head of insurance investment banking. He also ran the private equity business for several years prior to the firm's acquisition of Donaldson, Lufkin & Jenrette Inc.

Separately, **BMO Capital Markets Corp.**'s **Bruce Cox** will join Credit Suisse as a managing director in the oil and gas group, based in Houston. He is expected to start in September as head of acquisition and divestiture. Cox was a managing director in BMO's A&D group since 2009. Prior to that, he worked at **Macquarie Tristone** and spent 17 years as a partner at **Netherland, Sewell & Associates Inc.**, an oil and gas reserves consulting firm. He also spent nine years at **Exxon Mobil Corp.** as a petroleum engineer.

**Clayton, Dubilier & Rice LLC** has appointed **John Krenicki Jr.** as a senior operating partner, effective in January. Krenicki is vice chairman of **General Electric Co.** and the president and CEO of GE Energy. Last month, GE announced Krenicki will



leave the company at the end of 2012, following the breakup of its energy business into three units.

According to a press release, under Krenicki's leadership since 2005, GE Energy doubled in size and profitability to become GE's largest business, with revenue increasing to about \$50 billion in 2012 and representing roughly one-third of GE's total profits. He also oversaw more than \$11 billion in acquisitions, including Dresser Inc., Wellstream Holdings plc, Lineage Power Holdings Inc., **John Wood Group plc**'s well-support division and Converteam over the past two years. Krenicki spent 29 years at GE.

**Cantor Fitzgerald LP** has launched an advisory business in Europe with 17 hires from **Canaccord Genuity Inc.**, led by **Gordon Neilly**, who joins as head of corporate finance. **Angelo Sofocleous**, who arrives as co-head of equity trading, will lead European sales and trading with **Marc Altmann**. The team is based in London and reports to **James Rowsell**, CEO of Cantor Fitzgerald Europe.

Separately, Cantor Commercial Real Estate said **Kenneth Margala**, previously an executive director at **UBS Investment Bank**, joined the firm as a director focused on loan origination. He works from Newport Beach, Calif.

**Oliver Chang, Robert Lee, Sarah Lee** and **Gavin Kleinknecht** have founded asset management firm **Sylvan Road Capital LLC**. Focusing on the single-family rental market, the firm expects to invest more than \$1 billion nationally over the next two years, beginning with an initial capital commitment of \$300 million from an unnamed private equity firm. Chang is the former head of U.S. housing strategy at **Morgan Stanley**, and his partners are the principals of Atlanta-based **Delmar Realty Advisors LLC**. Sylvan is based in Atlanta and has offices in San Francisco. Chang joined Morgan Stanley in 2005 and is said to have predicted, in 2006, the bursting of the housing bubble. ■

## < PREVIOUS

larly written communications, prior to a resumed tender offer might require the company to commence filings under a schedule tender offer and Hertz prefers to avoid that at this juncture. Also, prudence dictates that making statements regarding specifics of a proposal could backfire if the terms or timing of a deal materially differed from the remarks.

Hertz did disclose in its last 10-Q in May that it was working toward a "final consent order" with the FTC staff. The process remains at that stage, a source said.

There has been some concern that if

Hertz has not resumed a formal process for securing antitrust approval, the FTC will not finalize a consent order and clear a hypothetical deal.

Hertz and Dollar Thrifty filed for anti-trust clearance for their April 2010 merger agreement, but that deal was shot down by shareholders after Avis made a spoiler offer, which was later aborted. Hertz also filed for its later unsolicited tender offer, which was withdrawn in October 2010 while a second request was under way. One source said the formal filing under Hart-Scott-Rodino was not a relevant matter and that Dollar Thrifty could expedite the review if it chose

by confirming with the FTC that it remains open to a merger with Hertz.

One reading of the Dollar Thrifty plea Wednesday is that it is telling the FTC that it's open to a revised offer and wants the antitrust process concluded. It is clear from the remarks that Dollar Thrifty remains not only open to a merger with Hertz, but that it is waiting for Hertz to make the next approach.

Dollar Thrifty shares dropped Wednesday by about \$2.70, or 3.6%, to \$71.70, at a premium of \$4.70, or 6.6%, to the last Hertz proposal, which Wednesday was worth \$67.10 in cash and shares. ■

# BRIEFLY NOTED

EDITED BY THE DAILY DEAL STAFF

## COURT DISMISSES NORTHERN ROCK INVESTORS' CASE

The European Court of Human Rights on Wednesday ruled "inadmissible" a long-running case brought by former retail investors in Newcastle, England-based lender **Northern Rock plc** against the terms of the bank's February 2008 nationalization, which cost many retail investors their life savings. The government later split the bank in two and early this year completed the sale of the "good" part of the institution to Richard Branson's **Virgin Money Holdings (UK) Ltd.** Lead plaintiff Dennis Grainger called the

decision "shocking," and the shareholder group vowed to fight on.

—Laura Board

## OLYMPIC RESOURCES CLOSES \$180M FUND

Olympic Resource Management LLC, a subsidiary of timberland developer and investment fund manager **Pope Resources LP**, closed its ORM Timber Fund III with \$180 million in committed capital, the parent company announced late Tuesday. Poulsbo, Wash.-based Pope Resources owns and/or manages 178,000 acres of timberland and development property in Washington and

Oregon. It also manages and co-invests in three timberland investment funds. The firm has \$171 million of timberland assets under management in its first two funds. The fund will invest in commercial timberlands in the Pacific Northwest. —Taina Rosa

## PAMLICO TAKES STAKE IN TEKLINKS FROM SYMMETRIC

Charlotte, N.C.-based private equity firm **Pamlico Capital** said Wednesday it acquired a majority stake in technology solutions provider **TekLinks** from **Symmetric Capital**. Terms were not disclosed. Birmingham, Ala.-based TekLinks, founded in 2001,

provides complex technology solutions, managed and cloud services to businesses throughout Alabama, Mississippi, Tennessee and the Gulf South. Symmetric acquired the company four years ago. TekLinks announced that Jim Akerhielm, previously CEO of **NuVox Communications Inc.** and **Triton Cellular**, will become CEO of the company. **Signal Hill Capital Group LLC** was TekLinks' and Symmetric Capital's financial adviser, and **Choate, Hall & Stewart LLP** was their legal adviser. **Alston & Bird LLP** was Pamlico's legal counsel. ■  
— T.R.



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# Torchmark buys Family Heritage

*The Texas life insurer adds 223,000 active policies through the \$219 million deal*

BY DEMITRI DIAKANTONIS

**Torchmark Corp.** is looking for additional insurance.

The McKinney, Texas-based life insurer said Wednesday that it has agreed to acquire privately held counterpart **Family Heritage Life Insurance Co. of America** for \$218.5 million in cash.

The buyer will fund the acquisition with cash on hand.

Family Heritage, of Cleveland, sells supplemental health and life insurance policies to families. The target, founded in 1989, has more than 1,200 sales agents and over 223,000 active policies.

“This transaction meets the criteria we established when we began looking at possible acquisitions several years ago,” said Torchmark co-CEOs Larry Hutchison and Gary Coleman in a joint statement. “We expect a seamless transition, as we have complete confidence in the Family Heritage management team, agents and employees.”

The two sides expect to close the transaction by the end of the fourth quarter. Torchmark expects the acquisition to add between 13 and 17 cents per share in 2013. The purchase price is subject to a final working capital adjustment and is not pending any financing conditions.

“Torchmark is a very well respected company in the industry, and their financial strength and resources will allow Family Heritage to continue its aggressive growth record long into the future,” said Family Heritage founder, chairman and CEO Howard Lewis in a statement.

Family Heritage posted a \$21 million net income and wrote \$162 million in direct premiums in 2011.

Family Heritage is Torchmark’s first acquisition in at least five years. In January 2007, the company purchased Direct Marketing Advertising Distributors Inc. for \$47 million.

In 2010, Torchmark’s Liberty Life Insurance Co. subsidiary sold United Investors Life Insurance Co. to **Protective Life Insurance Co.** for \$343 million.

The deal follows two other life insurance deals announced in the past month. On July 13, **Apollo Global Management LLC**-backed **Athene Holding Ltd.** acquired **Presidential Life Corp.** for \$415 million. And just one day earlier, **Cigna Corp.** purchased a 51% stake in Turkish life insurance and pension provider **Finans Emeklilik ve Hayat AS** for \$103.6 million.

Torchmark shares were trading 10 cents higher, to \$49.84, on Wednesday afternoon, giving it a market capitalization of \$4.9 billion.

**Wells Fargo Securities LLC** is advising Torchmark, which is being represented by a **Locke Lord LLP** team of Kent Jamison, Chris Allison and Philip Bush.

Family Heritage is taking advice from **Willis Capital Markets & Advisory Ltd.** and **Peter J. Solomon Co.’s** Kenneth Baronoff. **Sidley Austin LLP** is its legal adviser.

Neither Torchmark nor Family Heritage returned calls on Wednesday. ■

## Sumitomo takes stake in Devon shale fields

*Will pay \$340 million in cash on closing and make a further \$1.02 billion investment*

BY LAURA BOARD

**Devon Energy Corp.** agreed Wednesday to give Japan’s **Sumitomo Corp.** a 30% share of the production in two shale fields in Texas in a \$1.4 billion deal that will help fund drilling costs.

The agreement—the latest in a series of shale energy deals—delivers to Sumitomo a slice of the output from Devon’s 650,000 net acres in Cline Shale and Midland-Wolfcamp Shale. In exchange, Sumitomo will pay \$340 million in cash on closing and make a further \$1.025 billion investment that Devon expects by the middle of 2014.

The arrangement mirrors a \$2.5 billion January deal between Oklahoma City-based Devon Energy and **China Petroleum & Chemical Corp.**, or Sinopec, involving five U.S. shale fields.

The Sumitomo transaction “once again demonstrates the value embedded in our high-quality portfolio,” said Devon president and CEO John Richels in a statement. “This arrangement will materially enhance Devon’s future returns and improve our capital efficiency. It will also further enhance our financial strength. For quite some time we have had a strong working relation-

ship with Sumitomo and look forward to a mutually beneficial joint venture.”

Devon Energy said Sumitomo’s investment, known as a drilling carry, would fund 70% of Devon’s total capital requirements on the assets. Devon Energy will operate and market all production from the two shale fields in North America and retains its entire interest in the acreage itself, noted Devon Energy spokesman Chip Minty.

Minty said further such joint venture deals are an option. “We are happy with these JV partnerships,” he said. “They give us the capital reach to acquire acreage in other areas.”

In a conference call, Richels said that one such acquisition would be a leasehold position on a further 400,000 acres in the Mississippi shale field, one of the five fields that feature in the Sinopec joint venture. ■

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# Creditors dog LightSquared over Harbinger loan

*Hedge funds want bankruptcy court to compel disclosure on financing*

BY CHRIS NOLTER

As **LightSquared Inc.** continues to press the Federal Communications Commission for permission to provide wireless broadband services, a group of the telecom's secured creditors is growing impatient with a lack of data from Philip Falcone's **Harbinger Capital Partners** regarding a prebankruptcy loan.

The group said Harbinger has refused to provide information about the financing and wants Judge Shelley Chapman of the U.S. Bankruptcy Court for the Southern District of New York to compel the hedge fund to turn over documents and other materials.

In pleadings, the creditors argue that a loan that Harbinger extended to LightSquared less than a year before its bankruptcy is "simply not an arm's length transaction." The group suggested that the debt could be subordinated or even knocked down to the status of equity.

The dispute reflects divided views of the likelihood that the Reston, Va., telecom will persuade the FCC that it should be able to provide conventional wireless wholesale services.

The secured creditor group, which has sparred with LightSquared over the use of cash and other matters, holds more than \$1 billion in face value of secured debt at the debtor's LightSquared LP subsidiary. Mem-

bers include **Appaloosa Management LP**, **Capital Research and Management Co.**, **Cyrus Capital Partners LP**, **Fortress Investment Group LLC**, **Knighthead Capital Management LLC**, **Redwood Capital Management LLC**, **Silver Point Capital LP** and **Solus Alternative Asset Management LP**.

They want to investigate a July 2011 loan, which has more than \$320 million outstanding.

The loan was unsecured when LightSquared incurred the debt, pleadings state, but became secured a month later.

The secured creditor group alleges that the 15% interest rate is out of sync with "the favorable interest rate environment" at the time. Interest is payable in kind, "a condition no arm's length lender would agree to accept," the pleadings add.

Further, LightSquared was undercapitalized and by its own projections would not be able to make the payments.

Even though Harbinger has sold some of the debt, the group charges that creditors who subsequently purchased the loans may be "non-statutory insiders" even if they have no link to Falcone's firm.

LightSquared sought bankruptcy protection in May. Falcone's plan to build a nationwide wireless broadband wholesaler unwound when the FCC declined to sup-

port a waiver allowing it to provide the service over its spectrum, which is approved for a hybrid satellite service. The company is in talks with the agency about ways to resolve its spectrum impasse.

Harbinger holds nearly all of LightSquared's equity and some of the July 2011 loans, according to disclosures made earlier in the bankruptcy.

A Harbinger spokesman and counsel to the company could not be reached Wednesday.

The secured creditor group cites a letter from Harbinger's counsel stating that the discovery is "completely unnecessary" and "counterproductive" at this stage of the bankruptcy. The letter added that "it will become clear that sufficient value exists to pay all creditors in full under a Chapter 11 plan."

The secured noteholder group said it needs documents and other information before the Sept. 11 expiration of a "challenge period" during which it can investigate prebankruptcy liens and obligations.

"Harbinger's optimism (and stonewalling) notwithstanding, the Ad Hoc Secured Group cannot conduct its investigation without discovery from Harbinger," the group said.

A hearing on discovery is set for Aug. 14, and objections are due by Aug. 7. ■

## Creditors to take control of Mouchel

BY JONATHAN BRAUDE IN LONDON

British infrastructure and services group **Mouchel Group plc** is set to be taken over by its lending banks, 18 months after rejecting an offer of more than £170 million (\$264.3 million) from one trade buyer as too low and then knocking back a reduced offer from another.

In a stock exchange announcement

Wednesday, the London company said it had agreed to a debt-for-equity swap with a consortium of **Barclays plc**, **Lloyds Banking Group plc** and **Royal Bank of Scotland Group plc** that would allow it to continue with business as usual.

The banks agreed to cut Mouchel's debt by £87 million in return for a majority stake, leaving the company with a further £60

million to repay. Mouchel said it believed the reduced sum was "appropriate for a company of Mouchel's size and prospects." The banks also agreed to pay existing shareholders a special dividend of one penny a share following completion of the restructuring. The company said it would thereafter repurchase all the shares entitled to the dividend without further payment.

It added: "The restructuring is the best available means of preserving the Group's

CONTINUED >

## REGULATION

## Lawmakers demand protection for customer funds

*Gensler says electronic confirmation of accounts already being implemented*

BY IRA TEINOWITZ IN WASHINGTON

Warning that their farm constituents are talking about putting their money under mattresses rather than in the commodity markets in the wake of the failures of **MF Global Holdings Ltd.** and **Peregrine Financial Group Inc.**, senators on Wednesday demanded that financial regulators act quickly to ensure that financial firms do not use customer funds to cover company losses.

The comments came as the Senate Agriculture Committee, which has already held hearings on MF Global's demise and held a hearing to update itself on MF Global and Peregrine. Those testifying included Commodity Futures Trading Commission Chairman Gary Gensler, bankruptcy trustees for both MF Global and Peregrine, and representatives of both commodities markets and of commodities customers.

Gensler told the committee that in the wake of the problems in oversight of customer fund segregation at both companies the National Futures Association, which the CFTC relies on for initial oversight of futures firms, has implemented rule changes, including electronic confirmation of bank accounts. Peregrine's CEO, Russell Wasendorf, has admitted he forged bank statements in providing written confirmation of bank statements.

Some of Wednesday's witnesses also called on Congress to better protect investors—either by creating an insurance fund for futures merchants or by making changes to the Bankruptcy Code. The senators were told that the code as structured is an expensive vehicle for resolving small customer claims against commodity broker-dealers and fails to prioritize claims adequately.

While the potential losses from both failures are substantial, exactly how much remains uncertain.

In prepared testimony Louis J. Freeh, bankruptcy trustee for MF Global Holdings and a former FBI director, suggested that despite a reported \$1.6 billion shortfall in customer funds, he expected customers

of the firm would eventually get all their money back.

James Giddens, trustee for the Securities Investment Protection Act liquidation of MF Global Inc., the brokerage division, said he was less certain that all the money would be paid back, pointing to \$700 million of disputed money that has to be resolved under British law.

Ira Bodenstein, Chapter 7 trustee for Peregrine, said he is still examining claims, though \$20 million in customer funds is said to have disappeared.

Senators of both parties expressed anger about the losses. "A loss of customer money of this magnitude had never happened before. It was something that shouldn't have been able to happen," said Committee Chairwoman Debbie Stabenow, D-Mich. She said she's been asked by constituents whether it's safe to invest in commodities and whether their money might better be put under a mattress.

She urged regulators to take action to make sure customers get their money back, make sure individuals who engaged in wrongdoing are held accountable and make changes to prevent the problems from happening again.

Sen. Pat Roberts, R-Kan., the committee's ranking Republican, said the problems raise questions about self-regulation.

He said the committee needs to consider "the fundamental question of whether the self-regulatory structure that has existed for decades is capable of regulating the industry or whether it has outgrown its time and needs to be replaced by a massive transfer of authority—and money—to the CFTC."

Giddens, noting that most of the investors who lost money had accounts of less than \$100,000, urged senators to consider establishing an insurance fund to protect investors, similar to the one offered for securities customers.

John Roe, co-founder of the Commodity Customer Coalition, was among several witnesses who suggested the Bankruptcy Code needed to be changed to better protect

customers of commodity brokers.

Roe said the code should be changed to subordinate claims of affiliates and parents of futures commission merchants to those of customers; make it harder for recipients of stolen property to exclude personal property under bankruptcy's safe harbor; and to more easily allow representatives of customers to sit on creditors' committees. ■

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< PREVIOUS

business, including safeguarding its existing customer contracts and job security for more than 8,000 employees, and represents the only viable and deliverable option for delivering value to shareholders."

The agreement came after a difficult two years and a £1 million loss in the first half of 2011 and just one month before Mouchel would have faced a debt default. The company came close to breaching its covenants in early 2011 before a refinancing package extended its debt until 2014. A victim, in part, of drastic government and local authority spending cuts, Mouchel was also troubled by poor management decisions as well as serious accounting errors. These all came to light ahead of the takeover battle.

In the eight years before it fell on hard times, Mouchel had grown, largely by acquisition, from a pure-play infrastructure services company to become a provider of local authority business process outsourcing, utility sector support services and highways consultancy.

In 2010 Mouchel had been the subject of a takeover bid by rival support services group VT Group plc, although VT was forced to abandon the pursuit when it was itself targeted for takeover by **Babcock International Group plc**. In February 2011, the company was the subject of a bidding war between **Costain Group plc** and **Interserve plc**, which initially valued it in excess of £170 million.

But a month later, Interserve walked away. ■

# FEEDBACK

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## Taking the wheel

Secured lenders can control debtors' sales efforts in several ways

**O**&G Leasing LLC doesn't exactly have a clear path out of bankruptcy. After more than two years in Chapter 11, the Jackson, Miss., oil rig operator finds itself fending off secured lender **First Security Bank** in a battle for confirmation of its reorganization plan.

First Security, indenture trustee for debenture holders owed \$42.6 million, has proposed a rival liquidation plan for O&G. The lender, however, also has taken the seemingly rare move of leading an auction of O&G's five Texas oil rigs in bankruptcy court.

"We have had a very hostile and adversarial relationship with First Security since the day we notified them of the anticipated default [on the debentures on March 15, 2010]. They won't accept anything from us simply because they want us gone," says debtor counsel Douglas Noble of **McCraney Montagnet & Quin PLLC**.

According to Noble, no court action occurred "for months" after First Security's March auction for O&G's assets. Court papers show three bidders vied for the assets before Hunter Drilling LLC, a newly formed subsidiary of **Red Mountain Resources Inc.**, emerged victorious with a winning offer valued at roughly \$33.9 million.

After First Security failed to file a plan based on the winning bid, Judge Edward Ellington of the U.S. Bankruptcy Court for the Southern District of Mississippi in Jackson asked both O&G and the lender to file amended plans by July 19.

A disclosure statement hearing for both is set for Sept. 4.

The way O&G's hostile relationship with its lender played out, some lawyers and professionals say, is rare. Nevertheless, the more general situation is actually much more prevalent in Chapter 11 than once thought: secured lenders and creditors spearheading sales for debtors in one form or another.

"The process of a lender controlling a sale is normally generated when a debtor is not presenting a feasible plan of reorganization or a debtor is not presenting an acceptable sale process to give a lender comfort that they're protected," says Michael Gesas of **Arnstein & Lehr LLP**, a partner in the firm's bankruptcy and creditors' rights group in Chicago.

The situation is an outgrowth of the motivations of secured lenders and debtors. For secured lenders, time is money. The debtor's managers, on the other hand, often seek to delay a sale process because ultimately they could reorganize or get a higher price.

In the instance of New York-based radio station owner **Inner City Media Corp.**, its senior lenders forced it into Chapter 11 on Aug. 19, 2011, after ICM allegedly balked at the last minute over a prepackaged reorganization plan. The lenders, affiliates of investment firms **Fortress Investment Group LLC** and **Yucaipa Cos. LLC**, alleged ICM chairman Pierre Sutton forced the company to back out, "apparently to seek a greater recovery for himself and other existing

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## SOAPBOX LENDER SALES

### < PREVIOUS

stockholders.”

Both sides, however, later agreed that “the most efficient means for the senior lenders to realize on their collateral and protect the debtors’ estates from the risk of liquidation under Chapter 7” was an immediate sale, court records show.

Judge Shelley Chapman of the U.S. Bankruptcy Court for the Southern District of New York in Manhattan on Feb. 21 approved the \$180 million sale of substantially all of ICM’s assets to the lenders, who acted as the stalking-horse bidders. Their credit bid went unchallenged.

While ICM’s case was not a purely lender-driven sale, the case does illustrate what Noble says is the root of many adverse relationships: lenders’ lack of confidence in the debtor’s management.

When a debtor has proved incapable of leading its own sale, the most frequent alternatives for the lender are to seek relief from the automatic Chapter 11 stay, which could allow a foreclosure attempt and a potential credit bid of secured debt, or to seek appointment of a Chapter 11 trustee to take over the case. Some lenders, however, take the alternative route of seeking control in Chapter 11.

Gesas says that when a lender has exhausted efforts to negotiate a Chapter 11 plan with a debtor, a lender’s plan seeking liquidation is more likely to get support from all creditors. The lender is generally undersecured in such cases and finds a “comfort level” in controlling the sale process and not having to respond to a debtor or its management.

“It is kind of a rare circumstance, but in the case where there is value to be preserved by creditors, it makes a lot of sense,” Gesas says.

For example, in November 2010, **PremierWest Bank**, secured lender to Portland, Ore., retirement community operator **Pioneer Village Investments LLC**, filed a competing plan for the debtor, which called for all of the debtor’s assets to be sold. Nearly all of the proceeds were to go toward repaying PremierWest’s \$13.9 million claim, court papers show. The lender

in February 2011 said it expected to receive a letter of intent within a week from a potential buyer.

Still, although the court approved the plan’s disclosure statement, the lender and Pioneer Village later settled, and the debtor exited Chapter 11 on June 1, 2011, through its own reorganization plan.

When the going gets rough for a debtor, creditors usually look to take matters into their own hands. The next step, if a lender decides to take it, is to convince a judge that a lender-driven sale is the only approach that will benefit all parties involved. Noble adds, however, that defining the most “beneficial” outcome depends on if the debt can be refinanced and reorganized and if the debtor’s operations are sufficient to support it.

According to Richard Squire, associate professor at Fordham University School of Law, the process for a lender securing approval to lead a sale is very similar to that for a debtor: both the debtor and creditor must satisfy the court that the sale procedures are fair, reasonable and necessary; they have to set out the process they want to follow; and they have to show that the auction was successfully advertised.

In contrast to the relationship between O&G and First Security, sometimes a debtor agrees to let the lender lead and takes a “what does it matter anyway” approach. Madlyn Primoff of **Kaye Scholer LLP**, who has been representing lenders for about 25 years, says that when the debtor is just “shrugging its shoulders” in such instances, the lender really controls the process anyway, because of its ability to credit-bid its secured debt, as ICM’s lenders did. In addition, some debtors are just not competent and capable of running the sale, she says.

“If a price is not achieved that the lender likes, [it] is going to credit-bid anyway—so [debtors] may as well let them [lead],” Primoff says. “This wouldn’t be my first choice though; it would be my last choice, because assets are generally maximized when debtors and lenders work cooperatively and everyone’s interests are aligned.”

Gesas points out that it would be easier to appoint a trustee in cases where the

debtor fails to file a solid plan during its exclusivity period or when the debtor is not acting in the best interest of all creditors; they would normally feel more comfortable if an independent party were involved.

“My preference would be to have a Chapter 11 trustee to conduct that sale and also be a buffer between my client [the debtor] and the balance of the creditors of this case. Junior creditors have a comfort level if there is a trustee between smaller and larger parties,” he says.

“If the debtor is not capable [of leading the sale], the remedy would be to appoint a trustee, not have the lender lead,” Primoff adds.

Yet Squire says lenders might fear giving up control of the sale process, where their incentive is to obtain the highest bid, as they receive payment first. On the other hand, the lenders might not believe the trustee would conduct a fair auction or might fear he or she was listening to what management wanted.

“Each party is sitting on the shoulders of the trustee, whispering in his ear,” Squire says.

“If it is clear to everybody that there is no possibility that the auction price will exceed the amount the lender is owed, then it’s a good idea to have a lender run [the sales process],” Squire concludes. “But if there is a very good possibility that the other bidders might bid more than what that lender is owed, it’s better to have a trustee.”

As for O&G, the outcome remains unclear. The company reiterated its position in its July 19 amended disclosure statement in favor of reorganization.

“A sale of the assets is neither a viable exit strategy nor is it supported by relevant market indicators,” O&G said.

First Security Bank, for its part, in its amended disclosure statement pointed to the debtor’s \$416,661 in net losses from its filing through May 31, which include adequate protection payments to the debenture holders at a reduced interest rate.

If Ellington approves both disclosure statements, later this year he might have to weigh the merits of the related plans, pondering whether a sale or a reorganization is better for all. ■ —*Francesca Barbato*

## DEAL DOCTORS MOVERS & SHAKERS

**Rebecca B. Connelly** will replace **Judge Ross W. Krumm** of the U.S. Bankruptcy Court for the Western District of Virginia in Harrisonburg.

Connelly, a sole practitioner, is the standing Chapter 12 and Chapter 13 trustee in the Western District of Virginia and has practiced in the Eastern and Western districts of Virginia. Krumm retired on Wednesday.

**Robert Kost** has followed **Richard F. NeJame** in moving on from **Gleacher & Co.** The pair had been co-heads of the investment bank's recapitalization and restructuring group.

Both Kost and NeJame, now at **Millstein & Co. LP** and **Oppenheimer & Co.**, respectively, also were founding members of the restructuring advisory group at **Lazard**. Kost, a partner at Millstein, has advised **Collins & Aikman Corp.** and **Owens Corning Inc.**; **Tronox Inc.** noteholders; and **Visteon Corp.** equity holders.

Earlier this year, Millstein added **Jane Vris** as general counsel and partner. Vris had been a partner at **Vinson & Elkins LLP** and earlier worked at **Cronin & Vris LLP** and **Wachtell, Lipton, Rosen & Katz**. She has 25 years of restructuring experience, advising **JPMorgan Securities Inc.** in the Northwest Airlines Corp. case and **Entergy Corp.** in the Chapter 11 proceedings for unit Entergy New Orleans Inc.

Millstein also recently picked up directors **Elizabeth Abrams** from **Miller Buckfire & Co. LLC**, **Brendan Hayes** from **Lazard** and **Brad Meyer** from **Houlihan Lokey Inc.**

Abrams has advised **General Growth Properties Inc.**, **Calpine Corp.** and **Gate Gourmet AG** in their restructurings; creditors of **Dow Corning Corp.** and secured creditor **LNR Partners LLC** in the **Innkeepers USA Trust** case.

Hayes has represented **NewPage Corp.** and **Local Insight Media Holdings Inc.** and executed financings for **Abitibi-Bowater Inc.**, **CIT Group Inc.**, **Spansion Inc.** and **Tribune Co.** He also has worked at **Barclays Capital** and **Lehman Brothers Holdings Inc.**

Meyer has advised **Freedom Communications Holdings Inc.** and **Jackson Products Inc.** and creditors of **Charter Communications Inc.**, **Masonite Corp.** and **R.H. Donnelley Corp.** He is a veteran of **Lazard**.

**Fried, Frank, Harris, Shriver & Jacobson LLP** has added **George R. Calhoun V** to its litigation practice.

The Washington special counsel, last at **Stephens & Johnson LLP**, concentrates on litigating complex disputes in areas including real estate, contracts, fraud and bankruptcy. He has appeared in bankruptcy court representing creditors and interested parties.

**Elizabeth M. Guffy** has joined the bankruptcy and restructuring practice group of **Burleson LLP**.

The Houston attorney, previously a sole practitioner, has also worked at **Dewey & LeBoeuf LLP**, predecessor **Dewey Ballantine LLP** and **Baker Botts LLP**. She has represented energy companies as debtors and creditors; served as a Chapter 7 and 11 trustee; and advised the Federal Deposit Insurance Corp. in structured sales of nonperforming loans.

**Gerard Uzzi** has shifted from **White & Case LLP** to **Milbank, Tweed, Hadley & McCloy LLP**.

The New York financial restructuring partner has been debtor counsel for **Centaur LLC** (now **Centaur Gaming**), **Global Safety Textiles Holdings LLC** and **Heartland Automotive Holdings Inc.**; represented secured creditor **Law Debenture Trust Co. of New York LLC** in the **Charter Communications** case; advised debtor-in-possession lenders for **Lear Corp.**; counseled bondholders of **Lehman Brothers Holdings**, **Nortel Networks Inc.**, **Trump Entertainment Resorts Inc.**, **Visteon Corp.** and **Washington Mutual Inc.**; and represented equity holders of **Dana Corp.** (now **Dana Holding Corp.**) and **Delphi Corp.**

Bankruptcy and restructuring partner **Larren M. Nashelsky** will be the next

chairman of **Morrison & Foerster LLP** in October.

Nashelsky, co-chairman of the firm's bankruptcy and restructuring group, replaces **Keith Wetmore**, who has been chairman for 12 years. Wetmore will become chairman emeritus.

Nashelsky joined **Morrison & Foerster** in 1999 from **Weil, Gotshal & Manges LLP**. He has served as debtor counsel to **Residential Capital LLC** and **Tricom SA**; represented trustees **Louis Freeh** and **Hobart Truesdell**, respectively, in the **MF Global Holdings Ltd.** and **Napster Inc.** cases; and advised unsecured creditors of **Ambac Financial Group Inc.**, **Caribbean Petroleum Corp.**, **Hawaiian Telcom Communications Inc.**, **Innkeepers USA Trust**, **Los Angeles Dodgers LLC**, **Mesa Air Group Inc.** and **Pinnacle Airlines Corp.**

**Jones Day** has added partner **Bruce W. Moorhead Jr.** to its banking and finance practice in Atlanta and New York.

Moorhead, last at **Hunton & Williams LLP**, represents financial institutions in asset-based and leveraged lending transactions, as well as in workouts and bankruptcies. He has represented agents on a \$75 million DIP loan for a jewelry retailer and a \$60 million DIP for memory chip-maker **Qimonda Richmond LLC**.

**Julio Herrera** has joined **Oaktree Capital Group LLC** to handle a new emerging market opportunities investment strategy.

Herrera, previously president of **FinTech Advisory Inc.**, has more than 20 years' experience investing in distressed and undervalued assets in emerging markets. At investment management firm **Oaktree**, he will focus on dislocated and distressed corporate and sovereign debt.

Herrera also has restructured Latin American distressed assets at **Lehman Brothers Inc.**, served as a proprietary trading analyst at **ING Capital Holdings Inc.** and was a portfolio manager and credit analyst at **RRH Capital Management Inc.**

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# DEAL DOCTORS MOVERS & SHAKERS

## < PREVIOUS

**Susan P. Johnston** has moved from **Covington & Burling LLP** to the corporate trust and insolvency and creditors' rights practice groups of **Carter Ledyard & Milburn LLP**.

The New York counsel represented bond indenture trustee **Wilmington Trust Corp.** in the Charter Communications case. She has served as Chapter 11 trustee and represented debtors, creditors' committees, trustees and examiners in insolvencies.

Middle-market private equity firm **Rutland Partners LLP**, which specializes in turnaround and restructuring investments, has added **Michael Reynolds** to its team.

The London investment executive has worked on debt restructuring and mergers and acquisitions deals at Hawkpoint Partners Ltd. and was a chartered accountant at **KPMG Corporate Finance LLC**.

**SSG Capital Advisors LLC, Greenberg Traurig LLP, Rothschild, Baker & McKenzie LLP, Deloitte Corporate Restructuring Group** and **Weil, Gotshal & Manges LLP** all took home multiple turnaround of the year or deals and assignments of the year wins from the Turnaround Atlas Awards on June 28.

SSG notched victories for its work with other firms on **Lower Bucks Hospital** (small markets turnaround of the year), **Patriarch Partners LLC's** acquisition of the Gorham, N.H., paper mill (community revival deal of the year), **Versa Capital Management LLC's** acquisition of the assets of ALC Holdings LLC (private equity turnaround deal of the year) and **Wolverine Tube Inc.'s** reorganization (small mid-markets corporate turnaround of the year.)

Greenberg Traurig worked on the restructuring of **Satélites Mexicanos SA de CV** (upper mid-markets turnaround of the year), the ALC sale and the reorgani-

zation of Station Casinos Inc. (large markets corporate turnaround of the year.)

Rothschild advised **Nakheel PSJC** on its separation from **Dubai World** (large markets cross-border turnaround of the year), Sbarro Inc. on its reorganization (middle-markets corporate turnaround of the year) and Blockbuster Inc. on its sale to **Dish Network Inc.** (middle-markets special situations M&A deal of the year).

Baker & McKenzie worked on the financial restructuring of **Al-Ittefaq Steel Products Co.** (out-of-court restructuring deal of the year) and the reorganization and sale of **Dallas Stars LP** (middle-markets Chapter 11 reorganization deal of the year).

Deloitte is part of the winning team

cash bid plus the assumption of some \$23 million in liabilities.

Private equity firm **Resilience Capital Partners LLC** has closed its third fund, Resilience Fund III LP, with \$225 million in committed capital.

Resilience, a Cleveland firm that targets turnaround and restructuring situations in the middle market, exceeded its goal of \$200 million. Investors in the new fund include insurance companies, pension funds, investment consultants, wealth managers, funds of funds, foundations and endowments.

Resilience specializes in business services and manufacturing companies in the Midwest and mid-Atlantic with sustainable market share. It purchased the assets of auto parts maker Steel Parts Corp. out of Chapter 11 in November 2006 for \$7 million, according to The Deal Pipeline. The firm also was to invest \$5 million in **Dairy Production Systems-Georgia LLC** before the debtor withdrew its reorganization plan, and it was the stalking-horse bidder for the bearings business of Delphi.

SHORTEST COMPLETED BANKRUPTCIES			
Among cases filed in the U.S. that ended between April 27 and July 27, 2012			
Debtor	Filing date	Exit date	Length (days)
Houghton Mifflin Harcourt Publishing Co.	5/21/12	6/22/12	32
Reddy Ice Holdings Inc.	4/12/12	5/31/12	49
Diamond Beach VP LP	4/12/12	7/17/12	96
Sapphire VP LP	4/2/12	7/17/12	106
FastShip Inc.	3/20/12	7/12/12	114

Does not include cases dismissed by the court

Source: The Deal Pipeline

for Lower Bucks Hospital and Wolverine Tube. Weil worked on the Blockbuster and Dallas Stars deals.

**Global M&A Network LLC** named seven winning turnarounds of the year and 15 winning deals and assignments of the year.

The turnaround and sale of Contessa Premium Foods Inc. garnered the retail manufacturing/distribution sector deal of the year award at the ACG New York Champion's Awards. Firms that worked on the transaction include **Scouler & Co., Ernst & Young LLP, General Electric Capital Corp., Imperial Capital LLC, Kelley Drye & Warren LLP, Pachulski Stang Ziehl & Jones LLP, Sun Capital Partners Inc.** and **Wells Fargo Bank NA.**

Sun Capital affiliate Premium Foods Acquisition Inc. won the debtor's assets at a June 28, 2011, auction with a \$28 million

**Houghton Mifflin Harcourt Publishing Co.** has written a new chapter in the compendium of quick exits from bankruptcy.

The book publisher emerged from Chapter 11 on June 22, just 32 days after commencing its prenegotiated case, giving Houghton Mifflin the quickest exit in the three months ended July 27. Senior creditors, owed \$3.14 billion, received all new common shares, subject to dilution, and \$30.3 million in cash. Shareholders received warrants exercisable for up to 5% of the company's reorganized equity.

Packaged ice maker **Reddy Ice Holdings Inc.** wrapped up its prenegotiated case in 49 days, easily besting three debtors that liquidated: condominium owner Diamond Beach VP LP (96 days), affiliate Sapphire VP LP (106 days) and cargo ship designer FastShip Inc. (114 days). ■

—David Elman

## SOAPBOX LETTER FROM DELAWARE

COMPILED AND EDITED BY JAMIE MASON, with staff reports

### The future is hazy for **Mother Earth's Alternative Healing Cooperative Inc.**

The medical marijuana dispensary on July 25 filed for Chapter 11 in the U.S. Bankruptcy Court for the Southern District of California in San Diego after it was unable to hash out a dispute with landlord **Wing Avenue Investments**, according to owner Robert Riedel.

U.S. Attorney Laura Duffy on Oct. 5 sent a letter to the landlord stating that the dispensary's operations on its property "may result in criminal prosecution." As a result, Wing Avenue has been trying to smoke Mother Earth out of its El Cajon, Calif., facility, a move that has left the marijuana distributor and its 70,000 patients fired up.

"What we're fighting for is safe access. ... Our landlord was made very aware of what we do in the building [when we signed the lease]," Riedel says.

For Mother Earth customers, medical marijuana access may become just a pipe dream if efforts to snuff out the company are successful.

"The people that come and see us have expended all other options," Riedel says. "They'll have to go back to illegal means, and that's not what we want for people."

Mother Earth is the only licensed medical marijuana provider in Southern California, Riedel says. —*Kelsey Butler*

Although it's close to its exit from Chapter 11, **Tribune Co.** has had some ups and downs recently.

Just days after winning confirmation of its reorganization plan on July 13, the newspaper publisher lost its battle with Occupied Chicago Tribune, which the debtor alleged infringed on its brand.

Michael A. Albert of the World Intellectual Property Organization on July 18 denied Tribune's bid to stop the arm of the

Occupy movement from using a logo and domain similar to its own.

Tribune, which publishes the Chicago Tribune, filed a complaint against Occupied Chicago Tribune on May 22 asserting that the volunteer organization's website uses the Chicago Tribune trademark. Tribune alleged that Occupied used the logo and a similar Internet domain name to "divert traffic" from its own site.

The WIPO ruling said that while the domain names are similar, the word "Occupied" has a distinctive meaning and that "no reasonable person would confuse" the domains.

Occupied Chicago Tribune is a volunteer organization that says it publishes "media for 99%" of the population.

—*Aviva Gat*

Liquor makes people behave in strange ways. But in the case of formerly bankrupt **FSJ Imports LLC**, which distributes Medea vodka in packaging with a wireless "billboard on a bottle," the wacky doings didn't come from imbibing the stuff.

Litigation between the company's majority equity holder, Joseph Lehey, and FSJ manager Tim Goldburd and his son, Matt Sandy, began in September 2010 in the New York State Supreme Court.

But things got weird during a Sept. 16 deposition for the suit, when Goldburd revealed that he was Sandy's father.

After the disclosure, befuddled Judge Charles Ramos of the state court didn't quite know what to do. "I'm not fooling around with the case," he opined. "[Lehey] has \$7.5 million invested, and they have nothing to show for it."

Judge Novalyn L. Winfield of the U.S. Bankruptcy Court for the District of New Jersey in Newark restored some order to the matter by issuing an opinion dismissing the Chapter 11 case on July 23, stating that

the filing was more of a "struggle for control between [its] members" than a creditor battle. —*Hayley Kaplan*

A District of Columbia judge won't allow bankruptcy lawyer Bruce E. Gardner to bill a client for secretarial work.

Judge S. Martin Teel of the U.S. Bankruptcy Court for the District of Columbia in a July 17 order told Gardner of **Gardner Law Firm PC** that certain work was not compensable from real estate company **Ayers Capitol Properties LLC**. Teel allowed Gardner \$47,840 in compensation.

Gardner charged \$225 per hour for his representation and \$275 per hour for litigation tasks, for a total of \$63,855, plus \$1,167 for expenses. He asserted that he should be compensated for secretarial tasks, but the court argued that his rate includes office rent and secretarial time.

The secretarial tasks included labeling exhibits, copying exhibits, scanning exhibits and copying and disseminating the company's disclosure statement.

Ayers' Chapter 7 trustee, Janet M. Nesse of **Stinson Morrison Hecker LLP**, objected to the compensation, saying Gardner wanted to be paid for tasks ordinarily performed by staff. —*Allison Collins*

**ZOMBIE WATCH: Aventine Renewable Energy Holdings Inc.** once again faces weak liquidity, according to **Moody's Investors Service**.

The credit rating agency downgraded the Perkin, Ill., ethanol producer, citing weakened liquidity, a dramatic increase in corn prices, the decrease in crude oil prices and a reduction in the discount between ethanol and gasoline prices.

Aventine emerged from Chapter 11 on March 15, 2010, after filing for bankruptcy protection on April 7, 2009. ■

—*Jamie Mason*

## CALENDAR CURTAIN RAISERS

### Lehman fees disputed

Several banks and hedge funds face an uphill battle in collecting more than \$33.5 million from liquidating Lehman Brothers Holdings Inc. to pay their legal and advisory fees and expenses.

U.S. Trustee Tracy Hope Davis on July 25 objected to four applications for payment of fees and expenses under Section 503(b)(3) of the U.S. Bankruptcy Code, which allows payment to parties other than official committees if they have made a “substantial contribution” in a Chapter 9 or 11 case.

Judge James Peck of the U.S. Bankruptcy Court for the Southern District of New York in Manhattan is scheduled to consider the requests, along with the objection, at an Aug. 15 hearing.

Among the requests is one from Lehman Brothers Special Financing Inc.’s “working group,” which consists of **Bank of America NA, Centerbridge Credit Advisors LLC, Crédit Agricole Corporate and Investment Bank, Credit Suisse International**, D.E. Shaw Oculus Portfolios LLC, D.E. Shaw Composite Portfolios LLC, **Deutsche Bank AG, Eton Park Capital Management LP**, Merrill Lynch International, **Morgan Stanley & Co. International plc, Oaktree Capital Management LP, Silver Point Finance LLC** and **Royal Bank of Scotland plc**. The unofficial group wants the estate to pay \$13.71 million in fees and expenses owed to its financial adviser, **Blackstone Advisory Partners LP**.

Two other members of the working group, **Goldman Sachs Bank USA** and Goldman Sachs International, want to be reimbursed for more than \$3.29 million in professional fees for their counsel, **Cleary Gottlieb Steen & Hamilton LLP**.

Meanwhile, an ad hoc group of Lehman Brothers Treasury Co. BV creditors also want to be reimbursed for \$3.74 million in legal fees and expenses owed to its counsel, **Brown Rudnick LLP**.

Finally, another ad hoc group of Lehman Brothers creditors wants the estate to pay \$10.09 million to **White & Case LLP**, \$1.85 million to **AlixPartners LLP** and \$858,928 to **Molinaro Advisors LLC**.

In her objection, Davis argued the right under the Bankruptcy Code for payment of fees because of substantial contribution is “construed narrowly and is not intended to change the basic rule that the attorney must look to his own client for payment.”

Davis argued that if the requested fees were approved, “fees and expenses awarded to the professionals in these cases, including ordinary course professionals, will aggregate almost \$1.5 billion.”

She concluded, “active participation alone is insufficient to give rise to a substantial contribution claim.”

Lehman, which owned investment banking, asset management, real estate and other assets, filed for bankruptcy on Sept. 15, 2008, after the collapse of a federal government-led effort to save it because of massive mortgage securities losses.

Lehman’s liquidation plan took effect on March 6. It will unwind its remaining holdings over several years. ■ —*Jamie Mason*

## BANKRUPTCY CALENDAR



(Upcoming hearings of note)

8/2/12

### **NovaSolar Inc.**

U.S. Bankruptcy Court for the Northern District of California, San Jose  
Hearing to consider conversion to Chapter 7  
Debtor counsel: *Campeau, Goodsell and Smith*

### **Patriot Coal Corp.**

U.S. Bankruptcy Court for the Southern District of New York, Manhattan  
Final debtor-in-possession loan hearing  
Debtor counsel: *Davis Polk & Wardwell LLP*

8/3/12

### **Otero County Hospital Association Inc.**

U.S. Bankruptcy Court for the District of New Mexico, Albuquerque  
Confirmation hearing  
Debtor counsel: *White & Case LLP*

### **Ocala Funding LLC**

U.S. Bankruptcy Court for the Middle District of Florida, Jacksonville  
DIP hearing  
Debtor counsel: *Stichter, Riedel, Blain & Prosser PA*

8/6/12

### **Eastman Kodak Co.**

U.S. Bankruptcy Court for the Southern District of New York, Manhattan  
Hearing to consider bonus payments  
Debtor counsel: *Sullivan & Cromwell LLP*

### **Cliffs Club & Hospitality Group Inc.**

U.S. Bankruptcy Court for the District of South Carolina, Spartanburg  
Confirmation hearing  
Debtor counsel: *McKenna Long & Aldridge LLP*

### **10-16 Manhattan Avenue LLC**

U.S. Bankruptcy Court for the Southern District of New York, Manhattan  
Combined disclosure statement and confirmation hearing  
Debtor counsel: *Rosen & Associates PC*

MORE CALENDAR ENTRIES ARE AVAILABLE ON  
THEDEAL.COM/PIPELINE.  
DATES ARE SUBJECT TO CHANGE.

## CALENDAR HEARINGS

# Prince Sports victorious in Chapter 11 match

Tennis racket maker **Prince Sports Inc.** will serve its equity to an affiliate of **Authentic Brands Group LLC**.

Judge Kevin J. Carey of the U.S. Bankruptcy Court for the District of Delaware in Wilmington on July 27 confirmed Prince's prenegotiated reorganization plan.

Under the plan, prepetition lender ABG-Prince will receive 100% of the debtor's equity in return for its \$65 million claim. ABG-Prince is an affiliate of Authentic Brands, a New York brand-licensing company that owns sports consumer brands including Sportcraft, TapouT, Iron Star and Sinister, as well as rights to use Marilyn Monroe's name and likeness and to license certain photographs. Private equity firm **Leonard Green & Partners LP**, in turn, owns Authentic Brands.

Other secured creditors and holders of priority claims will be paid in full.

General unsecured creditors will receive a pro rata share of \$500,000 and proceeds from certain causes of action for an estimated 2.7% recovery, while old equity holders will be wiped out.

Court papers show only ABG-Prince and general unsecured creditors voted on the plan. Some 96.72% of unsecured creditors, holding 99.99% of claims, voted in favor of the plan. Carey approved the disclosure statement for the plan on June 19.

Meanwhile, Carey on July 26 approved bonus and severance requests from Prince.

According to a July 6 motion, three rank-and-file employees will receive bonuses as they help transition their responsibilities to a licensee of Prince's Europe, Middle East and Africa business. Their positions were eliminated through the restructuring. The bonuses will be equal to four weeks of salary and will not exceed \$15,000.

Prince said it needed to give out the bonuses because the employees have no reason to help: as soon as they do, they are out of a job. Prince said it wanted to ensure the employees stayed until they complete the transition. Moreover, the employees have extra work now that they are transitioning their responsibilities.

Prince will also hand out severance payments to 25 other employees whose

jobs have been eliminated through the restructuring. Severance payments will total about \$60,000 and be equal to two weeks of salary for each employee.

Prince, owned by Providence, R.I., PE firm **Nautic Partners LLC**, filed for Chapter 11 on May 1 with a prenegotiated plan and a \$2.5 million debtor-in-possession loan from ABG-Prince.

The Bordentown, N.J., debtor is a premier branded sporting goods company that develops, sources and markets racket sports equipment, footwear, apparel and accessories for tennis and indoor court sports such as squash and racquetball, according to court papers.

Prince blamed its bankruptcy on reduced demand for its products combined with increased competition over the past five years. After ABG-Prince on March 27 acquired Prince's \$65 million in secured debt, Prince ended talks with three potential purchasers that were offering less than its outstanding secured debt and decided a sale to the lender would be its best option to reorganize successfully. ■ —Aviva Gat

# Casino owner cleared to send plan

**Circus and Eldorado Joint Venture** is set to seek confirmation of its amended reorganization plan on Sept. 13.

Judge Bruce T. Beesley of the U.S. Bankruptcy Court for the District of Nevada in Reno on July 25 approved the disclosure statement for the debtor's plan, according to Jennifer Smith of **Lionel Sawyer & Collins**, counsel to the official committee of unsecured creditors.

Circus, which owns the Silver Legacy Resort Casino in Reno, Nev., will amend the disclosure statement to provide certain financial information requested by bondholders **Black Diamond Capital Management LLC** and **Capital Research and Management Co.**

Black Diamond on July 9 objected to Circus' plan, alleging it did not disclose

financial information necessary to determine whether the plan was feasible.

Under the debtor's amended plan, filed June 29, administrative claims would be paid in full.

Holders of mortgage note claims, owed \$142.8 million plus an additional \$10.28 million in prepetition interest, would receive a pro rata share of \$85 million, the amount of available balance sheet cash on the effective date, \$27.5 million in new second-lien notes and \$15 million in subordinated notes. The debtor's partners also would kick in \$15 million.

All prepetition interest would be paid in full.

A \$70 million first-lien term loan from an undisclosed lender would partially fund the \$85 million cash payment.

**U.S. Foods Inc.**'s \$210,944 secured claim and other secured claims (\$47,000) would be paid in full.

General unsecured claims, totaling \$4.7 million, would be paid in full through four quarterly installments with 5% interest.

Eldorado LLC and Galleon Inc. would maintain their 50% interests in the debtor. Eldorado and Galleon are affiliates, respectively, of nonbankrupt casino operators **Eldorado Resorts LLC** and **MGM Resorts International**.

Circus and unit Silver Legacy Capital Corp. filed for Chapter 11 on May 17.

The Silver Legacy Resort Casino is a 19th century silver mining-themed hotel, casino and entertainment complex. The economic decline has hampered the casino's operations, and the company hasn't made any interest payments on \$160 million in secured mortgage notes since September, according to court documents. ■ —Pat Holohan



## DIP DIMENSIONS

# Fire in the desert

*WVSV Holdings faces not only objections to a \$2.25 million postpetition loan but to its Chapter 11 case itself*

**WVSV Holdings LLC** must tread carefully if it wants to use a \$2.25 million debtor-in-possession loan.

The Arizona land owner looks to prime certain secured creditors in a move that echoes the fight **Harper Brush Works Inc.** had with its prepetition creditors before the court ultimately denied its request for a priming DIP.

For WVSV to avoid that same fate, it will have to prove to Judge Redfield T. Baum of the U.S. Bankruptcy Court for the District of Arizona in Phoenix that its DIP is worth priming existing lenders.

Baum has scheduled a two-hour evidentiary hearing on the DIP for Aug. 8. During the hearing, the U.S. trustee and secured creditor **Perkins Coie LLP** will assail the DIP.

WVSV owns 13,260 acres in Buckeye, Ariz., about 50 miles west of Phoenix, set for development as the Sun Valley master planned community. Perkins Coie's \$302,791 claim, **10K LLC's** \$252,325 claim and taxes totaling \$7,091 encumber a 1,710-acre piece, referred to as Tract A.

WVSV on June 29 requested approval of financing from **Kennedy Funding LLC**, secured by 1,313 acres for sale in Tract A, to fund attorneys' fees, administrative expenses, planning and entitlement costs and other expenses.

The debtor, as Harper did, asserted it has considerable equity in Tract A and its equity cushion is sufficient to prime the prepetition secured claims. To support its equity claim, WVSV pointed to the \$20.52 million value of Tract A based on the pending sale.

Specifically, WVSV is under contract to sell 800 acres for \$12,000 per acre, or \$9.6 million. The contract also allows the buyer to purchase an additional 513 acres after closing. WVSV, citing the price, assured its prepetition lenders they were fully secured, even if primed by Kennedy.

The debtor said once it closed the sale, it would immediately repay the DIP and the Perkins Coie claim. (The 10K claim is subject to appellate proceedings.)

As in the Harper case, though, the U.S. trustee and a secured creditor debate whether the DIP would help the company or hurt it. Moreover, while WVSV asserts Tract A is worth enough to protect all creditors, 10K has questioned whether the property even rightfully belongs to the debtor.

U.S. Trustee Ilene J. Lashinsky on July 9 objected to the DIP, asserting the motion failed to provide final terms for the loan. The motion, she said, detailed a letter of interest with no actual contract. (WVSV filed a commitment letter on July 11.) Lashinsky also argued the motion made it unclear if priming the existing creditors was a requirement for Kennedy to consummate the loan.

**Company name: WVSV Holdings LLC**

**Commitment: \$2.25 million**

**Lender: Kennedy Funding LLC**

**Pricing: 12% for first year, 15% for second, 18% for third**

**Term: Three years**

**Fees: \$80,000 commitment fee, with last \$50,000 due on closing**



Moreover, Lashinsky said she was concerned Kennedy might not have the authority to fund the loan. She noted Kennedy only filed its articles of organization with Arizona's Corporation Commission on June 20 and had yet to obtain its approval.

Kennedy has provided a New Jersey address, but Lashinsky said Kennedy's domestic corporate status was revoked by the Garden State two years ago.

Perkins Coie also objected to the loan on July 9, asserting WVSV failed to prove priming financing was the only option available. Perkins Coie said it was not confident its claim was adequately protected, despite the pending sale and alleged equity cushion.

The law firm's claim comes from a \$642,850 judgment against the debtor from October 2007. The debtor made quarterly payments on the debt until May 2008.

10K, meanwhile, has taken issue not with the DIP but the entirety of WVSV's case. The creditor moved for dismissal on July 9, asserting the bankruptcy is "the outgrowth of nine years of litigation" regarding "massive fraud and a breach of fiduciary duty owed to 10K." The creditor has asserted WVSV is not the rightful owner of its property. If that were true, the debtor would not be able to secure its debt.

10K originally owned WVSV's property. It alleged WVSV gained control of the real estate through a series of deals involving secrecy and kickbacks, including one from convicted felon Conley Wolfswinkel.

According to 10K, the Court of Appeals in Arizona ruled on April 24 that 10K could challenge the validity of the sale to WVSV and retry a tort claim that previously resulted in a \$360 million verdict against WVSV and Wolfswinkel. (Multiple appeals in overlapping litigation from both sides nullified that verdict.)

The debtor filed for Chapter 11 on May 14, 10K alleged, to "thwart the inevitable—an unappealable judgment in favor of 10K and a return of the ... property to 10K." (WVSV refuted 10K's assertions in a July 25 response.)

Baum held an initial hearing on the DIP on July 10, at which the debtor disputed the objections. Baum then set the evidentiary hearing. He later moved the dismissal hearing from Aug. 2 to Aug. 8 to consider the DIP and dismissal requests together.

The stakes are high, with the debtor's assets potentially hanging in the balance.

Debtor counsel Michael W. Carmel of **Michael W. Carmel Ltd.**; Richard M. Lorenzen of Perkins Coie, counsel to his own law firm; and 10K counsel David Cleary of **Greenberg Traurig LLP** could not be reached for comment. ■

—Aviva Gat

## CONTROVERSIES NOVELTIES

# Skinner loses bid to reverse case conversion

**Skinner Engine Co.** will remain in Chapter 7.

Judge Dennis M. Fisher of the U.S. Court of Appeals for the 3rd Circuit on July 25 issued an opinion asserting Skinner's reorganization plan is "patently unconfirmable" and that the bankruptcy court had the right to toss Skinner out of Chapter 11 at the disclosure statement stage.

Skinner, a former Allegheny, Pa., steam engine maker, had appealed a May 26, 2009, decision by Judge M. Bruce McCullough of the U.S. Bankruptcy Court for the Western District of Pennsylvania to convert the case to Chapter 7 because he deemed the plan to be unfeasible.

In its June 19, 2009, appeal, the debtor challenged McCullough's decision to deem its plan unfeasible without holding a confirmation hearing. Skinner also argued that the bankruptcy court had "abused its discretion" in converting the case.

Writing for himself and Judges Thomas I. Vanaskie and Jane R. Roth, Fisher acknowledged issues on plan feasibility are usually addressed at a confirmation hearing, but he noted a "bankruptcy court may address the issue of plan confirmation where it is obvious at the disclosure statement stage that a later confirmation would be futile because the plan described by the disclosure statement is patently unconfirmable."

Fisher wrote that in such plans, creditor voting results can't overcome defects, and those flaws contain material facts that have been fully developed at the disclosure statement hearing.

Under the debtor's plan, filed May 1, 2006, Skinner would have imposed a surcharge against asbestos claimants who opted to pursue their claims, equal to 20% of cash from insurance actions and policies, to pay creditors. Fisher said the move would establish "an inherent conflict of interest under circumstances that are especially concerning."

McCullough had argued that the plan set up a system under which the debtor would be "financially incentivized to sabotage its own defense," as it had no other means to repay creditors, a sentiment Fisher echoed in his opinion.

"Although settlements will be controlled by a plan trustee with no financial interest in the outcome of the proceedings, it is not as if Skinner can entirely remove itself from the process," Fisher wrote. "Rather, these settlements will likely require Skinner's involvement in both defense and discovery ... thus [the plan] creates an inherent conflict of interest."

Before its April 16, 2001, Chapter 11 filing, Skinner had more than 29,000 asbestos claims pending against the company, as Skinner products allegedly contained asbestos from the 1930s to the 1970s. Though merchant mariners began bringing personal injury claims against Skinner in the 1980s, many of the cases were ultimately dismissed in May 1996, as the claimants had failed to provide medical or exposure history. ■

—Kelsey Butler

# Judge rules FSJ cases filed in bad faith

**FSJ Imports LLC** may have to turn to its own product to dull its loss in bankruptcy court.

"The court finds that the Chapter 11 cases [of Medea vodka distributor FSJ and affiliate FSJ LLC] do not serve a valid reorganization purpose and that the petitions were filed simply to obtain a tactical advantage in [prepetition] litigation," Judge Novalyn L. Winfield of the U.S. Bankruptcy Court for the District of New Jersey in Newark said in a July 23 opinion. Winfield also found no indication the debtors weren't paying their debts as they came due, and she said the companies are "asset rich" rather than insolvent.

Winfield signed an order dismissing the cases on July 17 because of the debtors' bad-faith filings.

Majority equity holder Joseph Lehey on May 23 had filed a dismissal motion, asserting FSJ manager Tim Goldburt and son Matt Sandy had put FSJ and FSJ Imports into Chapter 11 "to frustrate and delay Lehey's exercise of his legitimate contractual and state law rights and remedies against the debtors, Goldburt and Sandy." Lehey further alleged the cases "are an elaborate contrivance by a desperate Goldburt to maintain Goldburt's and Sandy's personal piggy banks funded by Lehey and control over \$4.5 million in inventory, the production of which was also funded by Lehey."

The shareholder pointed to the May 11 filings coming three days before an evidentiary hearing in the Supreme Court of the State of New York that might have replaced Goldburt as manager with Lehey.

In a June 4 response, FSJ asserted Lehey's motion was premature and that its filing was made in good faith.

The dispute between Lehey and Goldburt has its roots in June 2007, court papers show, when Lehey proposed making a \$10 million capital contribution in FSJ and Medea vodka in exchange for a 10% membership in the New York company. Lehey had invested \$7.5 million before he stopped making payments in late 2008 and began an inquiry into use of the invested funds.

In September 2010, Lehey commenced a lawsuit against FSJ Imports, Goldburt, Sandy and others in the Supreme Court of the State of New York, alleging breach of contract, breach of fiduciary duty, fraud and unjust enrichment, among other charges. Other FSJ members subsequently assigned their interests to Lehey, giving him a 68.04% stake in FSJ by the November 2010 filing of an amended complaint.

Lehey alleged assets were transferred from FSJ without his consent. ■

—Hayley Kaplan

## BANKRUPTCY WARNINGS

- Grizzly Gold Corp. is the subject of a going concern warning by Lake & Associates CPA's LLC as of July 25
- Oxygen Biotherapeutics Inc. is the subject of a going concern warning by Cherry, Bekaert & Holland LLP as of July 25
- Amazonica Corp. is the subject of a going concern warning by Thomas J Harris CPA as of July 24
- Consolidation Services Inc. is the subject of a going concern warning by GBH CPAs PC as of July 24
- Mobile Vault Inc. is the subject of a going concern warning by ZS Consulting Group LLP as of July 24
- Resource Exchange of America Corp. is the subject of a going concern warning by Bobbitt Pittenger & Co. PA as of July 23
- Dakota Gold Corp. is the subject of a going concern warning by Drake & Klein CPAs as of July 23
- North American Energy Resources Inc. is the subject of a going concern warning by Paritz & Co. PA as of July 23
- Viking Minerals Inc. is the subject of a going concern warning by Madsen & Associates CPA as of July 20
- FrogAds Inc. is the subject of a going concern warning by M&K CPAs PLLC as of July 19

## SECOND-LIEN DEBT

- Universal Hospital Services Inc. had second-lien notes rated B+ by S&P on July 24
- Universal Hospital Services Inc. had second-lien notes rated B3 by Moody's on July 24
- Pinnacle Holdco Sarl had a second-lien term loan rated Caa1 by Moody's on July 12
- Beazer Homes USA Inc. had second-lien notes rated B+ by Fitch Ratings on July 11
- Pinnacle Holdco Sarl had a second-lien term loan rated CCC+ by S&P on July 10
- Connolly LLC had a second-lien term loan rated Caa1 by Moody's on July 10
- Cengage Learning Inc. had second-lien notes rated CCC by S&P on July 6

- Storage facility owner Floridian Vest LLC and two affiliates are set on Aug. 13 to seek approval to sell their assets to CubeSmart LP for \$13 million. There isn't likely to be an auction for the debtors' three self-storage facilities unless another party makes a bid or Judge Mary Grace Diehl of the U.S. Bankruptcy Court for the Northern District of Georgia orders an auction. —Jamie Mason
- Solyndra LLC on July 27 filed a disclosure statement and liquidation plan sponsored by Madrone Partners LP and Argonaut Ventures I LLC. The sponsors would contribute exit financing and fund a settlement loan that would go to pay unsecured creditors who agree to forgo claims against Solyndra parent 360 Degrees Solar Holdings Inc. The U.S. Department of Energy would recover 0% to 17% on a \$150 million claim and would likely have a separate \$385 million claim wiped out. Noteholders owed \$186.6 million also would receive no recovery, and Solyndra general unsecured creditors would recover an estimated 2.5% to 6%. Judge Mary F. Walrath of the U.S. Bankruptcy Court for the District of Delaware is set to consider the disclosure statement on Sept. 7. —Aviva Gat
- Judge Kevin J. Carey of the Delaware court on July 26 approved Statewide Holdings Inc.'s purchase of the assets of Traffic Control and Safety Corp. for more than \$60 million. The vehicle of second-lien lenders will pay \$500,000 in cash for the provider of traffic control and safety products; assume first-lien debt and \$2.5 million in trade debt; credit-bid the amount owed under a debtor-in-possession loan; and inherit \$20 million of the second-lien debt. —J.M.
- Carey on July 25 approved the \$82.5 million sale of the North American assets and equity of multimedia product maker Cinram International Inc. to private equity firm Najafi Cos. Justice Geoffrey B. Morawetz of the Ontario Superior Court of Justice in Toronto had approved the sale on July 12. —A.G.
- Technology repair company Blue Raven Technology Inc. on July 25 won approval of the sale of substantially all its assets to an affiliate of PE firm Leading Ridge Capital Partners LLC for \$1.51 million. —Hayley Kaplan
- Judge Catherine McEwen of the U.S. Bankruptcy Court for the Middle District of Florida on July 26 converted the case of software company Savtira Corp. to Chapter 7. Savtira terminated its postpetition loan a week earlier. —Kelsey Butler

—This data will be updated each issue.  
For more complete information, please see  
our database at <http://TheDeal.com/pipeline>

# DIRE STATS

## Debtor-in-possession fee averages

Commitments made July 27, 2011– July 27, 2012

Fee	Largest (\$thous.)	Average (\$thous.)	Sample size
Commitment	\$1,009.89	\$270.70	16
Closing	750.00	171.61	13
Administrative	500.00	120.08	6
Upfront	600.00	290.50	6
Agency	150.00	55.84	5
Collateral monitoring	20.00	5.90	5
Exit fee	1,500.00	440.33	5
Agents	400.00	165.00	4
Extension	60.00	31.15	4
Origination	75.00	56.25	4
Backstop	722.86	441.01	3
Due diligence	20.00	10.32	3
Facility	175.00	98.39	3
Advance	50.50	50.25	2
Collateral	250.00	125.63	2
Maintenance	50.00	26.00	2
Monitoring	3.50	2.25	2
Retainer	150.00	77.50	2
Servicing	25.00	13.00	2
Termination	500.00	325.00	2

Source: The Deal Pipeline

## INSIDE THE NUMBERS

### Legal fee

Edward Weisfelner of Brown Rudnick LLP is a legal leader. Representing the official committee of unsecured creditors in the Dewey & LeBoeuf LLP case with an hourly fee of \$1,055 for his expertise, Weisfelner is the top-billing unsecured creditor counsel on all bankruptcy cases filed so far this year as of July 27. Once a top global law firm, New York-based Dewey filed for Chapter 11 protection on May 28 and is in the process of winding down its operations. The firm decided it was in the best interest of its clients, creditors and employees to do this after it was unsuccessful in structuring a transaction to maintain the core value of the firm through a merger with another firm.

—Kimberly Ghorm

### Top-billing unsecured creditor lawyers\*

Bankruptcy cases filed Jan. 1–July 27, 2012

	Lawyer	Law firm	Debtor	Hourly fee
1	Edward Weisfelner	Brown Rudnick LLP	Dewey & LeBoeuf LLP	\$1,055
2	Lawrence Gottlieb	Cooley LLP	United Retail Group Inc.	985
3	Brett Miller	Morrison & Foerster LLP	Pinnacle Airlines Corp.	975
	Richard Pachulski	Pachulski Stang Ziehl & Jones LLP	Trident Microsystems Inc.	975
4	Michael Richman	Patton Boggs LLP	Prince Sports Inc.	960

\*Hired as counsel or co-counsel to unsecured creditors

Source: The Deal Pipeline

## LEAGUE TABLES

### Top unsecured creditor law firms

By active cases, as of July 27, 2012

	Law firm	No. of active cases
1	Lowenstein Sandler PC	47
2	Pachulski Stang Ziehl & Jones LLP	43
3	Cooley LLP	33
4	Duane Morris LLP	23
5	Arent Fox LLP	22
	Morgan, Lewis & Bockius LLP	22
6	Akin Gump Strauss Hauer & Feld LLP	18
	Blank Rome LLP	18
7	Greenberg Traurig LLP	16
8	Pepper Hamilton LLP	14
9	King & Spalding LLP	13
	Otterbourg, Steindler, Houston & Rosen PC	13
10	Foley & Lardner LLP	12

Rankings include cases in which law firm was hired as counsel or co-counsel to unsecured creditors

Source: The Deal Pipeline

### Top unsecured creditor lawyers

By active assignments, as of July 27, 2012

	Lawyer	Law firm	No. of active assignments
1	Richard Esterkin	Morgan, Lewis & Bockius LLP	22
	Jay Indyke	Cooley LLP	22
2	Kenneth Rosen	Lowenstein Sandler PC	17
3	Cathy Hershcopf	Cooley LLP	16
4	Lawrence Gottlieb	Cooley LLP	14
5	Bradford Sandler	Pachulski Stang Ziehl & Jones LLP	12
	Thad Wilson	King & Spalding LLP	12
6	Jeffrey Cohen	Cooley LLP	11
	Bruce Grohsgal	Pachulski Stang Ziehl & Jones LLP	11
9	Sharon Levine	Lowenstein Sandler PC	11
	Andrew Silfen	Arent Fox LLP	11
	David Stratton	Pepper Hamilton LLP	11

Rankings include assignments in which lawyer was hired as counsel or co-counsel to unsecured creditors

Source: The Deal Pipeline



## M&A AUCTIONS

# LSP to hold open auction

Electricity producer **LSP Energy LP** will auction its assets in August without a stalking-horse bidder after all.

According to Evan D. Flaschen of **Bracewell & Giuliani LLP**, counsel to an informal group of LSP bondholders, Judge Mary F. Walrath of the U.S. Bankruptcy Court for the District of Delaware in Wilmington on July 26 didn't approve amended bidding procedures with a lead bidder after two other parties offered to buy the debtor without a breakup fee.

The amended bidding procedures sought approval of a \$249 million stalking-horse bid from South Mississippi Electric Power Association. The stalking-horse bidder would have received a \$7.5 million breakup fee if it lost at auction.

Walrath, however, did approve the new timeline for the sale process in the amended bidding procedures motion.

Bidders have until Aug. 6 to submit offers for the debtor, and an auction will take place on Aug. 13.

**Quantum Utility Generation LLC** and **Tenaska Inc.** have both offered to bid at least the same amount as South Mississippi Electric Power Association but without a breakup fee, so Walrath determined the stalking-horse bid was unnecessary, Flaschen says, adding that the bondholder group hopes for an active auction.

A sale hearing will be held on Aug. 16, he says.

A minimum overbid and incremental bidding amount for the auction were not set at the July 26 hearing, Flaschen says.

Several parties objected to the amended bidding procedures, including Quantum, which said it had been working for more than four months to compose a bid and that changing the bidding procedures "this late in the process would be unfair to Quantum and other potential purchasers."

Court papers indicated if LSP Energy sold its equity interests at auction, it would file a reorganization plan and disclosure statement and seek approval of the sale at a confirmation hearing.

LSP Energy won approval of its bidding

procedures, without a stalking-horse bidder in place, on March 23. After that, it received 10 nonbinding indicative offers, but several of the preliminary bidders withdrew from the sale process after additional due diligence, according to court filings.

Power plant owner LSP Energy filed for Chapter 11 on Feb. 10 with three affiliates. The cases were jointly administered on Feb. 13.

LSP Energy blamed its petition on liquidity issues that began with the interruption of its operations by the mechanical failure of a combustion turbine at its Batesville, Miss., facility in May 2011.

LSP's electric generation facility has three gas-fired, combined-cycle electric-generating units with a total capacity of 837 megawatts. These connect with the **Entergy Corp.** and Tennessee Valley Authority transmission systems. The debtor also owns the 58-acre parcel under the facility. ■

—Jamie Mason

## SP wins bidding procedures nod

**SP Newsprint Holdings LLC** can print up auction notices.

Judge Christopher Sontchi of the U.S. Bankruptcy Court for the District of Delaware in Wilmington on July 27 signed an order approving the bidding procedures of the newsprint producer.

According to court papers filed July 19, an affiliate of secured lender **GE Capital Corp.** will be stalking-horse bidder for the assets in a deal valued at \$145 million. SPN AcquisitionCo LLC would credit-bid the entire amount of GE Capital's outstanding revolving loans and a portion of an outstanding term loan for substantially all assets of the Greenwich, Conn., debtor.

As of the Nov. 15, 2011, petition date, SP Newsprint owed GE Capital \$41 million under a revolving facility and about \$213 million under a term loan, court papers show.

The proposed buyer has also agreed to provide enough cash to pay all outstanding obligations under a debtor-in-possession credit agreement with GE Capital, would assume \$27.9 million in administrative priority claims and would pay any outstanding prepetition employee wages. The buyer would also fund closing administrative costs, projected to be about \$20 million.

Under the bidding procedures, if SP received more than one qualified offer by Aug. 13, it would hold an auction on Aug. 17. Qualified offers must be valued at no less than \$145 million and must provide for the assumption of all the liabilities agreed upon in the SPN AcquisitionCo deal. Competing bidders also must provide a 5% deposit, court papers said.

SP did not set bidding increments in court papers.

A sale hearing will take place on Aug. 21.

Sontchi, meanwhile, on July 27 also approved SP Newsprint's July 19 request to increase its borrowing capacity under the DIP to \$60 million from \$30 million. GE Capital had previously agreed to augment the cap on the delayed-draw DIP by \$5 million on April 27, bringing the total DIP amount to \$30 million.

Sontchi on Jan. 25 signed a final order approving the original \$25 million DIP.

The financing will mature in six months and accrues interest at the prime rate, according to a Dec. 15 DIP motion. It was unclear from court papers if the DIP is new money.

The debtor and three affiliates filed for Chapter 11 protection on Nov. 15, more than a year after minority shareholder **White Birch Paper Co.** filed for bankruptcy. The newsprint company attributed its filing to a default on a credit agreement with GE Capital. ■

—Kelsey Butler