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Out in Seven Months

Motor Coach Industries Quickly Emerges from Chapter 11

by Julie Schaeffer

Motor Coach Industries has completed a financial restructuring and emerged from Chapter 11 in just seven months – an admirable achievement given the market environment and objections to the reorganization, says Ken Ziman, a bankruptcy partner at Simpson Thacher & Bartlett LLP, which represented Motor Coach.

“Clearly there have been bankruptcies achieved in similar or shorter time frames, but very few in the credit markets of late 2007 and 2008, particularly where you had confirmation fought as hard as it was fought in this bankruptcy,” Ziman explains.

Schaumburg, Illinois-based Motor Coach, which was founded in Winnipeg, Manitoba, Canada, in 1932, supplies buses for municipalities and private tour companies. The

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Corporate Bankruptcies Waning?

First Quarterly Drop in Filings Since 2007

by David Buzzell

Although major corporations continue to fall by the wayside, there are some signs that the carnage is abating. Lost among the news for the second quarter of the year, which included the General Motors, Chrysler, General Growth Properties, and Thornburg Mortgage bankruptcies, is the fact that fewer large corporations (assets of over \$100 million) went under during the past three months than did during the first quarter of the year. The 61 corporate giants that went bankrupt in April, May, and June would normally be unprecedented, but in these abnormal times it is only the second highest month on record. Between January and March, 75 such corporations filed. This drop, which equates to a decline of about 18%, is the first one in 11 quarters, going back to the first quarter of

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New Breed of Bankruptcies

How Can Restructuring Pros Prepare?

by Julie Schaeffer

The Chapter 11 filings of Chrysler and GM are just two striking examples of the new breed of bankruptcy that is taking center stage in the current restructuring cycle. How does this new breed of bankruptcy differ from past bankruptcies – and how can restructuring professionals prepare?

Jonathan Carson, Managing Director and Cofounder of Kurtzman Carson Consultants, believes he has insight into the inner workings of today's bankruptcies given his firm's current involvement in some of the country's largest Chapter 11 filings.

According to Carson, whose firm is a claims and noticing agent that provides administrative support and technology solutions to companies undergoing corporate

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Motor Coach, *from page 1*

company employs around 2,000 people, and has 95 percent of the public market share, and a substantial portion of the private market share, according to Ziman.

In 1999, the company was acquired by a fund controlled by JLL Partners, a private equity firm. Although the company refinanced in 2004, it still found itself with significantly more debt than it could manage – debt that was maturing between December 2008 and February 2009. “The company did a couple of restructurings outside of bankruptcy. In 2003 and 2004, a JLL affiliate purchased bonds that had been used to finance the original LBO and contributed those to capital, leaving only about \$60 million of bonds outstanding,” says Ziman. “But the company wasn’t generating enough cash flow to refinance about \$500 million of secured debt and the remaining \$60 million of bond debt, especially in the markets of late 2007 and early 2008.”

The company looked at sales opportunities throughout 2008, but a difficult first half of 2008 created problems. Although there were many reasons for that, one was that some of the company’s bigger public customers delayed orders. Municipalities typically have an idea when funding will come through, and place orders for buses accordingly. But sometimes their funding analysis is wrong, and they need to push the order back.

Motor Coach filed for bankruptcy in September 2008, on the same day that Lehman Brothers did, and shortly thereafter, AIG crumbled. “The credit markets were in disarray, so clearly reorganizing was going to be a challenge,” says Ziman.

Ultimately, however, Motor Coach struck a deal with Franklin Mutual Advisers, LLC, a subsidiary of Franklin Resources, Inc., a global investment management organization with more than \$391 billion in assets

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Waning?, *from page 1*

2007 (see Exhibit 1 on page 2). During the more economically sedate years of 2004-2007, a dozen large corporate bankruptcies was the norm in any one quarter, so five dozen, which has occurred in the last three months, is very much a sign of a sick economy, although perhaps the patient is improving.

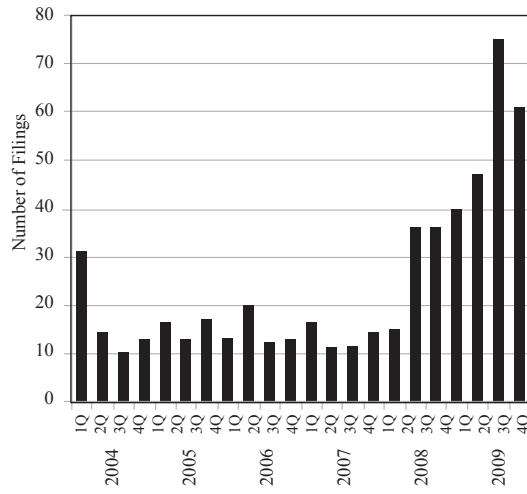
When looking at the biggest of the big, the same trend can be seen (see Exhibit 2 on page 4). Bankrupt corporations reporting over \$1 billion in assets fell from 17 in the first quarter to 14 in the second quarter (a 17% decline). Again, though, historically two or three \$1 billion plus bankruptcies could be expected to occur in a quarter. Fourteen in a quarter exceeds anything previously reported, aside from the preceding quarter.

For those wondering about the status of smaller corporations (those reporting assets of \$1 million or more at the time of filing), according to bankruptcy data compiled by the Beard Group, 1,623 companies filed during the first six months of 2009. This contrasts sharply to the 1,026 that filed during the first half of 2008 and the mere 676 that were filed during the first half of 2007. Percentage wise, this equates to a 58% jump in filings for companies of all sizes.

In a trickle-up effect, many of the recent filings have been by companies directly dependent on the American consumer. In addition to the General Motors and Chrysler bankruptcies, there have been filings by Fontainebleau Las Vegas Holdings (owner of luxury resorts in Las Vegas and Miami); General Growth Properties (the second largest operator of shopping malls in the country, including Faneuil Hall in Boston and the South Street Seaport in New York City); Six Flags, Inc. (operator of 20 theme parks throughout the U.S.), and Source

Exhibit 1

Chapter 11 Filings, \$100 Million+ Assets Quarterly, 2004-2009



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restructuring, there are three things that make today’s bankruptcies different.

The first is an unprecedented level of interaction between the government and the private sector, as we’ve seen in the automotive sector.

“I think that sets the stage for what might come in the future for companies that are deemed ‘too big to fail,’” says Carson. “It’s a new hybrid bankruptcy.”

But not everyone agrees. Andrew Schwartz, who chairs the bankruptcy/restructuring practice at Foley Hoag LLP in Boston, thinks GM and Chrysler are rare phenomena. “Those bankruptcies arose in extraordinary circumstances,” he notes. “We’ve seen a politicization of the bankruptcy process that is far from typical and, in my opinion, is likely specific to this moment and this industry.”

The second difference today is the growth in Section 363 asset sales, which allow for asset sales free and clear of liens. Section 363 sales have been used by some corporate debtors for a long time, but there has been an increased number of businesses using them in this cycle. 148 Chapter 11 cases have involved an asset sale motion or action as part of their proceedings thus far in 2009. Additionally, 25 cases have been filed in 2009 in which a 363 asset sale has occurred.

According to Schwartz, this has been a developing trend for a number of years.

Carson says “the increase is in large part driven by the limitation of available capital, time restrictions imposed by 2005 bankruptcy reform, and more complex interrelationships.”

He notes that, as a result, today and going forward “the best result for a company may be selling virtually all of its assets in an organized fashion rather than undergoing a straight reorganization around a core business.”

Lastly, today’s restructurings are often fast tracked. “In the past, the “free fall” bankruptcy – where a company entered bankruptcy because of a specific event, then determined a course of restructuring and came out a reorganized entity – was more prevalent,” says Carson. “Now we see more prearranged and prepackaged bankruptcies, and a lot of them are quick and that can be beneficial. Spending time in bankruptcy costs money, which isn’t good for anybody. But sometimes companies can navigate the process too quickly,

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Research Report

Who's Who in Chrysler LLC

by Françoise C. Arsenault

Chrysler LLC (Chrysler) manufactures, assembles, and sells cars, trucks, and automotive parts and accessories primarily in the United States, Canada, and Mexico. Since its founding in 1925, Chrysler has manufactured millions of vehicles under distinctive brands, including AMC, Chrysler, DeSoto, Dodge, Eagle, Imperial, Jeep, Plymouth, and Valiant. Since the 1930s, Chrysler has also operated a vehicle parts division under the Mopar brand. The company has been a pioneer and an engineer's car company. Chrysler is credited with inventing the legendary HEMI engine and is the largest producer of all-electric vehicles in the United States.

The company supplies passenger cars, SUVs, sports tourers, minivans, and pickups. Currently, Chrysler employs approximately 55,000 hourly and salaried employees worldwide, about 70 percent of whom are based in the United States and about 72 percent of whom are covered by collective bargaining agreements. As of April 30, 2009, Chrysler had 32 manufacturing and assembly facilities, 23 of which are located in the United States, and 24 parts depots, 20 of which are also in the U.S. Chrysler has an expansive dealer network, with more than 3,200 dealerships. U.S. sales comprise 72 percent of the company's sales. The company also purchases 78 percent of its parts and materials from U.S.-based suppliers. Before April 30, 2009, Chrysler and its foreign subsidiaries produced about 2 million new vehicles annually. Chrysler reported assets of approximately \$48.5 billion and liabilities of \$55.2 billion for the year ended December 31, 2008. The company also had more than \$48.5 billion in revenues and a net loss of about \$16.8 billion for the same period.

In late 2008, Chrysler's Transformation Plan was slowed dramatically by the global credit crisis and Chrysler turned to the government for new financing. On January 2, 2009, the U.S. Treasury loaned Chrysler \$4 billion under the Troubled Assets Relief Program (TARP). As part of the loan, Chrysler was required to submit a Restructuring and Long-Term

Viability Plan, which it did on February 17, 2009. Chrysler also continued to pursue negotiations with Fiat S.p.A and sought and received \$600 million in loans from the Canadian government. The infusion of new funds, however, did not resolve Chrysler's liquidity problems and Chrysler requested additional assistance from the U.S. Treasury. On March 30, 2009, the U.S. government put its support behind the Chrysler-Fiat Alliance and offered to provide substantial additional capital to fund Chrysler's Viability Plan with a modified strategic alliance with Fiat.

Chrysler and 24 of its wholly owned U.S. subsidiaries filed for Chapter 11 reorganization on April 30, 2009, in the U.S. Bankruptcy Court for the Southern District of New York. On June 1, the bankruptcy court approved the sale of most of Chrysler's assets to New CarCo Acquisition LLC, a new company formed by Fiat S.p.A. Chrysler will receive \$2 billion for its assets. In return, Fiat will control 20 percent of Chrysler, a stake which could increase to 35 percent if certain milestones are met. A union trust will own 68 percent and the remaining 12 percent will be shared by the Canadian and U.S. governments. On June 9, the U.S. Supreme Court affirmed the sale to Fiat. The bankruptcy court also has approved Chrysler's request to reject 789 dealership agreements. Robert Nardelli, the Chairman and CEO of Chrysler LLC, returned to Cerberus Capital Management as an advisor on completion of the sale.

The Debtor

Sergio Marchionne is the Chief Executive Officer of Chrysler LLC. **James Press** is Deputy Chief Executive Officer, and Special Advisor. **Richard Palmer** is Senior Vice President and Chief Financial Officer. **Jan Bertsch** is Senior Vice President, Treasurer, and Chief Information Officer. **Holly Leese** is Senior Vice President and General Counsel of Chrysler LLC.

Jones Day is bankruptcy counsel to Chrysler. **Corinne Ball**, a partner, directs the work. The Jones Day team also includes **John R. Cornell**, **David G. Heiman**, **Thomas F. Cullen**, **Jere R. Thomson**, **Jeffrey B. Ellman**, **Richard**

H. Engman, **Candace R. Ridgway**, **Marilyn A. Sonnie**, **Brett P. Barragate**, **John K. Kane**, **Kevyn Orr**, **Gregory M. Shumaker**, **Pedro Jimenez**, **Mark Cody**, **Richard Shaw**, and **John E. Mazey**, all partners, and **Robert W. Hamilton**, of counsel.

Togut, Segal & Segal LLP is conflicts counsel to Chrysler. **Albert Togut**, the senior partner, and **Frank A. Oswald**, a partner, work on the case.

Schulte Roth & Zabel LLP is special corporate counsel to Chrysler. The team includes **Robert R. Keisel**, **Richard A. Presutti, Jr.**, **Alan S. Waldenberg**, **Marc Weingarten**, and **Adam C. Harris**, partners.

Cahill Gordon & Reindell LLP is special counsel to three independent members of the Board of Managers of Chrysler. **Joel H. Levitin**, a partner, heads up the team.

Dykema Gossett PLLC is special counsel to Chrysler for supplier and environmental matters. **Ronald L. Rose**, a partner, works on the case.

Freshfields Bruckhaus Deringer LLP is special counsel to Chrysler for issues related to foreign national sales and subsidiaries. **Ludwig Leyendecker**, a partner, directs the work.

Cadwalader, Wickersham & Taft LLP is counsel to the U.S. Treasury. **John J. Rapisardi**, a partner with the firm, leads the team.

Capstone Advisory Group LLC is the financial advisor to Chrysler. **Robert Manzo**, Executive Director, leads the engagement.

Greenhill & Co. LLC is serving as investment banker to Chrysler. **Bradley A. Robins**, Managing Director with the firm, works on the engagement.

PricewaterhouseCoopers LLC is tax advisor, information technology advisor, and special accountant to Chrysler. **Perry M. Mandarino**, a partner, directs the work.

Kekst and Company is serving as communications advisor to Chrysler. The team is led by partners **Fred Spar** and **David Lilly**.

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Motor Coach, *from page 2*

under management as of March 31, 2009. Franklin managed seven different funds that had made about \$210 million of investments in Motor Coach's third-lien secured debt. Under the plan of reorganization, Franklin would roll that debt into common stock (becoming the company's majority shareholder) and inject an additional \$160 million into the company.

The other element of the plan of

reorganization was exit financing, which also proved difficult in the market environment. "Rothschild Inc., the company's financial advisor, engaged in an expansive search for exit financing," says Ziman. But because the appetite for taking on any kind of risk at the time was limited, that search came up short of the \$230 million targeted. The company then had to turn back to existing lenders to raise the exit financing."

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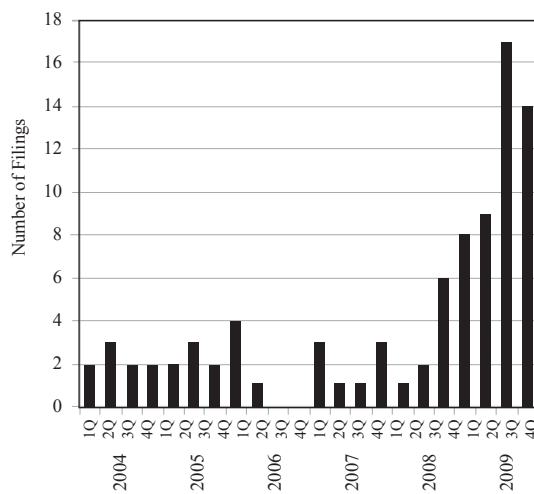
Waning?, *from page 2*

Interlink Companies (which delivers magazine, Internet, and home entertainment content directly to consumers). All of these companies have assets of \$1 billion or more. General Motors (assets of \$82 billion) and Chrysler (\$39 billion) head this list. With assets of nearly \$30 billion, General Growth's Chapter 11 filing earned it recognition as the largest U.S. property bankruptcy in U.S. history.

A seismic shift continues in the information sector, with Charter Communications, RH Donnelley, Ion Media Networks, and Idearc, being the latest victims of 2009. All reported assets in excess of \$1 billion. □

Exhibit 2

Chapter 11 Filings, \$1 Billion+ Assets
Quarterly, 2004-2009

**New Breed**, *from page 2*

realize they didn't strategically accomplish what they should have, and find themselves back in bankruptcy. That's when you see more Chapter 11s occurring."

Despite all of these new challenges, Carson does not share the opinion of those who argue that Chapter 11 no longer works. "Companies with good business models and supportive stakeholders can not only survive, but can flourish upon emergence from Chapter 11," he says. "I suspect we'll see more businesses use Chapter 11 to maximize strategic value and to emerge stronger and better positioned for growth."

How can restructuring professionals prepare for the new breed of bankruptcy? According to Carson, it's important to keep three things in mind:

Be prepared. Key documents have to

be prepared in an organized fashion and made accessible, because they are needed by so many different parties at so many different times.

Be transparent. Carson thinks it's crucial for companies to develop a strategic communications strategy to disclose progress to relevant constituencies – employees, banks, vendors, media – during the restructuring process. "It's important that you know what to say, how to say it, and when to say it," he says.

Be sensitive. Carson believes it's easy to get focused on your own goal in the restructuring process given how busy you are. "To work through difficult matters and come out with a productive outcome, you have to listen to everyone who has a seat at the table, and take their interests into consideration when coming to a conclusion," he says. □

Calendar

American Bankruptcy Institute
Complex Financial Restructuring
Program

September 10-11, 2009
Hyatt Regency Lake Tahoe
Incline Village, Nevada
Contact: www.abiworld.org

Beard Audio Conferences

The Credit Crisis: An Overview of the
Role of Alternative Investments in the
Capital Markets
September 15, 2009
Contact: www.beardaudioconferences.com

Turnaround Management Association

TMA Annual Convention
October 7-9, 2009
J.W. Marriott Desert Ridge
Phoenix, Arizona
Contact: www.turnaround.org

**Tenth Annual Conference on
Healthcare Transactions**

Successful Strategies for Mergers,
Acquisitions, Divestitures, and
Restructurings
November 5, 2009
The Millennium Knickerbocker Hotel -
Chicago
Contact: www.renaissanceamerican.com

**Sixteenth Annual Conference on
Distressed Investing**

Maximizing Profits in the Distressed
Debt Market
November 30 - December 1, 2009
The Helmsley Park Lane Hotel
New York, NY
Contact: www.renaissanceamerican.com

American Bankruptcy Institute
21st Annual Winter Leadership

Conference
December 3-5, 2009
La Quinta Resort & Spa
La Quinta, California
Contact: www.abiworld.org