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Inside

Tax Lien Prioritized

Over Failed Chapter 11 Fees, Says Fourth Circuit

by Julie Schaeffer

What takes priority in a Chapter 7 liquidation under the Bankruptcy Code – attorneys' fees claim or secured tax claims? That was the question in *In re Anderson*, on which the U.S. Court of Appeals for the Fourth Circuit opined in January.

The question arose when Henry Anderson, Jr., filed for Chapter 11 bankruptcy in February 2010, but the case was converted to a Chapter 7 and a trustee appointed in November 2011.

At the time, Anderson's estate had two outstanding debts: approximately $200,000 in legal fees related to the Chapter 11 proceedings owed to Stubbs & Perdue, P.A. and nearly

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About Those Gift Cards...

RadioShack Report Shows Claim Filing Statistics

by Randall Reese

The treatment of gift cards and the claims associated with holding an unused gift card have been major topics of dispute in the RadioShack bankruptcy cases. According to RadioShack, it had been selling gift cards – with no expiration date – for approximately 15 years prior to its February 2015 Chapter 11 filing. As of June 2015, RadioShack estimated that there were approximately 2.9 million unused gift cards outstanding with aggregate balances of approximately $46 million.

Among other matters, the RadioShack bankruptcy resulted in two separate adversary proceedings relating to gift card matters. The first was initiated by the State of Texas and sought a declaratory judgment that: (1) unredeemed gift card holders are entitled

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Absolute Priority

Court Holds Rule Applies to Individual Chapter 11s

by Julie Schaeffer

A legal loophole that allows individual Chapter 11 debtors to retain a significant portion of their assets without creditor consent was closed in January when the Ninth Circuit Court of Appeals ruled in *Zachary v. California Bank & Trust (In re Zachary)*.

The case addressed the absolute priority rule, which holds that no junior creditor class may receive or retain any property under a plan of reorganization unless unsecured creditors are paid in full.

"The rule is a powerful tool for unsecured creditors that can both enhance their bargaining power regarding a plan, and help prevent a plan from being confirmed over

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$1 million in secured tax claims owed to the IRS.

The total amount of funds available in Anderson's estate was roughly $720,000, and with Chapter 7 administrative expenses amounting to around $300,000, the estate was left with only about $420,000 for distribution. So, Anderson's estate had insufficient funds to pay both of the debts,

Generally, secured claims take priority over unsecured claims, such as attorneys' fees, under the Bankruptcy Code – but there is a limited exception under Section 724(b)(2) for so-called "administrative expenses."

One problem is the changing language of that exception. Up until 2005, the language around the exception was simple: It clearly provided that all holders of claims for administrative expenses could subordinate secured tax creditors. There was concern that the language created an incentive for debtors and their attorneys to drive up administrative expenses at the expense of legitimate tax creditors, so in 2005 Congress narrowed the exception language with the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA). A drafting error in the revision, however, creating significant confusion. So, in 2010, with the Bankruptcy Technical Corrections Act (BTCA), Congress again amended the exception language, clearly stating that Chapter 11 administrative expense claims cannot subordinate secured tax claims. Congress, however, did not rectify the statute until December 2010, months after Anderson filed for Chapter 11.

The trustee sought an order from the bankruptcy court excluding Stubbs & Perdue's claim as an administrative expense, claiming that the law that was in effect at the time of the decision should be used – namely, the 2010 revision that says Chapter 11 administrative expense claims cannot subordinate secured tax claims.

Stubbs & Perdue, of course, knew that unless its unsecured administrative claim took priority over the IRS claim, it would not collect its attorneys' fees granted by order during the Chapter 11 proceedings. Seeking those fees, it argued that the pre-2010 version of the Section 724(b)(2) exception language should apply, and its claims for attorneys' fees should

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to a Priority Claim to be paid ahead of general unsecured creditors; (2) any state attorney general has standing to file proofs of claim on behalf of consumers holding unredeemed gift cards in their respective states; and (3) under unclaimed property law, states are entitled to receive the value of the unredeemed gift cards. The debtors first sought to have the complaint dismissed and, when that failed, sought summary judgment asserting that no gift card claims are entitled to priority, Texas lacked standing to file a proof of claim for distribution purposes on behalf of individual gift card holders and no state has a valid claim to unclaimed property based on the debtors' unredeemed gift cards. The Official Committee of Unsecured Creditors appointed in the cases joined in RadioShack's summary judgment motion.

The second adversary proceeding was filed as a class action seeking a declaratory judgment that a class of gift card claimants should be formed, with the lead plaintiff appointed as class representative, and that claims arising from gift cards are entitled to priority. The bankruptcy court ultimately decided not to certify a class of gift card holders in the case.

RadioShack, the creditors' committee, and the State of Texas ultimately reached a settlement of the first adversary proceeding, which was approved by the bankruptcy court. Pursuant to that settlement, among other things, the parties agreed to treat certain gift card claims as priority claims pursuant to 11 U.S.C. § 507(a)(7). They also agreed to modify the plan of liquidation to provide for a $500,000 cash reserve for allowed priority gift card claims that will not operate as a cap or limitation on distributions on account of allowed priority gift card claims and give claimants 12 months from the date of a gift card bar date notice to file proofs of claim asserting gift card claims.

In addition, the settlement included an agreement regarding the manner of notice that would be given to potential gift card claimants of their options with regard to unused gift cards. Interestingly, the methods of notice used were a mix of old and new media. For example, where email addresses were available to RadioShack's Liquidating Trustee, holders of gift cards issued beginning on January 1, 2010 that would be entitled to priority treatment were to receive notice

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their objection in a process commonly known as 'cramdown,'" says Bernard Bollinger, chair of the insolvency and financial solutions practice group at Buchalter Nemer.

The rule has long been applicable in corporate bankruptcies, but provisions of the 2005 Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) raised questions about whether it applies to individual bankruptcies.

Specifically, BAPCPA added two sections to the bankruptcy code: section 1115, which expands an individual Chapter 11 debtor's estate to include earnings and property acquired after the petition is filed and before the case is closed, dismissed, or converted, and section 1129(b)(2)(B)(ii), which provides that an individual debtor may retain property included in the estate under section 1115.

That raised a question: Did those two sections combine to create an exception to the absolute priority rule, allowing an individual debtor to retain property that he or she acquires before commencement of the case when the creditors are not paid in full? Or does the absolute priority rule still apply to individual bankruptcies?

Courts in most jurisdictions (including the Fourth, Fifth, Sixth, and Tenth Circuits) eventually ruled that the absolute priority rule does still apply to individual bankruptcies, but the Ninth Circuit was an exception, with contradictory rulings. Some bankruptcy courts in that circuit issued said the absolute priority rule applies to individual Chapter 11 cases; some said it doesn't.

In 2012, the Ninth Circuit Bankruptcy Appellate Panel provided some certainty when it ruled in *In re Friedman* that the absolute priority rule does not apply to individual Chapter 11 cases – allowing individual debtors to confirm plans of reorganization over the objections of unsecured creditors, while at the same time keeping valuable assets from the reach of those creditors.

Then came *Zachary*, which began when David Zachary and Annmarie Snorsky jointly filed a Chapter 11 petition. In their third amended plan of reorganization, the debtors put California Bank & Trust (CB&T), their largest unsecured creditor with a claim of approximately $1.9 million, in its own class and proposed

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Research Report

Who's Who in Noranda Aluminum, Inc.

by Dave Buzzell

Noranda Aluminum Inc., headquartered in New Madrid, Missouri, is an integrated producer of primary aluminum and high-quality rolled aluminum coils. Noranda Aluminum has two business segments: an upstream business and a downstream business. The upstream business consists of three separate segments: bauxite mining at the St. Ann Facility in Jamaica, operated by Noranda Bauxite Ltd.; an alumina refinery in Gramercy, Louisiana, operated by Noranda Alumina LLC; and an aluminum smelter and metal fabrication facility in New Madrid, operated by Noranda Alumina.

The downstream business is owned and operated by Norandal USA, Inc. and consists of three rolling mills located in Salisbury, North Carolina; Huntingdon, Tennessee; and Newport, Arkansas. The company's flat-rolled products business is one of the largest aluminum foil producers in North America.

Noranda Aluminum is a subsidiary of Noranda Aluminum Holding Corporation (NAHC). NAHC and Noranda Aluminum Acquisition Corp. (NAAC) were formed in 2007 by investment funds affiliated with Apollo Management, L.P. to acquire a portion of the aluminum business of Xstrata (Schweiz) A.G. Between 2004 and 2009, Gramercy Alumina Holdings Inc. (Gramercy Alumina) held a 50% interest in the Gramercy and St. Ann Segments, with Century Aluminum Co. holding the remaining 50%. On August 31, 2009, Gramercy Alumina became the sole owner of both the Gramercy and St. Ann segments.

On February 8, 2016, Noranda Aluminum and 10 of its affiliates (NAHC, NAAC, NHB Capital, LLC, Noranda Intermediate Holding Corporation, Norandal USA, Inc., Gramercy Alumina and Gramercy Alumina II, Noranda Alumina LLC, Noranda Bauxite Holdings Ltd, and Noranda Bauxite Limited) filed separate Chapter 11 bankruptcy petitions in the United States Bankruptcy Court for the Eastern District of Missouri.

Noranda Aluminum, Inc., et al., blamed, among other things, the sustained and dramatic decline in the price of primary aluminum caused by an oversupply in the market; increasing exports from China; and decreased demand, which resulted in the lowest prices since 2009.

In addition to the price decline, the debtors also disclosed additional exacerbating factors that have placed significant pressure on already strained businesses, including: multiple incidents at the New Madrid facility; a substantial increase in rates paid for electricity to power the New Madrid facility; an unsuccessful arbitration with the Government of Jamaica regarding the production levy NBL is obligated to pay to the Government of Jamaica for the bauxite it mines; the bauxite supply contract with Alumina Co., LLC, one of NBL's significant customers, that is substantially below market; and significant labor-related liabilities, principally pension obligations.

The debtors estimated both assets and liabilities in the range of $1 billion to $10 billion. The debtors had approximately 1,857 employees as of the petition date, and in 2015, produced approximately 498 million pounds of primary aluminum.

Through December 31, 2015, the debtors reported total revenues of $1.23 billion and a net loss of $258 million. As of the petition date, the debtors had $529.6 million in outstanding principal amount of secured indebtedness, consisting of a revolving credit facility and a term loan.

The court has granted Noranda interim approval of up to $165 million in new debtor-in-possession (DIP) financing The new financing, combined with cash generated from the company's ongoing operations, will be used to support the business during the bankruptcy process.

In addition to the new financing, Noranda Aluminum is streamlining its operations. The debtors intend to continue operating the New Madrid facility until its existing supplies and inventory are exhausted, at which point remaining operations at New Madrid will be curtailed. The debtors intend to continue to operate the St. Ann and Gramercy facilities at full production levels throughout the Chapter 11 cases. Noranda Bauxite Limited is continuing production and its partnership with the Government of Jamaica at its St. Ann mine.

The Debtor

Kip Smith is Noranda Aluminum's President and chief executive officer. **Dale W. Boyles** is chief financial officer.

The debtors have engaged **Paul, Weiss, Rifkind, Wharton & Garrison LLP** as general counsel. **Alan W. Kornberg**, partner and chair of the bankruptcy and corporate reorganization department, **Elizabeth R. McColm**, partner, and **Alexander Woolverton** and **Michael M. Turkel**, associates, lead the engagement.

Carmody MacDonald P.C. is serving as local restructuring counsel. **Christopher J. Lawhorn**, principal, **Angela L. Drumm**, principal, and **Colin M. Luoma**, associate, lead the engagement.

Alvarez & Marsal North America, LLC is the restructuring advisor. **Robert M. Caruso**, managing director at Alvarez & Marsal's Chicago office, is serving as chief restructuring officer to Noranda. **Charles Moore**, managing director in the Detroit office, and **Holden Bixler**, senior director in the Chicago office, are also working on the engagement.

PJT Partners, LP is serving as investment banker. Partners **Steve Zelin**, **Mark Buschmann**, and **Jamie Baird** lead the team advising Noranda.

Ernst & Young LLP is serving as auditor and tax advisor. **Jeffrey B. Smith**, a partner, heads the engagement.

Official Committee of Unsecured Creditors

Lowenstein Sandler LLP is counsel to the Committee. **Kenneth A. Rosen**, head of the firm's bankruptcy, financial reorganization and creditors' rights department, and partners **Sharon L. Levine** and **Jeffrey D. Prol**, lead the engagement.

Houlihan Lokey Capital, Inc. is serving as the Committee's financial advisor and investment banker.

The Trustee

The trustee is **Paul A. Randolph**.

The Judge

The Judge is the **Honorable Barry S. Schermer**. ¤

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subordinate the IRS's secured tax claims. The current version, Stubbs & Perdue claimed, "would have an impermissible retroactive effect, cutting off its right to recover for Chapter 11 administrative expenses incurred before Congress amended the Code in 2010." Again, that's because Anderson initially filed for Chapter 11 before Congress passed the act.

The bankruptcy court dismissed Stubbs & Perdue's objection, reasoning that the post-2010 version of the Section 724(b)(2) exception language governed under "the normal rule" that holds a court should apply the law in effect at the time it renders a decision.

"In its view, the current version of Section 724(b)(2) was already in effect when the case converted to Chapter 7, so application of current law would have no retroactive effect on the professional's right to subordinate tax liens in a Chapter 7 case," says Michael Cook, a partner at Schulte Roth & Zabel LLP. "The district court affirmed for essentially the same reason."

The Fourth Circuit affirmed the district court's decision on the grounds "that courts should apply the law in effect when they render their decisions...unless that law would operate retroactively without clear congressional authorization."

It noted that the Chapter 11 case began in early 2010 and did not end until November 2011, 11 months after the last relevant Congressional amendment – so by the time the case converted to Chapter 7 in November 2011, the earlier version of Section 724(b)(2) had been superseded already by the current corrected version. The Fourth Circuit thus applied the post-2010 law.

The Fourth Circuit also favored this outcome because it had the "advantage of being clear and easy to administer." That's important in bankruptcy, the Fourth Circuit noted, because a bankruptcy trustee has a fiduciary duty to repay the debtor's creditors expeditiously.

"Anderson serves to remind professionals in a Chapter 11 case to evaluate: (1) the chance of a failed reorganization; and (2) the existence and amount of any federal or state tax liens against the debtor's property," says Cook. He notes that even when there is a large tax lien, parties can avoid the application of Section 724(b)(2) by using a Chapter 11 liquidation if reorganization is not feasible.

Nicholas Miller, a partner at Neal, Gerber & Eisenberg LLP, agrees with the decision, which he says was well reasoned, well written, and rightly decided.

"As an initial matter, the law firm would have lost even had the BAPCPA version of Section 727(b)(2) applied because that statute was facially ambiguous and included a clear drafting error," he says. "So, once

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by email. Where no email address was available (or the email notice was returned as undeliverable) but a physical address was available, holders of gift cards issued beginning on January 1, 2013 that would be entitled to priority treatment were to receive notice by postcard.

Moreover, the means of notifying unknown gift card holders also sought to utilize new media opportunities. In addition to the distribution of a press release, RadioShack's Liquidating Trustee proposed a month-long campaign of banner ads placed through Facebook and Google. It was estimated that the Google and Facebook campaigns would cost approximately $50,000, including the cost of designing the banner ads. Peter Kravitz, the Liquidating Trustee of the RSH Liquidating Trust, says that "the idea of using social media to reach gift card holders is novel and cutting edge and, we believe, was the best notice possible for the thousands of holders of old RadioShack gift cards."

On March 31, 2016, the Liquidating Trustee publicly filed a Gift Card Summary Report detailing the number and amount of gift card claims that had been filed through March 6, 2016. As of that date, 4,191 claims had been filed asserting claims on account of 4,355 allegedly outstanding gift cards. In total, the amount of claims asserted was approximately $5.35 million.

However, those numbers do not tell the entire story. Of the filed claims, 92 percent (by number, not amount) are on account of gift card numbers found in RadioShack's books and records. Specifically, 1,627 claims asserted priority claims of approximately $46,000. Thus far, the Liquidating Trust has made distributions on 89 percent of those claims, with distributions totaling over $55,000. The distribution amount exceeds the asserted amount of the claims

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Calendar

American Bankruptcy Institute
New York City Bankruptcy Conference
May 12, 2016
New York Hilton
New York, NY
Contact: www.abiworld.org

Association of Insolvency & Restructuring Advisors
32nd Annual Bankruptcy & Restructuring Conference
June 8 – 11, 2016
Coronado Island Marriott Resort & Spa
Coronado, CA
Contact: www.aira.org

Turnaround Management Association
2016 TMA Europe Annual Conference
June 9 – 10, 2016
Grand Hotel Plaza
Rome, Italy
Contact: www.turnaround.org

Turnaround Management Association
12th Annual Northeast Regional Conference
August 31 – September 1, 2016
The Gideon Putnam Resort
Saratoga Springs, NY Contact: www.turnaround.org

National Association of Bankruptcy Trustees
2016 Annual Convention
September 7 – 10, 2016
Hard Rock Hotel & Spa
San Diego, CA
Contact: www.nabt.com

National Conference of Bankruptcy Judges
90th Annual NCBJ Conference
October 26 – 29, 2016
Marriott Marquis Hotel
San Francisco, CA
Contact: www.ncbj.org

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Special Report

Regional and Local Bankruptcy Accounting Firms

Firm	Senior Partners/Professionals		Representative Clients/Industries
Anchin, Block & Anchin New York, NY www.anchin.com (212) 840-3456	Marc A. Newman E. Richard Baum Paul Gevertzman Sol Lipshitz	Richard H. Stieglitz Barry Weisman Marc Wieder	Client industries include architecture and engineering, chemicals and energy, construction, fashion, financial services, food and beverage, insurance, law firms, life sciences, manufacturing and distribution, private equity, public relations and advertising, real estate, and technology.
Bederson West Orange, NJ (973) 736-3333 www.bederson.com	Edward P. Bond Timothy J. King Charles S. Lunden	Charles N. Persing Matthew Schwartz	Creditors' committees, debtors, trustees, as well as court-appointed examiners, mediators, fiscal agents, receivers, and fiduciaries. Client industries include automotive, banking and finance, construction, department stores, entertainment, healthcare, heavy equipment, hospitality, importing and exporting, intellectual property developers, leasing companies, oil and gas exploration, and others.
BPM San Francisco, CA (415) 421-5757 www.bpmcpa.com	Russ Burbank Edward Webb Craig Hamm	Robert Chung Brooke Bailey	Senior lenders, creditor committees, debtors, and owners/equity investors in bankruptcy, state court, and out-of-court- situations. Client industries include agriculture, automotive, construction, consumer/retail, financial services, law firms, life sciences, manufacturing and wholesale, real estate, technology, vineyard/wine.
DHG Charlotte, NC (704) 367-7020 www.dhgllp.com	Matt Snow	Ken Hughes	Agribusiness, banking, construction, dealerships, energy, financial services, government contracting, healthcare, hospitality and restaurants, insurance, manufacturing and distribution, private equity, professional services, public sector and government, real estate, retail, and others. Recent clients include Southern Regional Health System, Inc., Briar's Creek Golf, Texoma Peanut Company.
KapilaMukamal Fort Lauderdale, FL (954) 761-1011 www.kapilamukamal.com	Soneet R. Kapila	Barry E. Mukamal	Practice areas include fiduciary, bankruptcy/creditors' rights, valuations, litigation support, and insolvency tax consulting. Recent engagements include CRO, Simply Fashion; financial advisor, High Ridge Management Corp., Aberdeen Land II, Lancer Partners, Grand Seas Resort Partners, Fiddler's Creek; forensic financial investigator, The Burruss Company.
Lain, Faulkner & Co. Dallas, TX (214) 720-1929 www.lainfaulkner.com	Dan B. Lain	Dennis S. Faulkner	Trustees, debtors-in-possession, unsecured creditors' committees, debtors, creditors' committees, chief restructuring officers, examiners, settlement and post-confirmation trustees, special claims analysts, secured creditors. Recent clients include One Source Industrial Holdings, Protom International, Inc., GBG Ranch.
Marcum New York, NY (212) 485-5500 www.marcumllp.com	Morris Hollander Frank Rudewicz Alan Winters	James Ashe Joseph DeSimone David Glusman	Recent clients include American Apparel, Trans-Lux Corporation, BG Medicine, Inc., As Seen On TV, Inc., Viscount Systems, Inc., Mecklermedia Corporation, SG Blocks, Inc., Inventergy Global Inc., Medbox, Inc., Blue Calypso, Inc., Cambridge Capital Acquisition Corporation, Ultimate Nutrition, Inc. and Prostar, Inc.
Marks Paneth New York, NY (212) 503-8800 www.markspaneth.com	Eric J. Barr Steven Eliach	Steven L. Henning Howard Hoff	Chapter 11 debtors, creditors' committees and Chapter 11 and Chapter 7 trustees. Client industries include commercial business, emerging growth companies, energy, financial services, hospitality, nonprofit and government, professional services firms, real estate, theater, media and entertainment.
Moss Adams Seattle, WA (206) 302-6800 www.mossadams.com	Chris Schmidt Dick Fohn	Dave Follett Bill Sturges	Aerospace and defense manufacturers, agribusiness, apparel manufacturers, asset management and broker-dealers, automotive and dealer services, clean technology, closely held businesses, communications and media, construction, consumer and specialty finance, financial institutions, food & beverage, and others. Recent clients include American Apparel, Inc., Capstone Therapeutics Corp., Joe's Jeans Inc.
Paritz & Company Hackensack, NJ (201) 342-7753 www.paritz.com	Joel Paritz Brian A. Serotta	Lester Albert	Chapter 7 and 11 trustees, debtors, debtors-in-possession, and creditors in Eastern and Southern Districts of New York and the District of New Jersey, as well as numerous creditor committees in bankruptcy cases. Recent clients include Deb Stores Holding, Royal Energy, Alliance Bioenergy, MJ Holdings, American Nano.
RubinBrown Denver, CO (303) 698-1883 www.rubinbrown.com	Michael Lewis Dale Lash Sunti Watanacharoen	Matt Wester Stephanie Drew	Attorneys, trustees, receivers, creditors, debtors, and servicers. Also assists distressed companies regarding reorganization, financial restructuring, and bankruptcy planning. Client industries include construction, gaming, healthcare, law firms, life sciences and technology, manufacturing and distribution, private equity, public sector, real estate, and transportation and dealerships.
WeiserMazars New York, NY (212) 812-7000 www.weisermazars.com	Michael Bernstein		Banking, broker/dealers, consumer products, energy and utilities, financial services, food and beverage, government, health care, hedge funds, insurance, manufacturing and distribution, media and entertainment, private equity, professional services firms, real estate, technology, textile, and transportation.

Worth Reading

Titans of Takeover
Author: Robert Slater
Publisher: Beard Books
Softcover: 252 pages
List Price: $34.95

Once upon a time – and for a very long time – corporate behemoths decided for themselves when and if they would merge. No doubt such decisions were reached the civilized way, in a proper men's club with plenty of good brandy and cigars. Like giants, they strode Wall Street, fearing no one save the odd trust-busting politico, mutton-chopped at the turn of the twentieth century, perhaps mustachioed in the 1960s when the word was no longer *trust* but *monopoly*.

Then came the decade of the 1980s. Enter the corporate raiders, men with cash on hand, shrewd business sense, and not a shred of reverence for the Way Things Have Always Been Done. These businesspeople – T. Boone Pickens, Carl Icahn, Saul Steinberg, Ted Turner – saw what others missed: that many of the corporate giants were anomalies, possessed of assets well worth possessing yet with stock market performances so unimpressive that they could be had for bargain prices. When the corporate raiders needed expert help, enter the investment bankers (Joseph Perella and Bruce Wasserstein) and the M&A attorneys (Joseph Flom and Martin Lipton). And when the merger went through, enter the arbitragers who took advantage of stock run-ups, people like Ivan "Greed is Good" Boesky.

The takeover frenzy of the 1980s looked like a game of Monopoly come to life, where billion-dollar companies seemed to change ownership as quickly as Boardwalk or Park Place on a sweet roll of the dice. By mid-decade, every industry had been affected: in 1985, 3,000 transactions took place, worth a record-breaking $200 billion. The players caught the fancy of the media and began showing up in the news until their faces were almost as familiar to the public as the postman's. As a result, Jane and John Q. Citizen's interest in Wall Street began its climb from near zero to where it is today.

What caused the avalanche of activity? Three words: President Ronald Reagan. Perhaps his most firmly held conviction was that Big Business was being shackled by the antitrust laws, deprived a fair fight against foreign competitors that had no equivalent of the Clayton Act in their homelands. Reagan took office on January 20, 1981, and it wasn't long after that that his Attorney General, William French Smith, trotted before the D.C. bar to opine that: "Business does not necessarily mean badness. Efficient firms should not be hobbled under the guise of antitrust enforcement." (This new approach may have been a necessary corrective to the over-zealousness of earlier years, exemplified by the Supreme Court's 1966 decision upholding an enforcement action against the merger of two supermarket chains because the Court felt their combined share of eight percent (yes, that's eight percent) of the Los Angeles market was potentially anticompetitive.)

Raiders, investment bankers, lawyers, and arbitragers, plus the fun couple Bill Agee and Mary Cunningham – remember them? – are the personalities profiled in Robert Slater's book, originally published in 1987. Slater is a wonderful writer, and he's given us a book no less readable for being stuffed with facts, many of them based on exclusive behind-the-scenes interviews. ¤

Robert Slater has authored several business books, which have been on the best-seller lists. He has been a journalist for Newsweek *and* Time.

This book may be ordered by calling 888-563-4573 or by visiting www.beardbooks.com.

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that ambiguity was resolved, as virtually everyone understood the statute to mean, the law firm still would have lost."

Miller adds, however, that the BAPCPA version of the statute does not even need to be addressed because every court along the way in this case rightly concluded that the BTCA version (which corrected the BAPCPA drafting error) applied.

"As the Fourth Circuit noted in its opinion, the BTCA version of the statue became effective even before the underlying case had been converted to Chapter 7. Once converted, the Chapter 7 rules in effect at that time – i.e. the BTCA version – applied. And merely because the law firm had an allowed claim before conversion does not somehow make the BTCA retroactive. This is because there is a big difference between (1) simply having a claim and (2) determining the relative priorities amongst competing claims. When the time came to prioritize those claims, the BTCA rules already were in place. So, the BTCA was not applied retroactively, and the Fourth Circuit got this one right."

In light of this decision, Miller says Chapter 11 professionals should do everything in their power to get their fee claims allowed on a final basis and paid before conversion to Chapter 7. "Retainers, which will provide the professional with a secured claim, and monthly fee procedures, which will reduce the amount of outstanding fees at any given time, will help," he says. "But the best protection is a final fee order that requires immediate payment of all fees and expenses, coupled with a conversion order that is contingent upon the debtor's payment of those fees and expenses. If the professionals have been working productively throughout the case, most judges generally will be receptive to these types of provisions. Most judges don't like to see professionals go unpaid for their hard work."

Trawick Hamilton Stubbs Jr., who represented Stubbs & Perdue, did not respond to a request to comment, nor did the trustee, James B. Angell of Howard, Stallings, From, Hutson, Atkins, Angell & Davis PA. ¤

Special Report

Outstanding Young Restructuring Lawyers – 2016

Lawyer	Firm	Outstanding Achievements
Adam Brenneman	Cleary Gottlieb Steen & Hamilton New York, NY abrenneman@cgsh.com	Integral part of team involved in the $6.5 billion OGX restructuring, largest private sector restructuring in Latin American history. Counsel to Corporación GEO in restructuring approximately $4.5 billion of bank and bond debt. Played key roles in other groundbreaking cross-border restructurings of Inversiones Alsacia S.A. and Express de Santiago Uno S.A., Mirabela Nickel Limited, Automotores Gildemeister, and Vitro.
Jason G. Cohen	Bracewell Houston , TX jason.cohen@bracewelllaw.com	Represented Kinder Morgan in acquiring outstanding public equity of Kinder Morgan Energy Partners, Kinder Morgan Management, and El Paso Pipeline Partners for approx. $76 billion. Responsible for day-to-day mgmt. of bankruptcy case involving TMT Procurement Corp. and 21 Taiwanese-based companies. Other representations include WBH Energy, Deep Marine Technologies, and creditors' committee in Harold's Stores.
Harrison Denman	White & Case New York, NY hdenman@whitecase.com	Played a leading role in firm's successful representations of large groups of creditors in high-profile Chapter 11 cases of Energy Future Holdings, Caesars Entertaining Operating Company, and Residential Capital. Had demonstrable success attracting new creditor representations, having formed and represented ad hoc groups of creditors for troubled companies such as SunEdison, Quiksilver, and LBI Media.
Kelly DiBlasi	Weil Gotshal & Manges New York, NY kelly.diblasi@weil.com	Advising global helicopter services company CHC, steel giant Essar Steel, and senior secured debtholders of Magnum Hunter Resources in pre-arranged Chapter 11. Represented Export-Import Bank of China as largest secured creditor in Chapter 11 cases of Northshore Mainland Services Inc. Previously advised Financial Guaranty Insurance Company as one of the largest creditors in City of Detroit's Chapter 9 case.
Daniel A. Fliman	Kasowitz, Benson, Torres & Friedman New York, NY dfliman@kasowitz.com	Lead bankruptcy partner to former directors and officers of Forest Oil Corporation in the Sabine Oil & Gas Corp. bankruptcy, successfully defeating UCC's motion for standing to pursue, among other things, fiduciary duty claims. Lead partner working with group of first lien term loan lenders of Seadrill Operating LP et al. Lead U.S. counsel for a group of unsecured noteholders of Lightstream Resources.
Brian D. Glueckstein	Sullivan & Cromwell New York, NY gluecksteinb@sullcrom.com	Led trial team representing E-silo UCC in opposing confirmation of plan of reorganization and proposed global settlement in $42 billion Chapter 11 case of Energy Future Holdings, achieving overwhelmingly favorable settlement after three weeks of trial. Providing counsel to Primorsk International Shipping Limited in its pending Chapter 11 reorganization. Also providing counsel in DISH Network and FXI Holdings cases.
Jayme Goldstein	Stroock & Stroock & Lavan New York, NY jgoldstein@stroock.com	Represented ad hoc group of senior unsecured noteholders ($600 million) and indenture trustee for such notes in highly successful litigation in Delaware Court of Chancery against, among others, Foresight Energy. Also represented ad hoc committees, significant lenders or trustees in Alpha Natural Resources (indenture trustee for $725 million second lien notes) and Swift Energy (indenture trustee for $905 million senior notes).
Nicole L. Greenblatt	Kirkland & Ellis New York, NY nicole.greenblatt@kirkland.com	Recent representations include Caesars Entertainment Operating Co. in its Chapter 11 restructuring and Sbarro and its affiliates in their second Chapter 11 cases. U.S. counsel to OGX Petroleo e Gas in connection with its bankruptcy in Rio de Janeiro. Also represented Physiotherapy, ad hoc committee of debt holders of Arcapita Bank, United Retail Group and its subsidiaries, Reader's Digest Association, and Tronox Inc.
Jennifer L. Marines	Morrison & Foerster New York, NY jmarines@mofo.com	Counsel in high-profile energy sector bankruptcies, including UCC for Texas Competitive Energy Holdings and certain debtor affiliates, including Energy Future Holdings Corp.; UCC for Patriot Coal, spearheading negotiations concerning valuation of unencumbered coal assets and leading bankruptcy team in negotiation of global settlement that formed the basis of Chapter 11 plan. Counsel to HOVENSA and UCC of Walter Energy.
Andrew Parlen	O'Melveny & Myers New York, NY aparlen@omm.com	Played a leadership role in firm's highest-profile restructurings, including current representations of Verso Corporation and Cal Dive International. In Verso, had a key role in negotiating with creditor groups and reaching agreement on restructuring agreement. In Cal Dive, secured several victories over objecting maritime lienholders. Also represented large secured creditor in Energy Futures Holdings Chapter 11 case.
Howard S. Steel	Brown Rudnick New York, NY hsteel@brownrudnick.com	Recent representations include lead plaintiffs' counsel opposing General Motors' efforts to enjoin claims related to ignition switch defect, including appeal before the Second Circuit; UCC and post-confirmation liquidation trust of Dewey & LeBoeuf, largest law firm bankruptcy in U.S. history; certain second lien holders and indenture trustee for second lien notes of Arch Coal, one of the largest coal bankruptcies in the world.
Christopher Updike	Debevoise & Plimpton New York, NY cupdike@debevoise.com	Lead counsel to FTI Consulting, as trustee overseeing liquidation of Caribbean Petroleum Corporation; represented Amsterdam House CCRC in largest non-corporate municipal bond default since Detroit Chapter 9; counsel to JPMorgan Chase as first lien agent and DIP lender in contentious Revel Casino Chapter 11. Scored several recent appellate victories, including favorable decisions before the Third Circuit Court of Appeals.

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Gift Cards, *from page 4*

by approximately $20,000 due to some claims being filed in blank or unknown amounts. The remaining claims, asserting approximately $11,000 in priority claims, are listed as requiring additional review before payment.

In addition, 2,250 claims assert approximately $74,000 in general unsecured claims, which are tied to gift card numbers with a total outstanding balance of over $90,000 in RadioShack's books and records. No details regarding payment of those claims is provided in the Liquidating Trustee's Summary Report but general unsecured claims are only entitled to pro rata payment from the net proceeds of the assets of the Liquidating Trust after payment of all allowed senior claims under the confirmed plan of liquidation.

The remaining 337 claims assert claims for gift card numbers not in RadioShack's books and records. While only eight percent of the filed claims by number, they account for 97.75 percent of the asserted dollar value of gift card claims filed thus far. Moreover, just two filed claims account for $5.2 million of the $5.35 million in asserted claims. According to the Summary Report, each of those two large claims "does not list a valid gift card number nor include reasonable evidence of claim." The remaining claims lack gift card numbers, list invalid gift card numbers, or list gift card numbers not in RadioShack's books and records. However, those claims total less than $30,000.

The deadline for the filing of gift card claims is not until December 2, 2016, but these preliminary results are notable to some observers. "I think the number of claims filed is disappointingly low," says Shelley Hunter, who tracks gift card treatment in retail bankruptcies for GiftCards.com. "This suggests that gift card holders either aren't aware that they can get money back for their RadioShack gift cards or simply haven't taken the time to file a claim."

The treatment of gift cards and the claims associated with holding an unused gift card have been major topics of dispute in the RadioShack bankruptcy cases.

Clint Krislov of Krislov & Associates, Ltd., who has represented gift card holders in the bankruptcy cases of several retailers, including the gift card holder seeking class certification in the RadioShack cases, believes that the report provides support for class treatment. "If, as seems likely, the $40,000 in priority redemptions so far are likely to be the eventual total actually redeemed, it shows the importance of having class certification with real notice and protections for these small amount creditors whose monetary deposits provide the lubrication for reorganizations to occur, and whose money is usually glommed onto by the nonpriority commercial creditors," says Krislov.

He also notes a comparison to Sharper Image's bankruptcy, another case in which he was involved. "Per the report (whose public filing was a demand we made), the result is that Texas' settlement will result in only about 1,500 people receiving about $35,000; a recovery of less than 1/10 of one percent," he asserts. "In contrast, the settlement that we produced in Sharper Image, a smaller company for sure, the gift card distributions totaled some $660,000; nearly 20 times as much, due to a much more robust notice campaign, even without people's emails. If anything, I think it shows that class certification's notice and due process requirements actually have value, and are important to pursue in future big box retailer bankruptcies." ¤

Absolute, *from page 2*

to pay it $5,000, or 0.26% of its claim. CB&T objected to confirmation on the grounds that the plan violated the absolute priority rule, allowing the debtors to retain their prepetition property even though CB&T was not being paid in full. The bankruptcy court denied confirmation, and the debtors appealed to the Ninth Circuit.

In looking at the case, the Ninth Circuit noted that two views of the absolute priority rule had developed since the passing of BAPCPA – a narrow view held by a majority of courts and a broad view held by a minority. Courts adopting the narrow view have interpreted sections 1115 and 1129(b)(2)(B)(ii) to allow individual debtors to retain only estate property acquired post-petition (meaning the absolute priority rule does apply to an individual debtor). Courts adopting the broad view have interpreted those sections to allow individual debtors to retain all estate property whether acquired pre- or post-petition (meaning the absolute priority rule doesn't apply to an individual debtor).

The Ninth Circuit created some certainty by adopting the narrow view. Specifically, it held that an individual debtor may not retain pre-petition property when creditors are not paid in full.

Part of its reasoning, says Katie Thomas, an attorney with Squire Patton Boggs: "interpreting sections 1115 and 1129(b)(2)(B)(ii) as defining a new class of property that is exempt from the absolute priority rule 'nicely harmonizes the new provisions.'"

The court also noted, says Thomas, that if Congress had intended to take the broad view and eliminate the absolute priority rule for individual Chapter 11 debtors, it would have done so in a more straightforward manner. "After all, Congress repealed the absolute priority rule in 1952 and then reinstated it in 1978, 'demonstrating that when it intends to abrogate the rule, it knows how to do so explicitly," she says.

As a result of the ruling, says Paul S. Arrow, a shareholder in the insolvency and financial solutions practice group at Buchalter Nemer, "in the face of an objecting class of unsecured creditors, individual debtors in the Ninth Circuit must either pay the unsecured creditors in full, or must not retain any of their non-exempt property. Alternatively, they may avoid selling their property by 'buying it back' in the form of providing new value to the bankruptcy estate for distribution to creditors. Either way, unsecured creditors in individual Chapter 11 cases now have increased leverage to help achieve a more substantial return on their claims."

"The decision in *Zachary*, as well as the prior decisions in the sister circuit

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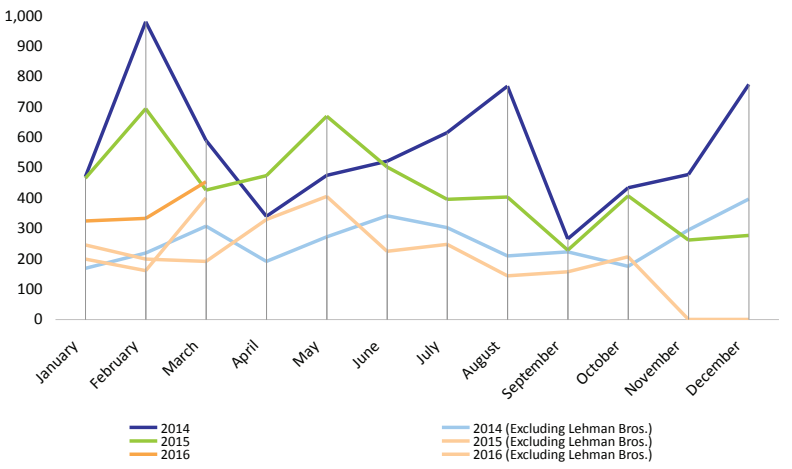
Special Report

Claims Trading Activity

The following charts reflect our analysis of over 13,000 notices of claim transfers filed in large Chapter 11 bankruptcy cases nationwide from January 1, 2014 to March 31, 2016. The court filings were aggregated from a review of court dockets across more than 2,200 cases. A list of the cases covered by our analysis can be found here: https://www.chapter11dockets.com/about/cases.

CHAPTER 11 DOCKETS

Claims Trading Activity by Number of Claim Transfer Notices Filed



Most Active Bankruptcy Cases for Claims Trading Activity: 1st Quarter 2016

By Asserted Amount of Claims Transferred

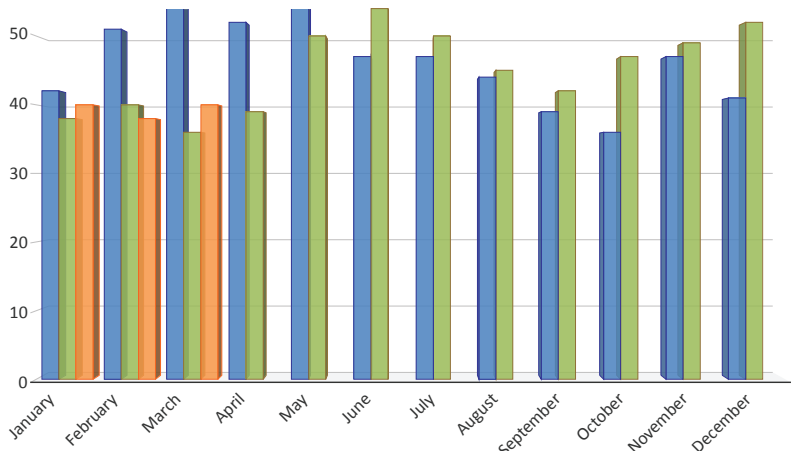
Lehman Brothers Holdings Inc.
Palmdale Hills Property, LLC
MF Global Holdings Ltd.
Fisker Automotive Holdings, Inc.
Brooke Corporation
Qimonda Richmond, LLC
Lyondell Chemical Company
Circuit City Stores, Inc.
Xtreme Power Inc.
Victory Medical Center Mid-Cities, LP

Most Active Bankruptcy Cases for Claims Trading Activity: 1st Quarter 2016

By Number of Claim Transfer Notices Filed

Lehman Brothers Holdings Inc.
Life Partners Holdings, Inc.
Victory Medical Center Mid-Cities, LP
Haggen Holdings, LLC
Magnum Hunter Resources Corporation
East Orange General Hospital, Inc.
Alpha Natural Resources, Inc.
Arch Coal, Inc.
American Business Financial Services, Inc.
Swift Energy Company

Large Chapter 11 Cases With Claims Trading Activity



Gnome de Plume

More Unintended Consequences of Easy Money

by Andy Rahl

I have been very critical of the negative effect that the Fed's easy money policies have had on the bankruptcy and restructuring business. Given that inequality in wealth and income has recently become a key political issue, it's surprising to see the degree to which that discussion has overlooked easy money as one of the key driving factors of that inequality.

Easy money, whether in the form of low interest rates, quantitative easing, or otherwise, works by lowering the discount rate across the economy. In theory, lowering the discount rate makes investment more attractive and that new investment should precipitate a virtuous cycle whereby it creates jobs and increases consumer spending, which spurs further new investment, jobs and spending, etc. However, in practice, despite many rounds of quantitative easing so far, the hoped-for increase in the rate of investment hasn't materialized. The rate of corporate investment has actually declined, while cash balances, stock buybacks, and bank reserves have reached record highs and productivity gains have stalled.

What also has happened, though, is that the lower discount rate has made all financial assets, especially equity, debt, and real estate, more valuable, as evidenced by the last six years of rising stock and bond markets and most real estate values. The inequality problem is that the distribution of financial assets across the economy is not equal. Generally speaking, rich people own financial assets and poor people do not, so the benefits of easy money are not distributed equally.

To take one example: people who are the incumbent owners of real estate reap the gains of rising real estate prices. Meanwhile, those who are not owners receive none of this benefit. Indeed, they get hit twice: as prices rise, affordability drops, and those who are not yet property owners only see the prospect of ownership recede further out of reach as prices continue to rise faster than their real income does.

Thus, one consequence of easy money has been a relative transfer of wealth from people who don't own financial assets to those who do. That has translated into a transfer of wealth from the poor to the rich, from the young to the old, from the rural to the urban, and from those with less education to those with more.

It may be that few of the blue-collar types at Trump rallies or the student-loan crowd at Sanders events understand the finer points of discount rates and asset pricing, but few of them would dispute that there has been a significant change in the distribution of wealth and economic opportunity over the last 15 years that has not worked in their favor. Not coincidentally, this is roughly the time when the Fed started pushing easy money.

Technology and trade have also been important contributors to this trend, but it's implausible to identify them as the proximate cause of a large part of the electorate unexpectedly going populist in 2016. Far more plausible is the dramatic rise in asset markets since 2009. It's a tall order to ask people to support a system where a narrow slice of the population that owns the bulk of its financial assets gets richer every year while they and much of the rest of the country struggle. No doubt there have been compensating effects in the form of cheaper financing for cars and appliances, etc., but it's hard to argue that the benefits of easy money have been equally distributed.

In any case, if the primaries so far are an indication, many voters have decided that collectively the United States is not better off. If the electorate ends up going populist in November, we should add that to the list of unintended consequences of easy money as well. ¤

Absolute, *from page 8*

courts, is a 'double-whammy' for individual debtors in Chapter 11," says Thomas. "Individual Chapter 11 debtors cannot confirm a plan over the objections of creditors unless they relinquish both five years' of post-petition disposable income (as provided for in section 1129(a)(15)(B)) and prepetition property. Debtors may need to brace themselves for longer, more protracted negotiations with unsecured creditors, and should prepare themselves to part with prepetition property. Enabling a fresh start for the individual Chapter 11 debtor has just become a more difficult endeavor, and may force more individual debtors into Chapter 7." ¤

In the Next Issue…

- *Special Report: Major Trade Claim Purchasers*
- *Special Report: Top Internet Bankruptcy Resources*
- *Research Report: Who's Who in Arch Coal, Inc.*

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