

TOP STORIES

Bankruptcy-Law Changes Cause Confusion In Chapter 11 Cases

Last fall saw a rush on the courts, as both debt-laden consumers and major corporations like Delta Air Lines Inc., Northwest Airlines Corp. and Delphi Corp. sought bankruptcy protection to avoid having to file under the untested provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act. *p. 2*

Bankruptcy-Law Changes Turn Many Lawyers Into Bloggers

What do sex, politics and the new bankruptcy law have in common? They're all hot topics on the blogosphere – for one. *p. 5*

Sea Containers Files Petition For Chapter 11 Reorganization

Sea Containers Ltd., one of the world's biggest marine-cargo operators, filed for Chapter 11 protection from its creditors after failing to make a \$115 million payment to its bondholders. *p. 6*

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Manhattan: Delta Air Lines hearing on modified retiree benefits

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Manhattan: Daewoo Corp. Chapter 15 hearing

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New Orleans: Exclusivity hearing

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Houston: Sentencing hearing for Ex-Enron CEO Skilling

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Manhattan: Hearing on reconsideration of Dana executive bonuses

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“The statute doesn’t really give any guidance at all on how to do that,” said U.S. Trustee Felicia Turner, whose office serves as the watchdog over bankruptcy cases in Florida, Georgia, Puerto Rico and the U.S. Virgin Islands.

After the law took effect last fall, creditor committees in almost every new Chapter 11 case were seeking so-called “comfort orders,” asking judges to assure them that they don’t need to provide confidential information to all creditors.

Turner said she’s happy with the use of the Refco ruling as a model for information-sharing protocol. “That’s what we think Congress probably meant,” said Turner, speaking at the Turnaround Management Association’s annual convention in Orlando last week.

Although Congress’s intent hasn’t been completely clear in many aspects of the bankruptcy reform, changes that gave a bankrupt company the exclusive right to file a Chapter 11 reorganization plan for a maximum of 18 months were designed to keep bankruptcy cases from dragging on for years while fees for lawyers and advisers piled up.

“I believe that the motivation in Congress was to cut professional fees,” Michael Richman, chair of Foley & Lardner’s bankruptcy practice, said at the TMA convention.

Energy giant Calpine, which listed more than \$20

billion in debt in its Chapter 11 filing in December 2005, may present the first real test on the exclusivity front, said the company’s bankruptcy lawyer, Richard Cieri of Kirkland & Ellis. Calpine’s 18 months will run out next June, and the company has already signaled it won’t file a plan before the end of 2006.

Some, however, have said the exclusivity restrictions aren’t likely to have a big impact because judges retain a lot of leeway to drive the process, and because lawyers come up with ways to get de facto extensions. “There are all sorts of games you can imagine taking place,” said ABI resident scholar Skeel.

Many bankruptcy lawyers and judges say they will be forced to work out the kinks in the new bankruptcy law themselves. Efforts to change the legislation – even to fix inconsistencies and grammatical errors – have gone almost nowhere, and the law’s opponents say they don’t have much hope to accomplish anything unless Congress passes into the hands of the Democrats next month.

“Certainly, the reaction to the stay bonus provision and the efforts to draft around it show us, for not the first time, that bankruptcy lawyers are quite ingenious,” said Skeel. **DBR**

- Kristina Doss, Patrick Fitzgerald and Marc Hopkins contributed to this report.

Bankruptcy-Law Changes Turn Many Lawyers Into Bloggers

BY LAURA MCGANN

What do sex, politics and the new bankruptcy law have in common? They’re all hot topics in the blogosphere – for one.

Bankruptcy enthusiasts have hopped on the blogging bandwagon in recent years to start at least 84 sites that touch on the topic, according to www.technorati.com, a Web site that keeps blog statistics.

A handful of these sites’ virtual pundits, who tend to keep scholarly or legal day jobs, exclusively cover the gamut of bankruptcy issues. They comment on an array of topics – from consumer debt to corporate flame-outs, and, with fervor and even humor, the law that governs it all.

Overwhelmingly, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 has been the law to produce the most bankruptcy commentary on the Web.

When Congress, which normally passes laws with acronyms that spell lofty words like “patriot,” approved BAPCPA, lawyers, judges and academics appeared eager to discuss the act’s implications.

One of the grandfathers of bankruptcy blogging, Steve Jakubowski, is a Chicago attorney at the Coleman Law Firm who runs www.bankruptcylitigationblog.com.

“I saw there were no bankruptcy blogs, I was shocked,” Jakubowski said, describing how he scouted the Internet for bankruptcy coverage in the spring of 2005. “It just seemed like a natural thing to do.”

Jakubowski writes commentary-based and round-up posts about once a week. He also gives readers access to a nine-part outline he created on the intricacies of the new law.

“It forces you to stay on top of the law,” said Jakubowski. “It’s a nice electronic library I keep for myself.”

Jakubowski’s library has helped others as well. The site boasts between 3,500 and 4,000 visitors a month who rack up 12,000 hits. That’s 1,000 more hits than there are members of the American Bankruptcy Institute.

The ABI, which has the lucky Web site that appears first when the word “bankruptcy” is googled, also sponsors its own blog, <http://bapcpa.blogspot.com>.

ABI asked to back the blog dedicated to covering the new law about a month or two after corporate-bankruptcy attorney David Rosendorf started posting. Over the next year-and-a-half, Rosendorf found himself picking and choosing what to cover.

“There’s a tremendous amount of law out there to discuss,” Rosendorf said.

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Bloggers (continued from page 5)

Rosendorf said he wanted to start a blog in the spring of 2005, but was lost for a subject. When the law passed he decided to blog about the tangible results of what had been the center of a flurry of discussion surrounding the act's hypothetical impact.

"There wasn't really enough discussion of what was actually happening in the courts when they had this dropped in their laps," Rosendorf said.

His blog chronicles major developments in the law, particularly as they relate to consumer bankruptcy cases. Rosendorf, who has been practicing corporate bankruptcy law for a dozen years, said the consumer issues have been a challenge.

Even though judges have started to draw dividing lines on some issues, "a lot of very smart judges have reached very different opinions," Rosendorf said. Clarifying some of these issues for lawyers in the trenches dealing with the new bankruptcy frontier has been the most gratifying part of his endeavor, he said.

Other blogs set their sites on a broader audience beyond practicing attorneys. For a group of professors linked by a common interest in bankruptcy policy, a team blog seemed like an opportunity to reach readers who

might not frequent a university library.

This summer law professor Bob Lawless of the University of Illinois at Urbana-Champaign persuaded six of his colleagues from around the country to start posting on www.creditslips.org.

Usually an academic's article is "published in a scholarly journal and sits on a shelf in a library," Lawless said. "We made a deliberate effort to reach out beyond academia."

Creditslips features both humorous and straightforward commentary on topics ranging from the growth in the elderly filing for bankruptcy to a new law that allows for tithing while in bankruptcy.

"Will Congress just cut it out?" Lawless asked in a post about the new tithing exemption. "Now, their inept drafting coupled with pandering to the religious right threatens the ability of the self-employed to fund chapter 13 plans. I thought we were supposed to like small business?"

The young blog that started in July is attracting about 1,400 visits a week, according to Lawless.

"We're not cnn.com or anything," he said. **DBR**

Sea Containers Files Petition For Chapter 11 Reorganization

BY PATRICK FITZGERALD

Sea Containers Ltd., one of the world's biggest marine-cargo operators, filed for Chapter 11 protection from its creditors after failing to make a \$115 million payment to its bondholders.

The Bermuda-registered company listed \$1.6 billion in debts and \$1.7 billion in assets in its bankruptcy petition, filed Sunday with the U.S. Bankruptcy Court in Wilmington. Measured by debt, the Chapter 11 filing was the largest since Dana Corp. entered bankruptcy proceedings in March.

It said it was forced to file for Chapter 11 after discussions with bondholder over a debt restructuring failed.

"The prime reason for seeking protection is to prevent any individual creditor from taking action on its own, which would be against the interests of Sea Containers and the majority of creditors," said Sea Containers Chief Executive Robert D. MacKenzie in a statement. "Although we have not paid the October 15 public notes, we are optimistic about the success of our restructuring program and our ability to reach agreement with creditors."

Last year, Sea Containers lost \$523.9 million on revenue of \$1.7 billion.

Sea Containers said it intends to reorganize around its container leasing and rail businesses. The company also runs a passenger train service in the U.K. Sea Containers placed two other units – Sea Containers Services Ltd. and Sea Containers Caribbean Inc. – under Chapter 11

protection. Sea Containers' other businesses, including the rail line and the company's U.S. ferry business, didn't file for Chapter 11.

The company operates its marine container fleet through a joint venture with General Electric Capital Corp. Though GE SeaCo unit, the company leases more than 50 types of containers including refrigerated units, tank containers heavy-duty "flatracks" and standard cargo containers. On Friday, the company sold its non-GE SeaCo containers for about \$24 million to Unitas Containers Ltd.

In addition to its container business, Sea Containers also operates the money-losing Great North Eastern Railway under a franchise agreement with the British government. The company said the London-to-Edinburgh passenger line has been plagued by an unsustainable contract with the British government, increased competition and higher fuel and electricity costs.

Sea Containers listed banks representing bondholders owed a total of \$367.8 million as its three largest unsecured creditors. Silver Point Capital, a hedge fund based in Greenwich, Conn., was listed as No. 4. The fund is owed \$19.5 million, according to court papers.

Before the Chapter 11 filing, the struggling Sea Containers had taken steps to restructure its business by exiting its ferry business. In June of this year, Sea Containers sold its Balkan Sea ferry line this summer for \$553 million and put its SeaStreak ferry business, which runs from New Jersey to Manhattan, on the block. It also pulled the plug on its U.K.-to-France Hoverspeed ferry service.

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