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Saving Whitton

Real Estate Firm Sets Precedent with Legal Maneuvering

by Julie Schaeffer

A real estate company's unique strategy for staving off foreclosure could pave the way for other such companies attempting to reorganize under Chapter 11.

"By merging several single-asset real estate companies, Whitton Corp. avoided onerous restrictions that bankruptcy law places on property owners with only one asset," says Hal L. Baume, a partner in the Princeton, NJ, and New York offices of Fox Rothschild.

Key to the company's strategy: "Whitton developed its reorganization strategy prior to filing Chapter 11, which required merging the entities into one company, the result of which limited the ability of each mortgage lender to block reorganization and foreclose on properties used as collateral," says Baume.

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A Sparkling Recovery

Jewelry Television Restructuring Receives Major Award

by Dave Buzzell

In 2008, after fifteen years in business, Multimedia Commerce Group, Inc., dba Jewelry Television (JTV), had become one of the bright lights in the jewelry retail business. The company was the largest jewelry-focused television home shopping network in the United States, the largest retailer of loose colored gemstones in the world, and the fourth largest Internet jewelry retailer. JTV had over 500 contracts with cable companies, satellite providers, and television stations, and was producing 24/7 programming for nearly 80 million households nationwide.

The company's future quickly tarnished, however, when the recession hit in 2008. The blow to jewelry retailers was especially unforgiving. Jewelry is a discretionary purchase,

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The New Rules

Bankruptcy Rules Set to Change in December

by Julie Schaeffer

As those who regularly practice bankruptcy law may have already figured out, change is afoot in some key bankruptcy rules, including Rules 2019 and 3001 – and not all restructuring professionals think they're good for the system. "Congress amended the Bankruptcy Rules, much as it did the Bankruptcy Code in 2005, because of perceived abuses in the system," says Jonathan Carson, managing director at Kurtzman Carson Consultants. "As was the case in 2005, the extra bureaucracy will make it more difficult and expensive for the bankruptcy process to run its natural course."

"The amendments to Rule 2019," says Carson, "are most relevant to Chapter 9 or

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Whitton, *from page 1*

In order to understand Whitton's maneuvering, it's important to note that the U.S. bankruptcy code recognizes two types of real estate entities – single-asset and multiple-asset – and treats them quite differently.

Single-asset real estate entities have 90 days to either file a plan of reorganization or to begin making regular interest payments on their principal loan balance. Additionally, lenders to single-asset real estate entities have the ability to block a plan of reorganization and proceed directly to foreclosure.

The intention, says Baume, is to make the case move swiftly. "With typical single-asset real estate entities, the major creditor is the lender, with, perhaps, some small unsecured creditors, because typical single-asset real estate entities have no ongoing business operations except owning and leasing real estate. Often, single-asset real estate debtors would file Chapter 11 with no realistic chance of reorganizing in order to stall foreclosure."

Multiple-asset real estate entities, on the other hand, have a real hope of reorganization, he says. As a result, the bankruptcy code gives them more time to develop a plan of reorganization. Additionally, lenders to multiple-asset real estate entities have a limited ability to block the entity's plan of reorganization and proceed directly to foreclosure – and as long as one lender agrees to a plan of reorganization, the real estate entity can follow that plan despite the objection of other lenders. "A single-asset real estate case doesn't give the debtor the kind of flexibility that comes in a multiple-asset, or non-real estate, bankruptcy," says Baume.

Whitton, based in Henderson, NV, had previously done business under several South Tech corporate names as a real estate firm with multiple single-asset entities. But just one day before lenders initiated foreclosure proceedings, Whitton merged its single-asset entities together to form a multi-asset entity and filed for bankruptcy protection.

As a result, Whitton gained time and leverage to reorganize rather than accept foreclosure. "Despite the fact that we had developed a reorganization plan prior to filing, if we had filed 15 separate debtor

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Jewelry TV, *from page 1*

and even more so with JTV's core demographic: women 45 to 70, with an average household income over \$75,000.

Tim Matthews had just been appointed CEO and President of JTV, in April of 2008, when the bottom fell out. Considering what Matthews brought to the table, he was a fortunate choice for a firm in dire straits.

Before coming to JTV, Matthews had been practicing law in Cincinnati for 26 years and was a partner for over twenty years in the law firm of Keating Muething & Klekamp, where he headed the firm's commercial finance and reorganization practice and counseled numerous firms in workout situations, working extensively on bank-related transactions. Prior to his law career, he had excelled as a student at Harvard University and then at Harvard Law School, graduating from both with honors and one of a handful of people in college responsible for running the undergraduate computer center. His love of technology and his entrepreneurial spirit led him to start a television and video production company in 1992 and serve on the boards of several technology-related businesses. Before becoming CEO of JTV, the company had engaged him as a management consultant and to lead its IT steering committee.

"I had experience working on all kinds of financial matters and was very comfortable dealing with banks. With my interests in broadcasting, media, technology, I also had a firm grip on television production, e-commerce, computers, and technology infrastructure – everything except selling jewelry," Matthews laughs.

Matthews had to quickly learn to sell jewelry as well. "We went through a hellacious time in 2008 and 2009," he recounts. The jewelry industry suffered as much or more than any other single industry. It was worse than the auto industry in terms of the decline in sales volume and you saw what happened to GM and Chrysler then."

Compounding JTV's problems were a series of prior business decisions, along with some bad luck. Jewelry Television had expanded its inventories dramatically in anticipation of growth, invested money in a corporate jet, elected to repurchase stock from a major shareholder, and

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New Rules, *from page 1*

Chapter 11 bankruptcy, as Rule 2019 governs disclosure requirements for committees that consist of multiple creditors or equity security holders, and the entities that represent them."

In its pre-amended form, Rule 2019 imposes additional disclosure requirements on committees (other than an official committee) representing more than one creditor or equity security holder. Such additional disclosures could include, among other things, the amounts of claims owned by the members of the committee, the date such claims were acquired, the amounts paid for such claims, and any dispositions of such claims.

The amended rule clarifies the meaning of "represent," which now requires active participation in the case on behalf of another entity, which can occur either by taking a position on a matter before the court or by soliciting votes on the confirmation of a plan. It expands beyond direct claims to include derivatives, participations, pledges, options, and other indirect interests, all of which are referred to as "disclosable economic interests." And, it modifies disclosure requirements.

In some ways, the amended rule reduces the level of information required, and specifically pertains to the nature and amount of the disclosable economic interests, the representing entity, and, under certain circumstances, quarter and year of acquisition. It does not require the disclosure of the price paid for a disclosable economic interest.

However, Carson points out that the amended Rule 2019 expands the scope of the disclosure requirements by authorizing a court to require disclosure by a party when knowledge of that party's economic stake would help the court evaluate that party's argument. "If the judge is considering three plans of reorganization, and a creditor is supporting one of them, the judge can ask a creditor to disclose further information to assist him/her in forming [its] conclusions."

Carson says the amendment reminds him of Congress' 2005 modification of Section 1102, which placed a new burden on creditors' committees to disseminate information they received to all non-committee constituents. "In an effort to curb a perceived abuse, new requirements were imposed for additional disclosures

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Research Report

Who's Who in the Los Angeles Dodgers LLC

by Françoise C. Arsenault

The Los Angeles Dodgers LLC (Dodgers) is a member of the Major League Baseball (MLB) National League West Division. Established in 1883, the team originated in Brooklyn, New York, where it was known by a number of nicknames before becoming the Dodgers by 1932. The team moved to Los Angeles before the 1958 season. The Dodgers played their first four seasons at the Los Angeles Memorial Coliseum before moving to their current home of Dodger Stadium, the third-oldest ballpark in MLB, trailing Fenway Park and Wrigley Field. The Dodgers were the first team to broadcast a game on television in 1939.

In March 2011, Forbes magazine ranked the Dodgers as baseball's third-most valuable team, worth \$800 million, more than twice what Frank McCourt paid for the team in 2004 when he purchased the Dodgers from News Corporation. Only the New York Yankees and Boston Red Sox are worth more.

On April 20, 2011, MLB Commissioner Bud Selig announced that the MLB would appoint a representative to oversee the day-to-day operations of the Dodgers because of concerns that the ownership was ruining the finances and operations of the team. On June 27, 2011, the Los Angeles Dodgers, LA Real Estate LLC, an affiliated entity which owns Dodger Stadium, and three other related holding companies filed for Chapter 11 reorganization in the United States Bankruptcy Court for the District of Delaware. In the Chapter 11 petition, the Dodgers listed assets of as much as \$1 billion and liabilities of as much as \$500 million. Frank McCourt has blamed Selig's refusal to approve a multibillion dollar media rights agreement with News Corporation's Fox Broadcasting Company as the primary reason for the filing.

The court had authorized the Dodgers to access up to \$60 million in DIP financing to pay salaries from \$150 million being offered by JPMorgan Chase hedge fund unit Highbridge Capital Management LLC. The team's largest unsecured creditors include former outfielders Manny Ramirez and Andruw Jones, who are owed \$21 million and \$11.1 million, respectively. On July 22,

the court ruled against the DIP financing, finding that the Dodgers' refusal to negotiate with the MLB on its alternative, unsecured loan contravened a Bankruptcy Code provision demanding that a debtor seek unsecured financing.

On September 16, the Dodgers requested court permission to auction television rights to the Dodgers games. Under the terms of the proposal, the Dodgers would negotiate exclusively with Fox Broadcasting for 45 days. If a stalking-horse bid is not agreed to within the 45 days, the Dodgers would then have 60 more days to solicit bids from other parties. According to the Dodgers, the sale of the team's television rights would generate sufficient income for the Dodgers to pay off its debts and exit bankruptcy. The Dodgers would include the MLB in the marketing process and would submit any deal to the Commissioner for approval.

The MLB has retained Thomas E. Lauria and Glenn M. Kurtz at White & Case to supplement its legal team from Proskauer Rose LLP, led by Mark K. Thomas and Jeffrey W. Levitan, partners, and Bradley Ruskin, co-Chair of the firm's Litigation & Dispute Resolution Department. The MLB appointed Akin Gump Strauss Hauer & Feld LLP senior counsel J. Thomas Schieffer to run the Dodgers when it assumed control of the team in April 2011.

Jamie McCourt and Frank McCourt expect to settle their divorce and resolve the question of who owns the Dodgers in a trial now scheduled for the late spring or early summer 2012. Frank McCourt is claiming sole ownership of the Dodgers and Jamie McCourt is claiming half ownership. Jamie McCourt has retained Laura Davis Jones and Timothy P. Cairns, partners with Pachulski Stang Ziehl & Jones LLP, to represent her in the bankruptcy proceedings and other matters.

The Debtor

Frank McCourt is the owner and Chairman of the Los Angeles Dodgers LLC. **Jeff Ingram** is Vice Chairman. **Ned Colletti** is the General Manager. **Geoff Wharton** is the Chief Operating Officer. **Peter D. Wilhelm** is the Chief Financial Officer. **Michael Young** is

Chief Revenue Officer. **Sam Fernandez** is Senior Vice President and General Counsel. **Tommy Lasorda** is Special Advisor to the Chairman.

Dewey & LeBoeuf is lead bankruptcy counsel. The team includes **Bruce S. Bennett**, **Sidney P. Levinson**, **Martin J. Bienenstock**, **Philip M. Abelson**, **David G. Feher**, **David L. Greenspan**, **James O. Johnston**, **Joshua Mester**, **Jeffrey L. Kessler**, **Mitchel C. Pahl**, **Matthew Walsh**, **Riche T. McKnight**, and **Monika Wiener**, all partners with the firm.

Young Conaway Stargatt & Taylor, LLP is serving as the local Delaware counsel to the Dodgers. **Robert S. Brady**, a partner with the firm, heads up the team. Also working on the case are **Pauline K. Morgan** and **John T. Dorsey**, partners.

Deloitte & Touche LLP is providing independent auditing services to the Dodgers. **Rod Gauer**, a partner in the firm's Los Angeles office, directs the work.

Kekst and Company Incorporated is serving as the media and corporate communications advisor to the Dodgers. **Robert D. Siegfried**, a principal and a partner in the firm's New York office, leads the engagement.

The Official Committee of Unsecured Creditors

The Committee includes the **Major League Baseball Players Association**; **Elizabeth Ann Stowe** and/or **David Edward Stow**, as conservators to **Bryan Stowe**; **KABC Radio**; **AVM Systems Ltd. Partnership**; and **Pyro Events, Inc.**

Morrison & Foerster LLP is acting as the lead counsel to the Committee. **Lorenzo Marinuzzi**, **Stefan W. Engelhardt**, **Brett H. Miller**, and **Larren M. Nashelsky**, partners, and **Todd M. Goren**, of counsel, are working on the case.

Pinckney, Harris & Weidinger, LLC is the local Delaware counsel. **Joanne P. Pinckney** and **Donna L. Harris**, partners, are working on the case.

The Trustee

The U.S. Trustee is **Roberta A. DeAngelis**.

The Judge

The judge is the **Honorable Kevin Gross**. ▣

Whitton, *from page 2*

cases, our chances of reorganizing would be less than they are by filing one,” says Baume.

Most of Whitton’s secured creditors opposed the reorganization, arguing, among other things, that Whitton had shown bad faith by merging before filing for bankruptcy protection. Some creditors also argued that the court should not allow this precedent to be set for policy reasons because it would allow debtors to get around the single-asset real estate provisions, says Baume.

However, with the blessing of one mortgage lender, an investor to revitalize the company, and the approval of Judge Bruce Markell, Whitton overcame the lenders’

attempts to block its plan of reorganization.

According to Baume, Whitton’s strategy isn’t entirely new. Transferring assets to a new entity before filing for bankruptcy is referred to as “new debtor syndrome,” and usually triggers bad-boy provisions in loan documents.

“If you’re a real estate company that owns 10 single-asset real estate entities, you would have to file 10 separate Chapter 11s, each one with all the associated impediments,” he says. “Over the years, debtors have tried to get around this by having the separate entities transfer their real estate to one entity (which would then file the Chapter 11), arguing that it’s not a

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Jewelry TV, *from page 2*

bought the Shop At Home Network, which eventually failed. While all of these decisions could have worked out in a growing economy, they turned very painful in a shrinking one.

In 2008, while the company’s revenues were dropping precipitously – declining by 40 percent in less than nine months – the company’s operating costs had to be dramatically reduced, along with its number of employees.

To compound the impact of a bad economy, the company also learned in 2008 that a major gemstone the company sold was found to have been artificially treated by suppliers. Even though the company’s tests showed it to be natural stone, the suppliers’ deception wasn’t caught, and the result was a class action lawsuit against the company, which was successfully settled later.

The economic downturn also had the perverse effect of causing gold prices to soar

at a time when consumers were becoming more cost conscious, putting a lot of pressure on the price of all the company’s popular gold jewelry items.

Matthews entered a situation when the amount of money owed by JTV on a line of credit had grown to \$100 million while revenue was in the process of dropping almost \$200 million in less than two years. Pre-tax losses totaled \$93 million during the same period.

In the fall of 2008, with the capital markets all but shut down, JTV defaulted on a \$100 million unsecured line of credit. As a condition for additional credit, the company’s lenders required Matthews to bring in a restructuring expert. Matthews agreed, but said he wanted the choice to be his. After considering several possible candidates, he selected Tom Hays of NHB Advisors, a Certified Turnaround Professional and Past Chair of the Turnaround Management

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New Rules, *from page 2*

which have added more time and expense to the process.”

Change is also afoot in Rule 3001, which pertains to filing a proof of claim in an individual bankruptcy. For any proof of claim based on written material, the claimant must provide a copy of that written material. If the written material cannot be obtained, the claimant must provide a statement explaining why. It’s the supporting documentation requirement that’s new.

The change, says Carson, puts a greater

burden on creditors to protect their interests in bankruptcy, but more importantly, can lead to sanctions. “For example, if a creditor files a claim against an individual because he or she owes money on a mortgage, and doesn’t provide all of the required disclosure, the judge can sanction the creditor for money.”

Megan Hill, an attorney with Tucson-based Bass & Associates PC, says the amended Rule 3001 is better in several ways, including the fact that it removes the requirement that a claim be effectively

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Calendar

American Bankruptcy Institute
7th Annual International Insolvency
& Restructuring Symposium
October 21, 2011
The Westin Dublin
Dublin, Ireland
Contact: www.abiworld.org

Turnaround Management Association
2011 TMA Annual Convention
October 25-27, 2011
Hilton San Diego Bayfront
San Diego, CA
Contact: www.turnaround.org

Practising Law Institute
Nuts and Bolts of Corporate
Bankruptcy 2011 Seminar
November 17-18, 2011
San Francisco, CA
Contact: www.pli.edu

Beard Group
18th Annual Conference on
Distressed Investing
November 28, 2011
The Helmsley Park Lane Hotel
New York, NY
Contact: (240) 629-3300

American Bankruptcy Institute
23rd Annual Winter Leadership
Conference
December 1-3, 2011
La Quinta Resort & Club
La Quinta, CA
Contact: www.abiworld.org

National Association of Bankruptcy Trustees
2012 Spring Seminar
March 30-31
The Venetian/Palazzo
Las Vegas, NV
Contact: www.nabt.com

Turnaround Management Association
TMA 2012 Spring Conference
April 3-5, 2012
Grand Hyatt Atlanta
Atlanta, GA
Contact: www.turnaround.org

Special Report

Major Chapter 11 Cases by Industry Sector*

Industry Sector	Company	Date Filed	Court	Assets	Debtor's Counsel
Accommodation/Food Serv.	MSR Resort Golf Course	Feb. 1	NY, Southern	\$2,200,000,000	Kirkland & Ellis
	Barnes Bay Development	Mar. 17	Delaware	\$531,000,000	Akin Gump Strauss Hauer & Feld
	Sbarro	Apr. 4	NY, Southern	\$471,006,000	Kirkland & Ellis
	Perkins & Marie Callender's	June 13	Delaware	\$290,000,000	Young Conaway Stargatt & Taylor
Agriculture	Merced Falls Ranch	Aug. 16	Calif., Eastern	\$100–\$500 Million	Walter & Wilhelm
Construction	Maronda Homes	Apr. 18	Penn., Western	\$100–\$500 Million	Manion McDonough & Lucas
Entertainment & Recreation	Los Angeles Dodgers	June 27	Delaware	\$500 million–\$1 billion	Young Conaway Stargatt & Taylor
Finance & Insurance	New Stream Secured Capital	Mar. 13	Delaware	\$500 million–\$1 billion	Reed Smith
	Global General and Reinsurance	Jan. 31	NY, Southern	\$500 million–\$1 billion	Chadbourne & Parke
	Majestic Capital	Apr. 29	NY, Southern	\$436,191,000	Genova & Malin
Healthcare	Hingham Campu	June 14	Texas, Northern	\$100–\$500 Million	DLA Piper
	Otero County Hospital Assocs.	Aug. 16	New Mexico	\$100–\$500 Million	White & Case
Information	Satelites Mexicanos, S.A. de c.v.	Apr. 6	Delaware	\$441,600,000	Greenberg Traurig
	Caribe Media	May 3	Delaware	\$100–\$500 Million	Pachulski Stang Ziehl & Jones
	Inner City Media Corp.	Aug. 19	NY, Southern	\$100–\$500 Million	Akin Gump Strauss Hauer & Feld
	Bowe Systec	Apr. 18	Delaware	\$100–\$500 Million	Richards, Layton & Finger
	Pegasus Rural Broadband	June 10	Delaware	\$100–\$500 Million	Elliott Greenleaf
Manufacturing	New Page	Sept. 7	Delaware	\$3,400,000,000	Dewey & LeBouef
	Solyndra	Sept. 6	Delaware	\$500 million–\$1 billion	Pachulski Stang Ziehl & Jones
	Constar International	Jan. 11	Delaware	\$418,000,000	Wilmer Cutler Pickering Hale & Dorr
	Evergreen Solar	Aug. 15	Delaware	\$373,972,000	Bingham McCutchen
	Angiotech Pharmaceuticals	Jan. 30	Delaware	\$326,800,000	Allen & Overy
Mining	Seahawk Drilling Inc.	Feb. 11	Texas, Southern	\$504,897,000	Fullbright & Jaworski
	Peregrine I	Apr. 25	Delaware	\$100–\$500 Million	Richards, Layton & Finger
Professional Services	Jackson Hewitt Tax Service	May 24	Delaware	\$315,990,000	Skadden, Arps, Slate, Meagher & Flom
Real Estate	PJ Finance Company	March 7	Delaware	\$275,000,000	DLA Piper
Retail	Borders Group	Feb. 16	NY, Southern	\$1,280,000,000	Kasowitz Benson Torres & Friedman
	Nebraska Book Company	June 27	Delaware	\$657,216,000	Pachulski Stang Ziehl & Jones
	Harry & David Holdings	Mar. 28	Delaware	\$304,300,000	Jones Day
	Archbrook Laguna Holdings	July 8	NY, Southern	\$246,200,000	Akin Gump Strauss Hauer & Feld
	DSI Hldings aka Deb Shops	June 26	Delaware	\$124,400,000	Weil, Gotshal & Manges
	Appleseed's Inter. Holdings	Jan. 19	Delaware	\$100–\$500 Million	Kirkland & Ellis
	Ultimate Acquisition Partners	Jan. 26	Delaware	\$100–\$500 Million	Jaffe Raitt Heuer & Weiss
Trans. & Warehousing	Omega Navigation Enterprises	July 8	Texas, Southern	\$527,600,000	Bracewell & Giuliani
	Marco Polo Seatrade BV	July 29	NY, Southern	\$100–\$500 Million	Bracewell & Giuliani
	Seaarland Shipping Management	July 29	NY, Southern	\$100–\$500 Million	Bracewell & Giuliani
Utilities	AES Thames	Feb. 1	Delaware	\$156,747,000	Landis Rath & Cobb



* Chapter 11 filings between January 1-September 30, 2011

Worth Reading

Getting It to the Bottom Line: Management by Incremental Gains

Author: Richard S. Sloma

Publisher: Beard Books

Softcover: 196 pages

List price: \$34.95

In the author's words, this is a book about how to "optimize operating profit in an ongoing business consistent with and supportive of the owners' (and/or creditors') demands." As in his book *The Turnaround Manager's Handbook*, also published by Beard Books, Sloma's guidance is all-inclusive, straightforward, and informative. He is unique in his ability to use quotes and maxims without sounding preachy or trite.

A quote from Francois Voltaire, "perfection is attained by small degrees," explains the main premise of this book, management by incremental gains. It is based on the simple notion that change, for better or worse and accidentally or on purpose, only occurs incrementally. Without a succession of small changes in the same direction, there can be no progress or growth. Sloma defines management as "getting work done through the efforts of others." Thus, change in an organization depends on people. The author takes a pragmatic (but perhaps somewhat pessimistic) view of the ability of people to change, and maintains that, the smaller a change planned by management, the more likely it is to be successfully implemented.

Sloma provides "real-world tested and proven methodology for working with people in a professional manner to maximize their individual commitment to goal achievement." He offers recommendations based on more than 30 years of management experience that "strike(s) the long-sought-after logical balance of viewing and managing people as if they were competent, conscientious, and ambitious individuals who genuinely seek opportunities for professional growth and development."

Getting It to the Bottom Line is not only about people skills. Sloma introduces financial and operational performance numbers, and gives details on how income statements and cash flow reports measure the magnitude and direction of planned changes in financial and operational performance. His operational framework is illustrated in the following eight steps: 1) quantify the do-nothing scenario; 2) if it works, don't fix it; 3) if it doesn't work, quantify minimal acceptable performance levels; 4) quantify the do-nothing scenario; 5) if necessary, cut your losses, liquidate, and reinvest elsewhere; 6) quantify management action plans to bridge the performance gap; 7) define and establish a reporting and control system; and 8) define and implement an incentive compensation program.

Sloma thoroughly discusses each step, applying commonly accepted financial analysis methods, as well as introducing some of his own. Throughout, he consistently emphasizes the importance of achieving ambitious goals one small step at a time. He admonishes managers to "spend no time or effort making 'little' plans. They have no magic to stir men's blood – or to make owners as wealthy as they could be!"

This is a solid and substantive book that targets managers at every level. The author presents his concepts in such a way that anyone charged with leading an organization can learn to do it better. □

Richard S. Sloma has served as chief executive officer, chief operating officer, and board member of multiple international companies. He holds business degrees from Northwestern University and the University of Chicago, and a law degree from De Paul University.

This book may be ordered by calling 888-563-4573 or by visiting www.beardbooks.com. This book and other Beard books are also now available in digital format at a discounted price from Google Books at books.google.com.

Whitton, from page 4

single-asset real estate entity, but judges have generally not allowed it."

Gary Marsh, a partner in the Atlanta office of McKenna Long & Aldridge, agrees. "Many bankruptcy judges have said it would be a bad-faith filing in violation of all the loan documents to convey the collateral to some new entity for the purpose of filing bankruptcy," he says.

Whitton was an exception to that rule, says Baume, because its various entities didn't transfer their assets; they simply merged into one entity.

"Furthermore, there were valid business reasons for the merger, which was done pre-bankruptcy under relevant state law for the purpose of reorganizing," Baume continues. "The new entity, Whitton, had 15 separate projects, five or six different lenders, and a bunch of unsecured creditors, so it is a typical Chapter 11 case."

The bankruptcy court agreed. "What appears to have occurred here is a restructuring of the entities in order to preserve and reorganize, and to take advantage of Chapter 11 rather than to abuse it," says Markell in the hearing transcript.

"As far as we can tell, this strategy has never been used before," says Baume. "This case shows that just because you hold your property in a bunch of single-asset real estate entities, there may be a way to file as a multi-asset entity that will pass muster with a court under the right circumstances."

Marsh says Whitton's strategy will usually backfire, as it "would violate almost any loan documents, and sometimes that would trigger some personal liability to a guarantor."

While Baume concedes that Whitton's strategy to bankruptcy won't work for every distressed single-asset real estate entity, he says it may work for some, and to the extent that it does, it's a good strategy.

"For real estate entities that have a realistic chance of reorganizing, but need the time and the same kind of negotiating position with lenders that non-single-asset real estate debtors enjoy, Whitton may be a model to follow," he says. □

Special Report

Major European Law Firms with Restructuring Practices

Firm	Senior Professionals	Representative Clients	
Addleshaw Goddard London Tel. +44 20 7606 8855 www.addleshawgoddard.com	John Joyce Graham Briggs Ged Barnes Daniel Redstone Jean Boldero	Andrew Smith Fraser Ritson Alison Goldthorp Sonia McMahon	Barclays, 3i, BDO, Baker Tilly, Begbies Traynor, Deloitte, Leonard Curtis, Ernst & Young, GE, Grant Thornton, HSBC, KPMG, Lloyds Banking Group, National Australia Group, Northern Rock, PKF, PwC, and others.
Allen & Overy London Tel. +44 20 3088 0000 www.allenoverly.com	Earl Griffith Mark Sterling	Gordon Stewart	Pamplona, receivers of PricewaterhouseCoopers, lenders to Cattles plc.
Ashurst London Tel. +44 20 7638 1111 www.ashurst.com	Giles Boothman David von Saucken Simon Baskerville Dan Hamilton Eric Bouffard Francesco De Gennaro	Jean-Pierre Farges Juan Hormaechea Diane Roberts Ingo Scholz Ben Tidswell Nigel Ward	General Atlantic, BNP Paribas, Commerzbank AG, Crédit Agricole CIB, ING, Majedie Investments, Religare Capital Markets, Merlin Entertainments, Candover Investment, Chloride Group, Apax Partners, JP Morgan, Deutsche Bank, Lloyds/HBOS, RBS, Alchemy, Apollo, Carval, Cerberus, GSO Capital Partners, M&G Investments, Oaktree, and others.
Clifford Chance London Tel. +44 20 7006 1000 www.cliffordchance.com	Michael Bray Mark Campbell Adrian Cohen Nicholas Frome Philip Hertz	Mark Hyde Geeta Khehar John MacLennan David Steinberg Iain White	Large lender groups (including steering groups and coordinators), financial institutions, corporate debtors, insolvency practitioners. Majority of work involves cross-border restructurings and insolvencies.
Freshfields Bruckhaus Deringer London Tel. +44 20 7936 4000 www.freshfields.com	Ken Baird Catherine Balmond Adam Gallagher Neil Golding	Nick Segal Richard Tett Anne Sharp	Lenders, investors, insolvency practitioners, creditors, and directors on banking and insolvency issues. Banks, investment banks, and debtors on consensual restructurings.
Gleiss Lutz Germany Tel: +49 (0) 711 8997-0 www.gleisslutz.com	Andreas Spahlinger Ralf Morshäuser Burkard Göpfert	Burkhard Jäkel Helge Kortz	Distressed companies, shareholders, creditors and business partners of distressed companies, buyers of distressed or insolvent companies, as well as insolvency administrators.
Herbert Smith London Tel. +44 20 7374 8000 www.herbertsmith.com	Laurence Elliott Stephen Gale Kevin Lloyd	Gary Milner-Moore Kevin Pullen Kirsten Massey	Ernst & Young, JJB Sports, TXU Europe Group, Eurohypo and Fortis, Yell Group, Onexim, Clearwater Capital Lloyds Banking Group and Bank of Scotland, Financial Services Compensation Scheme.
Hogan Lovells London Tel. +44 20 7296 2000 www.hoganlovells.com	Joe Bannister Laurence Crowley Stephen Foster Deborah Gregory	Paul McLoughlin Robin Spencer Alexander Wood Geoffrey Yeowart	Senior and junior lenders (including clearing banks, investment banks, and hedge funds), and all other stakeholders, including directors, corporate debtors, pension fund trustees, suppliers and insolvency practitioners, both in domestic and cross-border transactions.
Horten Denmark Tel. +45 3334 00 00 www.horten.dk	Piya Mukherjee Claus Bennetsen	Nicolai Dyhr	Pillar Securitisation S.à.r.l., Luxembourg (formerly Kaupthing Bank Luxembourg S.A.), Nordea Bank Danmark, Jyske Bank, Danske Bank, FIH Bank, Sydbank A/S.
Kromann Reumert Copenhagen, London, Brussels Tel. +45 70 12 12 11 www.kromannreumert.com	Marianne Philip Soren Aamann Jensen Lisa Bo Larsen	Christian Jul Madsen Teis Gullitz-Wormslev Louise Krarup Simonsen	Local banks such as Danske Bank, Nordea Bank and Jyske Bank, national and international corporates, as well as large lender groups, investors, creditors and directors.
Linklaters London Tel. +44 20 7456 2000 www.linklaters.com	Bruce Bell Tony Bugg Richard Bussell Euan Clarke	David Ereira Iain Fenn Richard Holden Chris Howard	PwC; Deloitte; Ferretti SpA; Oaktree Capital; senior lender steering committees on restructuring of McCarthy & Stone and Crest Nicholson; affiliate of Sun European Partners; US\$6.6B SIV managed by Cheyne Capital; LBO restructurings in Sweden, France, Spain, Germany, Italy.
Norton Rose London Tel. +44 20 7283 6000 www.nortonrose.com	Hamish Anderson Richard Calnan John Challoner James Dunnett	Radford Goodman Michael Ings Raj Karia James Stonebridge	Allied Gold Mining, Capita Trust Company, banks on restructuring of Danaos Corporation, Bioera.
Simmons & Simmons London Tel. +44 20 7628 2020 www.simmons-simmons.com	Peter Manning Alan Gar Gerhard Gispen Christian Pascoet	Hans-Hermann Aldenhoff Andres Mochales	Alitalia, Alizyme, Bank of America Merrill Lynch, Barclays Bank PLC, Barclays Bank S.A., BBVA, Citibank, KPNQwest, Landesbank Hessen-Thüringen, Lehman Brothers International Europe, Link Lending, Morgan Stanley, Pinton, Socotherm, State of Hestia, Yukos Oil.
Slaughter and May London Tel. +44 20 7600 1200 www.slaughterandmay.com	George Seligman Sarah Paterson	Ian Hodgson	Uniq, UKFI, Carl Zeiss AG.

Jewelry TV, from page 4

Association. Matthews says he was happy with his decision.

"I really appreciated Tom's approach," says Matthews. "As a lawyer, I've seen the typical scenario where a financial consultant to a troubled company comes in with an army of 18 to 20 people and runs up big bills. The turnaround specialist can end up contributing to the downfall of the company."

In Hays, Matthews found someone with a different perspective on a turnaround professional's job. "In the darkest days, after I had been at JTV for seven or eight months, the Bank Group asked Tom if he should run the company as CRO. Tom told them that it would be a mistake. He said I had a good team in place, and all I needed was time to turn the company around."

"That's not the advice most outsiders would give," Matthews continues. "It's not in their fee interest to do that."

Hays focused on resuscitating a company. "It would have been a much bigger assignment had I taken the CRO position, but it would have been the wrong thing for JTV," says Hays. "I told the Bank Group that Tim was a great leader and we were very confident in him. It would destroy the culture for me to come in and challenge his authority on a very visible basis."

Instead, Hays worked directly with Matthews as an advisor. He tackled JTV's unsold inventory, doing an in-depth analysis and moving to maximize its value. Aggressive price cutting and promotional activities were initiated. Old and slow moving inventory was liquidated with an on-air inventory reduction campaign that went on for nineteen continuous days. He initiated the groundwork for expansion of

margins, but perhaps his greatest contribution was as a champion of activity-based product line financial statements, which have had a profound impact on operations.

Operations were retooled to reduce costs and conserve cash. In addition to liquidating Shop at Home, capital expenditures were scaled back, hundreds of positions were eliminated, and contracts with 500 affiliates and cable companies were renegotiated, eventually saving the company over \$20 million annually, while increasing viewership.

These emergency actions were followed by further steps to ensure the company's survival. A private label credit card was introduced in the fall of 2008. By early January 2009, nearly one quarter of JTV's sales were with these cards. A gold repurchase program – The Gold Exchange – was also initiated. "It's become our third most profitable business category," says Matthews. "As gold prices have crept up, Gold Exchange volume has grown. Rising gold prices are not the greatest thing for the jewelry business, but we've got a hedge in place."

JTV also partnered with a foreign rival, Gems TV Holdings, which closed its competing U.S. television operations and has invested in JTV. JTV has also leased the Shop at Home facility it owns in Nashville and disposed of its corporate jet.

As a result of these and other measures, JTV has enjoyed consistent month-to-month profitability since January 2009. "We went back into the black and have stayed there," says Matthews. The company is contemplating an IPO of its stock in the near future, possibly next year.

As a result of its impressive turnaround, NHB Advisors and JTV were recently awarded M&A Advisor's Distressed

Financing Deal of the Year in the major deal category (\$100 million and above).

Matthews credits NHB for the award. "Tom was perfect for us. He was the gray hair we needed to provide perspective during a bad time for us. He was focused on getting the company out of trouble and then growing it again. I can't speak highly enough of him."

Hays is equally complimentary of Matthews. "The very fact we were able to turn this around without a Chapter 11 proceeding is a testament to everyone involved. We preserved equity and now everybody's ahead on the deal. The bank debt is down over 50% and is being reduced at roughly a million dollars a month. The business is continuing and they are doing a great job." □

New Rules, from page 4

disallowed for failure to provide documentation. "While such a sanction still remains optional, it is now permissive in its remedy language," she says. "A judge may continue to treat a diligent creditor's honest mistake as an honest mistake, and allow the creditor the opportunity to prove its claim."

Carson, however, says the amendment to Rule 3001 reminds him of the amendments made to the Bankruptcy Code back in 2005 in that it's an attempt to fix a problem.

"In 2005, there was some abuse, but Congress changed the Bankruptcy Code as if the abuse was systemic, and the added bureaucracy weighed the system down, making it more difficult and expensive for the bankruptcy process to run its natural course. The amendment to Rule 3001 attempts to address similar issues on the creditor side. Time will tell its impact on the bankruptcy system." □

In the Next Issue...

- *Special Report: Nation's Largest Claims Administrators*
- *Special Report: Outstanding Turnaround Firms 2011*
- *Research Report: Who's Who in Jackson Hewitt, Inc.*

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