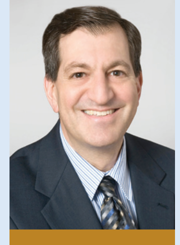
Keeping Pace with Chapter 11's 'New Normal'



BY BENJAMIN D. FEDER, JUNE GUEST EDITOR

Attend any gathering of bankruptcy and restructuring professionals, and one theme on the restructuring industry tends to predominate: the speed at which Chapter 11 cases now take place. While this applies primarily to 363 sale, prepackaged, and prenegotiated cases, even large, complex Chapter 11 cases that result in confirmation of traditional stand-alone plans are being completed in a fraction of the time such cases once usually took.

The reasons are no mystery. The Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) amendments, particularly the strict time limits on plan exclusivity and lease assumption; the proliferation of investment firms capable of making quick decisions in place of commercial banks and institutional bondholders; and a growing awareness of the substantial benefit of shorter periods during which an enterprise must operate in the fishbowl of Chapter 11 have led to best practices and procedures for getting enterprises into bankruptcy and through to sale or plan confirmation.

Practices and procedures following primary case resolution, however, have not quite kept pace. The intense focus placed by principals and professionals on pre-filing negotiations and post-filing implementation of deal terms frequently dissipates. Case activity during the post-sale and/or post-confirmation phases tends to lack the clarity of purpose and clear direction of earlier stages. Liquidating trustees, chief liquidation officers, and wind-down committees are all too often left to deal with the inevitable detritus—claims reconciliation, miscellaneous asset sales, tax issues, collections—in an ad hoc fashion.

However, as bankruptcy and workout professionals have adjusted to the "new normal" of accelerated cases, creative lawyers, financial advisors, crisis managers, and others have begun to invest more time and effort to the back end of the Chapter 11 process. Not surprisingly, the results can be highly beneficial for residual stakeholders.

This edition of *The Journal of Corporate Renewal* focuses on issues that can arise during the wind-down or post-confirmation phases of cases. Charles Goodrich of Goodrich & Associates discusses how a small amount of forethought and planning can pay significant dividends in connection with the wind-up of distressed businesses. My Kelley Drye & Warren colleagues Elisheva Tietz, Mark Page, and Jason Alderson discuss changes to the U.S. Tax Code that allow for an extended carryback period for net operating losses, and how Bankruptcy Code Section 505 can help expedite distributions to creditors of the resulting refunds.

On the legal front, Edward Neiger and Dina Gielchinsky of Neiger LLP discuss an appellate challenge to plan confirmation in the *Visteon* case and share insights into the equitable mootness doctrine. Barry Radick and Richard Law of American Appraisal Associates discuss fresh start reporting for reorganized companies. And finally, David Bonington of Counsel RB Capital offers thoughts on how liquidation firms are branching beyond their traditional roles in helping with asset dispositions. CR

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