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# turnarounds & workouts

News for People Tracking Distressed Businesses

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## **L.A. Dodgers in Bankruptcy Team's Filing Could Play Out Like Bad Reality Show**

by Julie Schaeffer

The Los Angeles Dodgers, one of the most exalted franchises in all of sports, has filed for Chapter 11 in what may be the bottom of the franchise's recent descent and will most certainly play out like a reality show gone bad.

"It's our national pastime; it's the Dodgers; its history is incredible; it's the team from Brooklyn that moved to Los Angeles; it's the team that broke the color barrier with Jackie Robinson," says Jonathan Henes, a corporate bankruptcy partner at Kirkland & Ellis. "And what's important is protecting this storied franchise. But we may be distracted for a while due to peripheral issues that have nothing to do with baseball, such as the owner's high-profile divorce proceedings and publicly filed allegations by Major League

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## **Red Flags Inadequate Plan Documents Can Stir Up Trouble**

by Dave Buzzell

In the June issue of *Turnarounds & Workouts*, Stephanie Wickouski, Partner with Bryan Cave LLP in New York, cautioned that judges are starting to look askance at some releases from liability in plan documents, either because they are too broad with respect to the persons getting released or the scope of conduct being released. Consequently, court approval of plans may be withheld, to the frustration of bankruptcy professionals and their clients.

Broadly written releases are not the only problem surfacing in bankruptcy filings and restructuring plan documents, however. According to Wickouski, there are several other

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## **Tips for Practitioners in Chapter 9 Getting In Is Hard; Getting Out Is Easy**

by Julie Schaeffer

Most industry professionals will argue that municipal bankruptcies are likely to be rare even in today's economic environment – but when they do occur, they're nothing like the Chapter 11s with which practitioners are typically most familiar.

"It's mostly likely that Chapter 9 is not a solution to budget-driven municipal financial problems, but in those cases where municipal bankruptcies do occur, it's important to note that, in many ways, the process of a Chapter 9 is the inverse of the process in Chapter 11," says Bill Brandt, President and CEO of Development Specialists, Inc. "With Chapter 11, it's relatively easy to get in, but the trick is getting out successfully. With Chapter 9, the trick is to get in successfully...but once you're in, the odds of coming out are far greater

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## L.A. Dodgers, *from page 1*

Baseball that he siphoned money from the team for personal use. We're going to see issues pop up that have nothing to do with the actual team or the game of baseball, but people will be watching to see how they play out."

According to a recent *Forbes* estimate, the Dodgers franchise is worth \$800 million, making it baseball's third-most valuable team.

That said, the Dodgers have accumulated significant debt since 2004, when current owner Frank McCourt acquired the team in a controversial deal that was almost entirely comprised of debt.

Although some estimates put the team's debt-to-value ratio at an alarming 54%, according to court filings the Dodgers have between \$500 million and \$1 billion in assets and between \$100 million and \$500 million in liabilities.

"It's not a debt crisis; it's a liquidity crisis," says Henes. "The value of the team is greater than the value of the team's debt, but there just wasn't enough cash to make the June 30 payroll."

To help save the team, McCourt arranged a future broadcast licensing deal with FOX Broadcasting Company that was reportedly worth \$3 billion, but he was required to get the approval of Major League Baseball (MLB), and MLB Commissioner Bud Selig refused to approve the deal.

That, in turn, led McCourt to file for Chapter 11. "I simply cannot allow the Commissioner to knowingly and intentionally be in a position to expose the Dodgers to financial risk any longer," he said in a statement.

According to Ira Herman, a bankruptcy partner at Thompson & Knight, one goal of the move was to buy time to reach a new TV deal that will solve the near-term cash flow issues. The Dodgers received a commitment for \$150 million in financing from Highbridge Principal Strategies, a unit of JPMorgan Chase, to keep the club operating while in bankruptcy. Initially, says Henes, that loan came with the condition that the team start the process of licensing future broadcast rights, and if a deal wasn't completed within 180 days, a default would be considered to have taken place. "Essentially McCourt was trying to obtain the same deal in court that he had

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## Red Flags, *from page 1*

"red flags" that bankruptcy professionals should recognize and avoid.

One red flag is a lack of remedial provisions. "Most plans I see suffer from this," says Wickouski. "The lack of an easy and straightforward default provision tends to be a widespread problem."

As a result, when a debtor fails to make a payment under a plan, particularly if a plan is self-administered, there's no ready answer for a creditor. "When the court is petitioned to enforce the plan, there's no remedy that's practical or economic for an individual creditor to undertake," Wickouski explains.

"Under many plans, there's either no post-confirmation committee or the post-confirmation committee is very limited in its role. Often, the committee is comprised of some of the entities that were on the pre-confirmation creditors' committee. They have much less engagement in a post-confirmation process if they are not getting compensated for it, so in essence they are just overseeing what is already a done deal. As a result, it's very difficult to monitor and enforce a plan post-confirmation, and most plans, when they're written, don't make it very easy to do that. I think that's an endemic problem."

Another red flag is the failure to properly consider the tax consequences of a structure of a plan. Wickouski notes that this is more commonly a problem in smaller cases. "In the larger cases everyone is pulling in their tax people – on both the debtor and creditor side. On the creditor side, especially, they are looking at things very closely from a tax perspective."

However, in some of the smaller cases, when a modification in the structure is required, either prior to confirmation or after confirmation, it can be costly and time consuming to have a do-over caused by a structure having tax consequences unforeseen by either the debtor or creditor. "It is not a widespread problem in the sense that it happens in every case," says Wickouski, "but when it happens it can be very costly and significant."

A third red flag – and this is from the standpoint of a trade creditor – is a discharge or injunction provision that has language essentially waiving or

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## Tips, *from page 1*

than for the average Chapter 11 debtor."

"It's not clear that there will be a lot of Chapter 9s, but it's important to know what would happen in one, at least for context in everything from negotiations with the municipality, creditors, and labor parties, to any workouts that may have to be done with or for a municipality," says Harold L. Kaplan, a partner with Foley & Lardner LLP.

There is a presumption, says Brandt, that no business endeavor would file for bankruptcy if it were not already in extreme straits. As a result, when it comes to Chapter 11s, there is no argument about whether to enter an order of relief. But to a great extent, the opposite holds true in a Chapter 9, he says.

"In a Chapter 9, the front end of the case is the whole shebang," he says. "You have to prove that you qualify and that you're worthy. With respect to both of those issues, evidentiary trials over those matters can often go on for months before a determination is reached as to whether enough evidence exists such that an order for relief should be entered."

To decide if an order of relief should be entered, says Brandt, a municipality has to first meet two criteria: It has to be a municipality as defined by the Bankruptcy Code, and it has to be statutorily capable of filing under its relevant state law. "On more than a few occasions, some municipalities or other governmental entities have tried to file Chapter 9 petitions prior to complying with specific legislation in their states that must be adhered to before a bankruptcy action can be commenced," he says.

On that topic, Brandt notes only a few states allow governmental units the unfettered ability to file Chapter 9. Fifteen states have statutory provisions that specifically authorize filing (AL, AZ, AR, CA, ID, KY, MN, MO, MT, NE, NY, OK, SC, TX, and WA). Another nine authorize filing conditioned on a further act of the state, an elected official, or state entity (CT, FL, LA, MI, NJ, NC, OH, PA, and RI). Three states grant limited authorization (CO, OR, and IL, and two states prohibit filing (GA and IA, although IA has an exception to the prohibition.) "The remaining 21 are either unclear or do not have specific authorization," says Brandt.

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# Research Report

## Who's Who in Caribe Media, Inc.

by Françoise C. Arsenault

*Caribe Media, Inc. (Caribe Media), based in San Juan, Puerto Rico, publishes print and Internet yellow page directories in Puerto Rico and in the Dominican Republic. Through its majority-owned Axesa Servicios de Informacion operating unit, Caribe Media prints and circulates approximately 3.2 million directories in Puerto Rico each year and is the official publisher for the United States territory's largest telephone company. The company's Caribe Servicios de Informacion Dominicana is the official directory publisher of the Dominican Republic's largest telecommunications company and publishes approximately 1.7 million directories annually in that country. Caribe Media also offers several other directories, an Export and Import Guide, and two magazines for tourists. The company provides online telephone listings through the web site [www.SuperPagesDR.com](http://www.SuperPagesDR.com).*

*Caribe Media, formerly known as Caribe Information Investments, Inc., is indirectly owned by Local Insight Media Holdings, Inc., which has a 50.4 percent stake in the company. Local Insight Media Holdings, based in Englewood, Colorado, filed for Chapter 11 protection in November 2010. Local Insight Media Holdings is the fifth largest directory publisher and local search provider in the United States, with annual pro forma revenue in excess of \$700 million. Local Insight Media Holdings is a portfolio company of the investment firm Welsh, Carson, Anderson & Stowe, which has a 49.6 percent ownership stake in Caribe Media. Caribe Media, which was once owned by Verizon, was acquired by the investment firm in 2006.*

*On May 3, 2011, Caribe Media and CII Acquisition Holding Inc. filed for Chapter 11 in the United States Bankruptcy Court for the District of Delaware, with the goal of restructuring approximately \$184 million in secured debt. In its filing, Caribe Media reported debt of \$127 million to a group of secured lenders led by administrative agent Cantor Fitzgerald Securities and \$57 million in senior subordinated notes to an affiliate of Welsh, Carson, Anderson & Stowe. In its petition, the company listed*

*assets and liabilities of \$100 million to \$500 million. The company has stated that it has no recognized unsecured liability and the court has not appointed an Official Committee of Unsecured Creditors.*

*Company officials provided a number of reasons for the default on its senior loan in November 2010 and ensuing bankruptcy filing. The reasons included declining revenues from the sale of the company's directories as a result of competition from online media, declining customer use of the yellow page directories in Puerto Rico, and the worldwide economic decline. However, Caribe Media was also under intense pressure from an ad hoc committee of secured lenders to file for reorganization in order to preserve approximately \$44.2 million in claims arising from allegedly improper and possibly fraudulent dividend payments. According to the secured lenders, the dividend payments were made to Local Insight Media Holdings and Welsh, Carson, Anderson & Stowe between May 2009 and September 2010.*

*Within a few days of the filing, the Caribe Media secured lenders agreed to drop the pursuit of a fraudulent conveyance cause of action for the \$44.2 million in dividend payments. As part of the proposed Chapter 11 restructuring agreement, the ownership stakes of Welsh, Carson, Anderson & Stowe and Local Insight Media Holdings will be reduced to zero and the senior secured lenders will receive almost 100 percent of the remaining equity in the company.*

### The Debtor

**Marilyn B. Neal** is the Executive Chairwoman of Local Insight Holdings, Inc. **Scott Brubaker** is serving as the interim Chief Executive Officer, President, and Chief Restructuring Officer of Local Insight Media Holdings and Caribe Media. **Christopher J. Batson** is the Chief Financial Officer and Treasurer. **John S. Fischer** is General Counsel and Secretary.

**Kirkland & Ellis LLP** is acting as lead bankruptcy counsel to Caribe Media. **Richard M. Cieri**, a partner in the firm's New York office, directs the work. The Kirkland & Ellis team also includes **Christopher J. Marcus** and **Leonard**

**Klingbaum**, partners in the New York office, **Ross M. Kwastenet**, a partner in the Chicago office, and **Nickolas A. Kacprowski** and **Mark E. McKane**, partners in the San Francisco office.

**Pachulski Stang Ziehl & Jones LLP** is serving as bankruptcy co-counsel to Caribe Media. **Laura Davis Jones**, the managing partner of the firm's Delaware office, heads up the team. **Michael R. Seidl** and **Curtis A. Hehn**, also partners in the firm's Delaware office, are working on the case.

The law firm of **Curtis, Mallet-Prevost, Colt & Mosle LLP** is bankruptcy conflicts counsel to Caribe Media. **Steven J. Reisman**, a partner and co-chair of the firm's restructuring and insolvency group, directs the work. Partner **Michael A. Cohen** also is working on the case.

**Lazard Freres & Co. LLC** is providing Caribe Media with investment banking and financial advisory services. **David S. Kurtz**, a managing director with the firm, leads the engagement.

**Alvarez & Marsal North America, LLC** is restructuring advisor to Caribe Media and is providing the company with an interim Chief Restructuring Officer, President, and Chief Executive Officer. **Brubaker**, a managing director, leads the engagement. Also working on the case are **Richard Jenkins**, a managing director in the Denver office, **Julie M. Hertzberg**, a managing director in the Detroit office, **Michael Askew**, a managing director in the Dallas office, and **Renee Nymeyer**, a senior director in the Dallas office.

**Deloitte & Touche LLP** is serving as the independent auditor and accounting services provider to Caribe Media. **Steven Yaroeh**, a partner in the firm's Denver office, is directing the work.

**PricewaterhouseCoopers LLP** is providing Caribe Media with tax advisory and consulting services. **Victor Rodriguez**, a partner in the firm's San Juan office, leads the engagement.

### The Trustee

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

### The Judge

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

**L.A. Dodgers**, *from page 2*

negotiated out of court, but MLB objected, and Highbridge and the Dodgers agreed to take that condition out," Henes says. "The interim financing that was approved on June 28 had no conditions with respect to a licensing deal."

Another goal of the filing may have been to prevent MLB from taking over the marquee franchise. "You could also argue that MLB was on its way to removing

McCourt from control of the team," says Henes. "In April, Commissioner Selig announced that he was appointing a representative to oversee all aspects of the Dodgers' operations, and MLB was investigating the Dodgers' operations and finances. Then, MLB blocked the Dodgers' sale of its future broadcast rights to FOX. The writing was on the wall, so he filed both to deal with the June 30th liquidity problem

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**Red Flags**, *from page 2*

discharging offset rights. As Wickowski explains, "A trade creditor providing goods and services during a case could have ordinary offset claims cut off by a confirmation. This waiver is often buried in the language. Typically one of the responsibilities of the creditors' committee is to check for that and make sure that the language protects the trade creditors."

However, says Wickowski, handling that task might not happen. "Committees can be dominated by non-trade creditors that could fail to look for that kind of waiver. Some say that creditors' committees are dominated by trade creditors; trade creditors will tell you that committees are dominated by bondholders; bondholders will tell you just the opposite. The reality is that everybody needs to look at this. I have seen plans go through where people have gotten sandbagged. It is important to look at the release language from the standpoint of an ongoing relationship, and its effect on offsets. Sometimes if you have ongoing litigation, the discharge language can chew you up."

Wickowski notes that the one remedy — placing default judgments in escrow — is rarely used any more, and that could be a mistake by creditors. "It's one of those

things that could be helpful, and I'm honestly surprised I don't see it more."

In plans that provide for a repayment of debt to a creditor or one or two large creditors, having a plan provision placing default judgments in escrow, offers a tangible remedy if there is a default. Otherwise, the creditor is compelled to return to the bankruptcy court and petition for enforcement of the plan. "One remedy that the debtor can provide in the plan is to provide for a consent judgment in favor of the creditor that the creditor may file in the event that a default occurs which is not cured. It provides a very easy remedy so that the creditor doesn't have to proceed to petition the bankruptcy court or sue in state court to enforce the plan. They have the confessed judgment they can file. I think that's a remedy that is frequently overlooked."

Wickowski observes that bankruptcy lawyers often complain that the transactional documents are not written with consideration of what happens in the event of a default. The problems in the document only become apparent when a default occurs. "I find it ironic that bankruptcy lawyers who are writing plan documents often also overlook

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**Tips**, *from page 2*

Even if a municipality can file for Chapter 9, says Brandt, in order to obtain an order for relief, there's a four-part test that must be met to convince the bankruptcy court that a Chapter 9 is called for under the circumstances.

First, and perhaps foremost, the municipality must demonstrate that it has obtained the agreement of a majority of its creditors to some type of impairment of the creditors' claims, such that this compromise

with its creditors will allow the municipality to regain its financial footing.

Second, if the municipality can't meet this first condition it then must demonstrate that, at the very least, it attempted to negotiate with its creditors in good faith in an effort to obtain these consents but that these negotiations resulted in an impasse.

Third, in the case where no negotiations have been held (meaning points number one and two are not at issue), the municipality

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# Calendar

**American Bankruptcy Institute**  
18th Annual Northeast Bankruptcy  
Conference  
July 21-24, 2011  
The Hyatt Regency  
Newport, RI  
Contact: [www.abiworld.org](http://www.abiworld.org)

**The National Association of  
Bankruptcy Trustees**  
2011 Annual Conference  
September 22-25, 2011  
The Ritz-Carlton  
Amelia Island, FL  
Contact: [www.nabt.org](http://www.nabt.org)

**National Conference of  
Bankruptcy Judges**  
85th Annual Conference  
October 12-15, 2011  
Tampa, FL  
Contact: [www.ncbj.org](http://www.ncbj.org)

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

# Special Report

## Canadian Bankruptcy Law Firms

Firm	Attyns.	Bankruptcy Attyns.	Senior Bankruptcy Partners	Representative Clients/Cases	
<b>Aird &amp; Berlis</b> (416) 863-1500 www.airdberlis.com	120	8	Harry Fogul Robb English Steven Graff	Richard Epstein Sanj Mitra Sam Babe	Toronto-Dominion Bank, Royal Bank of Canada, Bank of Nova Scotia, Bank of Montreal, Canadian Imperial Bank of Commerce, Wells Fargo, HSBC, Roynat / Air Canada, Nortel Networks, Canwest, Ivaco, Asset-Based Commercial Paper, Frontera Copper, Hemosol, Prizm Income Fund.
<b>Blake, Cassels &amp; Graydon</b> (416) 863-2400 www.blakes.com	550	22	Bernard Boucher Kelly Bourassa Milly Chow Sebastian Guy Susan Grundy Pamela Huff	William Kaplan Michael McGraw Linc Rogers Peter Rubin Steven Weisz	AbitibiBowater, Ableco Financial, Alvarez & Marsal, Aveos, Caterpillar Financial, CIBC Asset Based Lending/Canwest, Cinram International, Deloitte, Groupe Dumoulin, Ernst & Young, Ford Motor (Canada), Gateway Casinos, JPMorgan Chase, MatlinPatterson, MEGA Brands, Natl. Bank of Canada, New Pacific/Silvercorp, Quad Graphics/Quebecor World, Signature Aluminum, and others.
<b>Cassels Brock &amp; Blackwell</b> (416) 869-5300 www.casselsbrock.com	200	13	Joseph Bellissimo Bill Burden Deborah Grieve Bruce Leonard	Alison Manzer Marc Mercier David Ward	CapitalSource Finance, Cisco Systems, Bank of Montreal, Government of Canada (General Motors and Chrysler restructurings), Government of England Pension Protection Fund (Nortel), Integrated Private Debt Fund, Return on Innovation Fund, Roynat, Warner Bros., and others.
<b>Davies Ward Phillips &amp; Vineberg</b> (416) 863-0900 www.dwpv.com	240	16	Jay Swartz Denis Ferland Alain Gaul Matthew Gottlieb	Robin Schwill Natasha MacParland Louis-Martin O'Neill	Nortel Networks, Shaw Communications, Canwest, Barzel Industries, Quebecor, Cooper-Standard Automotive Canada, Japan Airlines, Robert Mander, Dura Automotive, Eddie Bauer, Circuit City/InterTAN Canada, Fiat S.p.A, Fraser Papers, E&Y, Alvarez & Marsal Canada, and others.
<b>Dickinson Wright</b> (416) 777-0101 www.dickinsonwright.com	25	3	Lisa Corne Dave Preger	Eric Kay	Creditors, debtors, and court-appointed officers in major insolvency and restructuring cases, including CCAA proceedings from Oakwood Petroleum through Curragh Mines and Olympia & York to Air Canada.
<b>Fraser Milner Casgrain</b> (416) 863-4511 www.fmc-law.com	521	45	David W. Mann R. Shayne Kukulowicz Roger P. Simard Philip M. Rimer Alex L. MacFarlane Ray C. Rutman John R. Sandrelli Dan R. Dowdall	B.A.R. (Quincy) Smith Brian W. Summers David LeGeyt Louis Dumont Christopher J. Ramsay Neil S. Rabinovitch Jane Dietrich Ryan Jacobs	BMO, RBC, ABN Amro Bank, KPMG, Deloitte, PWC, E&Y, HSBC, RSM Richter, Terrestar, Medican, Movie Gallery, Canwest, Intrawest, Sengroup, Jameson House Properties, Grant Forest Products, Nortel Networks, Trident, Alvarez & Marsal, FTI, Quebecor, Ravelston, Investors of Portus Group, Solv-Ex, JED Oil, Bombay Furniture Co, Vicwest Corporation, Conor Pacific Environmental, Shaw Communications.
<b>Goodmans</b> (416) 979-2211 www.goodmans.ca	200	17	Jay A. Carfagnini Robert J. Chadwick Gale Rubenstein Fred Myers Brian Empey	L. Joseph Latham Joseph Pasquariello Brendan O'Neill Melaney Wagner	Nortel Networks, Canwest Newspapers LLP, Postmedia, AbitibiBowater, Cinram, Angiotech Pharmaceuticals, Masonite, Circuit City, Smurfit-Stone, Compton Petroleum, Chemtura Corporation, Frontera Copper, Grant Forest Products, Catalyst Paper, Fraser Papers, White Birch Paper, SkyPower, Gateway Casinos, Government of Ontario, and others.
<b>Gowling Lafleur Henderson</b> (416) 862-7525 www.gowlings.com	750+	73	David F. W. Cohen Colin Brousson Thomas Cumming Christopher Fournier	John McLean Clifton Prophet Patrick Shea Denis St-Onge	Bank of Montreal, Canadian Imperial Bank of Commerce, HSBC, Circuit City, GE, Government of Quebec, Credit Suisse AG (Toronto Branch), Quorum Oil and Gas Technology, NAV Canada (Skyservice Receivership), RBC Royal Bank, Biscayne Metal, bclMC Construction Fund, Stanfield Mining Group, Timbercreek Asset Mgmt., and others.
<b>McMillan</b> (416) 865-7000 www.mcmillan.ca	400	23	Lisa Brost Hilary Clarke The Honourable Yoine Goldstein Andrew J.F. Kent Adam Maerov Daniel V. MacDonald	Max Mendelsohn Marc-André Morin Peter Reardon Wael Rostom Nicholas Scheib Sheryl Seigel Éric Vallières	Canwest Communications Corporation, Nortel Networks, AbitibiBowater, Grant Forest Products Inc., Trident Exploration, Barzel Industries, The Bank of Nova Scotia, American Iron & Metal Company, AT&T, Ernst & Young, HSBC, International Air Transport Association, JP Morgan, The Bank of New York, RPX Corporation in its capacity as a managing director of Norpax, Pricewaterhouse Cooper, Progressive Moulded Products, Royal Bank of Canada, and others.
<b>Osler, Hoskin &amp; Harcourt</b> (416) 362-2111 www.osler.com	454	63	Sandra Abitan Robert Anderson Rupert Chartrand Jeremy Dacks Martin Desrosiers Steven Golick	John MacDonald Christa Nicholson Edward Sellers Tracy Sandler Marc Wasserman	Alvarez & Marsal, Angiotech Pharmaceutical, Avenue Capital, Aveos Fleet Performance, Atomic Energy of Canada, Bank of America, Bank of Montreal, Blockbuster Canada, Canwest Global, Circuit City, Credit Suisse, Davie Yards, Deloitte, Ernst & Young, FTI Consulting, GB Merchant Partners, General Motors of Canada, Goldman Sachs Credit Partners, JP Morgan Chase, KPMG, Magna Entertainment, and others.
<b>Torys</b> (416) 865-0040 www.torys.com	260	16	Tony DeMarinis Michael Rotsztein	Scott Bomhof David Bish	Brookfield Asset Management Inc., Fairfax Financial Holdings Limited, Nortel Networks Inc., Google Inc., The Cadillac Fairview Corporation Limited, Goldman, Sachs & Co., Royal Bank of Canada, Credit Suisse, Canada Development Investment Corporation.

# Worth Reading

## Going for Broke: How Robert Campeau Bankrupted the Retail Industry, Jolted the Junk Bond Market, and Brought the Booming 80s to a Crashing Halt

**Author: John Rothchild**

**Publisher: Beard Books**

**Softcover: 286 Pages**

**List price: \$34.95**

Robert Campeau, one of 14 children born to a French Canadian mechanic and blacksmith, invested \$5,000 in a modest house under construction in Ottawa in 1949, doing most of the carpentry work himself. Foreseeing the post-war suburb boom, and virtually creating the Ottawa skyline, he went on to build a successful, sprawling \$200 million real estate corporation.

Then, riding the tidal wave of leveraged buyouts of the late 1980s, he borrowed \$11 billion from Wall Street to acquire Allied stores and Federated Department Stores, both successful and relatively debt-free retail conglomerates, in hostile takeovers. *Fortune* magazine called the Federated buy “the biggest, looniest deal ever.” Two years later, Allied, Federated, and Campeau Corporation were plunged into Chapter 11 receivership.

Campeau was many things: risk-taker extraordinaire, earnest, eccentric, endearing, cocky, extravagant, persistent, impetuous, commanding, frenetic, and capricious. He shocked the conservative Canadian business community with his brazenness, flamboyance, and quirky ways. In 1980, he showed up at the home of the CEO of Royal Trustco, Canada’s largest trust company and real estate brokerage, at breakfast time. His English only passable, Campeau told the astonished CEO that he was taking over Royal Trustco that very day. Campeau was summarily thrown out and the major business players in Canada quickly got together and bought up all the outstanding shares of Royal Trustco to thwart his plan.

Campeau was a total stranger to the U.S. investment banking world. His quest had begun with the intention of buying a U.S. bank or S&L. Reading about the hostile takeover of Macy’s, however, he abruptly ordered his Canadian financiers to look for a retail company instead. Once in contact with Wall Street, he bemused them with his colorful and baffling ways of doing business.

Blinded or dazzled by his eccentricities, enticed by the prospect of colossal fees, and caught up in the times, investment bankers assembled the funds needed for Campeau’s adventure into retailing. He drastically overbid for both companies. In the case of Federated, Campeau paid over \$8 billion for a company that had a market value of \$3 billion, and borrowed about \$7 billion. Allied was worth about \$2 billion, but he paid \$4 billion.

Campeau never found the “synergy between real estate and retail” he promised the shocked and angry management and employees of the two companies. Saddled with enormous debt, Campeau’s complete ignorance of the retail industry, his ridiculously high expectations, and his broken promises, the companies went into a free fall. Casualties included upward of 10,000 employees laid off at Federated and Allied alone, junk-bond investors, brokerages stuck with bridge loans, other retailers forced to lower their prices as Allied and Federated unloaded inventory, and creditors with claims of over \$8 billion.

The first line of *Going for Broke* reads, “This is the story of a marvelous financial calamity.” Read on and be amazed, amused, and saddened. □

*John Rothchild is a well-known journalist and writer. He has authored and co-authored over a dozen books.*

This book may be ordered by calling 888-563-4573 or by visiting [www.beardbooks.com](http://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](http://books.google.com).

## L.A. Dodgers, from page 4

and in an attempt to keep control.” The good news, says Henes, is that the approval of interim financing on June 28 is a win for both the Dodgers and MLB. “Both have the same key concern at this moment: making sure the franchise is going to continue operating in the ordinary course of business. A disruption would be a disaster for baseball.”

That certainly appears to be the case, according to Bruce Bennett, bankruptcy counsel from Dewey & LeBoeuf. “The team is entering the bankruptcy case with enough committed financing to meet all of its short-term expenses and to successfully reorganize,” he says.

It remains unclear how the bankruptcy will play out, however, with one major factor being whether McCourt is able to maintain control of his team. That’s because bankruptcies often make professional teams in violation of league charters, which can pave the way for ownership removal. If that’s the case, the filing gives McCourt temporary protection, but also gives MLB ammunition to displace him.

“There are complex legal issues with sports franchises in federal bankruptcy,” says Henes. “The goal of bankruptcy is to allow companies to continue to operate in the ordinary course of business, preserve jobs, and maximize value. While MLB shares the first two goals, and certainly wants to maximize value, it also cares about who owns the franchise and who is part of the exclusive membership of Major League Baseball. So we could see McCourt arguing that under bankruptcy law the Dodgers should be able to enter into certain deals without MLB consent, and MLB arguing that all transactions need its consent. The judge will have to decide which is right under federal bankruptcy law.”

The Los Angeles Dodgers filed in the U.S. Bankruptcy Court in Delaware. The bankruptcy filing also covers LA Real Estate LLC, the owner of iconic Dodgers Stadium and three other entities. The bankruptcy filing, according to Reuters, shows some of the Dodgers’ largest unsecured creditors as former star players Manny Ramirez and Andruw Jones. □

# Special Report

## Outstanding Investment Banking Firms – 2011

Firm	Senior Professionals	Outstanding Achievements	
<b>Blackstone Group</b> New York, NY (212) 583-5000 www.blackstone.com	Tim Coleman Stefan Feuerabendt Michael Genereux Martin Gidgeon	Flip Huffard Nicholas Leone Arthur Newman Steven Zelin	Recent engagements include MBIA (Asian Art Museum debt restructuring), International Lease Finance Corp.(credit facility amendment and extension), J.C. Flowers (HSH Nordbank investment), Natural Products Group (prepack), ongoing roles in Lee Enterprises, Mohegan Sun, and Lehman.
<b>Goldman Sachs - Americas</b> Restructuring Group New York, NY (212) 902-1000 www.goldmansachs.com	Bruce H. Mendelsohn	Recent selected engagements include Brookfield Properties in GGP, Cinram (out of court restructuring), Evergreen Aviation (out of court refinancing), LNR (out of court restructuring), and Ares (prepackaged acquisition of Simmons Bedding).	
<b>Gordian Group</b> New York, NY (212) 486-3600 www.gordiangroup.com	Henry Owsley Peter Kaufman Patricia Caldwell	Dennis McGettigan David Herman	Recent achievements include successfully advising Spansion in one of the most complex and contentious bankruptcies in years and continuing role advising the regulator to Ambac. Additional assignments include BankUnited, Carlisle Apartments, CCS Medical, Lexington Precision, Madoff, Newark Group, Ramsey Industries, TLC Vision, and Schutt Sports.
<b>Greenhill &amp; Co.</b> New York, NY (212) 389-1500 www.greenhill-co.com	Robert F. Greenhill Scott L. Bok	Jeffrey F. Buckalew	Recent major engagements include Edge Oilfield Services, The Timberland Corporation, Citigroup, AIG, Wesco Financial Corporation, Bosque Power Company, Constar International, One Communications Corp., Medicity, IAC / InterActiveCorp., Planar Solutions, and others.
<b>Houlihan Lokey</b> Los Angeles, CA (800) 788-5300 www.HL.com	Amit Patel Andrew Miller Andrew Turnbull Brad Geer Chris DiMauro	David Hilty Eric Siegert Eric Winthrop Matthew Niemann Tuck Hardie	Recent engagements include Atlantic City Hilton, Blockbuster, Capmark Financial, Centaur, Chemtura Corp, East West Partners, General Growth Properties, Great Atlantic & Pacific Tea Co., Green Valley Ranch Gaming, Majestic Star Casino, Oriental Trading Co., Trico Marine, Visteon Corp.
<b>Jefferies &amp; Company</b> New York, NY (212) 284-2428 www.jefferies.com	Steven Strom Frank Merola Richard Morgner Leon Szelezinger	Tero Janne Robert White Richard Klein Alex Rohan	Selected engagements include Borders, Caribbean Petroleum, DBSD, Extended Stay, Fairpoint Communications, Gateway Casinos, Insight Imaging, KV Pharma, Medical Staffing, Nortel, Pliant, Sea Launch, Tronox.
<b>Miller Buckfire &amp; Co.</b> New York, NY (212) 895-1800 www.millerbuckfire.com	Henry S. Miller Kenneth A. Buckfire Jason R. Anderson John Bosacco James Doak	Stuart E. Erickson Jeffrey Finger Harold A. Neu John R. Orem David A. Shiffman	Selected engagements include Keystone Automotive, General Growth Properties, Penn National Gaming, Neff Rental, American Capital, The Palisades Center, Magna Entertainment Corp., The Reader's Digest Association, Aveos Fleet Performance, Simmons Bedding Co., Stallion Oilfields Services, and others.
<b>Rothschild Inc.</b> New York, NY Tel: (212) 403-3500 www.rothschild.com	Neil A. Augustine Stephen Ledoux David L. Resnick Todd R. Snyder	Stephen Antinelli Bernard Douton Daniel Gilligan Homer Parkhill	Recent assignments include advising Nebraska Book Company, Sbarro, Harry and David, Vitro, S.A., the Board of AIG, Blockbuster, RHI Entertainment, Coach America, Fairpoint Communications, Tronox, American Apparel, Deb Shops, Ad Hoc Committee of Policyholders in FGIC, and NY State Governor's Office on labor negotiations.
<b>UBS Investment Bank</b> New York, NY (212) 821-3000 www.ubs.com	Steve D. Smith Douglas P. Lane	Jim McKnight	Recent engagements include General Growth Properties (\$27.5B) (company), Centro Properties Group (\$17B)(company), Charter Communications (\$21B)(cross-over bondholders), Evergreen Solar, ICO Global (\$1.7B)(bondholders), Boston Generating (\$1.1B) (acquirer), Young Broadcasting (\$.85B)(company), Constellation Energy's acquisition of Boston Gen assets, and others.
<b>William Blair &amp; Company</b> Chicago, IL (312) 364-5436 www.williamblair.com	Geoffrey Richards		Brokered the sale of National Envelope under very contentious and difficult circumstances, using the 363 process to creatively increase value. Recognized by TMA as middle market deal of the year. In LECG, closed over 15 separate transactions in a little over a month.

**Tips**, from page 4

must demonstrate that conducting such negotiations with its creditors was implausible and impractical, and because of that fact, can be excused from trying.

Fourth, there exists a bit of a catch-all test, which Brandt calls the “event-driven circumstance.” In other words, the municipality must demonstrate that it was in direct and dire exposure to self-help by a certain creditor or creditors (such as Idaho County), or was on the cusp of having to make a preferential payment to one or more creditors. “In this last case, the bankruptcy court must find that these emergency conditions were, indeed, extant and that a filing as a result was unavoidable,” says Brandt.

If an order for relief is eventually entered by the bankruptcy court, Kaplan notes that practitioners will need to be aware of a number of unique situations with Chapter 9s.

For example, he says, a bankruptcy practitioner really has to look at the actual statute to determine which sections of the Bankruptcy Code, in addition to other ones,

specifically laid out in Chapter 9 apply and which do not.

“Some of them are surprising,” says Kaplan. “For example, Chapter 9 has been read to allow municipalities to try to reject or renegotiate collective bargaining agreements, but it’s under what is referred to as the Bildisco standards, under Section 365 of the Bankruptcy Code, which generally pertains to assuming or rejecting executory contracts, rather than the more stringent standards under Sections 1113 and 1114 of the Bankruptcy Code, which are not incorporated in Chapter 9.”

On a practical procedural basis, there is both good news and bad news for bankruptcy practitioners who are involved with these cases, says Brandt.

The good news is threefold, says Brandt.

First, the U.S. trustee’s oversight of a Chapter 9 is basically relegated to minimal involvement, with its role in the case being limited to virtually only the simple appointment of a creditors’ committee.

Second, there is essentially no fee review by either the court or the U.S. trustee with respect to professional fees incurred during the conduct of the Chapter 9.

Third, although you’re in the bankruptcy system, the judge’s authority to drive the case under Chapter 9 is fairly circumscribed. “There are those who believe that the judge’s role in a Chapter 9 is far closer to that of a special master or a mediator than a bankruptcy judge,” says Brandt.

That said, the judge’s limited ability to force action and lack of fee review creates some bad news as well.

First, the court can’t relieve the civic officials of their offices or duties and, similarly, lacks any power to impose a revenue increase on city taxpayers.

Second, because of these limitations on authority, pushing the various parties along to a consensual outcome and a successful plan is far more of a political exercise than a legal undertaking.

Finally, no fee review means there is no order from the bankruptcy court directing that the professionals be paid, “which makes getting proper remuneration for your services in these types of situations always a bit dicey,” says Brandt. □

**Largest Chapter 11 Filings of May and June, 2011**

<i>Debtor</i>	<i>Date</i>	<i>District</i>	<i>Assets</i>
Nebraska Book Company	June 27	Delaware	\$657,216,000
Los Angeles Dodgers	June 27	Delaware	\$500M to \$1B
Jackson Hewitt Tax Service	May 24	Delaware	\$315,990,000
Perkins & Marie Callender’s	June 13	Delaware	\$290,000,000
Deb Shops	June 26	Delaware	\$124,400,000
Techdyne	June 9	Arizona	\$100,000,070
Pegasus Rural Broadband	June 10	Delaware	\$100M to \$500M
Hingham Campus	June 14	Texas, Northern	\$100M to \$500M
Caribe Media	May 3	Delaware	\$100M to \$500M
ALT Hotel	May 5	Illinois, Northern	\$100M to \$500M
Wolf Mountain Resort	May 9	California, Central	\$100M to \$500M

**In the Next Issue...**

- *Special Report: Restructuring Depts. of National Accounting Firms*
- *Special Report: European Restructuring Practices of U.S. Law Firms*
- *Research Report: Who’s Who in Perkins & Marie Callender’s, Inc.*

**Red Flags**, from page 4

default provisions. When we’re putting a deal together, we’re all optimistic. You have to go into it with the thought that it’s going to be performed – that’s your expectation. But you also have to consider what happens if it does not, what your remedies are. And conversely, if you are the obligor, what rights you want to have if there is a default or an act of default.”

“Default provisions in a plan are just as important as they are in the original documents, Wickowski continues. “An escrowed confessed judgment, having a clear notice and grace period, and then a description of specific remedies that are available if there is a nonpayment – these are among the things that can help avoid problems in plan documents.” □