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Experts Expect Financial Crisis To Send Bankruptcies Soaring

Double-Digit Default Rate Possible

By Marie Beaudette

In late 2007, bankruptcy and restructuring experts were predicting a trouble-filled 2008, an assertion that now seems like an understatement as the worldwide financial crisis continues to worsen.

A year later – after the collapse of Bear Stearns Cos., **Lehman Brothers Holdings Inc.** and **Washington Mutual Inc.** and dozens of other U.S. financial firms – experts say 2009 will bring even more bankruptcies as the crisis takes its toll on companies outside of the financial sector.

The coming wave of bankruptcies could be "unlike anything we've ever seen," said Richard Levin, who chairs the bankruptcy practice at New York law firm Cravath, Swaine & Moore LLP.

While the speculative-grade default rate remains under 4%, it's expected to increase significantly in 2009. Moody's Investors Service expects the global speculative-grade default rate to reach 10.4% by December, while Standard & Poor's is predicting an increase to 7.6% through the fall of 2009.

"Corporate default rates will likely climb sharply throughout 2009 as the ongoing credit crisis leaves few options for companies needing to refinance maturing debt or amend loan agreements that move out of compliance with covenants," said Kenneth Emery, Moody's director of corporate default research.

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Major Chapter 11 Filings In 2008

Company	Date Filed	Assets
Lehman Brothers Holdings Inc.	9/15	$639 billion
Washington Mutual Inc.	9/26	$32.9 billion
Quebecor World Inc.	1/21	$7.7 billion
Tribune Co.	12/8	$7.6 billion
SemGroup LP	7/22	$6.1 billion
Pilgrim's Pride Corp.	12/1	$3.8 billion
Circuit City Stores Inc.	11/10	$3.4 billion
VeraSun Energy Corp.	10/31	$3.4 billion
LandAmerica Financial Group Inc.	11/26	$3.3 billion
Tropicana Entertainment LLC	5/5	$2.8 billion
Tousa Inc.	1/29	$2.3 billion
WCI Communities Inc.	8/4	$2.2 billion
LandSource Development	6/8	$1.8 billion
Bally Total Fitness Holding Corp.	12/3	$1.4 billion
Hawaiian Telcom Communications	12/1	$1.35 billion
Linens 'n Things Inc.	5/2	$1.2 billion
Frontier Airlines Holdings Inc.	4/10	$1 billion
Buffets Inc.	1/22	$963.6 million
Chesapeake Corp.	12/29	$936.6 million
Kimball Hill Homes	4/23	$795 million
Mervyn's LLC	7/29	$681.4 million

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Experts Say Chapter 11 May Be Best Option For U.S. Auto Makers

Industry Begins Painful Overhaul

By Marie Beaudette, Patrick Fitzgerald
and Eric Morath

Two of the Detroit Big Three auto makers may have just received a $17.4 billion lifeline from the U.S. government to stay afloat, but analysts say General Motors Corp. and Chrysler LLC may still be forced to file for Chapter 11 bankruptcy protection.

A growing number of experts say the auto makers can't address their problems – uncompetitive labor costs, massive legacy liabilities, unprofitable brands and outsized dealer networks – without the tools of the Bankruptcy Code. And if U.S. car companies continue to burn through cash at an alarming rate in 2009, Chapter 11 may become the only option to accomplish a sweeping, industry-wide reinvention.

"Nobody wants to see our American motor carrier icons go into bankruptcy – not even those who have been predicting this fate for some time. But, if most stakeholders will be better off and if we minimize the surprise factor, then Chapter 11 reorganization…is the way to go," Edward Altman, a finance professor at New York University's Stern School of Business, told Congress last month at a hearing on the auto-industry bailout.

Many experts believe GM will have to file for bankruptcy, even with the assistance it's getting from the government. Chrysler, they say, may not be able to survive at all. Ford Motor Co., while in a better cash position than its fellow U.S. auto makers and not in immediate danger of bankruptcy, will also need to take dramatic steps to remain competitive.

Bankruptcy is "not a viable option" for GM, spokeswoman Julie Gibson said. Chrysler Chief Executive Robert Nardelli told Congress last year that bankruptcy "would be devastating." Both firms, however, have hired bankruptcy advisers.

Auto executives, along with some analysts and lawmakers, say a bankruptcy filing would cause consumers to completely abandon struggling car companies. But bankruptcy experts say the risk could be managed.

Jay Westbrook, a bankruptcy-law professor at the University of Texas School of Law, says all of the auto makers' options are

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Auto Suppliers Brace For Bumpy 2009 As Big Three Restructure

Parts Makers Face Falling Sales

By Eric Morath

A wave of auto supplier bankruptcies is coming in 2009, and government efforts to prop up auto makers will likely only lessen the storm surge, auto industry and bankruptcy experts say.

U.S. auto-parts manufacturers, inextricably linked to struggling auto makers General Motors Corp., Chrysler LLC and Ford Motor Co., are facing falling revenue as recession-shocked consumers avoid car dealerships. The drop in business, combined with a credit crunch that has choked off access to rescue financing, could prove disastrous for an industry that's already seen a number of bankruptcies and liquidations.

"Suppliers are in for an incredibly difficult time," said John Henke, a supplier analyst and president of Planning Perspectives Inc. in Birmingham, Mich. "I can't remember a time when volumes dropped so low, so quickly."

Parts makers, particularly those serving Detroit's Big Three auto makers, need to sell a large number of products to cover their costs. The number of parts a supplier sells is tied to the number of vehicles moving off dealership lots. Auto sales fell dramatically in 2008, and many analysts believe they'll sink lower this year as consumers wrestle with a recession and concerns about a possible bankruptcy filing by GM or Chrysler.

Over the past several years, a number of major auto suppliers have sought bankruptcy protection. **Delphi Corp.**, GM's former parts unit, has been in Chapter 11 protection since 2005. Dura Automotive Systems Inc. and Dana Holding Corp. both went through bankruptcy restructurings. **Plastech Engineered Products Inc.**, **Intermet Corp.** and **Key Plastics LLC** sought Chapter 11 protection in 2008.

Experts say 2009 may bring even more supplier bankruptcies. Seven parts makers are on Standard & Poor's "weakest links" list of companies most likely to default, including Visteon Corp., Metaldyne Corp. and TI Automotive Ltd.

In the past, suppliers have turned to banks to help bridge industry downturns, but the global credit crisis has cut off that lifeline.

"When you can't get money there is only so much you can do to keep your doors open," said Mike Wall, a Grand Rapids, Mich., automotive analyst with CSM Worldwide.

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Soaring Loan Costs Make Chapter 11 A Luxury Few Can Afford

Bankruptcy Financing Dries Up

By Peg Brickley

The high cost of going broke is rising, thanks to a credit crunch that has made bankruptcy financing an expensive commodity few cash-strapped companies can afford, experts say.

Dozens of companies are circling bankruptcy, trying to find a way to pay the price for a soft landing in Chapter 11 rather than an emergency crash into Chapter 7, according to firms that have been advising them. The difference between the two forms of bankruptcy is worth millions to companies paying lawyers and financial advisers, who aren't getting any cheaper. The fastest-rising cost of all is the price of money for companies in trouble.

"There just isn't money to finance Chapter 11 filings," said Robert J. Stark, a New York bankruptcy lawyer who usually represents creditors. "The banks say they're lending, but lawyers and bankers trying to get the deals done are sitting there scratching their heads saying, 'What do we have to do to get money?'"

The short answer: pay heavily. These days, money is as expensive as it is scarce. Bankruptcy financing that used to be available at 2% above the London interbank offered rate is now available only at 5%, 6% or 7% above Libor even for companies that would ordinarily be considered low-risk, investment bankers say.

Interest rate floors are standard these days in bankruptcy loans. The floors operate to keep the base rate of interest on Chapter 11 loans at 4% or 5%, even if base lending rates outside bankruptcy drop.

In a growing trend, banks are demanding to keep secret the extra fees attached to Chapter 11 loans, saying the payments are sensitive commercial information. Electronics retailer **Circuit City Stores Inc.**, for example, recently won court permission to conceal the fees on its Chapter 11 financing. But buried in a court filing was the company's estimate that it would pay $30 million in fees for less than $200 million in borrowing power over 13 weeks.

All told, the brief borrowing window would cost an estimated $44.5 million, Circuit City said, for money earmarked for a holiday sales push that the company hoped would allow it to pay off the banks.

"Lenders can name their pricing because liquidity is so tight and need so desperate that amounts that were shocking to the point

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U.S. Defaults In 2008

The financial crisis that hit in 2008 claimed dozens of corporate victims in the U.S. More companies are expected to default in 2009 as the recession continues. Here's a list of the U.S. companies that defaulted in 2008.

Company	Debt *in millions*	Default Date
Buffets Holdings Inc.	$934.70	1/4
Tousa Inc.	$2,259.00	1/4
Propex Inc.	$437.25	1/22
PRC LLC	$227.00	1/23
Plastech Engineered Products Inc.	$640.00	2/4
Sirva Inc.	$660.64	2/5
Holley Performance Products Inc.	$60.00	2/11
Wellman Inc.	$675.00	2/25
Atlantis Plastics Inc.	$216.70	2/27
Thornburg Mortgage Inc.	$305.00	3/3
Ziff Davis Media Inc.	$354.99	3/5
Leiner Health Products Inc.	$581.60	3/10
Legends Gaming LLC	$442.00	3/14
Fremont General Corp.	$165.82	3/18
Fremont Investment & Loan	$4.34	3/18
Interep National Radio Sales Inc.	$100.00	4/1
Vicorp Restaurants Inc.	$176.53	4/4
Vertis Inc.	$1,643.50	4/8
Linens 'n Things Inc.	$1,350.00	4/15
Kimball Hill Inc.	$703.00	4/25
Home Interiors & Gifts Inc.	$310.00	4/29
French Lick Resorts & Casino LLC	$142.14	4/30
Recycled Paper Greetings Inc.	$207.00	5/2
Tropicana Entertainment LLC	$2,930.00	5/6
Herbst Gaming Inc.	$1,585.40	5/19
Greektown Holdings LLC	$567.15	5/30
Residential Capital LLC	$6,812.77	6/4
Six Flags Inc.	$1,119.35	6/16
JHT Holdings Inc.	$130.00	6/24
Gainey Corp.	$255.28	7/1
Ginn-LA Conduit Lender Inc.	$675.00	7/2
GWLS Holdings Inc.	$95.00	7/11
Indymac Bancorp	$0.00	7/14
IndyMac Bank, FSB	$2,655.22	7/14
Pierre Foods Inc.	$396.00	7/14
Atrium Cos. Inc.	$803.50	7/17
Journal Register Co.	$715.00	7/25
Portola Packaging Inc.	$240.00	7/29
WCI Communities Inc.	$1,375.00	8/4
Hines Horticulture Inc.	$290.24	8/20
Mrs. Fields Famous Brands LLC	$195.75	8/25
LBREP/L SunCal Master I LLC	$395.00	9/10
Lehman Brothers Holdings Inc.	$144,426.23	9/15
Motor Coach Industries	$296.19	9/15
UTGR Inc.	$565.00	9/16
Lehman Brothers Inc.	$229.91	9/23
HRP Myrtle Beach Holdings LLC	$113.79	9/24
Washington Mutual Bank	$19,913.63	9/25
Washington Mutual Inc.	$8,984.62	9/25
Ashton Woods USA LLC	$454.00	10/2
Baseline Oil & Gas Corp.	$240.00	10/7
Viskase Companies Inc.	$108.68	10/10
Majestic Star Casino LLC	$580.00	10/15
Hawaiian Telcom Communications	$1,074.70	11/3
VeraSun Energy Corp.	$1,165.75	11/3
Palmdale Hills Property LLC	$0.00	11/6
Pilgrim's Pride Corp.	$1,591.63	11/6
American Media Operations Inc.	$1,043.75	11/7
Chesapeake Corp.	$488.84	11/20
Lenox Group Inc.	$170.50	11/23
Downey Financial Corp.	$200.00	11/24
Downey S&L Assn	$0.00	11/24
Metaldyne Corp.	$1,216.22	11/25
LandAmerica Financial Group	$390.00	11/26
Constar International Inc.	$395.00	12/1
Trump Entertainment Resorts Holdings LP	$1,250.00	12/1
Finlay Enterprises Inc.	$200.00	12/3
Tronox Inc.	$200.00	12/3
Commonwealth Land Title Insurance Co.	$0.00	12/4
Lawyers Title Insurance Corp.	$0.00	12/4
Hovnanian Enterprises Inc.	$2,834.00	12/5
Tribune Co.	$12,862.00	12/9

Source: Standard & Poor's "Global Bond Markets' Weakest Links & Monthly Default Rates," December 2008

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Storm Brewing For Retailers As U.S. Recession Heads Into 2009

Experts Predict More Bankruptcies

By Rachel Feintzeig

For retailers, 2009 could turn out to be one long hurricane season.

Experts have been warning for months that elements like plummeting consumer spending, unfavorable changes to the Bankruptcy Code and squeamish vendors and lenders are poised to wreak havoc on the retail industry. Now, they're darkening their forecasts even further, bracing for the worst as the holiday season gives way to a new year and a deluge of bankruptcies.

"You've just got a real enormous headwind in the retail sector," said Richard A. Chesley, a partner at the Paul Hastings law firm. "From luxury to the specialty retailer to the teen space, it is pain being felt throughout the market."

Linens 'n Things Inc., **Circuit City Stores Inc.** and **Mervyn's LLC**, to name a few, have turned to the courts for protection from creditors amid the downturn, and experts are beginning to question the ability of long-cherished brands and household names to weather the financial crisis.

Some experts say they've never seen retailers affected this deeply before by a downturn. Companies are not only entering bankruptcy in increased numbers, they're rarely emerging.

"Is it a shock or is it kind of the new reality?" asked Stephanie Hoff, a retail analyst with Edward Jones.

Credit Suisse said an estimated 5,304 retail stores will shut their doors in 2008 or early 2009, a 167% increase from 2004-2007, which saw an average of 1,990 store closings per year. Bankruptcy courts have been transformed into going-out-of-business machines, churning out liquidation after liquidation, with few reorganizations in sight.

The **Boscov's Inc.** department store chain has been one of the only exceptions to that trend. The company was able to tap a steady stream of financing as it engineered a sale to a family-led group of investors in November. The significance of the reorganization didn't escape Chief Executive Kenneth Lakin, who, after the sale hearing, proclaimed the lenders' loyalty a "near-miracle" in today's tough climate for corporate credit.

Indeed, Boscov's story remains an anomaly, though one that many beleaguered retailers, like Circuit City, are desperately trying to imitate. Unfortunately, despite their best efforts, they may not have much luck.

"The Chapter 11 process only works to the extent that you have

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More Newspaper Companies May Follow Tribune Into Chapter 11

Publishers Face Painful 2009

By David McLaughlin

Newspaper companies, coming off a dismal year racked by layoffs, bankruptcies and plummeting revenue, are facing another painful year in 2009 that could see more big names follow **Tribune Co.** into Chapter 11 protection.

Newspapers were battered in 2008 and fought to stay afloat by slashing costs and begging lenders for more breathing room. Tribune crashed into bankruptcy in early December, the second newspaper company to file in 2008, while others teetered on the brink.

With revenue projected to slide further in 2009, industry analysts expect more old-line media outlets will join Tribune in bankruptcy court along with **Creative Loafing Inc.**, an alternative newspaper publisher that filed for Chapter 11 in September.

“They know that 2009 itself is going to be a very tough year. The question is how they’re going to get through 2009. It is a world of poor options,” said Ken Doctor, a newspaper analyst at research firm Outsell Inc.

Newspaper revenues have been squeezed for years as readers and advertising dollars migrated to the Internet, but adding to those structural problems is a global financial crisis that will only intensify the industry’s struggles, experts say. The ongoing recession and credit crisis are eating into company earnings, hindering asset sales and driving up the cost of raising new capital.

A number of newspaper publishers, weighed down by heavy debt loads, have beaten a path to their lenders seeking easier debt terms so they can avoid defaulting. Many have been successful, and the trend is expected to continue in 2009, but some industry observers expect newspapers won’t be able to avoid defaults.

“I do think there will be some companies that have to reorganize” in bankruptcy, said John Puchalla, a newspaper analyst for Moody’s Investors Service. “If advertising continues to weaken, we don’t think they’ll be able to cut costs by enough to prevent cash flow from continuing to erode.”

Before Tribune’s bankruptcy on Dec. 8, ratings agency Standard & Poor’s listed six newspaper companies at “risk of imminent default,” signaling a “high possibility” of bankruptcy. The group

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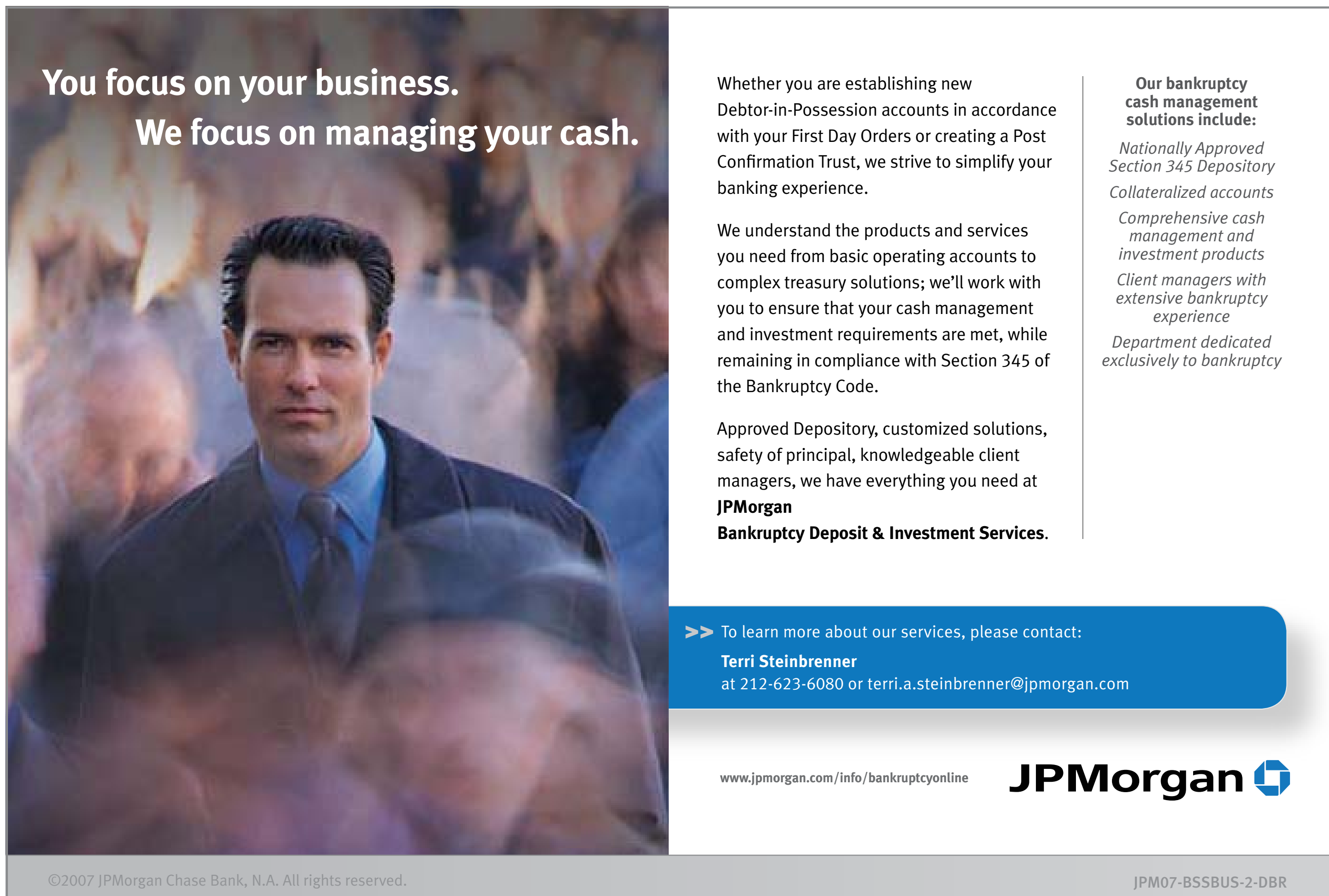

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Ailing Economy Sends Lawmakers, Investors To Professor Gloom

Altman Ponders Dark Side Of Finance

By David McLaughlin

Edward Altman bursts into the Salomon Center at New York University's business school. It's the day after Senate Republicans balked at loaning billions to rescue the Big Three auto makers, and Altman is running late after spending the morning on the phone with Barclays Plc, dishing out investment advice about General Motors Corp.

Amid the worst financial crisis in decades that has credit markets running haywire, Altman is a wanted man.

"Nothing's comparable in terms of how the markets are frozen," he said of the crisis. "It's still not the worst in terms of defaults. But in terms of impact on the real economy, I haven't seen anything like it."

A finance professor at NYU's Stern School of Business, Altman, 67, made his name studying what he calls the "dark side" of finance – credit risk, defaults and bankruptcies. With credit markets in turmoil and the recession pushing more and more companies to the brink, lawmakers, reporters and hedge funds are looking to pick his brain.

The week before the bailout talks fell apart, Altman was testifying before Congress, telling lawmakers that GM is doomed to collapse and should file for bankruptcy with the federal government providing a bankruptcy loan. He's also recently been advising star hedge fund manager John Paulson, who made billions betting on the housing bust. Altman sits on a Paulson advisory board that includes former Federal Reserve Chairman Alan Greenspan.

Known as Professor Gloom at NYU, Altman has spent his academic career delving into the deepest recesses of credit markets and default cycles. He rose to prominence in financial circles thanks to a mathematical model called the Z score, a tool used to predict whether a company will file for bankruptcy. It's a simple-looking formula, but it took hold across the financial world and is widely used by financial institutions to evaluate the bankruptcy and default potential of companies.

The model would help establish Altman, sometimes known as the Z Man, as a leading expert when it comes to economic downturns and financially troubled companies.

"He was a guiding light in this business and one of the forward

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Altman continued from page 8

thinkers in buying debt instruments and the risk you need to look at," said Shelley Greenhaus, a former Altman student and a distressed-debt investor.

Default rates are ramping up from historic lows, and one unique aspect of this cycle, Altman says, is the number of troubled companies that are trying to restructure their debt through distressed exchanges, where bondholders are asked to swap notes for new debt and take a loss. These deals, which are considered defaults, restructured about $20 billion in debt from 1984 to early December, but more than half of that amount has occurred in 2008, according to Altman's research. A number of companies are fighting to pull off additional exchanges, which could push that total past $70 billion, he says.

Altman is forecasting a default rate of 11% to 11.5% by September 2009, which would be the second highest since 2002, when it reached 12.8%. His prediction is higher than that from ratings agency Standard & Poor's, which is forecasting a default rate of 7.6% by the fall. Altman sees bankruptcy as likely for GM even with the federal loans it asked for. He gives the company a "50-50" shot at successfully reorganizing but only if the federal government steps in with a massive bankruptcy loan. He sees no hope for Chrysler.

"They're not competitive, and they won't be," he said. "They're too small."

When Altman developed the Z score, the work was remarkable not just because of the way it took off, but also because of the timing. Altman built the model as a doctoral student in finance at the University of California, Los Angeles. It was the 1960s, a time when few were paying attention to bankruptcy. The modern Bankruptcy Code was a decade away, and mega-bankruptcy cases involving billions of dollars in debt didn't exist.

But he jumped in anyway at the urging of a professor. It was a chance to break ground in an unexplored corner of the financial world.

"I think I was always fascinated by the dark side of finance from the beginning," said Altman, whose NYU office is littered with reports and books with titles like "Financial Crises" and "Managing Credit Risk." "When I saw what was happening to corporate America and how much more risky it was getting, I said this is going to be a much bigger field."

And he was right. Since his time as a graduate student, bankruptcy transformed from a backwater legal practice into an integral, and profitable, business for the nation's biggest law firms. Meanwhile, the junk bond market exploded, and vulture investors launched distressed-debt funds to profit from troubled companies. (Altman plays tennis with the vulture king, billionaire investor Wilbur Ross.)

In a report issued in November, Altman put the face value of distressed and defaulted debt at nearly $2 trillion.

Altman has been at the forefront of this growth. In the early 1980s, a headhunter firm approached him about working for Morgan Stanley, which was thinking about getting into the junk-bond business. He declined but did consulting work for the bank, which led to articles and a book. He went on to do research and advisory work for a number of banks and continues to do work for Citigroup Inc.

> **"I think I was always fascinated by the dark side of finance from the beginning. When I saw what was happening to corporate America and how much more risky it was getting, I said this is going to be a much bigger field."**
>
> Edward Altman

But he never wanted to leave the classroom for Wall Street.

"The money wasn't that important compared to waking up in the morning and if I didn't want to do any work, I didn't have to," he said. "And I didn't want to have to worry about making or losing money for someone else."

But he has inspired students to take that route. Tagged as "Altman's Vultures" in an NYU alumni magazine article, students like Greenhaus have launched their own distressed-debt funds.

Greenhaus, the president of Whippoorwill Associates, credits Altman with turning him on to bankruptcy and distressed investing. When he was at NYU in the late 1970s, there were about 10 students in Altman's class. Today, Altman's classes fill lecture halls, another sign of the field's spectacular growth. Greenhaus says Altman showed him the practical applications of what he was teaching in the classroom.

"He was able to bridge the practical world and the academic world, and that is a rare quality to be able to do both," he said. DBR

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Bankruptcy Bill To Stem Housing Crisis Has A Better Shot In 2009

Obama Backs Mortgage Modification

By Kristina Doss

Lawmakers seeking to change the nation's bankruptcy laws to keep struggling Americans in their homes have been defeated by the powerful financial services lobby time and time again. But this year could be their chance to push their proposals through to fruition.

The failure to significantly curtail foreclosures in the past year helped trigger the financial crisis and spread the contagion throughout the world. Some argue this could diminish the financial lobby's pull and credibility on Capitol Hill if they try once again to stop bankruptcy legislation aimed at curbing the foreclosure problem.

Democrats willing to tackle the foreclosure quandary head on are now in control of Congress, and they're counting on President-elect Barack Obama to help them advance changes to the law that will allow struggling Americans to stay in their homes.

"Change is coming to Washington," Sen. Richard J. Durbin, D-Ill., said at a hearing examining how bankruptcy law changes could help homeowners. "I'm confident that early (2009) we will be able to take effective steps to address our economic crisis where it started – by helping families save their homes."

Rep. Brad Miller, D-N.C., who has in the past pushed to change how bankruptcy courts treat mortgages, agrees. "I think the politics on that now have changed pretty dramatically," he said in an interview.

"We aren't going to get control of the downward spiral of the U.S. economy unless we stop the collapse of the housing crisis, and we're not going to stop the collapse of housing crisis until we get control of foreclosures," Miller said.

As the stars line up in their favor, Miller and Durbin pledged to reintroduce legislation this year that would give bankruptcy judges authority to modify the terms of a homeowner's mortgage on a primary residence, power the judges currently don't have.

Banks and mortgage lenders were successful in blocking the legislation in recent years, even as foreclosures began to mount and the financial crisis blossomed. But lawmakers in favor of the bankruptcy-law change hope the dramatic downturn in the U.S. housing market has given them enough evidence that change is needed.

"Now we are able to see that many of the dire predictions we heard at last year's hearing have not only come true, but in fact the situation has become far, far worse than anyone imagined," Durbin said at a November hearing.

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Bankruptcies, Consolidations In Store For Health-Care Industry

Credit Woes Constrain Liquidity

By Jacqueline Palank

The new year will bring more bankruptcy filings for hospitals, nursing homes and other health-care businesses as the industry faces pressure to consolidate amid constant threats to its bottom line, experts say.

Seized-up credit markets are weighing on hospitals already bogged down with a host of other challenges, including insufficient insurance reimbursement rates and high numbers of uninsured patients. Such constraints on hospitals' liquidity have already led to a number of bankruptcy filings in the past year.

In 2008, **Hawaii Medical Center** filed for bankruptcy because it couldn't restructure a loan it needed to fund operations. And after seeking Chapter 11 protection, both **Physicians Medical Center LLC** and **Hospital Partners of America Inc.** pulled the plug on their reorganizations because they couldn't get the cash they needed to pay off their debts and continue operating.

While health-care services will always be in demand regardless of the economy's highs and lows, experts say the current lows are squeezing already razor-thin profit margins.

"You're going to see a severe downturn in the health-care market," said Deryck A. Palmer, co-chairman of Cadwalader, Wickersham & Taft LLP's financial restructuring department. He said hospitals and other health care providers, including nursing homes, will "come under a multitude of pressures due to the lack of liquidity due to the credit crunch."

Such pressures, according to fellow Cadwalader restructuring partner Andrew M. Troop, will force the industry to address an oversupply of hospital beds.

"You're going to see pressure to close facilities and consolidate," Troop said. "Whether that occurs through mergers or some other vehicle, you're going to see people try to take beds out of the system."

Experts expect to see more hospitals follow in the footsteps of Hawaii Medical, Hospital Partners, Physicians Medical and the other hospitals that filed for bankruptcy in 2008.

"We've seen a fair number of bankruptcies (in 2008), and I think we'll see more" in 2009, said George Pillari, a managing director with Alvarez & Marsal's health-care team.

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Women In Restructuring Industry Build 'Good Girls' Networks

Groups Develop Connections, Careers

By Rachel Feintzeig and Jacqueline Palank

A few weeks before Christmas, Elizabeth Vrato heads to the Four Seasons Hotel in Chicago for a special holiday high tea.

The sounds of harps fill a room where tables are topped with cucumber sandwiches, miniature teapots and lavish floral arrangements. There, suit-clad and PDA-toting women chat about insolvency while sipping tea.

"It's an interesting juxtaposition because it's so girly and so feminine," Vrato says of the annual soiree, hosted by the International Women's Insolvency and Restructuring Confederation. "But then you're coming with your BlackBerry and talking about lines of credit and liquidity."

By attending events like this, Vrato, a business development executive with the Garden City Group, is participating in a new way to shatter the glass ceiling: female-centric networking.

Although women have been climbing the corporate ladder for decades, the gender balance is still far from equal at the highest ranks of many U.S. companies. The bankruptcy and restructuring field isn't immune – in fact, even as the restructuring industry reflects on the progress it has made in the several decades since its inception, female professionals today still find themselves outnumbered at meetings, at their firms and at court hearings.

The persistent gender disparity has prompted women to take a new approach, banding together to bring in business, develop contacts and recognize each other's work on their own terms.

"It is still a man's world. There are a lot of very well-known women, but we are still few and far between," said Leslie A. Berkoff, a partner at Moritt Hock Hamroff & Horowitz LLP. "The men have their good old boys network, and we refer to this as a good girls network."

One of the pillars of the so-called good girls' network is IWIRC, which hosts annual conferences and is home to local chapters that allow women to refer business to each other and trade advice on everything from handling bankruptcies to finding balance in their professional and personal lives. Many times, the socializing is done against the backdrop of spa days, shopping excursions and make-up demonstrations in an effort to build trust and camaraderie.

"Men have been doing that on the golf course for decades. It's no different than that," said Lori Payne, a BDO Seidman managing director and co-chair of IWIRC's Southern California group.

Professional groups like the American Bankruptcy Institute and the Turnaround Management Association have jumped on board, offering cocktail hours and other networking events especially geared toward their female contingent at industry conferences.

Women are also taking matters into their own hands and launching female networking groups and events. A few years ago, a group of female attorneys from Greenberg Traurig formed the Damsels for Distress, which holds monthly lunches in Chicago and New York to connect female attorneys, bankers, financial advisers and other restructuring professionals.

Those connections can quickly yield increased credibility and business for female bankruptcy professionals. In the fast-paced and high-pressure world of restructuring, where armies of professionals lead companies on the march toward rehabilitation, attorneys refer investment banking jobs to colleagues they know they can trust, and vice versa.

"The men have their good old boys network, and we refer to this as a good girls network."

Leslie A. Berkoff
Moritt Hock Hamroff & Horowitz LLP

"My business is all based on relationships," Payne said. "By the time you read about an opportunity in the newspaper, it's too late."

But in order to build those crucial relationships, women must let their peers know what services and skills they have to offer, a practice that doesn't come easily to some. Female-specific networking events can help to ease anxieties that may come with meeting new people and afford women the self-confidence to promote their work. IWIRC chair Debra Kuptz believes her group has been particularly successful in this regard.

"The organization itself sort of has developed this culture of camaraderie and trust. I just think that's a powerful thing," she said.

But some women see the fashion shows and chit-chat as distractions from the true purpose of networking events.

"We have to put women in an environment where they feel comfortable with the straight talk, not just the 'oh don't we look pretty in our suits' talk," said Cindy Warner, a managing director at restructuring firm AlixPartners. "I think we have to have the real conversations, not the girly conversations."

Still, many women defend these "girly" settings, which they say never detract from the main reason they attend. Whether the meeting takes place in a bland hotel conference room or a luxurious spa, business is always at the heart of the events.

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"Women have come to these organizational meetings and receptions with the right attitude – I'm here to meet people, I'm here to network and I'm here to get business," said Jean Robertson, a partner at Calfee, Halter & Griswold LLP. "We're not learning how to put on a scarf properly…These are very difficult, complex issues that we're covering."

And many women say they appreciate the creativity of the events and crave a break from the monotony of lunch meetings and coffee chats that tend to dominate their calendars.

"Why do we have to stare at each other over a cup of coffee? Does anybody need more caffeine?" asked Kelly Beaudin Stapleton, a former U.S. Trustee and current senior managing director in Traxi LLC's corporate restructuring group.

No matter how women prefer to network, they agree that such events have introduced them to valuable role models. Berkoff, IWIRC's former chairwoman, said when she joined the organization early in her career, she was inspired by the female role models and mentors she met who had built successful careers in bankruptcy while raising children – a specific mold no one at her law firm fit at the time.

"The women I had met in IWIRC were married, had impressive careers, kids; they did it all," Berkoff said. "I just took my lead from them."

Today, women continue to build up such organizations and events in order to help their cohorts, especially those just starting out, succeed. In doing so, they've chosen not to imitate decades of male boardroom bonding, but to develop their own unique brand of networking that captures women's interests and skills.

"It used to be 'oh, the men do it, the men have good old boy networks,'" Stapleton said. The new answer? "Let's just figure it out on our own and figure out what our special niche can be and move forward with it," she said. DBR

Good Girls Network

Membership in the International Women's Insolvency and Restructuring Confederation has grown steadily over the years as word of the group's female-centered networking opportunities spread among the bankruptcy and restructuring community. The group now has 29 "networks" across the country that organize everything from golf outings to tea parties in their regions and come together for annual meetings.

IWIRC Membership Growth from 2002-2008

Date	Members	Number Increase From Previous Year	Percentage Increase From Previous Year
Dec-08	822	16	2%
Dec-07	806	42	5%
Dec-06	764	94	12%
Dec-05	670	111	17%
Dec-04	559	68	12%
Dec-03	491	120	24%
Dec-02	371	-	-

Source: IWIRC

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Banks Get A Bad Break In 2008

Of the 52 bank closures that have occurred in the past eight years, almost half have transpired since Jan. 1, 2008. Of the 25 banks that closed in 2008, all but four closed in the second half of the year, during the height of the economic crash. Here's a full list of 2008's failed banks.

Bank Name	Location	Closed	Assets	Deposits
Douglass National Bank	Kansas City, Mo.	1/25	$58.5 million	$53.8 million
Hume Bank	Hume, Mo.	3/7	$18.7 million	$13.6 million
ANB Financial NA	Bentonville, Ark.	5/9	$2.1 billion	$212.9 million
First Integrity Bank NA	Staples, Minn.	5/30	$54.7 million	$50.3 million
IndyMac Bank FSB	Pasadena, Calif.	7/11	$32 billion	$19 billion
First National Bank of Nevada	Reno, Nev.	7/25	$3.4 billion	$3 billion
First Heritage Bank NA	Newport Beach, Calif.	7/25	$254 million	$233 million
First Priority Bank	Bradenton, Fla.	8/1	$259 million	$227 million
The Columbian Bank and Trust	Topeka, Kan.	8/22	$752 million	$622 million
Integrity Bank	Alpharetta, Ga.	8/29	$1.1 billion	$974 million
Silver State Bank	Henderson, Nev.	9/5	$2 billion	$1.7 billion
Ameribank	Northfork, W.V.	9/19	$115 million	$102 million
Washington Mutual Bank	Seattle	9/25	$307 billion	$188 billion
Main Street Bank	Northville, Mich.	10/10	$98 million	$86 million
Meridian Bank	Eldred, Ill.	10/10	$39.2 million	$36.9 million
Alpha Bank & Trust	Alpharetta, Ga.	10/24	$354.1 million	$346.2 million
Freedom Bank	Bradenton, Fla.	10/31	$287 million	$254 million
Franklin Bank SSB	Houston	11/7	$5.1 billion	$3.7 billion
Security Pacific Bank	Los Angeles	11/7	$561.1 million	$450.1 million
The Community Bank	Loganville, Ga.	11/21	$681 million	$611.4 million
Downey Savings and Loan	Newport Beach, Calif.	11/21	$12.8 billion	$9.7 billion
PFF Bank and Trust	Pomona, Calif.	11/21	$3.7 billion	$2.4 billion
First Georgia Community Bank	Jackson, Ga.	12/5	$237.5 million	$197.4 million
Haven Trust Bank	Duluth, Ga.	12/12	$572 million	$515 million
Sanderson State Bank	Sanderson, Texas	12/12	$37 million	$27.9 million

Source: Federal Deposit Insurance Corp.

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Health Care continued from page 11

More than 2,000 of the nation's 3,900 general hospitals were "teetering on the brink of insolvency" last spring, according to an Alvarez & Marsal study, because they're not making a profit seeing patients.

The threats to hospitals' solvency are many and far-reaching. One source of blame for hospitals' shaky stances is insufficient reimbursement rates from Medicare and Medicaid. Another is growing numbers of uninsured patients and laws requiring hospital facilities to treat such patients. They've also battled to stay competitive, an expensive task that involves spending millions of dollars to recruit skilled personnel and purchase the latest technology, as specialty care providers crop up.

On top of that, health-care companies are now finding it much more difficult, as are businesses in all industries, to get new capital as lenders impose more restrictive financing terms or become more selective.

"It's the worst possible time to be trying to raise money for a health-care provider," said Robert D. Lynch, chief operating officer of lender Healthcare Finance Group Inc.

To cope, Lynch said hospitals have been slashing their capital expenditures; facilities are choosing to forego key projects such as building upgrades or the purchase of new equipment.

Pillari said he knows of several well-rated hospitals that in September and October froze all capital spending after observing the turmoil in the credit markets. That means hospitals aren't making the improvements they need to stay competitive. "They have plenty of money," he said. "They're not sure what's going to happen next. They want to sit on their cash."

Even more threatening to hospitals' solvency, experts say, are state budgets that are stretched to the limit. When it comes time to start cutting, health-care spending – one of the largest state expenditures – is often sent to chopping block first, depriving already underfunded facilities of needed cash.

"This is a brutal situation because you have a lot of states and a lot of counties that fund a lot of hospitals," Pillari said. "And as these things can't be funded and won't be funded in some cases, you have regions of the country and area that are just going to be in dire straits for access to care."

It's not as if hospitals can simply choose to accept fewer patients or close their emergency rooms, which see large numbers of uninsured and indigent patients. Instead, they "have to do more for those patients with less resources," Pillari said.

To avoid insolvency, hospitals will come under pressure to make cuts wherever they can, from layoffs to cutting out certain non-competitive or non-essential services.

"We've seen some hospitals undergo fairly significant reductions in force, particularly on the administrative level," said Daria Niewenhous, a health-law attorney and member of Mintz Levin. "They're taking a hard look at roles and responsibilities and trying to see where they can realize some efficiencies."

With the U.S. economy in a recession and the credit markets unlikely to loosen up any time soon, hospital officials may find it easier to justify taking such steps as finding a buyer or filing for bankruptcy.

"They'd be reluctant to do that in normal economic times, but now that you have this gigantic excuse floating around, they can now say that it made a lot of sense for us to merge with the guy around the block or to sell out to a national company," Pillari said.

"They'll have that window where they can do it and everyone can save face." DBR

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Legislation continued from page 10

The rise in foreclosures has not only hurt homeowners but has also affected industries that rely on their business. Over the past year, homebuilders like **WCI Communities Inc.** and **Tousa Inc.** have filed for bankruptcy protection.

Wall Street has also been shaken to its core by the failures of big mortgage players like **Washington Mutual Inc.** and **IndyMac Bancorp Inc.** and investment banks **Lehman Brothers Holdings Inc.** and Bear Stearns Cos. The resulting financial meltdown forced President George W. Bush to sign into law a $700 billion economic bailout package to prevent the financial crisis from intensifying.

Given the government's unprecedented intervention in the nation's financial institutions, some argue it's time to start directly helping struggling consumers by giving bankruptcy judges the authority to modify the terms of mortgages on primary residences.

"Americans are right to demand action from Congress that focuses on the needs of ordinary, hardworking people," Sen. Patrick Leahy, D-Vt., said in a statement prepared for the November hearing. "As the new administration prepares to inherit the severe economic challenges and failed deregulatory policies left to it by the outgoing administration, this is authority that Congress should provide."

Miller acknowledges that "a distinct minority" of Democrats may continue to side with Wall Street banks, mortgage lenders and insurance companies and oppose his bill, but he says the industry "should have no credibility left."

"They have been saying for a year and a half: 'Don't worry about this, we have everything completely under control, don't worry about the foreclosure problem,'" he said. "Now they are saying we are going to have a Great Depression."

Another force behind bankruptcy-law changes could be Obama and Vice President-elect Joe Biden. Both pledged during the presidential campaign to work to eliminate the provision that prevents bankruptcy judges from modifying an individual's mortgage payments.

That's an about-face for Biden, who while in the Senate voted in favor of a bill that overhauled the nation's bankruptcy laws in 2005. Critics say the bill was written to benefit the credit card industry.

Democrats looking to pass the bankruptcy legislation also have a supporter in Republican Congressman Steve Chabot of Ohio, a state hit hard by the housing crisis. "I think we've got a good chance in the next Congress," Chabot said in an interview.

Banking lobbyists, however, say they'll fight new legislation, even as foreclosures continue to rise. The industry claims legislation that would allow bankruptcy judges to modify primary-residence mortgages would cause interest rates and borrowing costs on those mortgages to rise, which could strand even more borrowers.

"We still remain opposed to efforts to grant new powers to bankruptcy judges," said Scott Talbott, senior vice president of government affairs for The Financial Services Roundtable.

Although Talbott acknowledges that larger Democratic majorities on Capitol Hill make it an "uphill battle" to prevent the passage of proposals like those crafted by Durbin and Miller, he denies that the financial services industry's credibility has diminished in light of the financial crisis.

"The industry is the most knowledgeable about these issues and you need the information to flow now more than ever," Talbott said.

David G. Kittle, chairman of the Mortgage Bankers Association, in November said Congress has already passed legislation that provides the industry with new tools to help troubled borrowers. The mortgage industry, he said, helped nearly 2.5 million borrowers avoid foreclosure between July 2007 and September 2008 through repayment plans and loan modifications.

Changing bankruptcy laws to allow judges to modify primary-residence mortgages would be "destabilizing," Kittle said.

Scott Stengel, a partner in the bankruptcy-law practice at Orrick, Herrington & Sutcliffe LLP, warns that giving judges the power to modify mortgages could hinder consumers' ability to get mortgage loans and other types of credit.

The proposed legislation "effectively gives borrowers a club to take into bankruptcy to reduce principal and adjust interest rates immediately," Stengel said.

A more nuanced, conservative approach, Stengel said, could better address the foreclosure crisis.

A program proposed by Federal Deposit Insurance Corp. Chairwoman Sheila Bair would allow the FDIC to modify interest rates and take other steps outside of bankruptcy to make mortgage payments more affordable. The FDIC is currently trying out its plan on mortgages held by IndyMac, which the banking regulator seized last year.

"I think Chairman Bair's proposal, being slightly more conservative in approach, is less likely to have a ripple effect in the mortgage market going forward than Sen. Durbin's approach," he said.

Stengel, however, admits that he wouldn't "be surprised to see something like Sen. Durbin's bill pass fairly early in the next Congress because of the pressing need to solve the housing crisis." DBR

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Newspapers continued from page 7

included Tribune along with Media News Group Inc., Freedom Communications Inc. and Gatehouse Media Inc. Tribune's bankruptcy came as it was facing a likely default by the end of December, according to analysts.

The *Star Tribune* of Minneapolis, meanwhile, warned in October it may have to file for bankruptcy after skipping a quarterly payment on $432 million in debt. Lee Enterprises Inc., the publisher of the *St. Louis Post-Dispatch* and 48 smaller newspapers, said last month that its auditors may issue a going-concern warning, which would trigger a default on the company's debt.

The warnings come amid dire revenue predictions for 2009. Moody's sees advertising revenue skidding 13% to 16% on top of an expected decline of 15% in 2008. The Newspaper Association of America, an industry trade group, predicts advertising revenue will slump about 10% after an estimated 16.5% drop in 2008.

Still, the Newspaper Association is downplaying the gloomy predictions. Randy Bennett, its senior vice president for business development, says the organization doesn't see bankruptcy as "imminent" for newspaper companies. Newspapers are cutting costs, he says, and chasing untapped revenue sources through new online efforts.

"If you look at what newspapers are doing to try to diversify and what they're doing in restructuring their organizations and the pool of dollars that are still out there that newspapers can go after, I think there are a lot of opportunities," he said. "Newspapers are going to have a tough couple of years, but I think the long-term prospects are very positive."

The good news is newspapers have seen their online audiences and revenues grow. But for all the emphasis on boosting online revenue, those figures have been slowing and won't be able to make up for the declines in print advertising, experts say. The print edition continues to generate the bulk of newspapers' revenue – about 91%, according to the Newspaper Association of America – so shifting entirely to the Internet isn't realistic.

Online ads "won't come close" to replacing the revenue newspapers earned from major print ad buyers like department stores and car dealerships, said Doctor from Outsell. "That business isn't coming back," he said. "The newspaper industry is still coming to grips with that." Newspapers, as their advertising revenues drop, have been slashing staff, but the cuts haven't kept pace.

Exacerbating these structural problems is the recession, which economists expect will stretch well into 2009. As consumers cut back on spending, ad spending takes a hit as well, further squeezing newspapers' bottom lines.

Several publishers, including The McClatchy Co., Lee Enterprises and The Journal Register Co., moved to sidestep looming defaults in 2008 by negotiating new terms with lenders or forbearance agreements to keep them from foreclosing on their collateral. Freedom Communications, which owns the *Orange County Register*, said in October that it had likely violated a lending covenant and was in talks with lenders. The deals give the company's more flexibility as revenue slides, but the changes come with a price, like higher interest rates and reduced borrowing ability.

"You'd like to raise rates as much as you could, but if you do that, you may be choking off the company's ability to survive," said Puchalla from Moody's. "It's kind of a balance that both the company and the lenders have to consider."

> **"They know that 2009 itself is going to be a very tough year. The question is how they're going to get through 2009. It is a world of poor options."**
>
> Ken Doctor, Outsell Inc.

In September, McClatchy, publisher of 30 daily newspapers, including the *Miami Herald*, amended its nearly $1.2 billion bank facility to raise the ratio of debt to cash flow. In exchange, it agreed to pay higher interest and reduce the availability of a revolving credit facility. Morris Publishing Group reached a deal with its lenders in October to relax a series of financial tests, but its parent, Morris Communications Co., must negotiate a transaction that will allow it to pay off all loans under its $275 million financing package, according to a regulatory filing.

Creative Loafing, the alternative newspaper publisher, wasn't as lucky. When it filed for bankruptcy in September, it said in a lawsuit filed against its lenders that they had refused to negotiate in good faith to change "unrealistic" lending covenants leading up to the bankruptcy.

Analysts expect newspapers will continue to turn to lenders to stay afloat in 2009. The Journal Register, for example, which publishes 22 daily newspapers and has more than $640 million in bank debt, has been operating under a forbearance agreement with lenders since July. The agreement expires Jan. 16 but could be extended.

Other companies have debt coming due, including The New York Times Co., which has a $400 million credit agreement expiring in May. The company said it's talking with lenders and is looking to raise $225 million through a sale-leaseback at its Manhattan headquarters.

The question for lenders in the coming months will be whether they want to declare defaults and move to liquidate assets that are dropping in value and that would find few buyers.

"It's going to be a tough call, because if you take ownership of newspaper assets, who do you sell them to?" said S&P analyst Emile Courtney. DBR

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Retailers continued from page 6

a strategic business plan in focus and markets that are willing to sustain you, to not only get there, but to support you when you get out of bankruptcy," Chesley said. "And what we're seeing, at least in the retail space, is that there's none of that. There's none of that support right now."

The support is dwindling from all sides, as consumers, lenders and vendors all seem to lose faith in retailers' ability to survive.

Suppliers have clamped down on the credit they extend to companies, often requiring letters of credit or payment up front before they'll turn over goods they used to routinely supply in exchange for only the promise of repayment.

"They're being much more cautious, much more conservative," said Peter J. Antoszyk, a partner at law firm Proskauer Rose. "It chokes the supply chain."

Linens 'n Things, for example, had to tap a $100 million letter of credit under its $700 million bankruptcy loan to coax vendors like Yankee Candle Company to continue supplying products. The retailer still was unable to survive Chapter 11; despite early attempts to reorganize, Linens 'n Things is shutting the doors to all 589 of its stores.

Many vendors say they have no choice but to require forms of insurance like Linens 'n Things' letter of credit as they struggle to maintain their own profit margins in a time when their customers are simply not paying. And with retailers falling every day, vendors are understandably wary about how they might fare if the company enters the shelter of Chapter 11.

Many of these retailers took on multiple layers of debt over the years while credit was plentiful, turning to untraditional sources like hedge funds and private equity firms to keep afloat. The days of leveraged buyouts and complicated balance sheets have left vendors worried that if one of their customers files for bankruptcy, there might not be any money left over after all secured creditors are paid.

"The vendors are saying, 'I don't know if this company is going to make it," said Ken Simon, a managing director of financial advisory firm

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U.S. Retailers At Risk

Retailers, coming off a year of dismal sales, bankruptcy filings and store closings, are expected to face a difficult 2009 as the U.S. economic crisis continues to put a damper on consumer spending. Here's a list of companies whose debt is considered particularly vulnerable to default.

Company	Rating	Outlook/CW
Awesome Acquistion Co. LP	B-	Outlook Positive
Barneys New York Inc.	B-	Stable
Beverages & More! Inc.	B-	Stable
Blockbuster Inc.	B-	Stable
The Bon-Ton Stores Inc.	B-	Stable
Burlington Coat Factory Warehouse	B-	Stable
Caribbean Restaurants LLC	B-	Stable
Charming Shoppes Inc.	B-	Stable
General Nutrition Centers Inc.	B-	Stable
Harry & David Operations Corp.	B-	Stable
Logan's Roadhouse Inc.	B-	Stable
Michaels Stores Inc.	B-	Stable
NBC Acquisition Corp.	B-	Stable
OSI Restaurant Partners LLC	B-	Stable
RGIS Inventory Specialists	B-	Stable
Smart & Final Holdings Corp.	B-	Stable
The Sports Authority Inc.	B-	Stable
BCBG Max Azria Group, Inc.	B-	Outlook Negative
Claire's Stores Inc.	B-	Outlook Negative
Eddie Bauer Holdings Inc.	B-	Outlook Negative
Guitar Center Holdings Inc.	B-	Outlook Negative
Krispy Kreme Doughnuts Inc.	B-	Outlook Negative
MAPCO Express Inc.	B-	Outlook Negative
Mastro's Restaurants LLC	B-	Outlook Negative
Mothers Work Inc.	B-	Outlook Negative
Perkins & Marie Callender's Inc.	B-	Outlook Negative
Rite Aid Corp.	B-	Outlook Negative
Sagittarius Restaurants LLC	B-	Outlook Negative
BI-LO LLC	B-	CreditWatch Negative
Duane Reade Inc.	CCC+	Developing
El Pollo Loco Inc.	CCC+	Outlook Negative
Loehmann's Holdings Inc.	CCC+	Outlook Negative
Oriental Trading Co. Inc.	CCC+	Outlook Negative
Finlay Enterprises Inc.	CCC	Outlook Negative
Real Mex Restaurants Inc.	CCC	Outlook Negative
Sbarro Inc.	CCC	Outlook Negative
Uno Restaurant Holdings Corp.	CCC	Outlook Negative

Data as of Dec. 6, 2008 Source: Standard & Poor's Global Fixed Income Research

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Retailers continued from page 18

Loughlin Meghji + Co. They "do the math and they say 'My God, if I extend credit and this thing doesn't make it, there's nothing here for me.'"

Other companies relied upon by retailers are also becoming increasingly nervous about both the retailer and the consumer's ability to pay. Credit card processors, for example, might hold onto money from transactions for longer periods of time due to concerns about credit-card defaults or returns. These holdbacks can decrease a company's liquidity and eventually push a business into bankruptcy.

"I think this time around we're going to see lenders be more aggressive with those reserves, which is something we haven't seen in the past," Antoszyk said. "They're going to be putting in reserves and ratcheting down on the company's ability to borrow."

While the age of free credit seems to be coming to an end for both companies and consumers, retailers are still trying to entice their customers to return to the free-spending shopping habits that marked the American public for so long. To do so, they're relying on some old methods, like layaway plans.

Antoszyk says the number of retailers implementing such programs, whereby stores hold an item for customers until they can pay the entire amount, is increasing for the first time since the 1950s. While layaway plans may lure some consumers into making purchases they otherwise would be hesitant, or unable, to make the practice could ultimately backfire, as stretched consumers are forced to abandon their purchases before making the full payment.

When "customers stop paying on [the merchandise] they'll have unsold inventory just building up. People will just walk away from it," Antoszyk said.

Concerns about customers' ability to pay and lenders' ability to lend have left other experts, like Ballard Spahr Andrews & Ingersoll LLP attorney David Pollack, pessimistic about how retailers will fare in the coming months.

"It used to be only the strong survive," Pollack said. "Even the strong I think are going to be struggling until this turns around." DBR

Financing continued from page 4

of being like something from 'The Sopranos' are now bandied around like, 'That's just the cost of money,'" said Stark, who is with the firm of Brown Rudnick Berlack & Israels.

The freeze in bankruptcy financing is of a piece with the glacial credit environment for all corporations, said restructuring advisor Jeff Werbalowsky. Lending to companies in Chapter 11 is a "specialized branch" of corporate finance, he said, suffering like the rest from constricted cash flow.

"If you can't get plain-vanilla business financing, it stands to reason you can't get mint financing with chocolate sprinkles and cherry bits mixed in, which is what bankruptcy financing is," said Werbalowsky, co-chief executive officer of Houlihan Lokey Howard & Zukin.

The trend of paying more for bankruptcy loans and getting less in the way of financial flexibility will continue in 2009, he said. But it won't last forever.

Rothschild Inc. investment banker Neil Augustine blames the high price of bankruptcy financing on the capital structure of companies that borrowed against everything they owned, leaving no room for new lenders. In the go-go years of plentiful cash, assets were pledged as collateral for one, two and even three layers of secured debt. Without collateral, "you may not like the price" on a bankruptcy loan, he says.

Although lenders can make juicy profits providing loans to companies in bankruptcy, they aren't lining up to get the business.

The competition that used to keep a lid on prices is over, with banks, hedge funds and investment banks no longer willing to vie for the chance to lend to troubled companies. Due to their own cash crunches or revamped lending standards "some institutions that we used to see all the time are just not in the market of investing in distressed companies right now," said bankruptcy attorney Laura Davis Jones of Pachulski Stang Ziehl & Jones.

Hedge funds and other lenders made exploratory forays in the form of buying what they thought was highly protected debt at a discount, only to get burned, said Durc Savini of Miller Buckfire, an investment bank with a major bankruptcy practice.

"A lot of these hedge fund guys are concerned about catching the falling knife," Savini said. "They've got capital but don't want to rush in."

Six months ago, the fallen prices of secured debt looked good to distressed debt investors, who jumped at the chance to get it at what they thought were bottom prices. Prices, however, have continued to fall, handing the investors a beating, Savini said. "People who invested in objectively well-secured loans have sustained major losses," he said.

As long as the risk element remains as high, the price of bankruptcy financing will continue to rise, said Houlihan's Werbalowsky, citing "a number of examples of (bankruptcy) lenders taking it on the chin." DBR

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Auto Makers continued from page 2

"scary." Nevertheless, he says, Chapter 11 bankruptcy may be their best shot at a viable future.

"Everything we do may not work, so we have to pick the things that we think have the best chance of working," he said. "I think a Chapter 11 bankruptcy with some government guarantees is feasible. Will it be very difficult; might it fail? Sure, absolutely."

Stuart Gilson, a professor at the Harvard Business School, says an auto maker bankruptcy is a "risk worth taking."

Bankruptcy experts say the federal government could play a major role in reassuring consumers that an auto maker could survive – and thrive – after a bankruptcy restructuring.

The credit markets remain weak, and the market for bankruptcy financing has all but dried up. The government would likely have to step to either directly provide debtor-in-possession financing or guarantee it, a move that should help convince Americans that the U.S. auto industry can survive.

"The DIP lender-of-last-resort must be the U.S. government," Altman, an expert on bankruptcy and corporate defaults, said in his written testimony to Congress last month.

In fact, the loan agreement GM and Chrysler reached with the federal government last month allows the $17.4 billion in loans to be converted into DIP financing in the event either of the auto makers files for Chapter 11 protection.

The government would also be able to force change on an auto maker as its bankruptcy lender, which holds the most senior position in a company's capital structure. Restructuring milestones could be written into the loan agreement.

Some experts have also suggested the government back vehicle-warranty programs if an auto maker files for Chapter 11 protection. Then, experts say, consumers can't use bankruptcy as an excuse for shunning U.S. auto makers.

"It would have to be managed very, very carefully," said Gilson. "Consumers have to be reassured."

Bankruptcy, however, isn't without its drawbacks. Over the past decade, the process has become more costly and complicated, and litigation has derailed more than a few Chapter 11 restructurings.

Advocates of an auto maker bankruptcy invariably cite the ability to scuttle labor contracts, but the mechanism the Bankruptcy Code provides to reject collective bargaining agreements is time consuming and expensive.

Lengthy trials are held in bankruptcy court to determine if the cuts are really necessary, and a company must exhaust any possibility of reaching a consensual deal before a judge will take the rare step of allowing a company to reject its labor agreements.

"There's a sentiment that Chapter 11 is an easy way to take care of legacy costs and deal with labor contracts," said James Mallak, managing director at Alvarez & Marsal. "You can't just reject contracts."

Still, Section 1113 of the Bankruptcy Code is the only way companies, absent the consent of workers, can modify labor contracts. This gives companies restructuring in bankruptcy a fair amount of leverage at the bargaining table.

As a condition of the $17.4 billion in federal loans, the Bush administration demanded GM and Chrysler cut compensation to levels of their foreign rivals by the end of 2009. But absent a bankruptcy filing, many analysts don't believe the auto makers will be able to strike a deal with their unions before the White House deadline.

One restructuring adviser who negotiated with the United Auto Workers union during the bankruptcy of a big Midwestern auto supplier says he was able to wring concessions out of the union only when the company sought to terminate its labor contracts.

"The only reason we got what we got from the UAW was when they saw us going down the path to eviscerate their contracts," the adviser said. "Only then did they put their cards on the table."

Even if union leaders and auto makers can reach a deal on labor costs, there's no guarantee rank-and-file workers would sign off on further wage cuts. Such a dispute between union leaders and workers could result in a strike, which could throw an auto maker into liquidation.

That's almost what happened in Northwest Airlines Corp.'s bankruptcy case, when flight attendants threatened to strike over wage-and-benefit cuts after their union agreed to a new deal with the airline. Northwest asked a federal judge to forbid a strike, and a federal appeals panel upheld a strike ban, but, notably, left the workers' right to strike intact.

There remains a legal gray area over when workers are within their rights to walk off their jobs if a company unilaterally imposes pay cuts. Given the legal uncertainty, it's unclear if President-elect Barack Obama would use his powers to force the auto workers to stay on the production lines.

The auto makers' moves to streamline their business operations will likely have serious implications for their retirees and for the Pension Benefit Guarantee Corp., the government-chartered pension insurer. Bankruptcy law allows companies to walk away from their pension plans if they can prove they can't stay in business while continuing to fund their obligations. It's unclear if GM or Chrysler are in that position.

GM said in its 2007 annual report that pension plans covering

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more than 400,000 retirees were overfunded by $18.8 billion. The company disclosed pension investment losses of $6.3 billion in its most recent quarterly report filed with the Securities and Exchange Commission. In November, GM said its plan for hourly workers was underfunded by $500 million.

Chrysler, which was taken private in 2007 by private equity firm Cerberus Capital Management LP, hasn't commented publicly on the status of its pension obligations since the end of 2007, according to spokeswoman Shawn Morgan. The plan was fully funded as of the end of that year.

But over the past year, the financial crisis has wreaked havoc on the markets. Pension funds and retirement investments have likely fallen along with asset prices.

In the event an auto maker walks away from its pensions, the PBGC would step in to take over its pension plans. But the PBGC is itself underfunded by some $11 billion, a deficit that could easily double or triple if one or more auto makers terminated their pensions.

> **"If there's excess capacity in the industry, Chapter 11 and (Section) 363 provide a vehicle for dumping the excess capacity."**
>
> Stuart Gilson, Harvard Business School

There is considerable uncertainty over how much the PBGC would be on the hook for in the event of a bankruptcy filing by one or more U.S. auto maker. Eric J. Selle, an auto analyst for JPMorgan Chase & Co., said the PBGC could inherit more than $100 billion of pension obligations if GM, Chrysler and Ford filed for bankruptcy and walked away from their pension obligations.

Such a situation, depending on the plans' funding situation, could require a bailout of the PBGC, bankruptcy experts say.

"That's a major point the government has to keep in mind when they think about the cost of all this," said Westbrook, of the University of Texas. He acknowledges that an auto maker bankruptcy could "swamp" the PBGC but he, like many other observers, believes the government would step in to save the agency.

"Some things are not thinkable, and that's not thinkable," Westbrook said. "As a practical matter the government is going to stand behind that and it's going to be very expensive."

In spite of the challenges, bankruptcy undoubtedly offers the auto makers numerous advantages, especially when it comes time to cut dealer contracts, sell unwanted brands and close factories.

Chapter 11 would certainly help GM and Chrysler trim their bloated dealer networks, which raise the auto makers' costs significantly. State franchise laws make it difficult for the auto makers to reduce their retail locations, but bankruptcy would allow them to reject those contracts.

GM Chief Executive Rick Wagoner told Congress that his company needs to cut 1,700 of its 6,400 retail outlets. Himanshu Patel, an analyst for JPMorgan, believes GM's dealer problem is "probably only addressable cost effectively" through a government-backed bankruptcy.

Bankruptcy court also provides a venue for the orderly sale of unwanted product lines.

GM has said it would most likely eliminate or sell its Hummer, Saab and Saturn brands. Chrysler says it won't sell off brands, but analysts have said Jeep could be attractive to foreign investors.

The Bankruptcy Code's Section 363 provides the auto makers with a mechanism to auction assets, including brands, engineering designs and logos, free and clear of liens and other encumbrances.

Bankruptcy auctions could also be used to sell or close plants and liquidate equipment. Many of GM and Chrysler's plants run far below their capacity, and closing plants so remaining factories can run at optimum output is essential to the auto makers' turnaround hopes.

"If there's excess capacity in the industry, Chapter 11 and (Section) 363 provide a vehicle for dumping the excess capacity," said Harvard's Gilson.

Auto supplier **Delphi Corp.**, GM's former parts division, used bankruptcy to close or sell 25 U.S. plants and several divisions, including its steering and battery units.

Delphi's Chapter 11 case, however, foreshadows some of the challenges a bankrupt auto maker would face. The company was forced to turn to GM for financial support when an investment deal designed to end its bankruptcy fell through last year. The parts supplier, after more than three years, is still operating under court protection.

GM, Chrysler and Ford, unlike Delphi, have no one other than the U.S. government to turn to for such support. To successfully turn around their businesses, they must take on a restructuring the scale of which has not been seen before.

"We're in a new era, and it's going to have to be a new auto industry," said Tony Schnelling, a managing director and founding member of turnaround firm Bridge Associates LLC. DBR

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Auto Suppliers continued from page 3

Cash-strapped auto makers will also be less likely to bail out foundering supplies. Detroit auto makers are notorious for squeezing suppliers on prices, but they have in the past stepped in to stop a critical supplier from going under, knowing that the loss of a single part can shut down their factories.

But as auto makers idle factories and cut production, they may not be able to save suppliers. Chrysler's unwillingness to financially support Plastech contributed to the company's demise.

"You'll see more suppliers fall by the wayside as the economic situation leads to the right-sizing of capacity," Wall said.

Although suppliers are now being squeezed by both the global financial crisis and severe auto industry downturn, the industry has been in a somewhat constant state of restructuring for the better part of a decade. Collins & Aikman Corp. and Plastech entered Chapter 11 to reorganize but ended up in liquidation. In 2008, Dura Automotive and Dana emerged from bankruptcy, only to face continued troubles. The New York Stock Exchange last month warned Dana that it could be delisted because its stock is trading at less than $1 a share.

Volume-dependent suppliers tied to Detroit have business models that are susceptible to failures during industry downturns and that don't incentivize them to invest in technology that may yield higher margins in the future, said Cyrus Pardiwala, who leads the U.S. restructuring advisory and insolvency practice at PricewaterhouseCoopers.

Pardiwala said financial restructurings for suppliers are often just a "short-term solution" because the underlying problems with Detroit's business model haven't been fixed.

Smaller suppliers will most likely be the first forced into bankruptcy this year, according to CSM's Wall. "You will see some big names in the next 12 months, but tier two and tier three suppliers are even more vulnerable," he said.

That's because most smaller parts makers, unlike the larger suppliers, haven't undergone the same type of cost-cutting in recent years to prepare themselves for the current crisis. Small suppliers also tend to be less diversified among customers and types of vehicles, while providing less advanced components that are susceptible to low-cost, foreign competitors.

All three of the Detroit auto makers have said they intend to trim the number of models they offer, if not eliminate entire brands all together. That could leave suppliers exposed to having a large portion of their revenue eliminated quickly, especially if bankruptcy or government oversight allows automaker to sever supply contracts.

"Automakers could then market-test the programs to more competitive suppliers and leave the current supplier with claims against the debtor, which may or may not get paid as general unsecured claims," said W. Patrick Dreisig, who co-chairs law firm Butzel Long's auto industry practice group.

Dreisig said that while suppliers face an uncertain future now, a bankruptcy filing by one or more auto makers could be "cataclysmic."

"In the supplier sector, it would cause a cascading effect of ripple-down bankruptcies," he said. DBR

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Outlook continued from page 1

Consulting firm Bain & Co. expects to see between 160 and 190 corporate defaults in 2009, which would put the default rate between 10% and 12%.

Bankruptcy experts say few industries will be spared pain in 2009. A lot of companies are "walking the tightrope," said Jonathan Henes, a partner in the bankruptcy practice of law firm Kirkland & Ellis LLP.

"I think it's going to be across industries," he said.

The credit markets remain frozen, and few companies teetering on the brink will be able to get new financing to avoid bankruptcy. "The reality is that lots of (companies that) got refinanced the last time around got a pass card, and they won't get one this time," said Douglas Baird, a professor at the University of Chicago Law School.

Some industries are bracing for extensive suffering. The U.S. automotive industry was in dire straights heading into 2009, with both General Motors Corp. and Chrysler LLC obtaining government loans to avoid free-fall bankruptcy. The auto makers' financial troubles will continue to hurt the already-troubled supplier industry.

The retail industry, which took a serious hit in 2008 as the U.S. economy entered a recession and consumer spending slowed to a trickle, is also facing a difficult 2009. A number of retailers, including **Linens 'n Things Inc.**, **Circuit City Stores Inc.**, **Boscov's Inc.**, **Mervyn's LLC** and **Sharper Image Corp.** filed for Chapter 11 protection in 2008, and few have been able to restructure in a challenging economic climate marked by a nearly complete lack of credit.

James B. Shein, counsel at McDermott Will & Emery LLP and a professor at Northwestern University's Kellogg School of Management, expects retail bankruptcies to further accelerate in early 2009. Many retailers are expected to simply liquidate.

More newspaper companies could follow **Tribune Co.**, the publisher of the *Chicago Tribune*, *Baltimore Sun* and *Los Angeles Times*, into bankruptcy in 2009. A number of publishers have asked their lenders to ease debt terms to avoid default, and others – including the *Star Tribune* of Minneapolis – have warned bankruptcy is possible.

Those companies that do seek to reorganize under bankruptcy protection in 2009 will face significant hurdles. Financing has dried up, leaving companies unable to fund a Chapter 11 restructuring or bankruptcy exit. Experts don't expect the debtor-in-possession or exit-financing markets to loosen much in 2009, which will cause serious problems for companies trying to restructure.

"There will be more complicated bankruptcies as companies are having to deal with restructurings in the face of limited liquidity and exit financing that is more difficult to come by and much more expensive," said Cyrus Pardiwala, the leader of PricewaterhouseCoopers' U.S. restructuring advisory practice.

In 2009, experts say, bankruptcy court may simply be a place companies can go to wind-down operations in an orderly fashion. "We're going to see a lot of companies that should survive liquidate," said Kirkland & Ellis' Henes.

The number of restructurings in 2009 will likely be far higher than the number of actual bankruptcy filings. Many companies, bankruptcy experts say, will do whatever they can to avoid Chapter 11 because they simply can't afford to go through the process.

"Bankruptcy today is still sort of the last resort for most companies because of the uncertainty and the huge costs of running even a mid-size case with all of the fees involved and the lack of liquidity for financing," said Rick Chance, a managing director of KPMG corporate finance.

Even if the economy begins to recover in 2009, bankruptcy filings will likely remain high into 2010 and, possibly, beyond, bankruptcy professionals say.

"In a recessionary period like this, there are some companies that could survive the downward spiral, and they cling by their fingernails," said Craig V. Rasile, who co-chairs the bankruptcy-law practice at Hunton & Williams LLP. "When the economy starts getting a little better, the recovery is so slow that a lot of folks who are hanging on by their fingernails during the worst of it are actually falling off." DBR

Eric Morath and Jacqueline Palank contributed to this story.

New Beginnings

A number of U.S. corporations managed to leave Chapter 11 behind in 2008, in spite of a global credit crisis that's caused bankruptcy-exit financing to all but disappear. Here's a list of major companies that emerged from bankruptcy protection in 2008.

Company	Emergence Date
Calpine Corp.	1/31
Dana Corp.	2/1
Solutia Inc.	2/28
Sirva Inc.	5/12
Movie Gallery Inc.	5/20
Dura Automotive Systems Inc.	6/27
Ziff Davis Media Group Inc.	7/11
Pacific Lumber Co.	7/30
Vertis Communications/ACG	10/20
BHM Technologies Holdings Inc.	12/3
Pierre Foods Inc.	12/12

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Hearsay

2008: The year the housing market went up in flames, Wall Street changed forever, and rational people went berserk. Had a tough year? At least you weren't caught hawking fake promissory notes, driving drunk while cross dressing, hunting on the government's dime or crashing an investment bank into the largest bankruptcy ever.

Was Fuld Knockout A Phantom Punch?

Richard Fuld, the former chief executive of **Lehman Brothers Holdings Inc.**, was punched in the face in the company gym after the investment bank filed for bankruptcy. At least that's what CNBC reporter Vicky Ward claimed, saying "two very senior sources – one incredibly senior source" had confirmed it to her. "He was on a treadmill with a heart monitor on. Someone was in the corner, pumping iron and he walked over and he knocked him out cold," Ward said. But *New York* magazine cast doubt on the whole story. "It's absolutely untrue," said a representative for Lehman. "It never happened." Alex Greenberg, general manager of the Lehman fitness center, backed them up. "The statement that he was punched is not true," he said. "It's a matter of fact that he has not visited the club since the bankruptcy. We're not even open on Sundays." The knockout was said to have occurred on Sunday, Sept. 21, 2008.

Cross-Dressing Bankruptcy Judge Busted

Bankruptcy Judge Robert Somma resigned from the bench in May, three months after he was convicted of drunken driving in Manchester, N.H. Somma, 63, was reportedly wearing a black cocktail dress, fishnet stockings and high heels at the time of his arrest. The judge was arrested after he rear-ended a pickup truck at a traffic light and pleaded no contest in February to a first-offense misdemeanor charge of driving while intoxicated and agreed to pay $600 in fines and penalties. He also agreed to a year-long suspension of his driver's license and said he would step down from the bench. Somma then reconsidered his resignation after receiving what he said was a groundswell of support. He later announced in May that he was stepping down to "pursue other endeavors." He was hired by the Boston law firm of Posternak Blankstein & Lund as a senior counsel in the firm's bankruptcy department. Boston attorney Frank J. Bailey was tapped to replace Somma.

AIG Bags Birds Along With Bailout

Insurance giant American International Group Inc. managed to escape bankruptcy – at least for now – thanks to more than $150 billion in taxpayer funds. But the bailout didn't stop executives from splurging on spa treatments and luxury retreats. The ultimate post-bailout folly, though, had to be the $86,000 AIG executives spent tromping through the English countryside on a lavish partridge hunting junket. London's *News of the World* sent undercover reporters to track the shooting party, which spent over $17,000 on food and drink. The private jet and limos added another $25,000. AIG's Sebastien Preil, 32, bragged to an undercover reporter, "I speak five languages and I have a senior post at AIG in Frankfurt. We have been given $85 billion from the U.S. bank to help us out but we should be on an even keel in two years."

Dreier Firm Crashes After Founder's Arrest

Dreier LLP, once a high-flying New York law firm, collapsed after founder Marc S. Dreier was arrested and federal prosecutors charged him with swindling a pair of hedge funds and other investors out of some $380 million. The firm filed for bankruptcy after Dreier, its sole equity partner, was arrested in Toronto for allegedly impersonating another person to complete a business transaction. Prosecutors say Dreier created an "elaborate charade" to convince several hedge funds to buy heavily discounted bogus promissory notes allegedly issued by a New York real estate development company because original investors had backed due to the crisis roiling the financial markets. Dreier, a prominent litigation attorney with degrees from Harvard Law School and Yale College, founded his 250-attorney Park Avenue law firm 12 years ago. One the firm's lawyers said Dreier's arrest had a "neutron-bomb like effect" on the office, as lawyers scrambled to launch new firms. Dreier remains in jail in New York.

Petters Scandal Flies Under Radar

In the battle of alleged Ponzi scheme titans, the case of Tom Petters has been overshadowed by spectacular downfall of Bernard Madoff. But while the Madoff scandal may cost investors $50 billion and features the star power of the Manhattan and Palm Beach social circuits, the Petters' affair, featuring household names like Polaroid and Fingerhut, boasts certain chutzpah all its own. Federal authorities say Petters, a Minnesota businessman, bilked investors out of as much as $3.5 billion with promises of high returns through the bogus sales of consumer electronics from small vendors to big-box retailers like Wal-Mart Stores Inc. The scheme unraveled when a company insider went to federal authorities and exposed the alleged fraud. Petters' business empire soon collapsed and several of his companies, including **Sun Country Airlines** and **Polaroid Corp.**, filed for bankruptcy. So far five people have pleaded guilty to charges resulting from the scandal. Petters, who was indicted in December on multiple counts related to fraud and money laundering, isn't one of them. He says he is innocent and remains in jail awaiting trial.

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