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Restructuring Uncertainty To Continue Through 2021

By **Vince Sullivan**

Law360 (July 9, 2021, 7:17 PM EDT) -- A pandemic-triggered surge in corporate restructuring filings in 2020 trickled to a drizzle in the first half of 2021, but bankruptcy professionals don't know if that slowdown will last, as favorable financial conditions wane and uncertainty increases over the spread of a coronavirus variant.

The glut of restructuring cases last year was almost exclusively driven by pandemic restrictions that caused public-facing businesses to lose their revenue almost overnight, but government-provided relief coupled with lenders' willingness to amend financing terms provided a cushion that has allowed many companies to ride out the crisis.

Now, as the world begins a return to normalcy with vaccination rates increasing, financial pressures may weigh heavily on enterprises whose distress was delayed by that relief, according to bankruptcy experts.

New COVID Wave Generates Murkiness

James M. Peck, a former New York bankruptcy judge now co-head of Morrison & Foerster LLP's cross-border restructuring practice, said interest rates will likely being to rise as the economy rebounds from the pandemic, making borrowing more expensive for companies already facing financial problems.

"There are pressures that can't be disregarded indefinitely that will lead to filings either later this year or in 2022," Peck told Law360. "It's largely the run-out of forbearance agreements in place currently and the wall of debt that needs to be refinanced over the next year or two."

While markets are very favorable at the moment for financing and for equity, there is no guarantee those circumstances will continue. It's imperative for companies with large debt loads set to mature in the short term to seek a refinancing transaction while conditions are still advantageous.

Lucy F. Kweskin, a restructuring partner with Mayer Brown LLP, told Law360 that financiers still have lots of cash to lend and are ready and willing to do so, but the uncertainty around the immediate future could cause that willingness to waver, especially in certain industries still experiencing turmoil.

"We're still in a pandemic and still seeing people wavering back and forth on what the future holds," Kweskin said. "It doesn't seem like the market is slowing down. People still have a lot of capital to deploy and a lot of enthusiasm."

But the spread of the delta variant of coronavirus is big question mark overshadowing talks of a recovery, both Peck and Kweskin said.

Retail Challenges Not Over

The risk of a resurgence of the coronavirus falls mainly on the industries that have already been facing distress, they said. Specifically, retail businesses and hospitality outfits would be the first to feel the pain.

After sustaining years of pressure from changing consumer preferences that saw a monumental shift of business to web-based retailers, companies in that industry were hammered in 2020 by the COVID-19 pandemic. The latter half of 2021 will be a make-or-break period for many brick-and-mortar retailers, more so than in a normal year, Kweskin said.

"Retail is so often driven by the holiday season, so we may not know yet who comes out alive and who doesn't," she said. "I don't think we'll really know that until we see what happens at the end of the year and in the first quarter of 2022. We need to see a little more of what happens in post-pandemic life to wrap our arms around what's happened."

Peck said uneven vaccination rates in the country have created a situation where COVID may continue causing problems for businesses in certain regions, while others won't feel as much disruption if the delta variant were to pick up steam.

"The fact that we have different pockets of contagion depending on what part of the country you live in frankly has an effect on a spotty recovery," Peck said. "This singular country is a bunch of regions, and I think the economic picture varies depending on where you look."

Office Space Conundrum

Aside from retail, the experts agree that commercial real estate may be in serious trouble. Many large employers have already made decisions about a return-to-work timeline, with the fall being a popular target date. When those workers make their choices, employers will have to make decisions on their space needs.

"I think office buildings, major downtown markets and shopping centers are under stress on account of fundamental changes in the behavior of workers and the behavior of consumers," Peck said.

Post-Labor Day will be a litmus test for how city centers "snap back" to normalcy, he said. When leases come up for renewal for office and commercial space, Peck said that some will be renewed and extended, while others will be amended to take less space.

"My guess is it will be the latter in many cases," he said. "As a consequence, we're going to see, maybe not in 2021 but shortly thereafter, any number of restructurings."

Oil and Gas Risks Continue

Kweskin said the energy sector is one that is always facing external pressures that can lead to insolvency or restructuring transactions, especially in the coal industry. With a Democratic presidential administration in office, she said coal may be shunted aside for greener energy sources, leaving the remaining mining outfits in the cold.

Oil and gas is vulnerable to the whims of OPEC and others who can set prices for the fossil fuels at their discretion. If prices fall back into a trough, as they had been for the last several years, it would likely cause smaller drilling operations to lose revenue as pricey nontraditional extraction methods would cost more than the products taken from the ground.

Mass Tort Paradigm Shift

Peck said he is interested in seeing how a handful of mass tort liability cases play out in bankruptcy courts in New York and Delaware, as they may provide a blueprint for companies in other industries to address large legal liabilities.

In New York, OxyContin maker Purdue Pharma is inching toward confirmation of its Chapter 11 plan to turn over ownership of the company to a trust that would continue running it for the benefit of government entities addressing the national opioid crisis that Purdue helped propagate through its marketing and sale of pharmaceuticals.

The plan calls for a settlement through which current owners the Sackler family would contribute more than $4.5 billion into trusts to satisfy the claims of thousands of personal injury claimants in exchange for a release of all claims against them as individuals.

In Delaware, the Boy Scouts of America is pursuing confirmation of its own Chapter 11 plan that features a settlement through which the organization and hundreds of local Scouting councils would contribute $850 million to address thousands of claims of childhood sexual abuse.

Also in Delaware, pharmaceutical company Mallinckrodt is likewise facing opioid-related liability that it is hoping to address in its Chapter 11 plan, also moving toward confirmation.

Peck said these cases could be a sign of things to come where corporations use the bankruptcy system to address these large liabilities in the same way asbestos cases have been administered in the past.

"The success of those cases in achieving confirmation will be potentially predictive of future cases like that where mass tort liability issues can be resolved," Peck said.

--Editing by Orlando Lorenzo.
