Shrinking market for legal services forces New York firm to lay off staffers

TOUGH TIMES

White & Case LLP, the New York-based law firm with more than 2,400 lawyers, announced plans to fire about 200 junior attorneys and 200 staffers in response to the decreasing market for legal services. White & Case also will defer the start date of about 60% of this year's incoming class of first-year attorneys in the United States until 2010, the firm said in a statement today. An undetermined number of partners will be laid off in the future, according to the statement. "I believe these measures provide the best way forward to meet the challenges we face today and to ensure the firm's long-term success," White & Case Chairman Hugh Verrier said in the statement. In 2007, White & Case was the sixth-largest grossing U.S. law firm, with revenue of $1.37-billion, according to the *American Lawyer*, a trade publication. *Bloomberg News*

Goodmans gets the nod in poll of peers

Veteran lawyers rank top players in insolvency field

By Julius Melnitzer

In a bid to get an anecdotal sense of who is getting the lucrative insolvency and restructuring action in an otherwise largely dormant legal market, *Legal Post* canvassed 16 of the country's veteran practitioners at different law firms in the field and asked them this simple question: "Ranked in order from 1 to 5, which firms do you run into most frequently in your practice?"

Firms were awarded five points for each first-place vote from a respondent, four for second place, three for third place, two for fourth place, and one for finishing fifth on an individual's list. Respondents could not vote for their own firms, meaning that the maximum possible score was seventy-five.

Goodmans got an astonishing 63 votes to finish way out in front of the rest of the pack and a remarkable 11 of 15 respondents picked the firm as their number one choice.

"The players in the restructuring world have changed a bit," says Robert Chadwick of Goodmans. "The banks used to be more central players in deciding on counsel, but nowadays bondholders, equity players, boards and companies are playing a much bigger role and looking for creative alternatives and solutions to their problems. That's where we tend to get involved."

Thornton Grout led the boutiques, finishing sixth overall, and Macleod Dixon's strong presence on the Calgary restructuring scene landed them in 10th place.

Financial Post

PETER REDMAN / NATIONAL POST

Robert Chadwick

LAWYERS' CHOICE

Firms ranked by a team of veteran practitioners on the basis of restructuring action and lucrative insolvency

- Goodmans: 63 (of a possible 75) points
- Osler, Hoskin & Harcourt : 37
- Ogilvy Renault: 26
- Stikeman Elliott: 26
- Bennett Jones: 14
- Thornton Grout Finnigan: 11
- Blake Cassels & Graydon: 9
- Borden Ladner Gervais: 7
- McMillan Binch: 7
- Macleod Dixon: 5
- Davies Ward Phillips Vineberg: 3
- McCarthy Tetrault: 2
- Chaitons: 2

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Lawyers moot liquidation strategies

PICK YOUR OPTION

By Julius Melnitzer

If a company was unfortunate enough to run into solvency issues in the boom times, the restructuring under the Companies' Creditors Arrangement Act (CCAA) was all the rage as the fix-it of choice, given the access to easy credit, private equity and strategic investors in expansion mode.

But times have changed, lawyers say.

"Most observers are predicting that we'll be seeing fewer sales of companies as going concerns because there is less liquidity in the market and therefore less money chasing even the good deals," says Rick Orzy of Bennett Jones in Toronto. "What they're expecting is an upsurge in liquidations."

That raises the question is the CCAA or the Bankruptcy and Insolvency Act (BIA) the appropriate vehicle for liquidation proceedings?

"There's always been a core debate as to whether the CCAA or the BIA are more efficient mechanisms for liquidation," says David Mann of Fraser Milner Casgrain in Calgary.

Critics argue the CCAA is inappropriate legislation to use when liquidation is the likely outcome of restructuring attempts. There are signs that judges across the country are leaning to the view that liquidation should properly occur under the auspices of the BIA, which provides rights, reviews and safeguards to creditors that are not found in the CCAA.

Still, the debate has emerged as the subtext of two recent conflicting decisions on whether stay extensions should be granted for initial orders made under the CCAA in the absence of the debtor having placed plan or arrangement before the court.

In Re Humber Valley Resort Corporation, the Newfoundland and Labrador Supreme Court extended a stay where no plan or arrangement had been filed. The court granted the extension, primarily because if it didn't, the debtor was likely to fail.

The court stated it was "satisfied that the present lack of a plan [was] not a reflection of a situation where the [debtor had] engaged the court only to defer liquidation without any real prospect of devising a plan acceptable to creditors."

In Cliffs Over Maple Bay Investment Ltd. v. Fisgard Capital Corp., however, the British Columbia Court of Appeal was clear that a stay of proceedings "should not be granted or continued if the debtor company does not intend to propose a compromise or arrangement" to its creditors.

Mr. Mann says the cases are at odds. "The two courts focused on different, yet equally prominent, underlying principles of the CCAA," he said. "The B.C. decision placed importance on the act's intention to facilitate compromise, which necessarily requires evidence of a plan going forward. The Newfoundland decision looks at the ultimate goal from a different angle, noting that if the stay were not granted, the reorganization would fail."

Mr. Mann argues that both perspectives have merit, but Derrick Tay of Ogilvy Renault points to a long history of jurisprudence that suggests the CCAA is the guiding factor. "It's impossible, especially in complex cases, to say at an early stage that there definitely will be a plan of arrangement and what it's going to look like. Courts should not deny an extension just because they can't discern up front whether or not there's going to be a such a plan," he says.

Mr. Orzy agrees. "You have a fair number of CCAA liquidations that started as legitimate restructurings, but just didn't work," he says.

Still, there's no question that the CCAA lends itself to abuse because of the broad discretion available to judges in deciding whom to protect.

> "The debate has been whether the CCAA or the BIA is more efficient

"It's one thing to give priority to DIP [debtor-in-possession] loans, but now judges grant big charges for directors, for the retention of key employees, and even for payments to key suppliers," says one veteran bankruptcy lawyer. "The point is that the CCAA allows you to do things that receiverships don't, but why should creditors agree to allow all these payments to other stakeholders if the only reasonable outcome is a liquidation rather than a continuation of the business or some part of it that will provide a value-added solution for them?"

Andrew Kent of McMillan in Toronto says the BIA should be invoked when a restructuring fails. "If a CCAA plan doesn't work out, and a blowout liquidation happens, the parties should be forced to flip over to the BIA, at least when the point of distributing the proceeds arrives," he says.

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Rick Orzy of Bennett Jones says observers are expecting an upsurge in liquidations.

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