

BRISK BUSINESS

Law firms see another good year for bankruptcies

BY PAUL BRINKMANN

The last few years of economic crisis and slow recovery have brought many large bankruptcies to South Florida's legal market, but the number was not as great as some bankruptcy experts expected.

As 2011 gets under way, local bankruptcy attorneys believe the pace of business bankruptcies will remain steady and possibly increase slightly if more liquidity becomes available for big restructurings.

Law firms will continue to pursue bankruptcy work as a last resort when other efforts to restructure loans have failed, but those with large numbers of bankruptcy attorneys are likely to continue positioning themselves for such work this year.



Seese

"I think the number of Chapter 11 filings will increase in 2011," said Michael Seese, a bankruptcy attorney with Hinshaw & Culbertson LLP in Miami. "I believe the prospects and sources of financing will continue to improve and, therefore, the increased availability of debtor in

possession financing will contribute to an increased number of filings. A lack of liquidity in the markets has resulted in fewer filings than expected over the past couple of years."

As strange as it may seem, some business entities have not filed for bankruptcy because there is no hope of restructuring under Chapter 11, no financing, no buyer and the process is considered too expensive.

Given those conditions, a marked improvement in the economy could be followed by a brief flurry of new bankruptcies, as financing for bigger Chapter 11 cases becomes available or as a company seeks to resolve claims in preparation for an auction or likely buyer.

Seese said improvement in real estate markets will also result in more filings.

"I think as values and the economy improve, owners may be less willing to walk away from projects, and lenders will become more aggressive," he said. "If the calls being received are any indication, I believe we will be quite busy in 2011."

Veteran bankruptcy attorney David Levine said he also believes there may be a spurt of bankruptcies in 2011.

"Everyone is hoping the economy continues to stabilize and improve," said Levine, of Miami-based Levine, Kellogg, Lehman, Schneider & Grossman LLP. "As that happens, there could be a lag effect on companies, so you may see a flurry of bankruptcy filings."

According to public records, Levine has worked on such major bankruptcies as those of homebuilders Levitt and Sons LLC, TUSA and the Fontainebleau Las Vegas, where



MARK FREERKS

'Everyone is hoping the economy continues to stabilize and improve. As that happens, there could be a lag effect on companies, so you may see a flurry of bankruptcy filings,' veteran attorney David Levine says.

HINSHAW & CULBERTSON LLP

Partner: Michael Seese
Website: www.hinshawlaw.com
Address: 9155 S. Dadeland Blvd., Suite 1600, Miami 33156
Phone: (305) 358-7747

LEVINE KELLOGG LEHMAN SCHNEIDER & GROSSMAN LLP

Founding Partner: David Levine
Website: www.lklaw.com
Address: 201 S. Biscayne Blvd., 34th floor, Miami 33131
Phone: (305) 403-8788

INFANTE, ZUMPANO, HUDSON & MILOCH LLC

Attorney: Luis Salazar
Website: www.izhmlaw.com
Address: 500 S. Dixie Highway, Suite 302, Coral Gables 33146
Phone: (305) 503-2990

he represented title insurance companies.

"What we've been seeing is controlled Chapter 11 liquidations," he said. "The real key is: Will the purse strings be loosened up by the major lenders?"

Levine said companies must have significant funding for Chapter 11 operations and exit financing.

"Generally speaking, until credit is freed up, you'll be somewhat limited in terms of the true Chapter 11 reorganizations," he said.

Levine recently left a larger firm, Tew Cardenas LLP, to start his own firm, where restructuring is a major focus.

"We wanted to embark on this and do our own thing," he said. "Fortuitously, this coincided with a trend that we've been reading about, where people have departed the big firms and been able to offer quality services."

SECURITIES CASES TO CONTINUE

Levine has also worked on cases where the government or the SEC has charged se-

curities violations. He expects that type of work – where prosecutors or a judge often chooses attorneys – to continue.

Such cases can include a dual recovery – a criminal forfeiture process and a civil bankruptcy process. That has been apparent in Ponzi scheme cases such as that of disbarred attorney Scott Rothstein's now-defunct law firm, Rothstein Rosenfeldt Adler.

Levine said he believes Eric Bustillo, the SEC's new regional director, has the benefit of having been with both the SEC and with the U.S. Attorney's Office.

"Eric understands the interplay between the civil and criminal process," Levin said. "Usually the civil side is better geared to handle the full-blown claims process. There is a federal forfeiture process, where the feds can set up a victim class, but the two sides have to work together for recovery, for the victims."



Salazar

Bankruptcy attorney Luis Salazar, of Miami-based Infante, Zumpano, Hudson and Miloch, recently helped B&F Marine, a Miami marine retailer, file Chapter 11 after it received a high-interest loan from Regions Bank, he said.

B&F is remaining open while it works through the Chapter 11 process.

The company filed for bankruptcy Dec. 22, declaring \$4.39 million in total assets and \$3.07 million in liabilities. During good times, it expanded to four locations, but has since closed three and is focusing on its main location, at 4001 S.W. 72nd Ave.

The \$1.8 million Regions loan is secured

by a lien on the retail store.

"The purpose of the case is to restructure that debt and give them an opportunity to stabilize," Salazar said.

He said B&F has enough cash on hand to finance operations in bankruptcy.

"Our plan is to propose a five-year payout of Regions' secured position," Salazar said.

South Florida continued to see upward movement in the number of bankruptcy cases filed in November compared to the prior-year period.

However, those filings fell, month-over-month, especially in Miami-Dade County, where the rate of personal bankruptcies dropped 25 percent in November compared to October.

In the three-county area, personal bankruptcy filings were up 27 percent in November, to 2,644 from 2,084 in 2009. But, personal bankruptcy filings fell 18.5 percent from a month earlier.

The number of business bankruptcy cases filed in the three counties in November rose 8 percent, year-over-year, to 111 from 103, but slipped 11.9 percent from October.

U.S. consumer bankruptcy filings totaled 114,587 in November, a 13.3 percent drop from October, but a 2.2 percent increase from a year earlier, according to the American Bankruptcy Institute.

"The drop in consumer filings from October is perhaps a positive step that the deleveraging of the U.S. consumer may be under way, after years of expanding consumer debt," ABI Executive Director Samuel Germano said in a news release. "Still, we anticipate that there will be nearly 1.6 million consumer bankruptcy filings by year-end."

pbrinkmann@bizjournals.com | (954) 949-7562