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DISTRESSED INVESTING AMID A FINANCIAL CRISIS
We are pleased to present highlights of the 2009 Distressed Investing Conference, a third annual event co-produced by the Turnaround Management Association and The Deal on January 21-23, 2009 at the Bellagio in Las Vegas. This event linked close to 500 corporate renewal professionals and corporate dealmakers in an unrivalled opportunity to exchange ideas and hear the latest trends on distressed investing from leading experts in the field.

This report will give you a glimpse of some of the most pressing concerns and opportunities facing the restructuring industry during a time of dramatic change in the rules of engagement in corporate lending. Get a behind-the-scenes look at credit default swaps, the consumer sector, trends in debtor-in-possession financing, and the impact of the credit crunch on debt and equity financings, along with other hot topics in the distressed arena.

Mark your calendar now to attend the Fourth Annual Distressed Investing Conference next January for more insights on the dynamic world of corporate restructuring and finance.

Kevin Worth
President and CEO
The Deal LLC

Linda Delgadillo, CAE
Executive Director
Turnaround Management Association

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THE CHANGE OF THE GAME

The financial crisis has rewritten the rules of distressed investing. So where do the opportunities lie?

Two years ago, at the 2007 Distressed Investing Conference, the distressed investing market was robust: the leveraged-loan and high-yield debt markets were setting new records; the second-lien market was way up; and nonbanking entities accounted for the majority of new issues. It was, by all estimations, an issuer’s market: lots of liquidity, easy loan terms and low default rates.

In fact, things were going so well that some sounded a cautious note. Speaking at the 2007 conference, Scott J. Davido, executive vice president, chief financial officer and chief restructuring officer of Calpine Corp., said the market was experiencing “irrational exuberance.” “And this is creating some very interesting dynamics—most good, but not all good,” he said. “The fundamental point is that when you have too many dollars chasing too few deals, you get a lot of gravity-defying things.” Lenders, he noted, were competing for your business.

Was there too much money in the market? Would default finally go up? What would that do to liquidity? Was there still money to be made?

To be understated about it, 2009 finds us in different times, with some of those questions now at least partially answered. At this year’s conference, Cerberus Capital Management LP’s Kevin Cross said, “The distressed financing markets themselves are distressed.”

Similarly, Mark Thomas, a partner in Winston & Strawn’s restructuring and insolvency group, who moderated the panel on busted financings, joked that, these days, he’d take any financing—busted or not. “And if it busts, we’ll deal with it after the fact.”

At the “Distressed Investment Fund Founders” panel, the moderator, David Resnick, who heads Rothschild’s global restructuring advisory business, kicked off the discussion with an outlook for 2009. “Without question, 2009 will be a challenging environment for all investors, especially those focused on turnarounds and companies with financial difficulties,” he said. Resnick explained that, in past years, investors could concentrate on companies’ operating challenges, assured of financing for a deal. Now, however, as the financing markets suffer, the situation is more complex. “Lenders are guarding their capital carefully, and the terms on which they provide it, with respect to both costs and covenants, are extraordinarily high.”

Yet, it’s not all gloom and doom. Both Cross and Resnick believe there’s value to be found in the distressed markets. Cross added that while most distressed lenders are looking at the secondary market, the primary market is full of opportunities and lenders are underwriting using unique structures. Similarly, Resnick said: “In the past, this environment is one in which distressed investors have made serious money.” He said that a default rate of 15.1%, which is Moody’s prediction for 2009, “means many targets”.

The crisis of consumer confidence has battered the businesses of nearly every consumer sector—from airlines to gaming to hospitality to retail and casual dining—and times are going to get worse before they get better, according to many of those who spoke at the conference.

So where will the opportunities be? Consumer industries?

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Perhaps, but watch out for retail. Ronald Greenspan, a senior managing director in FTI Consulting’s corporate finance practice, remarked that there’s virtually “zero franchise value” in almost all of the recent bankruptcy filings in the retail sector.

“I think what this massive down cycle is doing is completing what I’ve always described as the Wal-Martization of America,” said Greenspan. “That there is only going to be one or two dominant players and if you’re not one of those dominant players you’re going to have a very difficult time surviving in the Wal-Mart age.” He added: “If you’re not that top horse or the second horse it’s going to be a liquidation day rather than a restructuring.”

Greenspan said that mall-based retailers “are up against an almost impossible situation” because their fixed costs are so high. “When the revenue starts to shrink and the margins start to shrink and you’re still in there paying $60, $80, $100 or $200 a foot for your space, your fixed overhead costs are going to drive you out,” he said.

It’s of course no surprise that, in this time of heavy filings, investors are taking a close look at the DIP financing market. The DIP—or debtor-in-possession financing—market has taken a hit since last year’s decision by General Electric Co. largely to halt lending to companies in bankruptcy-court protection or near it.

So, now, the question becomes: As the demand for DIP loans goes up in the coming year, where are those loans going to come from, given the lack of market depth and the constraints faced by ailing financial institutions?

Kevin Phillips, from the restructuring group of Banc of America Securities-Merrill Lynch, said that, given the number of traditional lenders who have been out of the market in the last year, offensive DIP lending—such as when the DIP lender makes the loan with the goal of acquiring the debtor or assets from the debtor—is attractive from a “risk-reward perspective.”

Tiffany Kosch, a panelist from Bayside Capital, a $3 billion distressed investment fund, provided the perspective of the funds and sponsors when it comes to the DIP market. She said: “People like Bayside will be active in the market because the next best alternative for businesses will be to liquidate. And that will be unattractive in terms of a recovery in the marketplace. So I would anticipate that you’ll find a lot of nontraditional lenders who have capital to be participating in what is truly a very good risk-reward, properly structured.”

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THE RADNOR CASE STUDY:
A VICTORY FOR SECURED LENDERS EVERYWHERE?

“It’s rarely a good thing to be an investor in the precedent-setting case in bankruptcy,” said Jose Feliciano of Clearlake Capital Group. “So I have that distinction.”

Feliciano, who used to be at private equity firm Tennenbaum Capital Partners when it invested in Radnor Holdings Corp., a manufacturer of foam containers and specialty chemicals that ultimately filed for Chapter II bankruptcy in 2006, spoke on a panel about the landmark case.

As Feliciano explained, the Radnor investment looked good for Tennenbaum when it began its due diligence of the company in the summer of 2005. At the time, he said, packaging companies were experiencing declining margins as a result of increasing oil and resin prices that, in some cases, they were unable to pass on to their customers. However, against that backdrop, Radnor had several new products that it was in the process of introducing to the market.

Soon after Tennenbaum made its investment in Radnor in the third quarter of 2005 and became the largest secured creditor in the company, disaster struck. Hurricane Katrina and Hurricane Rita hit the Gulf, disrupting the petrochemical sector and “creating havoc” in the markets for resin and natural gas, as well as other important inputs for Radnor products.

Feliciano explained what Radnor’s balance sheet looked like at the time: a $60 million revolver led by National City, about $25 million of other secured debt and some $25 million of debt at a European subsidiary. After the Tennenbaum investment, there was about $120 million of senior secured debt and about $135 million of unsecured debt, which Feliciano called “a very key aspect of the case.”

Throughout 2006, Tennenbaum helped Radnor manage its liquidity, change management and reduce costs—moves that Feliciano characterized as typical for this kind of investment. Tennenbaum brought in advisory firm Alvarez & Marsal to help manage the company; but then, according to Feliciano, things changed.

“All of a sudden we went from approximately $5 to $10 million of liquidity to an over-advanced situation,” he said. “That precipitated the bankruptcy.”

That’s when things got messy. Tennenbaum filed the company for bankruptcy in 2006, consenting to the debtor-in-possession facility and an accelerated time frame for a Section 363 bankruptcy sale. A 363 sale allows a bankruptcy trustee or DIP to sell the bankruptcy estate’s assets “free and clear of any interest in such property.” Since competing interests in the property need not be resolved as a condition to the sale, the “free and clear” provision provides a means for the debtor to consummate the sale fairly quickly.

Stanford Springel of Alvarez & Marsal spoke on behalf of the debtor-company. “From a company perspective,” he explained, “it was extraordinarily important that we have a stalking horse bidder”—after Lehman Brothers Holdings Inc. tried to run a sale process—“because we were running on fumes, even after Silver Point came in [on the debtor’s side]. We wanted our customers to know that we were going to survive and wanted our vendors to continue to supply us. It was really important to send a signal to the marketplace that we were going to be a long-term player. Because, otherwise, there wasn’t going to be anything for anybody.”

Amit Patel of Goldman, Sachs & Co., who at the time was with Houlihan Lokey, which was advising Tennenbaum, told the audience that the sales process, which Lehman was brought in to run, was very difficult due to a question of valuation. Also, the board, as Springel noted, was convinced that the sale process would result in no recovery for unsecured creditors. It tried to defeat the sale of the assets to Tennenbaum through a lawsuit arguing that it was attempting a takeover of the company through its loans and the lender wanted to obtain ownership of Radnor’s assets at depressed values, leaving no recovery.

The Delaware judge ruled for Tennenbaum on every claim, and Tennenbaum won the 363 auction and bought the company. Since the end of 2006, the company has been in the midst of a turnaround. The judge also ruled that since Feliciano resigned from the board as soon as the sale process began and it looked like Tennenbaum was going to be a bidder, Tennenbaum was not an insider—and thus there was no conflict—just because Feliciano, an employee of Tennenbaum, had once sat on the board.

Latham & Watkins attorney Joe Athanas, who moderated the panel but was uninvolved in the case, called Radnor “a huge victory for secured lenders everywhere.”

Would Feliciano do it over again? Probably not. Loan-to-own isn’t a strong investment model, he said. “Extending loans at par with the idea that the company is going to do worse than you expected so you can get to be a lucky owner does not seem to be a great strategy.”
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Credit Default Swaps: Roulette or Risk Management?

Before Lehman Brothers Holdings Inc. went belly up, and before the Troubled Asset Relief Program (TARP) gave the media an opportunity to position the taxpayer against those who fueled the excesses of Wall Street, credit default swaps (CDS) were being blamed for helping to create the financial crisis.

Indeed, in October 2008, CBS’s “60 Minutes” ran two pieces on credit default swaps—the instruments that have been called “financial weapons of mass destruction” by Warren Buffett, and which many say enabled the mortgage crisis. On the show, Steve Kroft characterized credit default swaps as “side bets on the performance of the U.S. mortgage markets and the solvency on some of the biggest financial institutions in the world.” He continued: “It’s a form of legalized gambling that allows you to wager on financial outcomes without ever having to actually buy the stocks and bonds and mortgages.”

Not surprisingly, coverage of the “60 Minutes” episodes took center stage at the panel entitled “Credit Default Swaps: Roulette or Risk Management.” The panel was moderated by David Havens, a managing director with the credit flow trading desk at UBS. The other panelists were Jeffrey Fitts of Alvarez & Marsal and Ed Weisfelner, a lawyer who runs the bankruptcy and restructuring department for Brown Rudnick.

Havens remarked that the “60 Minutes” episodes have “vilified CDSs and made them out to be a very nefarious thing that’s driven the markets down.”

Havens went on to explain CDS as “credit insurance,” but then qualified it. “It’s not insurance though because banks and brokers and hedge funds aren’t allowed to traffic in insurance . . . . But it looks, feels and smells a lot like insurance.”

As to the role that credit default swaps played in bringing down the financial system, Weisfelner was a bit more circumspect. “I’m not certain to what degree our financial woes can be traced back to CDSs . . . . But I think it’s sort of symptomatic of the problem and that is greed.”

So are credit default swaps roulette or risk management? Are they good for companies that issue debt? How about for those who hold bonds in financial institutions?

The panelists gave a much more favorable spin than “60 Minutes”—but not by much. Weisfelner said: “Hedging is always a good part of risk management. Can you imagine airlines that didn’t hedge the price of jet fuel? They would have failed a lot more and a lot sooner. The concept of risk management is a wonderful thing— it’s mom and apple pie.”

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Then he added, tongue-in-cheek: “It’s when the leverage associated with it outstrips all the benefit of being able to manage the risk that guys like us get to make a fortune.”

Havens, the moderator, agreed. “It crossed the bridge from being a risk management hedging tool to a tool of speculation, and it grew in a viral and uncontrolled manner.”

So given the havoc that credit default swaps have wrought, the question for the panelists became: What needs to be done? Havens laid out a five-point prescription for what must happen:

- **Major cathartic institutional failures:** “We’re probably largely through that process now,” he said.
- **Robust two-sided markets in distressed assets:** “I think we were heading in that direction with the original TARP program, which gave people some sense of confidence that there was going to be a buyer of last resort of troubled assets.” He added: “Hopefully we’ll begin to see a clearing price for these troubled assets, which is going to be absolutely vital to the resurrection of the markets.”
- **Enduring and holistic government intervention:** “We need to know what the regulatory regime is going to be like for credit default swaps in the future.”
- **Home price stability:** “Hopefully it’s by year-end 2009, but more realistically it’s 2010.”
- **A return to lending:** “We need to see banks willingly lending to one another, which is going to be part of the clearing process of all these problematic assets.”

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BUSTED DISTRESSED FINANCINGS:
WHAT HAPPENS WHEN THE RUG IS PULLED?

For those who keep a close eye on busted exit financings, companies such as United Rentals Inc. and Huntsman-Hexion have come to symbolize the latest era of M&A-related litigation. Not surprisingly, mention of these cases led off the panel entitled “Busted Distressed Financings: The Impact of the Credit Crunch on Debt and Equity Exit Financings.”

The moderator, Mark Thomas, a partner in Winston & Strawn’s restructuring and insolvency group, explained that the panel would provide an overview of contractual disputes that have arisen from busted distressed financings, as well as the contract principles that arise in the context of terminated M&A deals.

Yet, it was not lost on Thomas that the focus of the panel—as it was originally conceived—perhaps failed to recognize the times we’re living in. “Had we known several months ago what would have transpired, we probably would’ve changed the title of this panel,” he said. “Several months ago it seemed like a great idea to talk about busted exit financings. ... [But] when we met over the past week, we really came to the conclusion that, geez, we’ll take any financing. And if it busts, we’ll deal with it after the fact.”

So what are the major issues that come up when a deal goes bust? According to Thomas Califano of DLA Piper it all goes back to those contract issues that first-year law students wrestle with: material adverse changes (otherwise known as MAC clauses); breach of representations or warranties; and failure to fulfill conditions precedent to closing.

The panelists then turned to the state of litigation surrounding these issues. A big question for the panelists was what litigation strategy the nonbreaching party should utilize in the event of a breach: Do you sue for money damages or do you sue for specific performance? Jeffrey Zapone of Conway MacKenzie Inc. said specific performance—a remedy in which the nonbreaching...

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party asks the court to compel the counterparty to consummate the merger—despite its low chance of success, seems to be way to go. “I think the headline is that specific performance is a very difficult remedy to obtain,” he said. “It’s a very high burden. But it seems to be the best way to proceed in these circumstances.”

Take the case of United Rentals Inc. vs. RAM Holdings, a 2007 case in which Cerberus Capital Management, L.P. allegedly breached its agreement to purchase URI. As Winston & Strawn’s Thomas explained it, RAM attempted to terminate the merger agreement and tendered a $100 million termination fee. United Rentals sued in Delaware to obtain specific performance—to, in effect, compel RAM—the holding company—to do the deal.

“The judge,” explained Thomas, “basically said, you know, this contract is pretty poorly written, and it’s very ambiguous, and therefore I’m not going to grant you, United Rentals, specific performance when the plain provision provides there’s a termination right if you walk away.”

In other words, based on the litigation landscape, the breaching party appears to have the upper hand if it decides to pay the termination fee and walk away. However, does that mean it’s advisable to do so? What about reputation damage?

At least two of the panelists believe that, in today’s environment, the notion of bailing out of a deal and taking reputational risk is, as one of the speakers put it, “not irrelevant, but it’s less relevant.”

“Reputational risk is one thing,” agreed Thomas, “but today it’s more about survival.”

Jonathan Rosenthal of Saybrook Capital said that today it’s all about opportunities—and opportunity costs—for the investor. “We shouldn’t miss thinking about the opportunity set for the investor,” he said. “As the company declines in performance, the investment begins to look less interesting in comparison to other investments. And so the inclination is to lean hard on those MACs, because in this environment they’ve probably created MACs that you can drive a truck through. The bankers and lawyers are going to fight that. . . . But the fact that [the contract] has some outs, that’s just the reality of the day.”

The takeaway? Suing for specific performance might be the best option for the nonbreaching party, but, given recent cases, that doesn’t mean it will succeed.
It wasn’t all gloom and doom at the “Distressed Investment Fund Founders” panel, but it sure began that way.

The moderator, David Resnick, the head of Rothschild’s global restructuring advisory business, kicked off the discussion with an outlook for 2009.

“Without question, 2009 will be a challenging environment for all investors,” he said, “especially those focused on turnarounds and companies with financial difficulties.” Resnick explained that, in past years, investors could concentrate on companies’ operating challenges, assured of financing for a deal; but now, as the financing markets suffer, the situation is more complex. “Lenders are guarding their capital carefully, and the terms on which they provide it, with respect to both costs and covenants, are extraordinarily high.”

So what do these admittedly gloomy days mean for distressed investors? “In the past,” Resnick said, “this environment is one in which distressed investors have made serious money.” He said that a default rate of 15.1%, which is Moody’s prediction for 2009, “means many targets.”

With that happy introduction, David Shapiro, a co-founder of KPS Capital Partners, took the microphone. Shapiro remembered the days of old for distressed investors: “We would go into a company, lock it up with a letter of intent fairly quickly, get exclusivity, do the due diligence, bring the financing source along with us, and close. It all seemed so orderly and neat. Unfortunately, those days are over.”

As companies weaken, Shapiro said that, at a time when there’s a temptation to focus only capital structure, it’s important to emphasize due diligence, to turn the focus back to looking at what a given company actually does and how a distressed investor can make it better.

Shapiro also preached the importance of patience. Explaining why KPS was reluctant to do deals in 2008, he said: “Our perspective has always been that, at the front-end of a downturn, you’re going to see a lot of tempting transactions, but you probably ought to get out of the way and let somebody else do those deals.”

Then Shapiro drilled down on the all-important topic of financing, drawing a distinction between “volunteer” lenders and what he referred to as “hostage” or “resident” lenders. “The idea of bringing in a volunteer lender and having them walk through the old school transaction process with you is just not going to happen anymore,” he said. “But if you have a bank group that is resident in the company today, your best chance is to work with that bank group and come up with some way of restructuring the facility that the resident banks already have.”

That may be because of the changing nature of bank relationships. Bringing a good restructuring adviser in early is crucial, he said, because “in this environment, you will die quickly. Banks are merciless. There’s no such thing as a relationship anymore. I’ve been in this business for 20 years and felt very proud of having cultivated dozens of good banking relationships. They’re worthless today. Everybody’s looking out for themselves. Banks are taking every opportunity they can to re-price or renegotiate deals.” Shapiro added, somewhat ominously, “You have no friends out there.”

Veteran investor Mike Heisley, the co-founder and principal of Stony Lane Partners, sounded a much more upbeat note. Heisley said he believes that “great fortunes are made during times of war and internal dysfunction.” However, he added, “I’m not so sure that having a lot of capital to employ right now is a huge asset, because
it might not necessarily be the solution to your problem."

The panelists agreed that having a management team that knows how to guide a company through tough times like these can, indeed, solve many problems. "There is a world of difference," said Heisley, "between someone that can manage a distressed company and somebody that can manage a company."

Shapiro elaborated. He said one must have a management team that’s actually seen tough times before so it won’t adopt the posture of a deer-in-the-headlights. "To me, though, as a lender, one of the biggest challenges is having a private equity fund as an investor who has no experience in a recession. Over the last five years, the private equity funds have been living through go-go times. Many of the partners are at an age where they really haven’t been through a recession." Private equity funds are often "clueless" as to how to implement a turnaround plan, he said.

Interestingly, Shapiro’s skepticism of private equity investors paralleled a view offered at the 2007 Distressed Investing Conference. There, Scott J. Davido, then executive vice president, chief financial officer and chief restructuring officer of Calpine Corp., said that the easy capital available during the days of old meant that a new class of distressed investor had entered the market.

"You see a lot of people playing in the distressed investing space just because they’re looking for places to put money to work," Davido said back in 2007. "In situations that would have scared the living daylights out of more traditional investors a decade ago, people now embrace these investments even without a lot of distressed experience—or even without a lot of industry experience in some cases."

The 2009 panel concluded with the moderator, David Resnick, asking the speakers which industries will see the most activity in 2009.

Heisley urged investors to look at those industries “which have an inherent viability that goes beyond the cycle”—such as commodities, and companies that have large amounts of money invested in infrastructure, like the oil and steel industries. "The reason for that," explained Heisley, "is that nobody knows where the bottom is in this market. So you better be investing in industries which have an inherent viability, that you know will come out on the other side. Because if it goes deep enough, there are going to be a lot of companies that don’t come out on the other side."
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CRISIS IN CONSUMER CONFIDENCE
AIRCRAFT, AND GAMING, AND RETAIL. OH MY!

The crisis of consumer confidence has battered the businesses of nearly every consumer sector—and times are going to get worse before they get better, according to those who spoke on the panel “Crisis in Consumer Confidence: Where Will the Opportunities Be?”

The moderator, Holly Etlin, a managing director of AlixPartners, where she provides restructuring and reorganization services, said that, over the 60 days prior to the January conference, consumer credit began to fall for the first time in many years. Moreover, the panelists agreed that, when it comes to the short-term outlook for the distressed consumer sector and whether there are deals to be done in the consumer space, there is simply no money to finance most deals.

Take the airline industry. Michael Cox, a managing director and partner at Seabury Group who’s worked on major airline restructurings both in the U.S. and abroad over the last 20 years, said “the money out there for airlines now is very, very tight.” He said the question is not whether there will be an airline industry, but how big it will be and who will be the players in it.

Domestically, the airline sector is “in the eye of the hurricane right now,” according to Cox. The rise in fuel prices hurt U.S. airlines more than their European and Asian counterparts because, said Cox, oil is priced in dollars, so countries with high currencies as of last summer—i.e. Europe and Asia—were less impacted by high fuel prices. (Though some of that pain, added Cox, was offset last fall when many domestic airlines reduced staff, moved to drop capacity and offloaded planes.)

From aviation, the panel moved on to the retail sector. Etlin asked the panel which companies will be able to restructure successfully and why?

Ronald Greenspan, a senior managing director in FTI Consulting’s corporate finance practice, said it’s amazing that there is virtually “zero franchise value” in almost all of the recent filings in the retail sector—from Linens N’ Things to Mervyns to Circuit City and Levitt.

“I think what this massive down cycle is doing is completing what I’ve always described as the Wal-Martization of America,” said Greenspan. “That there is only going to be one or two dominant players and if you’re not one of those dominant players you’re going to have a very difficult time surviving in the Wal-Mart age.” He added: “If you’re not that top horse or the second horse it’s going to be a liquidation day rather than a restructuring.”

Greenspan said that mall-based retailers “are up against an almost impossible situation” because their fixed costs are so high. “When the revenue starts to shrink and the margins start to shrink and you’re still in there paying $60, $80, $100 or $200 a foot for your space, your fixed overhead costs are going to drive you out,” he said.

No consumer sector is immune, it seems—not even the one that provides the backdrop for the distressed investing conference.

Edward Weisfelner, the chairman of Brown Rudnick LLP’s bankruptcy and finance department, said there are very few casinos on the strip that aren’t in trouble. He said while costs stay where they are, spending-per-customer is down. Both smoking bans and high gas prices are keeping gamblers at home. Financing is in bad shape, too. “The debt that got piled on to do acquisitions is a ticking time bomb and there’s no money to refinance,” he said.

Casual dining is also taking a big hit. Etlin, the moderator, observed that the average restaurant bill has declined 30% as people are cutting back on alcohol, appetizers and desserts.

Greenspan provided some insight into what’s going on. He said the premium liquors are being switched out for so-called standard brands, and people are tending to opt for the specials rather than buying higher-margin items like steak and lobsters. Smoking bans hurt casinos and restaurants alike because not only do ticket prices go down, but customers tend not to linger as much when they’re not drinking.

“What is really gone is what I describe as the silly money,” concluded Greenspan. “The people who were eating out four nights a week because they had just pulled $100,000 out of their house refi or because they had a very large bonus or because they thought they had equity here or there. Now, people are going to be feeling poorer for a long time. The consumer had $5 trillion of net worth wiped out—about half out of their home equity and half out of their market equity. It’s going to take a long time for that to recover.”
Attendees network during the cocktail reception

Conference attendees trade business cards in between panels

Biff F. Ruttenberg, CTP, of Atlas Partners LLC asks a question after Pitt’s keynote speech

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  - Financial advisor to the official committee of unsecured creditors

- **DURA** has completed a **Chapter 11 reorganization** **$1.5 billion**
  - Financial advisor to the official committee of unsecured creditors

- **Global Power Equipment Group** has completed a **Chapter 11 reorganization** **$256 million**
  - Financial advisor to the official committee of unsecured creditors

- **Key Plastics LLC** has completed a **Chapter 11 reorganization** **$307 million**
  - Financial advisor to Key Plastics, LLC

- **Arrowood Byron Freemarck Abbey** has completed a **Section 363 Asset Sale**
  - Financial advisor to Legacy Estate Group, LLC

- **Pierre** has completed a **Chapter 11 reorganization** **$380 million**
  - Financial advisor to the plan sponsor

- **Remy** has completed an **Out-of-Court restructuring** **$1.89 billion**
  - Financial advisor to the ad hoc committee of second lien FRN holders

- **Palco** (The Pacific Lumber Company and its subsidiary) **SCOTIA PACIFIC COMPANY LLC** has completed a **Chapter 11 reorganization** **$950 million**
  - Financial advisor to the official committee of unsecured creditors

- **The Wornick Company** has completed a **Chapter 11 reorganization** **$224 million**
  - Financial advisor to the ad hoc Committee of senior secured noteholders

Merger and acquisition advisory services are provided by Duff & Phelps Securities, LLC.
FUNDING THE PROCESS
TRENDS IN DIP FINANCING

The credit crunch means many things to many entities, but for companies contemplating bankruptcy and looking for debtor-in-possession and exit financing, it means they can’t find the cash needed to get through the process.

The market for so-called DIP loans—or debtor-in-possession financing—has taken a huge hit since last year’s decision by General Electric Co. largely to halt lending to companies in bankruptcy-court protection or near it.

“It is a struggle, a real struggle to find DIP financing,” Jonathan Henes, bankruptcy attorney at Kirkland & Ellis told the Wall Street Journal in October. “In the old days, like early 2007, the banks would do an origination and syndication model, where hedge funds and [loan funds] would gobble up those loans, but they don’t have the capital. They are out.”

So it was no surprise that attendees of the Distressed Investing Conference piled in to hear the panel entitled “Funding the Process: Trends in DIP Financing.” Among the five panelists was David Gozdecki, who works in the restructuring finance group of GE Capital and focuses on DIP and exit financings.

Michael Fixler, a managing director of CM&D Capital Advisors who moderated the panel, commenced by ticking off the industries that dominated the DIP market in 2007 and 2008: manufacturing, automotive, consumer household products, real estate and retail. He said that, going forward in 2009, the industries that require DIP financing won’t change much. Yet, the question remains: As the demand for DIP loans goes up in the coming year, where are those loans going to come from, given the lack of market depth and the constraints faced by ailing financial institutions?

GE’s Gozdecki said that, in 2009, he expects to see “much less on the underwriting side” and more on of the “club facility type structure.”

On the question of where the capital may come from, Kevin Phillips, from the restructuring group of Banc of America Securities-Merrill Lynch said that, given the number of traditional lenders who have been out of the market in the last year, offensive DIP lending is attractive from a “risk-reward perspective.” (Offensive DIP lending involves a DIP lender seeking to make a profit with the least amount of risk, including situations in which the DIP lender is making the loan with the goal of acquiring the debtor or assets from the debtor. This strategy can be effective where the debtor is out of money and has no other source of funds.)

Tiffany Kosch, a panelist from Bayside Capital, a $3 billion distressed investment fund, provided the perspective of the funds and sponsors. She qualified her answer by saying that what funds like Bayside will be able to do will be “directly driven” by what people like Gozdecki and Phillips are doing at GE and BofA. “But we’ll pick up the pieces around them,” she said. “If it’s ugly and it’s complicated and it’s difficult, then that’s for us.” She added: “People like Bayside will be active in the market because the next best alternative for businesses will be to liquidate. And that will be unattractive in terms of a recovery in the marketplace. So I would anticipate that you’ll find a lot of nontraditional lenders who have capital to be participating in what is truly a very good risk-reward, properly structured.”

Brett Barragate, a financing partner with Jones Day, provided the lawyer’s view. “If you’re in the position of representing a debtor or potential debtor and you’re working with the investment bank sizing and financing, you piece together as many of your existing lenders as you can drag along with you, and then you have to look for that missing piece. It could be a private equity sponsor that was involved in the deal. That’s going to be a potential way for sponsors to recover some of the lost value in companies.”

Two of the panelists then reminded the crowd that if all else fails, there’s always the government—the lender that Fixler, the moderator, called “the ultimate lender of last recourse.”
Distressed Investing Conference

Bellagio Hotel
Las Vegas, Nevada

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The Deal Pipeline's Bankruptcy League Tables
Ranked by new assignments gained within active bankruptcy cases for the fourth quarter of 2008

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### TOP CRISIS MANAGEMENT PROFESSIONALS

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### TOP INVESTMENT BANKERS

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### TOP NON-INVESTMENT BANKERS

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Source: The Deal Pipeline, http://pipeline.thedeal.com
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