

# Bankruptcy Court Decisions

WEEKLY NEWS & COMMENT

VOLUME 45, ISSUE 20

JANUARY 17, 2006

## **Lending issues boil over in 2006**

**Craig S. Dean, Principal, AEG Partners**

For the bulk of 2006, we expect the majority of controversies to be centered around issues stemming from the dramatic changes in the makeup of the lending community. With the accelerating prevalence of hedge funds, distressed investors, and second lien financing providers in leveraged transactions, the mix of lenders is far different than just a few years ago. While traditional cash flow and asset-based lenders have established some standard protocols for working through bankruptcies, the more recent entrants have wider ranging agendas. Some lobby for a rapid Section 363 sale or windup of a case to make for a successful "trade," while others work to control the agenda as a means to become the owner of the debtor. In the latter case, we definitely expect to see more onerous DIP financing structures, designed to put the lender in a position to better control the process. As a result, there will be some healthy controversies over the terms and conditions of DIP financing in the months ahead. While many of the new BAPCPA provisions will eventually end up in some form of litigation, one of the sections likely to be tested early is information sharing among unsecured creditors. Further, with the new law potentially encouraging more concentration of committee membership among bondholders, you can expect some dissatisfied unsecureds to test the adequacy of the information and solicitation in court soon.

From the turnaround manager perspective, we do expect an increase in the pace of cases calling for restructuring professionals in the coming year.

While certain industries such as auto parts, airlines and mid-tier retailers will remain under severe pressure, we expect much of the upturn to be driven by the aggressive leverage practices of the last two or three years. We have seen the market shift, however, toward professionals who can deliver operational as well as financial restructuring skills to the debtor. As a result, the professionals we added to the AEG team in 2005 have very extensive operating management experience, and we will continue that focus in 2006.