Bankruptcy in a Changing Economy
As Restructuring Work Climbs, M & A Activity Shifts

By Jeff Blumenthal
Of the Legal Staff

No one really likes to see the economy take a downturn. But for the bankruptcy lawyers, well, let’s just say they have to fight off a sense of excitement at the prospect of additional work.

“Bankruptcy lawyers tend to be contrarians,” Morgan Lewis & Bockius bankruptcy partner Michael Bloom said. “So whenever the economy is in a downturn, we find ourselves in a bit of a paradox. You’re busy, but the people you’re dealing with are not very happy.”

Bankruptcy lawyers are now moving to the front of the class as full-service firms try to cope with the changing economy. And some deal lawyers are finding new ways to keep themselves busy.

With the public markets drying up, mergers and acquisitions attorneys who just as recently as nine months ago were feasting on such work, are now helping clients consolidate or putting them in touch with one of the firm’s resident bankruptcy lawyers to handle restructuring work.

“In the last 90 to 120 days, our restructuring work has increased exponentially to reflect the downturn of the economy,” Bloom said. “And it cuts across all economic sections and involves companies of all sizes from failed dot-coms to large corporations.”

Cozen and O’Connor bankruptcy chair Neal Colton said the past few months have been as busy for him as any time in his career.

“It’s almost oppressive,” Colton said. “There’s so much work, and it’s all of great substance and tremendously challenging. I’ve never had so many important, demanding matters pending at the same time. And they all involve complex relationships, significant publicly and privately owned businesses with assets in the $100 millions. And that’s only a small piece of what’s been happening around the country with all of my counterparts in the bankruptcy bar.”

Duane Morris & Heckscher bankruptcy chair David Sykes said there was a steady increase in bankruptcy work in the second half of last year and a dramatic rise during the first month of 2001.

“I would not call it a recession, just an increased need for restructuring,” Sykes said. “It’s noticeable in the 3rd Circuit because we have Wilmington, which attracts so many filings.”

Kenneth Aaron, chair of Buchanan Ingersoll’s bankruptcy group, said bankruptcy lawyers and firms in general are anticipating the effects of the slowdown, if it continues through the year. But he believes that there is not much work a bankruptcy lawyer can do with all of the dot-coms having trouble.
“You need assets and debts to reorganize a company,” Aaron said. “What does a dot-com have? Basically only equity that has been invested by venture capitalists. There’s not stock issued unless the company went public. So you’re left with a name, hardware, the software they developed, some furniture. No trucks, no cranes… just intellectual property, which in this case is one of the great oxymorons of our time. So [a bankruptcy lawyer] can help close it down and sell some of the assets, and that’s basically it.”

A Change In The Mix

Down the hall from Colton, his Cozen and O’Connor partner Michael Heller is trying to cope with the effect the slowdown has had on his practice as chair of Cozen’s emerging growth and venture capital practice group.

“I like Neal, and I like talking with him,” Heller said. “But I’m spending way to much time in his office talking to him about professional matters.”

Heller said much of his time is now consumed with helping existing companies obtain bridge financing to keep them afloat until the public market begins to turn around. In addition, many clients need help with scaling back expenses.

“But we still have an inflow of new companies,” Heller said. “A lot of employees who were downsized have decided to try and start their own companies. It’s more difficult, and it takes longer during this economic climate. But there’s a lot of capital out there looking for good, solid companies in which to invest.”

Ballard Spahr Andrews & Ingersoll business and finance partner Richard Braemer said he is not seeing as many deals for new economy clients as he was this time last year. But like Heller, he is handling bridge financing until the client can downsize back into profitability or public markets improve.

As for old economy clients, Braemer said a lot of them are looking for strategic acquisitions in hopes of expanding geographically or product-wise. He said he is also seeing a lot of consolidation and roll ups.

“I just checked out our business and finance department, and we’re busier than we were this time last year,” Braemer said. “So there’s a lot going on. It’s just not the same work that’s been going on for the past few years.”

Blank Rome Comisky & McCauley business and corporate department chairman Larry Wiseman said transactional lawyers are still busy, but there has been a shift in the kind of work they do.

“We’re certainly not seeing as many IPOs with stock prices dropping like they have,” Wiseman said. “A lot of those deals are being delayed, or re-priced or being financed privately. I think if there has been a slowdown at all, it’s just been a minor reduction in volume [of work
for deal lawyers]. What has changed is the mix. In general, I’d say we’re seeing more venture capital and private work. You just have to be sensitive to the market and react accordingly.

**Expanding on Skills**

Drinker Biddle & Reath business and finance department chair Jack Michel said what concerns him about the future of the economy is weak debt markets.

“Lack of venture capital funding for dot-coms has had some impact [on the economic downturn] but what is more significant is that debt financing has not been available, and transactions have been held up because of it.”

“Right now, [Drinker’s transactional lawyers] are as busy as we were last year. But we anticipate a flat year in terms of the entire legal business, so we’ll probably pull back on lateral hiring. But this is not like 1991, when the bottom fell out of the market completely.”

Michel said Drinker feels fortunate that when the economy was rolling on a high five years ago, it hired three bankruptcy associates and trained them to become mergers and acquisitions lawyers. Today, they are left with three lawyers adept at both dealmaking and bankruptcy work — whatever the economy dictates.

Bloom said he remembers a six-month period in the early Clinton years, when the economy began to take off, as being the slowest time of his career.

“We just had to expand our skill sets, just like many transactional lawyers are re-learning workouts and reorganizations now. And it’s been left to the bankruptcy lawyers like myself to teach them. What I find interesting is that we have [mergers and acquisitions] associates in their fourth, fifth or sixth year — who really know how to structure and complete a deal — but they’ve only known good economic times so they have to be cross-trained.”

**Legal Recruiting**

Coleman Legal Search president Michael Coleman said legal recruiters have also noticed the change in the economic climate.

“We’ve seen less of a demand for corporate lawyers compared to a year ago,” Coleman said. “But that’s logical because the IPO market is way off. My understanding is that there are still a good amount of deals out there, though.”

“On the other hand, there has been some increase in demand for bankruptcy partners and associates in Pennsylvania and even more so in Delaware.”

Coleman, though, said he does not believe firms are hiring more bankruptcy lawyers in anticipation of an extended economic downturn.
“I think firms learned the lesson of the late 1980s, when they hired so many people that they had to, for the first time, lay people off for economic reasons [when the economy turned sour]. So I think people are a little gun shy to go out and hire people based on anticipation. I just think there’s a bit of an increase [in bankruptcy hires] because there’s more work now. But no one is going overboard.”

This article appeared in the February 20, 2001 edition of The Legal Intelligencer and is posted with permission.