

The Distressed Debt Report

News, Information, and Analysis of Distressed Debt in the Middle Market

Volume VI, No. 20

distresseddebt.dealflow.com

November 9, 2010

IN THIS ISSUE

FEATURE

- Private equity firms continue to pursue struggling banks.
- Philip Falcone can take on more first lien debt for his 4G wireless plan.
- The pace of bankruptcies and defaults may be slowing2

NEWS IN BRIEF

"Vulture fund" Sandton is accused of exploiting a clerical error; the corporate default rate fell in October; fund manger Maria Boyazny launched her own firm; Amalgamated Bank is accused of a conflict of interest; the National Enquirer's parent company is bankrupt; department store Loehmann's may default; Kayne Anderson closed a \$600M mezzanine fund; airline operator Gulfstream and luxury jet maker Emivest filed Chapter 11; tax authorities and the FBI may be pursuing Yellowstone Mountain's former owners; Carlyle and Anchorage Capital are recapitalizing a Hawaiian bank; Goldman took control of a construction products company; and hirings and firings3

DISTRESSED DEBT MONITOR

The Distressed Debt Report lists the latest bankruptcies and debt defaults by publicly traded companies7

PE FIRMS CONTINUE TO COVET STRUGGLING BANKS

by Kirk O'Neil

A growing number of private equity firms and hedge funds are investing in banks and bank holding companies as the list of failed and troubled banks continues to grow.

With more than 140 banks failing this year and more than 700 banks on the Federal Deposit Insurance Corp.'s problem bank list, private equity firms view banks and bank holding companies as good investments with a strong upside.

"Private equity firms believe that bank values are low, and they will benefit from a rebound in bank pricing," said Peter Weinstock, an attorney with the law firm of **Hunton & Williams** in Dallas. "The most attractive banks to PE firms are those with management teams with the ability and opportunity to be consolidators."

Bank holding company **SKBHC Holding's** proposed acquisition of Spo-

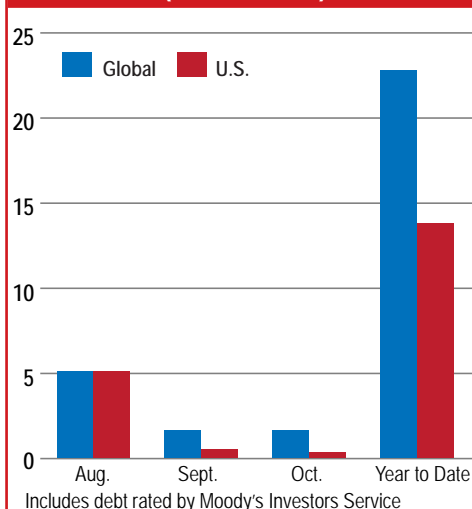
kane, Wash.-based **AmericanWest Bank** last month was one of the most recent transactions involving private equity investors. The bank's holding company **AmericanWest Bancorp** filed Chapter 11 and agreed to sell the bank to SKBHC, which would recapitalize the bank.

SKBHC agreed to buy the bank's common stock for \$6.5 million and will recapitalize the bank with up to \$200 million if it wins the bankruptcy auction. The FDIC is requiring the bank to recapitalize, under the terms of a cease-and-desist order issued in May.

The Federal Reserve approved SKBHC Holdings' application to become a bank holding company only a couple of days before AmericanWest's Chapter 11 filing and sale agreement in October. SKBHC had made the application in April when it sought to purchase **First**

Continued on page 10

2010 DEFAULT VOLUME (\$ BILLIONS)



Source: Moody's Investors Service

FALCONE CAN ADD FIRST LIEN DEBT FOR 4G PLAN

by Teri Buhl

Philip Falcone of **Harbinger Capital** thinks he can build a better, less expensive 4G wireless network than the major telecom carriers and is counting on his skills in debt investing to maneuver through the project's challenging financing.

Falcone's goal is to sell wholesale-only high-speed voice and data service to other wireline companies, retailers, and even the major telecom companies like **AT&T**, and **Verizon**.

It's a project he's been working on for over five years. He began by buying up the distressed debt of ailing satellite companies including **SkyTerra** (renamed **LightSquared**) for only \$262 million.

He then persuaded the Federal Communications Commission to trust a hedge fund with controlling the valuable telecommunication commodity that LightSquared had won ownership of, called spectrum. Regulators had

Continued on page 8

Editor & Publisher *Brett Goetschius*

Managing Editor *Adam Steinbauer*

Assistant Managing Editor *Meghan Leerskov*

Senior Editors *Donna Horowitz*
Dan Lonkevich

Associate Editor *Bill Meagher*
Kirk O'Neil

Staff Writers *Maria Brosnan Liebel*
Joshua Sisco

Contributing Editors *Jim Connolly*
Joe Gose
Mark Mueller
Paul Springer

Production Editor *Gary Newman*

IT Services Manager *Dale Abrams*

Marketing & Events *Steve Kazin*
Mike Michalak
Alison Reimers
Eric Salvatorezza

The Distressed Debt Report

DealFlow Media, Inc.
P.O. Box 122
Syosset, NY 11791
T (516) 876-8006
F (516) 876-8010
subscribe@dealflow.com
www.dealflow.com

The Distressed Debt Report™ is published on the second and fourth Tuesday of every month, except the second Tuesday of August and the fourth Tuesday of December. Subscription rate: \$1,595 per year for 22 issues, delivered electronically.

All rights reserved. © 2010 DealFlow Media, Inc. Photocopy permission is available solely through DealFlow Media. *Copying, distributing electronically by email, or duplicating this publication in any manner other than one permitted by agreement with DealFlow Media is prohibited.* Such actions may constitute copyright infringement and leave perpetrators subject to liability of up to \$150,000 per infringement (Title 17, U.S. code). *The Distressed Debt Report* and *The Distressed Debt Conference™* are trademarks of DealFlow Media.

The Distressed Debt Report is a general-circulation publication. No data herein should be construed to be recommendations to purchase, retain, or sell securities, or to provide investment advice of the companies mentioned or advertised. No fees are accepted for publishing any editorial information. DealFlow Media, its subsidiaries, and its employees may, from time to time, purchase, own, or sell securities or other investment products of the companies discussed or advertised in this publication.

BANKRUPTCIES, DEFAULTS MAY BE SLOWING DOWN

A slowdown in corporate Chapter 11 filings and debt defaults is occurring as the year winds down, turnaround management firms and bankruptcy attorneys agree.

But that slowdown could be short-lived as the new year begins.

“Typically, at this time of the year in October and November, as it relates to the retail sector, there’s usually a bit of a slowdown in Chapter 11 filings and defaults,” said Ron Sussman, an attorney with the New York Law firm **Cooley LLP**. “Retail’s success weighs heavily on performance around Christmas season. Retail can improve sales performance significantly in a matter of days. You might see an uptick in Chapter 11 filings if the Christmas season doesn’t go well.”

Sussman, whose firm’s practice has a strong retail representation, said the Chapter 11 filings happening in the next two months will come from companies with little hope of a Christmas season turnaround.

“Those filing now will have a lot of bad debt, covenant breaches and no hope that Christmas was going to save them,” Sussman said.

Lisa Poulin, managing partner of turnaround management firm **CRG Partners Group** in Bethesda, Md., says that the slowdown in filings has come after business performance in the spring quarter was better than expected.

“We’re not seeing a lot of defaults because companies are accessing the high-yield market to refinance,” said Poulin, who is also president of the Turnaround Management Association. “That’s where distressed debt goes. Banks are still using amend-and-extend on maturities, and banks are saying their customers had a better second quarter. It’s not as though the economy has improved that much, but it’s been better.”

Companies are also hesitant to file because of uncertainties with the economy and taxes, she said.

“There’s a great deal of uncertainty out there,” Poulin said. “People react unpredictably when they are uncertain.”

Relationships with banks will be very important for middle market companies over the next few years as a wave of debt maturities will arrive starting in 2013, she said.

“We’ve seen an uptick from banks wanting assessments of middle market companies,” Poulin said. “There’s no rush to file foreclosures. They are willing to work with borrowers.”

Poulin said she has seen upper middle market companies begin to make operational improvements such as changing product lines and revising delivery contracts to cut costs and improve revenues prior to hitting the maturity wall.

“We see some companies dealing with problems early before their debt is due because they don’t want to be in trouble when the time comes to refinance,” she said.

Thomas Kim, senior managing director of turnaround management firm **r2 Advisors** in Denver, said that lenders are willing to refinance or amend and extend because they realize that recovery rates on forced sales are depressed.

“Anyone under distress is undervalued,” he said. “Prices are being pushed down. I don’t believe institutional lenders are forcing defaults when it’s not absolutely necessary. What’s happening with public companies is those who are in better shape can access the high-yield market and are getting additional debt. High-yield debt has been popular, since high-yield junk bond offerings have been at all-time highs over the past two years.

“If a company can’t access the high-

yield market or other debt, they are just hanging on with amend-and-extend,” Kim said.

Values of some distressed assets have

been pushed down as private equity firms have become very selective for only the strongest opportunities, Kim said. This has produced a lot of cash chasing

only a few deals and creating tight competition. Meanwhile, many smaller private companies that are struggling will not attract private equity, he said. —KO

CLERICAL ERROR ON TRIAL IN GAMA AVIATION SUIT

by Paul Springer

Gama Aviation claims that a “vulture capital fund” is taking advantage of a loan processing mistake to take over the company’s air charter business, according to a lawsuit filed last month in a New York state court.

Key Equipment Finance loaned Gama \$6.7 million in July 2008, according to the suit, Key then sold the obligation earlier this year to **Sandton Capital**.

Gama says that it and Key had negotiated a 60-month term for the loan, which funded the purchase of a Lear 60 jet. The note was to be secured by the Lear aircraft.

Key was unwilling to link its variable rate to LIBOR for all five years, so the lender and Gama agreed to renegotiate at the end of 24 months. Gama would then be free to shop for other lenders or finish out the rest of the five-year maturity at a new rate.

But an early draft of the note inaccurately stated a 30-month reset period. Gama asked for the period to be revised back to 24 months.

Not until the spring of this year, Gama’s suit says, did the parties realize that the revision had been botched to state that the loan matured in 24 months.

An attorney representing Gama, **Boies, Schiller & Flexner** partner Courtney Rockett, said that legal precedent for “mutual mistake” allows parties who agree on original intent to reform an agreement to reflect that intent accurately.

Gama says Key initially agreed this spring to continue accepting payments while a new agreement was ironed out.

That situation changed after a few months, however, when Sandton Capital purchased a portfolio of loans from Key.

Sandton’s knowledge of the mutual mistake issue brings the validity of its claim into question, Rockett told *The Distressed Debt Report*. “This is a classic instance of mutual mistake where the documentation did not reflect the agreement reached by the parties,” she said. “The vulture capital fund that acquired the note acknowledged its awareness of this issue, and thus was not a bona fide purchaser.”

The suit alleges that Sandton encouraged Key not to modify the loan or extend its maturity and that Sandton issued a notice of default last month.

Sandton’s demand for payment contained a typo of its own, according to Gama. The document stated that the required amount of \$6.2 million was the sum of two figures that actually add up to around \$5.9 million, Gama said.

The suit also alleges that Sandton intentionally forced Gama into default by directing Key not to accept a September payment on the loan.

Market conditions have reduced the Lear aircraft’s value to around \$3 million, according to Gama.

The suit claims a Sandton principal “was told about the mutual mistake and rejected it out of hand.” Sandton was unwilling to amend the note’s maturity, according to Gama. Sandton offered some alternatives that would have caused problems with covenants in loans from other lenders and abruptly cut off negotiations with “threats to illegally seize

and sell the [Lear] aircraft,” the suit alleges.

Lowenstein Sandler partner Steven Hecht told *The Distressed Debt Report* that agreements are often amended to account for “mutual mistake,” but the situation gets more complicated when a third party gets involved. Hecht also said borrowers are well advised to require loan provisions requiring that they receive notice in the event that the loan is going to be sold.

Sandton representatives did not return a phone call from *The Distressed Debt Report* seeking comment. As of press time, the company had not yet filed a response to the suit in court. ■

Corporate Default Rate Falls in October, Moody’s Says

The trailing 12-month default rate for U.S. companies with debt rated speculative-grade by Moody’s Investors Service fell to 3.6% in October from 4% in the previous month, the rating agency said. The default rate was 14.6% a year earlier.

Moody’s said it expects the default rate to fall to 2.9% by December and continue to fall to 2.2% one year from now.

Boyazny Launches Distressed Firm MB Global Partners

Former **Siguler Guff** portfolio manager Maria Boyazny launched a new distressed investment advisory firm, **MB Global Partners**, in New York in partnership with financial services firm **G2 Investment Group**.

MB Global Partners said in a state-

ment that it will focus on an array of credit dislocation and distressed strategies by allocating capital to other managers and to direct investments in corporate debt, commercial real estate, and other hard assets and special situations.

Boyazny previously managed \$4.5 billion in assets for Siguler Guff's Distressed Opportunity Funds I, II, III and IV.

G2 Investment Group is an independent, privately owned financial services firm established by Todd Morley and partners. Morley previously co-founded Guggenheim Partners.

Petra CDO Sues Servicer for \$32M in Conflict Quandary

A purported conflict of interest on the part of a loan servicer allegedly led it to induce a lender to continue lending long after the borrowers gave up on their construction project.

New York-based **Petra Mortgage Capital Corp.** and an affiliated collateralized debt obligation filed a suit claiming that **Longview Ultra I Construction** fund trustee **Amalgamated Bank** found itself in a predicament when an intercreditor agreement made it the guarantor of a loan it also had a duty to foreclose on.

The suit was filed Oct. 28 in a New York state court.

The suit says that in 2007, Petra and Amalgamated entered into the agreement as part of a plan to originate as much as \$95 million in loans for a Manhattan condominium project that included the restoration of a synagogue.

Petra raised all but \$2 million of the \$34 million loaned to builder **Fort Tryon Tower SPE**, but Amalgamated guaranteed repayment to Petra in the event of default or acceleration. Amalgamated was also solely responsible for servicing the loan and taking legal action to enforce its notes and mortgages, the suit says.

Fort Tryon defaulted repeatedly starting in 2008, according to Petra's account.

Faced with the prospect of making \$32 million in guarantee payments, Petra alleges that Amalgamated delayed starting the foreclosure process.

"Even [beginning the foreclosure] was just a ruse to give the appearance that defendant was

discharging its obligations," the suit says. "After commencing the foreclosure action, defendant resumed its apparent foot-dragging."

Petra seeks damages of at least \$32 million.

An attorney for Petra and Amalgamated representatives did not respond to inquiries from *The Distressed Debt Report*. Amalgamated has not yet filed a response to the suit in court.

National Enquirer Parent American Media Plans Pre-packaged Chapter 11

American Media Inc., publisher of *The National Enquirer*, said it will file a prepackaged Chapter 11 bankruptcy following approval of a plan of reorganization by its lenders.

American Media's reorganization relies on a debt-for-equity exchange with a group of its lenders. Holders of 80% of the debt have already agreed to support the plan, the company said.

American Media said in a statement that it expects to emerge from bankruptcy in less than 60 days after it receives an affirmative vote on its prepackaged Chapter 11.

The company also said it cancelled an offer to exchange senior subordinated notes due in 2013 for cash and common stock and also nixed a cash offer to pay off senior payment-in-kind notes due in 2013 after both offers failed to receive enough votes for approval.

Loehmann's to Default on Debt, May File Bankruptcy

The Loehmann's department store chain said it defaulted on senior secured notes due in October and may file a pre-negotiated Chapter 11 bankruptcy this week.

Loehmann's Capital, the special purpose corporation that issues debt on behalf of **Loehmann's Holdings**, failed to receive valid tenders from holders of 97% of its senior secured notes due in 2011 to exchange them for senior

Time to Capitalize

TIMING IS CRITICAL WHEN RAISING CAPITAL

Rodman & Renshaw is the #1 ranked placement agent for private placement transactions for public companies.* Since 2003, we have completed over 370 offerings, which raised billions of dollars for our clients.

Contact Craig Schwabe,
Managing Director, Investment Banking
at 212.356.0524 or cs@rodman.com

#1 PLACEMENT AGENT

Rodman & Renshaw
Investment Banking • Capital Markets • Research • Institutional Sales & Trading

1251 Avenue of the Americas
New York, NY 10020
212.356.0500 www.rodman.com

This material has been prepared for informational purposes only. While it is based on information generally available to the public from sources we believe to be reliable, no representation is made that the subject information is accurate or complete. Past performance is not a guarantee nor does it necessarily serve as an indicator of future results. *PrivateRise, a service of DealFlow Media Inc., and Sagent Research Systems, Inc., both ranked Rodman & Renshaw as the #1 Placement Agent among full-service investment banks for PIPE financing arrangements, with most deals transacted in 2003, 2005, 2006, 2007, 2008, 2009 and 2010 year to date. Rodman & Renshaw, L.L.C. is a wholly owned subsidiary of Rodman & Renshaw Capital Group, Inc.
September 30, 2010 Member FINRA, SIPC

secured notes due in 2014. The company received valid tenders representing 92.4%, which was not enough to consummate the exchange offer.

Loehmann's said that without the exchange offer approval, it would not make its October interest payment for the senior secured notes before the expiration of a 30-day grace period and would default on the notes and its revolving credit agreement with **Crystal Financial**.

Loehmann's said it would continue to negotiate with its lenders regarding forbearance agreements and may consider filing a prenegotiated bankruptcy.

The Melville, N.Y.-based company operates 55 discount department stores in 15 states and Washington, D.C.

It was purchased in 2006 by the **Dubai World** sovereign wealth fund, for about \$300 million.

Kayne Anderson Capital Advisors Closes \$600M Mezz Fund

Kayne Anderson Capital Advisors closed its first middle market mezzanine fund with a \$600 million capital raising.

Kayne Anderson Mezzanine Partners, based in New York, is led by co-managing partners Ed Cerny and David Petrucco. The fund will provide mezzanine capital to private equity-sponsored and unsponsored middle market companies.

Kayne Anderson Mezzanine said it has so far made six portfolio investments totaling nearly \$90 million for refinancing, corporate expansions, leveraged buy-outs, and recapitalizations.

Gulfstream International Files Chapter 11

Gulfstream International Group, a publicly traded commercial airline and pilot training company, filed for Chapter 11 bankruptcy.

The Fort Lauderdale, Fla.-based company said in a statement that it will seek to restructure its debt and obtain

long-term financing to allow it to acquire its fleet of aircraft and improve its cost structure.

Gulfstream said that it has secured \$5 million in debtor-in-possession financing from Chicago-based **Victory Park Capital Advisors**.

The company's airline, Gulfstream International Airlines, operates 42 aircraft that fly more than 150 daily flights to 18 destinations in Florida and the Bahamas and six destinations from Cleveland.

The company's Gulfstream Training Academy provides commercial pilot training.

Emivest Files as Luxury Jet Market Nosedives

Emivest Aerospace Corp., a subsidiary of Dubai-based **Emirates Investment and Development**, alluded to a soft market for corporate jets in its petition for Chapter 11 protection.

The company said it has a backlog of orders but lacks working capital to fund production.

Emivest filed on Oct. 21 in Delaware's U.S. Bankruptcy Court. The company has obtained \$4 million in debtor-in-possession financing and has said that it hopes to remain in business.

Emivest started out as **Swearingen Aircraft** in 1958 and later became small jet designer **Sino Swearingen Aircraft Corp.** in 1995, after which the company was funded by the government of Taiwan in a \$700 million project to develop the SJ30 jet plane. The plane set a world speed record in 2008 for planes weighing less than 20,000 pounds, according to the bankruptcy filing. The company's website says that actor Morgan Freeman purchased one of the craft last year.

The company's liabilities include a 2009 7% revolver with \$35.8 million outstanding and a \$15 million note to **Yao-Hwa Glass Co.**

The company also owes **Wells Fargo** part of a 2009 \$4.2 million arbitration award the bank received over a disputed

transaction fee from a capital raising for a 2008 merger with Dubai's Emivest. The bank was not involved in the financing, but an exclusive placement agent agreement entitled Wells Fargo to a fee.

The company said in court documents that it has suffered from a dearth of working capital since 2005, while economic conditions since 2008 have crimped the corporate jet market. Bad publicity generated by executive use of private jets also depressed the prices for luxury planes, the filing says.

Emivest has laid off 150 workers and suspended retirement plan matching contributions, but it says these measures still left it in a situation where operations could not continue without Chapter 11 protection.

Donlin, Recano & Co. and **Morgan Joseph & Co.** are assisting in restructuring efforts.

Tax Man, Feds Interested in Former Yellowstone Mountain Owners

The **Yellowstone Mountain Club** was sold to **CrossHarbor Capital Partners** in a bankruptcy sale last year, but questions linger about the former proprietors and their personal use of funds **Credit Suisse** loaned to the resort.

One of the former principals is reported to be the subject of a criminal investigation, while the other may owe over \$50 million in taxes on loaned funds that were actually taxable distributions.

Yellowstone filed for Chapter 11 protection in the U.S. Bankruptcy Court in Butte, Mont., last year.

In 2005, Yellowstone obtained a \$375 million loan from Credit Suisse as part of a covenant lite financing that gave the borrowers latitude to use the proceeds as they wished. Proprietors Timothy and Edra Blixseth, who later divorced, ended up with about \$300 million in loan proceeds.

The bankruptcy court entered a \$40 million fraud judgment against Timothy Blixseth in September, and now Mon-

tana's Department of Revenue is seeking \$57 million in taxes from him. The bankruptcy judge ruled in August that Blixseth's characterization of loan proceeds to entities he controlled as loans was really an attempt to "disguise" distributions.

Montana's tax department began filing claims to preserve its rights early in the bankruptcy. Now the department has begun efforts to collect from Blixseth, according to reports in the media. Blixseth is reported to have called the effort "bogus."

Edra Blixseth is being investigated by federal authorities, according to an *Associated Press* report. Several people have been deposed in the investigation and the FBI has questioned Blixseth's former bookkeeper, the *AP* reported. Timothy Blixseth disclosed the investigation of his ex-wife, according to the report.

Edra Blixseth claims that she has

spoken to the FBI, but only in response to inquiries about her ex-husband, the *AP* said.

Attorneys for the Blixseths did not respond to inquiries from *The Distressed Debt Report*.

Carlyle, Anchorage Capital Recapitalize Central Pacific Bank

Central Pacific Financial, the parent company of Honolulu-based Central Pacific Bank, said that **The Carlyle Group** and **Anchorage Capital Group** have each agreed to purchase about \$98 million in common stock to help recapitalize the holding company.

The private equity firms' investments are part of a planned \$325 million capital raise. Central Pacific will continue to raise another \$130 million from other investors.

The company will also conduct a \$20 million rights offering that will allow current shareholders to purchase shares at the same price as the new investors.

Following the stock purchase, Carlyle and Anchorage Capital will each own a 24.9% stake in Central Pacific. Each will be entitled to one seat on the holding company's and bank's boards of directors.

Contech Restructuring Hands Control to Goldman Sachs

Contech Construction Products, a provider of construction site

and storm water management products, completed a balance sheet restructuring that reduced its outstanding debt by half to about \$240 million and handed majority ownership to **Goldman Sachs Mezzanine Partners**.

Funds advised by **Apax Partners** will continue to hold an equity stake in the West Chester, Ohio-based company.

Under the restructuring, Contech removed about \$240 million of debt, which amounted to all of the outstanding principal and interest owed on its mezzanine debt due in 2014.

Also, **Wells Fargo Bank** and a syndicate of lenders amended Contech's senior secured credit facility, modifying covenants and interest rates and extending the facility to Jan. 31, 2013.

Wolverine Tube Will File Prearranged Chapter 11

Wolverine Tube, a publicly held provider of metal tubing for industrial companies, filed a prearranged Chapter 11 bankruptcy.

The Huntsville, Ala.-based company said that it reached a restructuring agreement with its lenders that will reduce the company's debt by \$110 million. Wolverine Tube said in a statement that it expects to emerge from bankruptcy in about 90 days with about \$30 million in debt on better terms.

The company said it believes it has sufficient cash on hand and cash flow from operations to fund its business activity through restructuring.

Wolverine Tube said it's restructured its operations over the past three years, improving its cost structure and competitiveness, and repaying a substantial amount of debt.

Impetus Capital Launches Small Business Advisory, Restructuring Firm

Impetus Capital, a small business advisory services company, launched its operations in New York.

The new company said it will

The Distressed Debt Conference 2010
A DealFlow Media Event

Event Book & Complete Audio CD

If you missed The Distressed Debt Conference 2010 in New York City, you can still get the complete audio recording on CD, along with the Event Book & Resource Guide.

The Distressed Debt Conference 2010 Audio Kit

Order Today!

ONLY \$395
Includes FREE Shipping

516-876-8006 or on the web: www.dealflow.com

The following table includes data about publicly traded companies that have filed for bankruptcy in the 30 days through Nov. 4. Data is provided by Capital IQ.

Public Company Bankruptcies

Company (Ticker)	Date	Enterprise Value (M)	Market Cap (M)	Revenue (M)	EBITDA (M)	Net Income (M)	Total Debt (M)
Wolverine Tube (OTCPK:WLVT)	Nov. 1	144.6	0.4	444.9	-1.78	-35.4	124.1
AVP Inc. (OTCPK:AVPI)	Oct. 29	-	0.02	-	-	-	-
AmericanWest Bancorporation (OTCPK:AWBC)	Oct. 28	-	0.33	38.7	-	-40.0	104.9

Debt Defaults

Company (Ticker)	Date	Revenue (M)	EBITDA (M)	Total Debt (M)
GameTech International (NasdaqGM:GMTC)	Nov. 4	40.6	3.77	28.9

offer small businesses advisory services including capital and balance sheet advisory, capital raising, business growth, operational and technical optimization, restructuring, and deal sourcing.

Impetus founder Patrick Persons said that the company will also offer new opportunities for investors looking for alternative investment vehicles.

Grove Farm Fish & Poi Files Chapter 11

Grove Farm Fish & Poi, which operates a fish farm as Hukilau Foods in Lihue, Hawaii, filed for Chapter 11 bankruptcy.

The company, which was established as a fish farm in 2000, reported about \$5 million in assets and \$8.6 million in liabilities. The company's largest unsecured debt includes \$133,000 owed to

Hawaii Employees Mutual, \$123,000 owed to the Oceanic Institute, \$64,000 owed to the U.S. Commerce Department and \$49,000 owed to Land o' Lakes Feed, according to the bankruptcy filing.

The company filed for approval of \$3 million in debtor-in-possession financing from an insider, **Visionary LLC**, who owns 51% of the company's stock. The DIP application has been opposed by the U.S. bankruptcy trustee, who objects to the loan terms that include a super priority claim that the trustee says is inappropriate and fees that are excessive.

In addition to the super priority claim, the proposed lender requires a \$10,000 loan fee, a monthly \$1,000 servicing fee and attorney fees and costs.

Grove Farm Fish claimed in the fil-

ing that **First Hawaiian Bank**, **American Savings Bank**, and **Central Pacific Bank** all turned down the company's request for DIP financing.

Hirings and Firings

Grant Thornton, the Chicago-based business advisory firm, hired Stephen Lukens as its new advisory services leader.

Siguler Guff & Co. promoted James Gereghy as head of the firm's four distressed opportunity funds. The company also appointed distressed team member Marianna Fassinotti to manage the funds' relationships with their general partners.

Law firm **King & Spaulding** appointed Edward Ripley as a partner in the firm's financial restructuring practice in Houston. Heath Rosenblat was elected counsel in the firm's New York office. ■

Continued from front page

expressed concern that he would resell the spectrum for a quick profit. But Falcone has publicly stated his intent is to build a national network that will reach rural areas, and not flip the 4G assets. Early this year, Falcone was given approval by the FCC to launch his plan.

He then had to go out to the private investment market to raise more capital that insiders say is to be used for funding after 2012. It remains an open question whether Falcone can raise enough money to fulfill this risky, but potentially highly profitable, plan or whether it will go bust and risk his reputation as one of the highest-profile distressed debt investors.

Expensive Debt

Last month, Falcone and his company LightSquared announced a high-yield debt deal that raised \$850 million, but had to offer a 12% coupon on a four-year term loan. News of the coupon was first reported by *Reuters*.

Institutional investors who were pitched to buy the syndicated loan by UBS confirmed to *The Distressed Debt Report* that the coupon rate was attractive, and people involved in the transaction said the loan attracted a lot of interest.

But one institution investor told *The Distressed Debt Report* that he passed because he thought it was too risky. "It looked like a desperate debtor to me who had to give up a high rate to pay off other company debt due and offer the kitchen sink to secure it," the investor said.

Unknown Costs

Some analysts were surprised that Falcone didn't use the UBS syndicated debt deal to raise more money, as they project that Falcone's 4G plan will need at least \$5.5 billion to \$8.2 billion in funding before it can achieve positive cash flow.

LightSquared has said it has raised a little more than \$2 billion so far.

Falcone won't disclose how much he'll need to complete the plan, but says that most analysts' projections are high. Harbinger managers note that none of the analysts know his cash-burn rate.

Last year a LightSquared competitor, **Clearwire**, did a similar debt deal for the same coupon rate but raised \$2.8 billion. This has left Wall Street questioning whether doubts about LightSquared's ability to meet its build-out funding goals prevented UBS from raising more capital for Falcone's 4G project.

"The fact that Harbinger only has been able to raise \$850 million in first lien debt indicates that investors believe there is significantly more risk," independent telecom analyst Tim Farrar told *Reuters* at the time.

Falcone wouldn't say if the terms of the loan were what he needed to meet his financing goals, but people involved in selling the deal said they saw strong interest in the syndicate loan and it sold well.

The market is speculating that terms of the loan prevent Falcone from taking on more first lien debt. But that's not the case, according to people who have seen the loan terms. "Falcone or LightSquared are not restricted from adding on more first liens to the \$850 million loan and borrowing more money down the road," an investor said.

Analysts including Farrar acknowledge that with the new debt-raise, Falcone doesn't need more money to meet his initial build-out commitments in the next year.

The debt is secured by LightSquared's most valuable asset, its FCC license to use high-speed spectrum that allows voice and data to transmit through difficult areas.

But Farrar told *The Distressed Debt*

Report that Falcone has yet to receive a public endorsement of his plan, which limits the value of the spectrum he owns. Signing a customer such as **T-Mobile**, which is currently shopping for a 4G wholesale provider, would go a long way toward confirming the value of Falcone's venture and helping him raise additional funds, Farrar said. So would another large institutional investor announcing a large equity investment in LightSquared.

Harbinger's Risk

How Falcone is using the new \$850 million in financing is also a source of speculation. Insiders at Harbinger say it's going to be used to build out LightSquared's network. But first, Falcone chose to pay off a previous \$750 million first lien loan that LightSquared had established before Falcone bought the company. Farrar says that LightSquared would have been charged 14% interest on that loan starting last month if the company hadn't redeemed the note. Falcone had his hedge fund buy \$430 million of that debt at a discount. He said in a September article in *Forbes* that he was planning to convert that \$430 million in debt into equity in LightSquared.

LightSquared said last month that it now has more than \$2 billion in capital, after issuing the new \$850 million in debt, paying off the old debt, and with \$1.75 billion in previous financing the company had raised. Harbinger's exchange of equity for debt freed up about \$500 million in working capital that would otherwise have gone toward paying off debt, Farrar said.

The debt-to-equity conversion would have increased Falcone's main hedge funds' investment in LightSquared. Previously, he had said that the funds had \$2.6 billion in equity invested in 4G assets. Falcone won't confirm or deny that the debt-to-equi-

ty has been converted yet. Harbinger has said that it has about \$9 billion in total assets under management, which would appear to mean that about 33% of its investors' money may now be in Falcone's 4G plan. Falcone has about \$800 million of his own fortune invested in LightSquared, *Bloomberg* has reported.

"Of course, if that happened then it increases Harbinger's risk because they no longer have first lien debt, but have to repay the \$850 million syndicated loan before there is any return to the equity holdings," Farrar told *The Distressed Debt Report*.

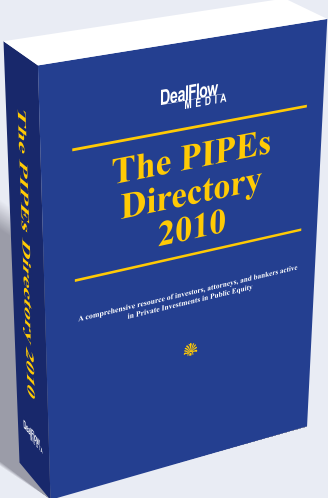
Falcone's master fund has lost about 11% this year, says an investor in the fund. A newer distressed debt fund that Falcone started last year, however,

now has \$900 million in assets under management and is up 11.6% this year through October, according to investors.

Falcone's challenge in the next few years is to keep building interest in his 4G plan so he can raise the additional billions he needs to complete the project by 2014. LightSquared will start building its network next month and has already said that it's signed two customers. Cash flow at this stage could help LightSquared finance its national build-out. This leaves industry analysts waiting to see if a big cash cow client like T-Mobil chooses LightSquared, instead of its competitor Clearwire, and gives investors a huge signal of confidence to pile more money into Falcone's 4G dream.

Meanwhile, Clearwire announced Friday it was having cash flow troubles and would default on its debt at the end of the year if it doesn't raise more capital. ■

Unless your company holds a multi-user license, it is a violation of U.S. copyright law to photocopy or reproduce any part of this publication, or forward it electronically, without first obtaining permission from DealFlow Media. For details about upgrading your license, contact Lenny La Sala at (516) 876-8006 or lenny@dealflow.com.



The PIPEs Directory 2010

Now in Hard Copy AND Online!

This edition provides up-to-date contact information plus a one-year subscription to the online directory database.

- Includes analysis of the state of the market and a special Registered Direct/CMPO section
- Access to more than 2,400 investors, investment bankers and attorneys
- Search by company name, city, state, country, first and last name, and more
- Access to the most comprehensive list of email addresses

Includes Email Addresses

\$795 includes FREE shipping

\$695 for subscribers to *The PIPEs Report* (save \$100).

Order your copy of this limited-issue reference book today.

Call 516-876-8006 or visit www.dealflow.com

Continued from front page

National Bank of Starbuck in Minnesota. The Federal Reserve approved the holding company application and sale of First National in October.

SKBHC Holdings was formed in December 2009 by **Merrill Lynch's** former co-head of global banking Scott Kisting, and includes several private equity firms as its investors. In April, **Goldman Sachs'** private equity group filed with the Federal Reserve to acquire up to a 24.9% stake in SKBHC.

In October, Goldman also purchased between 6% and 9.8% interests in three other bank holding companies, **Doral Holdings** of San Juan, Puerto Rico, **Avenue Financial Holdings** of Nashville, Tenn., and **Atlantic Capital Bankshares** of Atlanta, according to Federal Reserve filings.

Joseph Vitale, an attorney with the law firm of **Schulte Roth & Zabel** in New York, said that private equity firms will often keep their percentage of ownership in a bank or bank holding company below 9.9%, since ownership of more than 10% triggers requirements for more extensive disclosure. Private equity firms looking to not deal at all with the Fed will keep their ownership below 5%.

"Regulators require no reporting with less than five percent ownership," Vitale said. "Once you cross that five percent threshold, you have to deal with the Fed. Ownership of more than five percent would trigger various disclosure requirements, filing requirements, and passivity commitments ensuring that the investor is only a passive shareholder."

The Fed doesn't allow private equity firms to own more than a 25% stake in a bank or bank holding company, Vitale said. The Bank Holding Company Act of 1956 prohibits companies with portfolios that contain entities with non-banking activities from owning control positions in banks or bank holding companies. The act defines a control position as 25% or more ownership of non-voting equity shares or more than 5% of voting shares.

As an alter-

native, some private equity firms have formed groups that each firm owns less than a 25% stake in, Vitale said. The new entity can then invest in a bank holding company or become a bank holding company.

But even with less than a 25% stake in a bank, regulatory requirements can still be onerous for private equity firms, Weinstock said.

"It's significant at five percent and can be overwhelming at over ten percent," he said. "At ten percent, a principal has to give financial and biographical information to the Fed. Significant investment is time-consuming and you have to share significant information."

Several private equity firms in August purchased significant interests in distressed bank holding company **Hampton Roads Bankshares**, which operates Bank of Hampton Roads, Gateway Bank and Shore Bank financial centers in Maryland, North Carolina and Virginia, according to Federal Reserve filings. The Fed had deemed the holding company critically undercapitalized and ordered it to raise capital.

Private equity firm **The Carlyle Group** and hedge fund sponsor **Anchorage Advisors** each purchased 23% of Hampton Roads' stock as part of a \$255 million private placement. Private equity firm **CapGen Financial** was also an investor.

Sales of big financial institutions have slowed since the FDIC's distressed sales of **IndyMac** in January 2009 and **Bank United of Florida** in May 2009.

"Since then, there have not been any deals made for large institutions," Vitale said. "It's been mostly regional or community banks."

Weinstock said the difficulty many private equity firms have with bank investments is their business plans may conflict with regulators' mission.

THE REVERSE MERGER CONFERENCE 2010
A DealFlow Media Event

Event Book & Complete Audio CD

If you missed The Reverse Merger Conference 2010 in Toronto, you can still get the complete audio recording on CD, along with the Event Book & Resource Guide.

The Reverse Merger Conference 2010 Audio Kit

Order Today!

ONLY \$395
Includes FREE Shipping

516-876-8006 or on the web: www.dealflow.com

"In some cases, a private equity firm's business plan is to liquidate problem assets," he said. "To satisfy regulators, you have to have a business plan that involves community lending and organic growth. A lot of the delay in bank holding company approvals relates to regulators getting comfortable with a business plan."

Regulators also limit private equity's ability to invest in troubled banks by restricting access to the FDIC's list of troubled institutions. The only way for private equity firms to see the FDIC's troubled bank list if they are interested in bank investments is to invest in a bank holding company, Vitale said.

"You need to be a regulated institution to see the list," he said. "Oth-

erwise, the information could be used to the detriment of banks on the list. It could be used in a lot of ways that are not good for the financial system. They limit it to firms subject to regulatory oversight so if they do something wrong, the regulators have the ability to go after them."

Still, Vitale said he expects private equity firms' interest in bank investments to continue.

"A couple of things will be going on to fuel merger and acquisition activity," he said. "Distressed banks will need to be closed or recapitalized. Healthy banks looking to grow will need infusions of capital and will be looking for investors."

Also, the Dodd-Frank financial reform bill requires regulators to imple-

ment new capital requirement rules. This will force all banks to raise more capital to meet the requirements. This should open the door for more private equity investment, he said.

"Banks will be looking for investors," Vitale said. "Not all will do it through offerings. Some will be looking for private investors." ■

Kirk O'Neil may be reached at kirk@dealflow.com.

Have news that may be of interest to readers? Please email us at editor@dealflow.com

DealFlow MEDIA

Fax this form to: (516) 876-8010

Or mail to: DealFlow Media, Inc.
P.O. Box 122
Syosset, NY 11791

Or email to: subscribe@dealflow.com

YES. Please sign me up for a single-user, twice-monthly subscription to *The Distressed Debt Report*. The annual subscription rate is \$1,595.

Credit Card (\$1,595/year Visa, MC, AMEX)

Invoice Me (\$1,595/year)

Satisfaction Guaranteed. If for any reason you are not satisfied with the publication, you may cancel at any time and receive a full refund of the unused portion of your subscription. As used herein a "single-user subscription" means a subscription that provides for electronic distribution of each report solely to the named subscriber.

The Distressed Debt Report Subscription Form

Card Number _____

Expiration Date _____

Signature _____

Name _____

Title _____

Company _____

Street _____

City _____ State _____

Zip _____ Country _____

Phone _____ Fax _____

Email _____