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DOWJONES | Daily Bankruptcy Review

Monday, June 24, 2013

Shipping Company TMT Group Seeks Shelter in Bankruptcy

By Rachel Feintzeig

Global shipping company TMT Group sought bankruptcy protection after failing to restructure its \$1.46 billion debt load out of court.

The company, which has a fleet of 17 vessels that transport everything from oil to vehicles around the world, filed for Chapter 11 protection on Thursday in Houston, the latest victim of an industry downturn that has left shipping businesses struggling to mend painful balance sheets.

In the years leading up to the recession, TMT, like many of its peers, was building up its fleet, placing orders for new ships. But when work dried up and charter rates dropped, TMT had trouble servicing its debt and keeping up with operating expenses. Many of the company's ships, which contain names like Ladybug, Whale, Elephant and Duckling, have been arrested at ports around the world, cutting off the company's "largest assets and sole means for revenue."

"The Arrested Vessels are currently laid up in multiple ports, losing income and accruing crew fees, arrest fees and other expenses, rather than generating funds that would inure to the benefit of the Debtors' estates, creditors, and Defendants themselves," the company said in court papers.

The defendants that the company references are an array of international banking and shipping institutions. They are targeted in a complaint TMT filed with the bankruptcy court, seeking to recover its vessels. The company wants a judge to issue a temporary restraining order protecting the ships.

Representatives for several of the banks weren't immediately available for comment on Friday.

"With every day that the Arrested Vessels are under arrest in port, the Plaintiffs are missing charter opportunities for the Arrested Vessels which could be generating funds to pay creditors and fund the reorganization process," the company said.

TMT's name has its roots in a company known as Taiwan Marine Transport Co. Taiwan Marine Transport, which isn't included in the bankruptcy filing, was founded in 1958 as a banana-boat operator with routes in Asia.

"Since then, the TMT Group has grown into a provider of worldwide sea borne transportation services," Lisa Donahue, a restructuring professional with AlixPartners, said in court papers.

see **TMT Group** on page 12

STX Pan Ocean Seeks Court Protection From U.S. Creditors

By Jacqueline Palank

Shipping company STX Pan Ocean Co., which filed for bankruptcy protection in South Korea earlier this month, has now filed for creditor protection in the U.S. to prevent a “race to the courthouse” by its U.S. creditors.

Following in the footsteps of other global shipping companies, the Seoul company on Thursday filed a Chapter 15 bankruptcy petition with the U.S. Bankruptcy Court in Manhattan.

Chapter 15 of the U.S. Bankruptcy Code offers foreign companies the chance to protect their U.S. assets from creditors while they restructure or liquidate in their home countries. It has become a common tool for shipping companies, whose vessels face seizure by unpaid creditors in seas and ports around the world.

“Without such relief, the company is exposed to an imminent risk of further pre-judgment attachment or arrest of its assets, namely vessels, and other actions which would result in a ‘race to the courthouse’ by all parties,” STX Pan Ocean said in court papers.

Judge Shelley C. Chapman will hold a hearing next Thursday to consider STX Pan Ocean’s request for a preliminary injunction to protect itself from litigation and the seizure of its assets.

Founded in 1966, STX Pan Ocean operates bulk, container, tank and automobile-carrier ships. The company, a unit of South Korean conglomerate STX Group, sought the protection of a Korean bankruptcy court on June 7 after a failed attempt at a sale.

In bankruptcy, STX Pan Ocean hopes to confront the financial woes brought on by the industry-wide decline in demand for its shipping services during the global economic downturn as well as an over-supply of ships.

A notice of the company’s bankruptcy filing posted to its website includes a “humble apology” from the company “for not fulfilling its social responsibility and giving occasion to feel anxiety.”

The Korean bankruptcy filing shields STX Pan Ocean from creditors looking to collect on their debts. By filing for Chapter 15 protection in the U.S., the company is aiming to extend that shield to its assets here.

The law firm of Blank Rome LLP will represent STX Pan Ocean in its Chapter 15 case, numbered 13-12046.

The company reported assets and debts each in excess of \$1 billion in its bankruptcy petition.

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Jefferson County Reaches Another Debt-Repayment Deal

By Katy Stech

Jefferson County, Ala., leaders struck a deal with Wall Street banks that own a small portion of its struggling sewer system's \$3.1 billion debt as they try to bring to close the largest municipal bankruptcy in U.S. history.

Jefferson County Commission President David Carrington said that county leaders worked out a repayment deal with several banks that hold \$138 million of the county's sewer system bonds. As liquidity banks, they were forced to buy some of the county's sewer bonds during the 2008 financial crisis.

The terms of the settlement, which weren't immediately available, still need to be approved by elected officials. Judge Thomas Bennett of the U.S. Bankruptcy Court in Birmingham, Ala., will also look over the deal when he evaluates the overall bankruptcy-exit plan for the 658,000-resident county.

The latest settlement involved three banks—State Street Bank and Trust Co., Bank of Nova Scotia and Bank of New York Mellon Corp.—that were left out of an earlier \$1.9 billion sewer-debt settlement already approved by county leaders. That larger deal shaves \$1.25 billion off the sewer-repair bill that the county racked up starting in 1997 after environmental regulators said the system was unacceptably leaking raw sewage into Alabama streams and rivers.

County leaders blamed that burdensome sewer debt and the loss of a \$75 million-a-year tax as they placed the county under Chapter 9 protection on Nov. 9, 2011.

During the case, the county has laid off employees, shut down rural court houses and closed a county-owned hospital for the poor.

Under the larger settlement, Jefferson County officials have until Dec. 20 to emerge from bankruptcy protection. The plan calls for the county to refinance the portion of the debt that wasn't forgiven by groups like hedge funds, private equity firms and J.P. Morgan Chase & Co.

As part of the deal, J.P. Morgan agreed to take the biggest hit in the sewer debt deal by forgiving \$842 million of its roughly \$1.2 billion claim. In 2009, the bank already agreed to pay a \$722 million fine to settle a dispute with the U.S. Securities and Exchange Commission over a massive bribery scandal that led to some former county leaders going to jail.

To comply with the sewer-debt deal's tight deadlines, county officials have said that the bankruptcy-exit plan's outline will be filed to the court before July 1.

The county will likely ask the court to hold a disclosure-statement hearing in early August. That hearing would allow Judge Bennett to hear objections to the plan outline.

see **Jefferson County** on page 6

For CROs, The 'R' Stands for Restructuring...And Risk

By Jacqueline Palank

It's a rewarding job to parachute into troubled companies and turn them around. It's also incredibly risky.

Struggling businesses often ask turnaround professionals to join the ranks of their top executives in a bid to solve their financial woes, satisfy their lenders and boost their credibility with creditors and shareholders. But these outsiders who take the job of chief restructuring officer, or CRO, face a number of potential landmines as they try to navigate a company back to health.

Those landmines are on display in the case of First NLC Financial Services LLC, whose CRO was dragged into a legal battle over a deal that allegedly allowed the subprime mortgage company's owner to walk off with its remaining valuable asset on the eve of bankruptcy.

"They're being brought into a distressed situation," attorney Christopher Ward, who leads Polsinelli PC's bankruptcy practice, said of CROs. "Anyone involved in that situation is going to be looked at as a potential target for recoveries."

CROs may come from outside the company and serve on a temporary basis, but they're otherwise no different from their C-suite counterparts.

"The 'O' is the important part. It is an officer in a corporation," said Ted Gavin, founding partner in corporate consulting firm Gavin/Solmonese LLC. "The duties of any officer in a corporation that's insolvent or in bankruptcy carry over to the CRO."

Those duties include acting responsibly and in the company's best interests. And just like other executives, CROs risk becoming lawsuit targets if they don't fulfill those duties.

One such lawsuit was filed against Thomas J. Allison, hired to be the chief restructuring officer of First NLC shortly before its 2008 bankruptcy filing.

According to the lawsuit, Mr. Allison's first order of business was to clear the sale of First NLC's mortgage portfolio to an affiliate of its current owner—a deal with an unorthodox marketing method that tasked the buyer with scouring the market for higher bids. The lawsuit claimed that the deal allowed the company's owner to purchase the assets for millions of dollars less than their worth, depriving First NLC's creditors of the chance to maximize their payout in the bankruptcy filing that followed the sale.

By allegedly failing to review the sale, the lawsuit claimed that Mr. Allison "demonstrated a conscious, knowing, willful, reckless disregard for First NLC's best interests and was grossly negligent in numerous regards."

The suit sought \$20 million in damages from Mr. Allison and two other executives on account of the allegations, which they denied. Through a spokesman, Mr. Allison declined to comment on the lawsuit, which settled days before a jury trial and doesn't include any admission of wrongdoing by Mr. Allison. Insurers agreed to pay \$1.05 million on Mr. Allison's behalf.

Attorney Scott Baena, who brought the lawsuit on behalf of the bankruptcy trustee overseeing First NLC's liquidation, said the case shows that some clarity is needed as to what being a CRO entails.

"There's got to be some better definition of what the responsibilities of a CRO are," said Mr. Baena, who leads Bilzin Sumberg Baena Price & Axelrod LLP's bankruptcy practice. "Unlike lawyers and accountants, there are no rules of admission to be a CRO. You and I could be a CRO even if you or I have no particular expertise."

Mr. Gavin, who called the lawsuit "a shakedown," said such litigation is always possible when everyone is fighting for a piece of a pie that by definition isn't big enough.

But "it stings," he said, "and people remember it."

In the face of the real threat of litigation, CROs take steps to protect themselves. When a company asks Larry Perkins to serve as its CRO, his first step is to make sure nothing fraudulent or fishy is going on.

"That's a key question. If it's still going on, and you step into the chair, you're going to be partially responsible for perpetuating that fraud," said Mr. Perkins, founder of turnaround firm Sierra Constellation Partners LLC.

Just as CROs face the same obligations and liabilities as other executives, they also benefit from similar protections, including insurance coverage of their defense costs should any litigation arise.

"Most CROs, the first question they're going to ask...is all your directors' and officers' insurance paid in full and up to date?" Mr. Ward said.

CROs also negotiate such legal protections as liability releases for anything that happened before they came on the scene as well as for their work during the bankruptcy case.

In fact, experts say CROs are safer in bankruptcy than out because courts are not only keeping an eye on the process but must also approve every move a company makes outside of its normal operations.

"Once the bankruptcy occurs, the CRO is very well-protected for all of his actions," Mr. Ward said. "You're getting the court's blessing on all your decisions."

see **CROs** on page 7

Blackstone to Pay \$10 Million to Settle Extended Stay Suit

By Patrick Fitzgerald

Buyout firm Blackstone Group LP and Bank of America Corp. have agreed to pay \$10 million to settle a multibillion-dollar clawback lawsuit over their role in the doomed leveraged buyout of hotel chain Extended Stay Inc.

Blackstone and the bank, which advised the firm on the deal, had been sued by a trust set up to pursue lawsuits on behalf of Extended Stay's bankruptcy estate for their roles in the disastrous \$8 billion buyout that led to the hotel chain losing billions of dollars before it filed for Chapter 11 protection two years later.

In 2007 Blackstone sold the chain, which has more than 660 hotels, to David Lichtenstein's Lightstone Holdings LLC in one of the last megadeals before the collapse of the real-estate bubble. Citigroup, which served as an adviser to Lightstone, has agreed to pay the trust another \$200,000 under a separate settlement.

After Extended Stay emerged from Chapter 11 with new owners, the litigation trust sued Blackstone, Lightstone, the banks and dozens of other individuals and corporate entities over what it called the "tainted" LBO seeking to undo billions of dollars of transactions.

But Finbarr O' Connor, who replaced the initial trustee that filed the suits, said in a filing Thursday that he decided to pull the plug on the Blackstone litigation because of a pair of rulings that shielded LBO transactions from clawback bids by creditors. In those cases, involving clawback attempts by creditors of energy company Enron and Canadian papermaker Quebecor, judges found that transfers fell within the "safe harbor" provision of U.S. bankruptcy law.

"These decisions and other caselaw left little doubt that the plaintiffs would need to litigate the claims directly related to the LBO to a higher court in order to have a possibility of prevailing on such claims," lawyers for Mr. O'Connor said in a filing with the U.S. Bankruptcy Court in New York.

By settling with the three defendants now, the trustee said, he can "focus on claims the plaintiffs believe have a greater likelihood of success."

Judge James Peck, the same judge who ruled against creditors in the Quebecor LBO dispute, will consider approval of the settlements at a hearing slated for July 18.

The lawsuits stem from a bankruptcy court-ordered investigation into the LBO. An examiner found that Extended Stay had viable claims against Lightstone and Blackstone because the deal benefited the firms while saddling the company with more debt than it could handle. But that 2010 report, and the lawsuits that followed, came before the Enron and Quebecor decisions.

Extended Stay emerged from bankruptcy last October under the control of an investor group made up of Centerbridge Partners LP, Blackstone and Paulson & Co. The trio purchased Extended Stay for roughly \$4.2 billion after prevailing at a May 2010 bankruptcy auction over a group led by Starwood Capital. The buyers then financed their purchase partly with \$2.7 billion of debt and put in about \$1.5 billion in equity.

-Jacqueline Palank and Kris Hudson contributed to this article.

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S&P: Global Corporate Default Tally Rises to 43 This Year

By Debbie Cai

Two global corporate issuers defaulted last week, taking the year-to-date tally to 43 issuers, Standard & Poor's said Thursday.

S&P earlier this month downgraded the corporate credit rating on home and garden retailer Orchard Supply Hardware Corp. to D after it filed for Chapter 11 bankruptcy protection. The firm then bumped the rating on Mexico-based telecom provider Maxcom Telecomunicaciones SAB to default after the company failed to make the June 15 coupon payment on its debt due next year.

Of the total number of defaults so far this year, 27 are based in the U.S., eight are based in Europe, and eight are based in the emerging markets.

S&P said 18 of the defaults are the result of missed interest, principal, or cash payments, 11 are due to bankruptcy filings, seven are due to distressed exchanges, four are confidential, one is the result of a failure to refinance or pay off a revolving credit facility, one is due to regulatory supervision, and one is due to subpar bond buybacks.

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Judge Sends Touse Chapter 11 Plan to Creditors for a Vote

By Patrick Fitzgerald

Florida home builder Touse Inc., which collapsed five years ago when the housing bubble popped, won preliminary approval of its Chapter 11 plan that will funnel hundreds of millions of dollars to a group of hedge funds.

Judge John K. Olson of the U.S. Bankruptcy Court in Fort Lauderdale, Fla., Friday signed off on a disclosure document describing the plan to creditors. A judge must approve the document, called a disclosure statement, describing how much creditors will recover before they can vote on the proposal.

The backbone of Touse's plan is a comprehensive settlement between bondholders and the lenders, dubbed "the grand bargain." It represents a big win for the hedge funds who bought up the company's debt at a deep discount then battled lenders over a series of transactions Touse made less than a year before it filed for bankruptcy.

Among the winners is Mark Brodsky's Aurelius Capital Management, a \$3.5 billion hedge fund that owns several hundred millions of dollars of Touse's bond debt. Aurelius stands to reap big profits under a plan that proposes to pay bondholders 58 cents on the dollar. Other bondholders on the winning side are Blackstone Group's GSO Capital Partners and the Carlyle Group's distressed-debt fund.

If the bondholders are the big winners in Touse's bankruptcy, the losers include another group of unsecured creditors—including homeowners and trade creditors—who are receiving just five cents on the dollar for their claims.

Florida-based Touse, once the 13th largest home builder in the country, borrowed heavily to fund its growth before collapsing into bankruptcy in 2008 as the housing market softened.

At issue was some \$500 million Touse had borrowed in 2007 to fund a \$421 million settlement of claims involving its ill-fated investment in rival Florida builder Transeastern Properties Inc. several years earlier. Touse's subsidiaries granted liens to the lenders involved in the deal but received none of the proceeds from the loan.

The bondholders, through Touse's creditors committee, sued a group of lenders to wipe out the loan obligations and liens, arguing that the financing transactions were a so-called fraudulent transfer, which can be challenged under bankruptcy law. In bankruptcy proceedings, a judge can find certain loans be fraudulent transfers if a company was insolvent when taking on new liabilities.

In October 2009, Judge Olson sided with the bondholders, voiding the lenders' claims and ordering them to disgorge more than \$400 million. In his decision, Judge Olson found the subsidiaries were insolvent at the time of the deal and didn't receive reasonably equivalent value. The bankruptcy judge's order put those lenders on the hook to make payments to the Hollywood, Fla., home builder.

The decision roiled the markets in distressed investing and rescue financing, where lenders complained the bankruptcy court was overreaching. A U.S. district court judge overturned the bankruptcy-court decision, but last year a federal appeals court has reversed the district court decision, setting the stage for the "grand bargain."

Neither Touse's lenders nor its bondholders will be paid in full under the plan, which requires court approval, but the estate does have some \$308.1 million on hand to dole out to creditors. Insurers who provided coverage to Touse's top brass have agreed to pay \$67 million in cash to settle their prospective liability.

Judge Olson has scheduled a confirmation hearing on the plan for Aug. 1 in Fort Lauderdale bankruptcy court.

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Jefferson County

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If Judge Bennett approves the plan outline, it would be sent to creditors who have the power to vote in favor or against it. But because the \$1.9 billion settlement has approval from a majority of the county's sewer bondholders, creditors are expected to vote in favor of the plan.

If approved, the settlement would shield sewer bondholders from potentially more severe cuts if Jefferson County had used the power of Chapter 9 protection to force involuntary cuts on creditors.

Had the county imposed those cuts against bondholders' protests, it would have been the first municipality in the country to do so.

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ATP Lenders Sweeten Offer With \$1.8M Additional Cash

By Peg Brickley

ATP Oil & Gas Corp. has overcome some opposition to the proposed sale of its deep-water drilling assets to its lenders, with a deal that provides \$1.8 million to cover the costs of wrapping up the company's bankruptcy case.

The official committee of unsecured creditors bargained for the cash to fund continued Chapter 11 efforts if the sale of the driller's most valuable assets to secured lenders led by Credit Suisse Group AG is ultimately approved.

A hearing continues before Judge Marvin Isgur in the U.S. Bankruptcy Court in Houston. Judge Isgur hasn't yet said whether he will approve the deal.

The bulk of the sale price, \$690 million, is in the form of a "credit bid," or offer to extinguish bankruptcy loans drawn down by ATP as it struggled through a difficult bankruptcy.

Hurt by the drilling moratorium that followed the 2010 Deepwater Horizon drilling disaster, ATP was plagued by a series of operational issues after filing for Chapter 11 bankruptcy protection in August 2012.

Missed business targets translated into tighter and tighter terms on bankruptcy financing. Banks marched ATP to the bankruptcy auction block, where they defeated competitors with a credit bid.

ATP says the deal with secured lenders is worth \$1.4 billion or more, when liabilities that the buyers are taking on are factored in. The alternative to the sale is liquidation, ATP says.

Judge Isgur said Friday he is "worried" about ATP's environmental liabilities, which will fall largely on regulators and on prior owners of the drill sites.

In addition to the \$1.8 million so-called "wind-down budget" for the Gulf of Mexico driller, lenders agreed to pay more than \$44 million to federal ocean energy regulators to cover the cost of decommissioning wells left behind after the proposed sale, lawyers told a bankruptcy judge Thursday.

That payment relieves ATP of the burden of being assessed as much as \$153 million, a claim that would eat up far more than the scant cash that will be in the bankruptcy coffers, assuming the sale is approved, according to evidence ATP provided during Friday's court session.

The environmental cleanup contribution and the provision of a bankroll for final bankruptcy costs are new additions to the lender takeover proposal, negotiated over weeks when ATP struggled to get the deal in front of the judge without too much opposition.

The unsecured creditor panel said lenders could not be permitted to take ATP's valuable Clipper and Telemark deepwater oil drilling operations, leaving behind nothing but abandoned wells and mounting environmental liabilities. In response to that criticism, lenders are providing about \$100 million in cash to cushion ATP's final days, said Mayer Brown LLP's Charles Kelley, attorney for the company, at Thursday's hearing in the U.S. Bankruptcy Court in Houston.

Lenders are also setting aside \$55 million in cash to pay suppliers and contractors that worked on the Clipper and Telemark projects, and they have claims that trump the rights of secured lenders. So-called mechanics and materialmen liens are high-priority claims that may be senior even to the bankruptcy loans that the Credit Suisse group is trading in for ATP's producing wells.

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CROs

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Because CROs are such a well-established facet of corporate restructuring, experts say it's somewhat rare to see claims that CROs failed to meet their duties to the company, its shareholders and creditors.

It's also a job where, as Mr. Perkins said, "you're only as good as your last case." CROs rely on referrals, presenting an enormous incentive to not only achieve success but do so in a legal and ethical manner.

"If you're dealing with a quality CRO, no CRO is going to put their integrity and reputation at risk for anyone," said attorney Michael Sirota, the co-chair of Cole, Schotz, Meisel, Forman & Leonard PA's bankruptcy practice. "It's a career killer."

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Court Cuts Ex-Enron CEO Skilling's Sentence to 14 Years

By Tom Fowler

A federal judge reduced former Enron Chief Executive Jeffrey Skilling's prison sentence to 14 years on Friday, meaning the one-time head of the energy trading giant could be free by the end of the decade.

Mr. Skilling, 59, was convicted in 2006 of lying to investors about the financial health of the Houston energy company and sentenced to 24 years in prison. The reduced sentence came at the bottom of the range recommended by prosecutors after a deal struck with Mr. Skilling earlier this year.

The Enron scandal led to the company's bankruptcy, dozens of indictments, and the collapse of accounting firm Arthur Andersen. It also upended much of the U.S. energy trading business for years and prompted tighter corporate governance and reporting requirements, including the Sarbanes-Oxley Act.

In 2009, the Fifth Circuit Court of Appeals upheld Mr. Skilling's conviction but found that trial Judge Sim Lake had erred in determining part of his sentence calculation and ordered that Mr. Skilling be resentenced.

Mr. Skilling has consistently maintained his innocence and was working toward winning a new trial. Earlier this year he reached an agreement with prosecutors, however, to drop his appeals in exchange for a recommendation to the judge for a shorter sentence of between 188 months and 235 months, or 14 to 17.5 years.

Mr. Skilling has already spent more than six years in custody. He could be eligible to reduce his sentence by 15% for good behavior, meaning another 25 months could be shaved from his time in prison according to Kirby Behre, an attorney with Paul Hastings LLP in Washington, D.C., who specializes in sentencing issues.

Another year could be cut from Mr. Skilling's sentence if he chooses to enter into a drug and alcohol abuse program while in prison. Also, he could serve the final year of his sentence in a low security halfway house near his home, and even spend some of those final months on in-home confinement, Mr. Behre said.

"Even with a reduced sentence, Skilling will still have to serve a very stiff sentence that far exceeds what most white-collar defendants receive," Mr. Behre said. "It is clear with hindsight that Skilling's original sentence of 24 years was unusually harsh and it far exceeded what similarly situated defendants received since 2006."

The resentencing also will free up about \$41 million in assets from Mr. Skilling's estate to be distributed to victims of the fraud. This includes nearly \$3 million related to the sale of a Dallas condominium and a Houston home Mr. Skilling owned, funds from several bank accounts and \$5 million he posted as bond when he was first indicted.

About \$100,000 of that will go to a fund to reimburse Enron employees whose retirement plans were gutted by the company's collapse. The rest will go to a fund set up by the Securities and Exchange Commission to compensate former shareholders. So far that fund has distributed nearly \$521 million to approximately 112,000 eligible victims, an SEC spokesman said, including \$450 million from settlement agreements and \$65 million from forfeiture actions against individuals.

Prosecutors brought criminal charges against nearly three dozen executives and employees of Enron and firms that did business with it, including Arthur Andersen, the accounting firm that audited the company's books.

Many individuals entered guilty pleas, but several were acquitted and many convictions were later overturned, including that against Arthur Andersen due to vague instructions given to jurors, and the conviction of former Chairman and CEO Ken Lay, who died before he could appeal.

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Appeals Court Blocks Madoff Trustee's Bank Lawsuits

By Reed Albergotti

In the latest legal setback to efforts by the court-appointed trustee seeking to recoup money for victims of Bernard Madoff's Ponzi scheme, an appeals court has blocked his ability to sue major financial institutions for roughly \$30 billion.

The ruling by the U.S. Court of Appeals for the Second Circuit in New York, which upheld an earlier court ruling, said that trustee Irving Picard had no legal standing to try and "claw back" money from J.P. Morgan Chase & Co., UBS AG, HSBC Holdings PLC and Unicredit Bank Austria AG.

However, Mr. Picard still has claims against the four banks in bankruptcy court.

In a series of lawsuits in 2010, Mr. Picard accused the banks of ignoring warning signs about Mr. Madoff's Ponzi scheme and allowing the fraud to continue.

But the 3-0 decision on Thursday shot down Mr. Picard's arguments, saying they "all miss the mark."

Mr. Picard, who has the option of asking a larger panel of the appeals court to reconsider the case or bring the issue to the U.S. Supreme Court, is "currently reviewing" the decision, a spokeswoman said.

Unless Mr. Picard can successfully appeal, Thursday's decision means that the potential pot of money that he can recover for victims will likely be significantly reduced.

Mr. Madoff's investors will still recover big sums since Mr. Picard has filed hundreds of lawsuits for nearly \$100 billion—or more than five times the amount that was lost in the Ponzi scheme—and he has recovered about \$9.3 billion of the \$17.5 billion in principal he has estimated was lost to fraud.

An additional \$2 billion has been recovered by the U.S. attorney's office in Manhattan.

In the lawsuit against J.P. Morgan, Mr. Picard accused the bank of being "at the very center" of the Ponzi scheme and being "thoroughly complicit in it."

On Thursday, a spokeswoman for J.P. Morgan said in a statement that the appeals-court ruling was "very well reasoned." She added: "As we have previously stated, we believe the trustee's claim that J.P. Morgan was complicit in Madoff's fraud is completely without merit."

In the suit against HSBC, Mr. Picard alleged that the bank "engineered a labyrinth of hedge funds, management companies and service providers,"

that "provided different modes for directing money to Madoff while avoiding scrutiny and maximizing fees." An HSBC spokeswoman declined to comment.

UBS used its prestigious name to "legitimize and attract money to Madoff's fraud," but then proceeded to "look the other way" when confronted with evidence that it was all a sham, Mr. Picard said in a lawsuit against that bank. A UBS spokeswoman said in an email the bank was "pleased with the court's decision."

Marco Schnabl, an attorney for Unicredit, said "We are very pleased at the Second Circuit's well-reasoned opinion."

In its ruling Thursday, the court cited previous Second Circuit case law that said "a bankruptcy trustee has no standing generally to sue third parties on behalf of the estate's creditors, but may only assert claims held by the bankrupt corporation itself."

Mr. Picard argued that the case law was errantly applied in this case and that it would have an adverse impact on the victims. The appeals court gave short shrift to that argument. "No doubt there are advantages to the course Picard wants to follow. But equity has its limits," it wrote.

Mr. Madoff is serving a 150-year prison sentence after pleading guilty in March 2009 and admitting to running a decades-long fraud.

The appeals-court ruling marks the latest in a number of disappointing courtroom defeats for Mr. Picard.

In March a federal judge ruled that Mr. Picard couldn't block an \$80 million settlement that was struck separately with the founders of "feeder fund" Fairfield Greenwich Group on behalf of a smaller group of investors.

Mr. Picard has contested several settlements reached with feeder funds, saying those deals, which involved people who invested indirectly, could hurt his ability to collect funds for victims who invested directly with Mr. Madoff's firm.

Fairfield funneled billions of dollars to Mr. Madoff, according to Mr. Picard. But U.S. District Judge Victor Marrero in Manhattan ruled in the March decision that the claims of investors in Fairfield are "separate and distinct" from people who invested directly with Mr. Madoff.

-Chad Bray contributed to this article.

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Spyker to Appeal Ruling Tossing \$3B Lawsuit Against GM

Dutch auto maker Spyker on Thursday said it will appeal the dismissal of its \$3 billion claim in a U.S. court against General Motors, which Spyker accuses of deliberately bankrupting Sweden's Saab in 2011, Agence France-Presse reported.

"Spyker...shall appeal the ruling of the District Court for the Eastern District of Michigan," in favor of GM, the company said in a short statement from its headquarters in the central Dutch town of Zeewolde.

It did not give any further details.

Spyker filed a lawsuit in August, claiming \$3 billion in damages. It alleged that GM criminally interfered in an operation that could have made it possible for Saab, which Spyker bought in 2010, to restructure and stay afloat, because the U.S. auto maker wanted to dominate the Chinese market.

Saab, a former GM subsidiary, filed for bankruptcy in December 2011 after teetering on the edge of the abyss for almost two years. A last-ditch bid to raise funds in China, with the Youngman group, was blocked by GM over issues concerning the transfer of technology.

Chinese car maker Youngman had long been interested in buying Saab and tried to snap it up before it declared bankruptcy—but its efforts were stymied by GM, which balked at transferring the necessary technology licenses.

At the time, Spyker Chief Executive Victor Muller said that the \$3 billion claim in compensation represented the value which Saab would have represented had the deal with Youngman gone through, but analysts at the time were skeptical whether the suit would succeed.

GM in its response to the claim denied any criminal action or intent, saying Saab had granted it a contractual right to agree, or not, to the transaction proposed by Spyker.

The U.S. car maker sold Saab in 2010 to Spyker. A deal reached parallel to the sale allowed Saab to keep using GM technologies and keep production going but allowed GM to stop the arrangement if Saab changed hands.

GM has maintained that Spyker bought Saab "knowing its financial history, and subject to terms spelled out unambiguously in the arrangements attached to the complaint."

"Those agreements include clear contractual limitations in the future use of GM's technology, and on the transfer of technology to others," GM said in a document, filed before the court a month after Spyker filed the claim.

International

Dubai Holding to Sell 35% Stake in Tunisie Telecom

By Asa Fitch

A subsidiary of Dubai Holding is searching for buyers for its 35% stake in Tunisia's biggest mobile phone operator, according to a statement from the Tunisian ministry of information and communication.

According to a statement by the ministry, the Tunisian government wants a global telecom operator with experience in the field to buy the stake. A Dubai Holding representative declined to comment.

A pair of Dubai Holding units purchased the Tunisie Telecom stake in 2006 for a reported \$2.25 billion. It was later transferred to Emirates International Telecommunications, another subsidiary that holds the company's communications assets.

Dubai Holding is owned by Sheikh Mohammed bin Rashid Al Maktoum, the ruler of Dubai, and has interests in sectors ranging from hospitality to real estate and financial services. The global economic crisis and Dubai's real estate market crash forced the company to renegotiate debts, and Dubai Holding is currently in the final stages of a \$10 billion debt restructuring deal.

Tunisie Telecom planned to list shares in Paris and Tunis two years ago, which could have paved the way for Dubai Holding to dispose of the stake. But political turmoil derailed those plans, and the listing was officially canceled in February of 2011.

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International

Demand for Flexibility Threatens EU Bank Bail-in Deal

By Tom Fairless

European Union finance ministers were struggling to agree on common rules for shuttering troubled banks Friday after Sweden warned there would be no deal unless much more power is granted to national authorities.

The comments raise the prospect of further delays to a new law that is a building block in the region's banking union project, a cornerstone of efforts to end the debt crisis.

Speaking to reporters on his way into a meeting in Luxembourg, Swedish Finance Minister Anders Borg said that euro-zone countries are pushing for a deal that would prove "very dangerous" for other EU states. "The current compromise is not satisfactory," Mr. Borg said.

Irish Finance Minister Michael Noonan said Friday's discussion would be "difficult" due to differences of opinion over how much flexibility to grant national authorities to protect some creditors when banks fail.

Finance ministers have already missed a March deadline for a deal on the common framework, known as the bank recovery and resolution directive. The rules will force banks to draw up detailed plans on how they would downsize or close during a crisis, require governments to set up national resolution authorities and funds to implement bank restructurings, and spell out the order in which investors and creditors would have to absorb losses.

They are part of a broader effort to avoid any more expensive, taxpayer-funded bailouts and prevent banking crises from bankrupting governments, as happened in Ireland and Cyprus.

Under the latest draft text reviewed by *The Wall Street Journal*, ministers are set to give extra protection to large deposits held by individuals and small and midsize companies when allocating

losses, at the expense of big corporations, whose deposits above EUR100,000 (\$132,190) would take losses at the same time as other senior, unsecured creditors.

However, several governments want to be able to exercise greater discretion over which liabilities to exclude from losses when a bank fails.

Mr. Borg called for a "dramatic" increase in the flexibility that national resolution authorities have in determining which investors take losses, to help prevent a "liquidity risk" for non euro-zone countries that have no access to emergency funding from the European Central Bank.

"Maybe we could solve this today but maybe another day," Mr. Borg said.

Still, EU Economics Commissioner Olli Rehn said there was a "fair chance" of a deal Friday. And French Finance Minister Pierre Moscovici told reporters he saw no "fundamental opposition" to an agreement after private talks with his German counterpart Wolfgang Schauble on Thursday.

Separately, EU finance ministers approved rules Friday that will tighten regulation of the region's derivatives markets, clearing the way for talks to begin with the European Parliament over a compromise deal.

The rules, known as the Markets in Financial Instruments Directive II, or Mifid II, aim to create a regulated trading environment for over-the-counter derivatives and boost competition among clearing houses in the EU. They are part of an effort by nations of the Group of 20 large economies to shine a light on the more opaque parts of the financial system.

-Max Colchester and Christopher Lawton contributed to this article.

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Beyond Bankruptcy

Chrysler Inks Deal to Refinance \$2.9 Billion Term Loan

By Christina Rogers

Chrysler Group LLC reached a key refinancing agreement with lenders on Friday that lowers interest costs and loosens some restrictions as it paves the way toward further integrating with its parent, Fiat SpA.

Chrysler said Friday it had refinanced a \$2.9 billion loan and a \$1.3 billion credit line, a move that will save it about \$50 million a year in interest payments. Chrysler is majority owned by Italy's Fiat SpA, which also said Friday it had obtained a 2 billion-euro (\$2.68 billion), three-year credit line, replacing one it had secured in 2011.

Both Fiat and Chrysler companies made the move on the heels of the announcement that the U.S. Federal Reserve might slow its bond-buying program, which could cause interest rates to rise.

In addition to lowering interest payments, the new loans make it easier for Chrysler to transfer money to Fiat. Fiat owns 58.5% interest and controls Chrysler but the two entities are separate. At the end of the first-quarter, Chrysler had \$11.9 billion in cash.

Fiat's ability to tap Chrysler's cash has grown in importance as the Turin, Italy-based auto maker continues to lose money in Europe and has become increasingly reliant on Chrysler's U.S. profits to strengthen its balance sheet, analysts say.

It also comes as Fiat seeks to buy full control of Chrysler from a union-run health-care trust, which got 41.5% of the company during its 2009 bankruptcy.

Chrysler last refinanced its debt in 2011 in order to pay back \$6.7 billion loans from the U.S. and Canadian governments, fully repaying those obligations. The loans were used to help rescue Chrysler in 2009 from bankruptcy.

Chrysler said the \$50 million in savings from the refinancing will be partially offset by a \$29.5 million fee for repaying lenders early.

The revolving credit line matures May 24, 2016. The new loan matures on the same date in 2017.

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TMT Group

[continued from page 1](#)

In 2007, the TMT acronym was changed from Taiwan Marine Transport to Today Makes Tomorrow to reflect the company's growing operations. A total of 23 entities filed Chapter 11 petitions Thursday.

TMT, which has \$1.52 billion in assets to its \$1.46 billion in liabilities, hired AlixPartners in March in an attempt to negotiate a "restructuring resolution for its existing debt." But it was unable to come up with a consensual deal. Instead, it has seen some of its lenders push for sales of the company's arrested vessels. The company said its bankruptcy filing was an attempt to "preserve its assets and maximize value for all stakeholders."

TMT's case has been assigned to Judge Marvin Isgur, and the company is set to make its debut in bankruptcy court on Monday morning. There, Judge

Isgur will consider signing off on a variety of requests, including one in which TMT seeks access to cash securing its lenders' claims. The company said its prebankruptcy bank lenders—First Commercial Bank Co., Sinopac Bank, Mega International Commercial Bank, Cathay United Bank and Shanghai Bank—have frozen a total of \$54.31 million in cash collateral, an act that has "imperiled the survival of [TMT's] business."

The company asked Judge Isgur to give it permission to address this "urgent need" swiftly, warning that "any lapse in operation, no matter how transitory, could have a devastating economic impact on the going concern value of the debtors' business."

TMT has tapped attorneys from Bracewell & Giuliani LLP to help guide the company through the Chapter 11 process.

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DIP Financing Terms

A WEEKLY SUMMARY OF DIP FINANCING TERMS

The following is a selected list of companies that have filed a Chapter 11 bankruptcy petition recently and have received a commitment for debtor-in-possession financing. Debtor-in-possession financing allows companies to pay day-to-day expenses and remain in possession of their business while under bankruptcy protection. Companies operating with DIP loans must seek permission from the bankruptcy court for large expenditures or to change the structure of the loan. The date reflects the original Chapter 11 bankruptcy filing month. The **bolded** entries are new or updated since the last table published.

| Company (Original Filing Date) Lead Lender(s) | Amount | Notes |
|----------------------------------------------------------------------------------|----------|---------------------------|
| Ahern Rentals Inc. (12/22/11) Bank of America | \$350M | Received final approval |
| AMF Bowling Worldwide Inc. (11/13/12) Credit Suisse | \$50M | Received final approval |
| ATP Oil & Gas Corp. (8/17/12) Credit Suisse | \$617.6M | Received final approval |
| Eastman Kodak Co. (1/19/12) Citigroup Inc. | \$950M | Received final approval |
| Exide Technologies Inc. (6/10/13) J.P. Morgan Chase & Co. | \$500M | Received interim approval |
| Garlock Sealing Technologies LLC (6/5/10) Bank of America | \$10M | Received final approval |
| KidsPeace Corp. (5/21/13) Healthcare Finance Group LLC | \$15M | Received final approval |
| K-V Pharmaceutical Inc. (8/6/12) Silver Point Capital LP and others | \$85M | Received approval |
| NE Opco Inc. (6/10/13) Salus Capital Partners LLC | \$67.5M | Received interim approval |
| Orchard Supply Hardware Stores Corp. (6/17/13) Wells Fargo | \$176.3M | Received interim approval |
| Patriot Coal Corp. (7/9/12) Citigroup Inc., Barclays Bank and Bank of America | \$802M | Received final approval |
| Reader's Digest Association (2/17/13) Bondholders | \$105M | Received final approval |
| Residential Capital Corp. (5/14/12) Barclays Bank | \$1.45B | Received final approval |
| Synagro Technologies Inc. (4/24/2013) Lenders led by Bank of America | \$30M | Received final approval |

Sources: Court documents, Securities and Exchange Commission filings

Looking Ahead

THIS WEEK IN THE BANKRUPTCY COURTS

Kodak Seeks to Send Its Chapter 11 Plan to Creditors

By [Jacqueline Palank](#)

Eastman Kodak Co. this week will seek court approval to let its creditors start voting on its latest restructuring plan, which offers improved payment terms to two key creditor groups.

The Manhattan bankruptcy court on **Tuesday** will review Kodak's disclosure statement, or restructuring plan outline, which its creditors will use to vote on the plan.

That plan now calls for a \$406 million rights offering. Kodak plans to use the proceeds from the sale of 34 million new common shares to pay off bondholders owed \$375 million. Previously, the bondholders were to have received equity in the restructured Kodak.

Kodak's unsecured creditors and retirees, a group owed \$2.8 billion, could purchase up to six million shares of Kodak's new shares under the proposed rights offering. Previously slated to receive 15% of Kodak's new stock under its original restructuring plan, the unsecured creditors and retirees will instead share in cash and warrants to purchase additional stock beyond the shares set aside for them in the restructuring.

Some of Kodak's bondholders, including GSO Capital Partners and BlueMountain Capital, have agreed to backstop the rights offering by buying up any shares that go unsold. In return, Kodak is seeking court permission to pay them about \$16.24 million in commitment fees and a \$4.06 million closing fee.

In addition to the disclosure statement, the bankruptcy court will also consider the rights offering and related fees at Tuesday's hearing.

Also on **Tuesday**, AMF Bowling Worldwide Inc. will seek to exit Chapter 11 protection by way of a merger with upscale bowling alley chain Bowlmor.

The Richmond, Va., bankruptcy court will consider confirming AMF's restructuring plan, which would combine the two companies to create the world's biggest operator of bowling alleys.

Ownership of the new company, called Bowlmor AMF, would go to AMF's junior lenders. Owed \$80 million, the bondholders would receive 20% of its common shares as well as the right to purchase another 57.5% of those shares in a \$50 million rights offering.

The remaining equity would be distributed to Bowlmor's current owners, Chief Executive Tom Shannon and Chief Financial Officer Brett Parker, who would keep those titles at the merged company.

Senior lenders owed \$213.7 million would be paid in full in cash under AMF's restructuring plan. A settlement with general unsecured creditors over potential plan disputes would see them recover \$2.35 million of the \$30 million to \$35 million they are owed.

On **Wednesday**, Residential Capital LLC will defend a critical deal with its government-owned parent before the Manhattan bankruptcy court.

The mortgage company faces a raft of objections—from the federal government's bankruptcy watchdog and its pension insurer, investors, bond insurers and banks and others—to its proposed deal to exit Chapter 11 with the help of government-owned parent Ally Financial Inc.

Ally, which isn't under Chapter 11 protection, has agreed to pay \$2.1 billion to ResCap and creditors in return for protection from litigation over ResCap's mortgage business. The broad scope of those releases has caught the attention of a government bankruptcy watchdog, who said the Ally releases may violate the Bankruptcy Code.

The deal, which improves an earlier offer from Ally to pay \$750 million to ResCap and its creditors, came on the heels of an investigation into ResCap's relationship with its parent.

Former Judge Arthur Gonzalez filed his report under seal the day before the settlement was reached, and creditor Berkshire Hathaway Inc. will ask the bankruptcy court to unseal the report and make Judge Gonzalez's findings public at Wednesday's hearing.

Also on the agenda for that hearing is a deal that cuts the claims of bond insurer Financial Guaranty Insurance Co. to \$596.5 million from \$5.55 billion.

-Patrick Fitzgerald and Andrew R. Johnson contributed to this article.

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Active Bonds

ACTIVE BANKRUPT BOND PRICE INDICATIONS

| Issuer | Coupon | Maturity | Most Recent Price | Previous Trade Price | Previous Trade Date | Change |
|--------------------------------|---------|----------|-------------------|----------------------|---------------------|--------|
| AMR CORP | 7.875 | 7/13/39 | 27.6 | 27.07 | 6/20/13 | 0.53 |
| AMR CORP | 9 | 9/15/16 | 115 | 115.7 | 6/20/13 | -0.7 |
| AMR CORP | 6.25 | 10/15/14 | 113.5 | 114.5 | 6/20/13 | -1 |
| EASTMAN KODAK CO | 7 | 4/1/17 | 15 | 15.875 | 6/20/13 | -0.875 |
| EXIDE TECHNOLOGIES | 0 | 9/18/13 | 14.25 | 12.055 | 6/13/13 | 2.195 |
| EXIDE TECHNOLOGIES | 8.625 | 2/1/18 | 61.193 | 60.625 | 6/20/13 | 0.568 |
| KV PHARMACEUTICAL CO | 2.5 | 5/16/33 | 75 | 75.5 | 6/20/13 | -0.5 |
| MF GLOBAL HOLDINGS LTD | 1.875 | 2/1/16 | 47.5 | 50 | 6/18/13 | -2.5 |
| MF GLOBAL HOLDINGS LTD | 6.25 | 8/8/16 | 51 | 52.5 | 6/18/13 | -1.5 |
| NORTEL NETWORKS LTD | 6.875 | 9/1/23 | 55.5625 | 53 | 6/20/13 | 2.5625 |
| NORTEL NETWORKS LTD | 5.34438 | 7/15/11 | 103.25 | 103 | 6/20/13 | 0.25 |
| OVERSEAS SHIPHOLDING GROUP INC | 8.75 | 12/1/13 | 81.25 | 81.5 | 6/18/13 | -0.25 |
| PATRIOT COAL CORP | 3.25 | 5/31/13 | 11.55 | 10.937 | 6/20/13 | 0.613 |
| PATRIOT COAL CORP | 8.25 | 4/30/18 | 48.75 | 45.083 | 6/20/13 | 3.667 |
| RESIDENTIAL CAPITAL LLC | 9.625 | 5/15/15 | 112.125 | 112 | 6/19/13 | 0.125 |

Source: MarketAxess, marketaxess.com

Composite high yield bond price indications are compiled from various market sources, some of which may make a market in or have financial interest in the issues for which prices are provided. PRICES ARE INDICATIVE ONLY. The information contained herein does not represent a solicitation to sell or buy the underlying issues. Dow Jones shall not be held liable for any reason for any errors or omissions, delays or inaccuracies in the indications or any decision made in reliance upon the indications. Dow Jones shall not be liable to any person for any loss of business revenues or lost profits or for any indirect, special, consequential or exemplary damages whatsoever, whether in contract, tort or otherwise, arising in connection with the indications, even if Dow Jones has been advised of the possibility of such damages. Dow Jones makes no warranty whatsoever, express or implied, including specifically any warranty of merchantability or fitness for a particular purpose with respect to the indications and specifically disclaims any such warranty.

The Tape

NEWS FROM AROUND THE COUNTRY

Detroit Manager's Plan Upsets Union Leaders

Simmering resentment over Detroit's unprecedented restructuring boiled over Thursday, with union leaders saying they were willing to take their chances in court over proposed benefit changes if Emergency Manager Kevyn Orr pursues Chapter 9 bankruptcy, the *Detroit News* reported. Several union leaders leaving a closed-door meeting with Mr. Orr's restructuring team said they were upset about the cuts and suggested Mr. Orr may have hurt his chances of reaching out-of-court concessions by skipping the meeting. The developments, which came as Mr. Orr launched a corruption probe of the city's pension funds, set up a showdown among Mr. Orr, pension officials and union leaders. They all can influence how quickly the city restructures as much as \$20 billion in debt or files what would be the biggest municipal bankruptcy in U.S. history. "We'll fight our case (in bankruptcy court) instead of fighting our case with Kevyn Orr," said Henry Gaffney, president of ATU 26, the union representing 863 active and retired bus employees. "We'll probably have a better chance." Not necessarily, bankruptcy experts said Thursday. Orr has the power to replace the city's health-care system but cutting pensions would require a ruling from a bankruptcy judge.

Lawmakers Step Up Delphi Pension Criticism

With the momentum of a local hearing earlier this month, Ohio lawmakers are ramping up criticism of President Barack Obama's administration for stalling in helping former salaried Delphi employees, the *Dayton Business Journal* reported. In a series of statements, lawmakers expressed frustration at the drawn-out investigation into what happened after Delphi filed for bankruptcy four years ago. Delphi's salaried retirees took a steep cut in benefits when their pensions were subsequently turned over to the Pension Benefit Guaranty Corp. "Delphi salaried retirees in Ohio are struggling to pay bills they had budgeted for under their full pensions," Sen. Rob Portman, (R., Ohio) said in a statement. "In too many cases, they are struggling to stave off foreclosure on their homes and to avoid declaring bankruptcy. In fact, many of these once prosperous salaried retirees are now living below the poverty level." Rep. Portman was critical of what he called "illegal political determination" in the decision, adding that while the legal proceedings have dragged on over several years, Delphi's unionized hourly employees have received the full benefits. U.S. Rep. John Boehner, (R., Ohio), also criticized the Obama administration for what he said was delaying on providing more information about the issue.

Lacroix Returns to Catwalk After Bankruptcy

One-time darling of the fashion world Christian Lacroix returns to the Paris catwalks this week with a tribute to late Italian designer Elsa Schiaparelli, famed for her collaborations with Salvador Dali and Jean Cocteau, Agence France-Presse reported. Mr. Lacroix, feted by fashion editors in the 1990s after he created the first couture house to open in a quarter century in 1987, will present 15 reinterpretations of Schiaparelli designs for the relaunched couture house. Ms. Schiaparelli, whose greatest rival was Gabrielle "Coco" Chanel, famously collaborated with surrealist artist Dali on her 1937 Lobster Dress, a white silk evening dress on which Dali painted a lobster. In another collaboration, the pale blue Tears Dress, a Dali designed print created the illusion of torn flesh. The label, which closed in 1954 after failing to adapt to post-war austerity, was officially reopened in July 2012 having been purchased in 2006 by Diego Della Valle. Mr. Lacroix rode the wave of the 1990s luxury spending boom with a string of exuberant, over-the-top creations that dazzled the fashion world. But he lost his fashion house in December 2009 when a Paris bankruptcy court approved a plan to end production of the classic label's haute couture and ready-to-wear lines.

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