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THE YEAR IN BANKRUPTCY: 2012

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December 2012 marked the fifth anniversary of the beginning of the Great Recession, which officially began in December 2007 and ended in June 2009 (at least in the U.S.). Five years down the road, the U.S. economy is undeniably on the road to recovery, with unemployment down to 7.8 percent from a high of 10.2 percent in October 2009, a significant drop in mortgage-foreclosure rates, and a housing market strengthened by the lowest mortgage rates in history. Even so, the recovery is shaky. Much remains to be done to restore the world's largest economy to sustainable growth and a positive outlook.

Characteristically divisive U.S. lawmakers in the dysfunctional 112th Congress actually failed to reach a deal in 2012 to avoid hurling the nation over the "fiscal cliff." However, in a (post)-last-minute ploy to prevent automatic spending cuts, the largest tax increase in U.S. history, and a relapse into recession, Congress worked out a compromise on January 1, 2013, that, among other things, repeals most of the Bush-era tax cuts for wealthy Americans, avoids tax increases on middle-class families, temporarily defers deep military and other government spending cuts, restores financial aid to farmers, and extends unemployment benefits.

Among the most memorable business, economic, and financial sound bites of 2012 were "LIBOR scandal," "Taxmaggedon," "QE3," "fiscal cliff," "sequestration," "Flash Crash II," and "the London Whale."

Now for the bad news. For the fourth year running, the U.S. ran a deficit in excess of $1 trillion for the fiscal year ("FY") ending September 30. Also, in a reprise of 2011, the U.S. reached its legal borrowing limit on December 31, giving Congress just four months (as extended pursuant to a deal reached in late January) before it must raise the debt ceiling (again), or (again) risk causing the government to default on its bills and financial obligations. In addition, the "sequestration" automatic spending cuts avoided on January 1 were only temporarily deferred. Stay tuned for Fiscal Cliff II.

U.S. unemployment remains stubbornly high, compared to the 4.9 percent unemployment rate in December 2007. At the end of 2012, 12.2 million Americans were unemployed (not counting the underemployed and those who have dropped out of the workforce). The U.S. Labor Department reported on January 4, 2013, that American employers added 155,000 jobs in December, leaving the unemployment rate unchanged at 7.8 percent, the level at which it has more or less remained since September. Overall, the country added 1.8 million jobs during 2012.

Food prices in the U.S. spiked at the end of 2012 and will continue to be higher in 2013, after the nation's worst drought in 50 years—2012 was the hottest year ever recorded in the contiguous United States—sent prices for corn, soybeans, feed, and related products (e.g., ethanol and meat) soaring.

A report released by the U.S. Education Department and the Consumer Financial Protection Bureau in July 2012 estimated that total outstanding student-loan debt in the U.S. for the first time exceeded $1 trillion (with an average loan balance of more than $23,000), surpassing the total U.S. credit-card balance ($693 billion) and the total U.S. auto-loan balance ($730 billion). Moreover, as the number of people taking out U.S. government-backed student loans has exploded, so has the number of those who have fallen at least 12 months behind in making payments—about 5.9 million people nationwide, up about a third in the last five years. In all, nearly one in every six borrowers with a student-loan balance is in default. Student-loan debt collection is a booming business. In FY 2011, the U.S. Department of Education alone paid more than $1.4 billion to collection agencies and other groups to hunt down defaulters. On July 6, 2012, President Obama signed legislation freezing federally subsidized student-loan rates for a year, averting a doubling of interest rates. The change helped more than 7 million students.

The latest U.S. Census Bureau data shows that the number of impoverished Americans increased from 49 million in 2010 to 49.7 million in 2011. The report also states that nearly 20 percent of American children continue to live in poverty. In September 2012, the Bureau reported that the income gap between the wealthiest 20 percent of American households and the rest of the country grew sharply, as an overwhelming majority of Americans saw no gains from a weak economic recovery. Median household income after inflation fell to $50,054, a level that was 8 percent lower than in 2007, the year before the recession took hold.

Fewer Americans filed for personal bankruptcy in 2012: 1.13 million individuals filed for bankruptcy last year, 14 percent fewer than in 2011, and the fewest since 2008, according to Epiq Systems, Inc.

Only 51 U.S. banks failed in 2012, compared to 92 in 2011, 157 in 2010 (more than in any year since the savings and loan crisis of the early 1990s), and 140 in 2009. The number of bank failures was the lowest since 2008, when 25 banks failed. Since 2008, a total of 465 banks with assets aggregating more than $680 billion have been closed by regulators. On the basis of recent trends, however, it appears that the U.S. banking system is slowly stabilizing as banks complete divestitures of toxic mortgage assets. At the close of FY 2012, the number of banks on the Federal Deposit Insurance Corporation's confidential "problem list" fell to 694—about 9.6 percent of all federally insured banks. At its peak in the first quarter of 2011, the number of troubled banks was 888, or 11.7 percent of all federally insured institutions.

Headlines in 2012 continued to herald the dire financial straits of U.S. states and municipalities. A variety of factors have combined to create a virtual maelstrom of woes for U.S. municipalities—a reduction in the tax base caused by increased unemployment; plummeting real estate values and a high rate of mortgage foreclosures; questionable investments; underfunded pension plans and retiree benefits; decreased federal aid; and escalating costs (including the higher cost of borrowing due to the meltdown of the bond-mortgage industry and the demise of the market for auction-rate securities). The burden has been too great for some municipalities to bear. Some have turned to chapter 9 bankruptcy protection for relief.

California led the charge in 2012, with three of its municipalities filing for bankruptcy, including the largest U.S. city to file for chapter 9 protection (the City of Stockton). In all, 15 municipalities (most of which were water and sanitary districts, hospital authorities, or state-run off-track betting enterprises) filed for bankruptcy protection in 2012, compared to 13 in 2011 and 7 in 2010.

BUSINESS BANKRUPTCY FILINGS

Business bankruptcy filings dropped off in both FY and calendar year 2012. However, public-company bankruptcy filings remained the same. According to data released by the Administrative Office of the U.S. Courts, business bankruptcy filings in FY 2012 totaled 42,008, down 16 percent from the 49,895 business filings reported in FY 2011. Chapter 11 filings fell to 10,597, down 12 percent from the 11,979 chapter 11 filings reported in FY 2011.

According to court data compiled by Epiq Systems, there were 7,760 business chapter 11 filings in calendar year 2012, compared to 8,658 filings in 2011, a decline of approximately 10 percent. All told, commercial bankruptcy filings fell 22 percent in 2012 to 57,788. The drop-off can be attributed to a number of factors, including the continuation of an "amend and extend" (or "extend and pretend") mentality by many lenders loath to redeploy capital in a market with historically low interest rates.

The number of bankruptcy filings by "public companies" (defined as companies with publicly traded stock or debt) in 2012 was 86, according to data provided by New Generation Research, Inc., tied for the fewest since 2007. There were also 86 public-company filings in 2011, whereas 106 public companies filed for bankruptcy in 2010, and 211 did so in 2009.

The year 2012 added 14 names to the billion-dollar public-company bankruptcy club, compared to 12 in 2011, 19 in 2010, and 52 in 2009. Counting private-company and municipal filings, the billion-dollar club gained 22 members in 2012.

The largest bankruptcy filing of 2012—Residential Capital, LLC, with $15.7 billion in assets—was the 35th-largest filing of all time, based upon asset value. Nineteen public and private companies with assets greater than $1 billion exited from bankruptcy in 2012. In a change from recent years, more of these companies reorganized than were liquidated or sold. Two of the most prominent names on the list were Lehman Brothers Holdings Inc., the largest bankruptcy filing ever (which returned a 100 percent recovery to brokerage customers), and Washington Mutual Inc., the second-largest bankruptcy of all time.

According to Standard & Poor's ("S&P"), the global number of corporate defaults in 2012 exceeded the number of defaults in 2010 and 2011. A total of 82 issuers defaulted in 2012, surpassing the 53 defaults in 2011 and the 81 defaults in 2010. However, the number of defaults in 2012 was significantly lower than the 264 defaults recorded in 2009. Forty-seven of 2012's defaults were based in the U.S., followed by 22 in emerging markets. Nine were based in Europe, while four were based in other developed regions. Missed interest or principal payments and bankruptcy filings were the top reasons for defaults in 2012, followed by distressed exchanges.

Completed distressed-debt and bankruptcy restructuring activity totaled $422.6 billion over the course of 2012, according to Thomson Reuters, a 102.6 percent increase compared to the $208.6 billion accrued during 2011. In total, 430 deals totaling $470.8 billion were announced in 2012—344 fewer deals compared to the same period in 2011. Activity was led by Greece's $263.1 billion debt-exchange transaction, the largest restructuring deal on record. U.S. deal activity totaled $61.6 billion in 2012, a 19.2 percent decrease from 2011. There were 129 announced U.S. restructuring transactions during 2012, 107 fewer than in the previous year.

WHERE DO WE GO FROM HERE?

The outlook for 2013 in the U.S. business bankruptcy world looks much as it did in each of the past two years. Low interest rates and freer credit markets mean that troubled companies (as well as their lenders) are less likely to opt for a reorganization strategy that incorporates a garden-variety bankruptcy filing. As in years past, prepackaged or prenegotiated chapter 11 cases and quick-fix section 363(b) sales are likely to be the norm. Bankruptcy prognosticators have highlighted the health-care, real estate, retail, shipping, energy, and professional sports sectors as having companies deemed "most likely to fail."

The transformation of chapter 11 bankruptcies during the 35 years since the Bankruptcy Code was enacted in 1978 has prompted calls for a hard look at reform. A variety of factors are driving the need for changes. These include: (i) increased use of secured credit throughout capital structures; (ii) an explosion in the growth of distressed-debt markets and claims trading that has made chapter 11 a takeover strategy; (iii) owner and creditor agendas that go beyond traditional restructuring; (iv) a change from debtors engaged principally in manufacturing to service companies, such as retailers and technology-driven enterprises relying less on hard assets and more on financial contracts; and (v) the increasing prominence of cross-border bankruptcy cases with international-law implications. A commission established by the American Bankruptcy Institute to study chapter 11 reform held five meetings in 2012 and expects to issue a report of its recommendations in April 2014.

EUROPE

The eye of the global financial storm stalled over Europe in 2012, where the tempest continues to threaten the 27-nation European Union, or at least the 17-member eurozone. Austerity measures implemented by Greece, Spain, Italy, Britain, and Portugal, among others, have proved to be both unpopular and unsuccessful. S&P downgraded the credit ratings of France, Italy, Spain, and six other European countries in 2012—a reminder that Europe's economic woes are far from over. The only eurozone nations retaining their top AAA ratings are Germany, the Netherlands, Finland, and Luxembourg.

According to Eurostat, the EU's statistics office, the 17 countries that use the euro ended 2012 at a record high unemployment rate of 11.8 percent (more than 26 million), the highest level since the euro was launched in 1999.

Greece reached an agreement with its private creditors in 2012 to secure the biggest sovereign restructuring in history, paving the way for a second bailout of the debt-ridden nation and averting an economic collapse. Under the terms of the $172 billion bailout, Greece will reduce its debt to about 120.5 percent of its gross domestic product by 2020, from about 160 percent in early 2012. Banks that hold Greek bonds, which had agreed in October 2011 to take a 50 percent loss on the face value of their bonds, agreed in February 2012 to take a 53.5 percent loss on the face value, the equivalent of an overall loss of around 75 percent.

On March 30, 2012, the Spanish government announced an annual budget that includes €17.8 billion ($24 billion) in fresh spending cuts for the central government, one day after it faced a nationwide general strike and said it would continue its increasingly unpopular austerity drive. Shortly afterward, Spain, which faces record unemployment of more than 25 percent, officially joined seven other eurozone nations in recession. Spain's credit rating was cut by S&P to just above "junk" status in June 2012, setting the stage for yet another eurozone rescue. Shortly afterward, Spain agreed to accept a bailout of up to €100 billion ($125 billion) for its cash-starved banks. Spanish and Portuguese workers coordinated a general strike in November to protest continued austerity measures.

On May 6, 2012, in a popular backlash against austerity measures, voters in France ousted the pro-austerity administration of Nicolas Sarkozy and elected François Hollande as the first Socialist president of France since 1995.

Official figures released by the British government at the end of April 2012 indicated that Britain fell into its first double-dip recession since the 1970s, raising more questions about whether government belt tightening in Europe has gone too far. Near the end of 2012, George Osborne, Britain's Chancellor of the Exchequer and the architect of the nation's austerity program, informed Parliament that the government missed one of its self-imposed debt-cutting goals and will have to extend the belt tightening into 2018, a year longer than previously promised.

In July 2012, the Italian government approved €4.5 billion ($5.6 billion) in spending cuts for 2012 aimed at slashing the size of Italy's bloated public sector and delaying a new tax increase until after the first half of 2013.

A positive development in the European debt crisis came on December 13, when EU leaders agreed to place eurozone banks under a single supervisory authority. The agreement would put between 100 and 200 major banks under the direct oversight of the European Central Bank, leaving thousands of smaller institutions to be overseen principally by national regulators. The new system is designed to strengthen oversight of a sector that, under the supervision of national regulators, failed to prevent banks from amassing debt quantities that could endanger the finances of eurozone states and threaten the future of the currency. The supervision mechanism is to be fully operational by March 2014 and is subject to the approval of the European Parliament and national legislatures before it goes into effect.

ASIA

Short-term growth nearly ground to a halt in India during 2012, dampening hopes that India, along with China and other non-Western economies, might help revive the global economy, as happened after the 2008 financial crisis. India is now facing a political reckoning, as the country's elected leaders address difficult, politically unpopular decisions. India's currency (the rupee) is falling, investment is down, inflation is rising, and deficits are eroding government coffers.

Faced with a sharply slowing Chinese economy, weak exports, and faltering investment, China's central bank unexpectedly announced in June 2012 that it would cut interest rates by a quarter of a percentage point. The interest-rate cut was the first by the central bank since December 2008, the last time policymakers in China—the world's second-largest economy—were deeply worried that they might be behind in responding to an economy receding faster than expected.

After three decades of torrid growth, China is encountering an unfamiliar problem with its newly struggling economy: a huge buildup of unsold goods that is cluttering shop floors, car dealerships, and factory warehouses. The glut of everything from steel and household appliances to cars and apartments is hampering China's efforts to emerge from a sharp economic slowdown. China is also confronting a major change in political leadership, with the election in November 2012 of Xi Jinping to the post of General Secretary of the Communist Party.

The world's third-largest economy also found itself treading water in 2012. In February 2012, Japan posted a record trade deficit, as the yen's strength and weaker global demand eroded profits at manufacturers and slowed the nation's recovery from the earthquake and tsunami in 2011. The trade gap widened to ¥1.48 trillion ($19 billion), and shipments dropped 9.3 percent compared with 2011, as energy imports surged.

On February 27, 2012, Elpida Memory, Inc., the last Japanese maker of computer-memory chips, sought bankruptcy protection, with liabilities of ¥448 billion ($5.5 billion). The company's failure to embrace the global consumer shift from computers to smartphones and tablets pushed the chipmaker into bankruptcy. This bankruptcy is the nation's largest since Japan Airlines Co. sought protection in January 2010 with ¥2.32 trillion in liabilities.

Sony Corporation more than doubled its projected net loss in 2012 to ¥520 billion, the worst ever, as additional tax expense hurt a company already battered by heavy losses in its television business, a strong yen, and natural disasters in Japan and overseas. It later announced a reduction in its global labor force of 10,000 employees (6 percent of its workers).

A GOOD YEAR IN THE MARKETS

Despite stalled U.S. economic growth, fiscal deadlock in Washington, an intensifying European debt crisis, and a slowdown in China, Japan, and India, stock markets had a surprisingly good year in 2012. In the U.S., the Dow Jones Industrial Average, the S&P 500, and the NASDAQ Composite Index all ended 2012 substantially higher, despite losing some ground in the final days of the year as concerns about the looming "fiscal cliff" mounted. Stocks staged a late-day rally in the final session of 2012, enabling the Dow Jones Industrial Average to post a 7.3 percent gain for the year, as hopeful investors wagered that politicians would come up with a last-minute resolution to avert the impending crisis. The Dow rose 166.03 points on December 31, or 1.3 percent, to 13,104.14, marking the largest gain on the final day of the year in its history. The S&P 500 Stock Index jumped 13 percent in 2012, and the technology-heavy NASDAQ soared 16 percent during the year.

In 2012, unlike in 2011, nearly all European and Asian markets finished the year significantly higher. In Asia, Japan's Nikkei 225 was up more than 26 percent, with the Hong Kong Hang Seng Index up more than 24 percent. In Europe, the Deutsche Börse AG German Stock Index ("DAX") soared over 27 percent for the year, the EURO STOXX 50 Price Index finished up more than 15 percent, and London's FTSE 100 Index was up more than 7 percent.

World markets were buoyed by the European Central Bank's announcement on September 6 of a sweeping new program for buying the bonds of troubled eurozone countries, followed by the U.S. Federal Reserve's announcement on September 13 that the bank would start a third round of its "quantitative easing" bond-purchase program ("QE3") intended to push longer-term interest rates lower and encourage borrowing and investment.

TOP 10 BANKRUPTCIES OF 2012

In 2012, unlike in many previous years, when bank holding and financial-services companies undone by the financial crisis dominated the Top 10 List for public-company bankruptcy filings, only a single financial-services company and two banking entities made the year's Top 10. The remainder of the list was populated by companies in the imaging, energy, publishing, aircraft, and shipping industries. Each company on the Top 10 List checked into chapter 11 with both assets and liabilities exceeding $1 billion.

Minneapolis, Minnesota-based real estate finance company **Residential Capital, LLC** ("ResCap") grabbed the brass ring for the largest public bankruptcy case in 2012 when it filed for chapter 11 protection on May 14 in New York with $15.7 billion in assets and $15.3 billion in debt. ResCap is a wholly owned subsidiary of GMAC Mortgage Group, LLC, which in turn is wholly owned by Ally Financial Inc. ("Ally"), the former finance arm of General Motors Co. once known as GMAC. As one of the biggest subprime-mortgage lenders in the country, ResCap was hit especially hard by the financial crisis. The fallout from the crash swamped both ResCap and Ally with mortgage liabilities—to the extent that Ally is now 74 percent owned by the U.S. government after a series of bailouts and failed the most recent round of bank stress tests conducted by the U.S. Federal Reserve.

ResCap's long-awaited bankruptcy filing was intended to alleviate that pressure (and enhance the prospects for taxpayer recovery) by effecting a sale of the company's mortgage business and loan portfolio. On November 21, 2012, the bankruptcy court approved the sale of ResCap's mortgage business to Ocwen Financial Corp and Walter Investment Management Corp., which agreed to pay $3 billion in an auction. It also approved the sale of a ResCap loan portfolio to Warren Buffett's Berkshire Hathaway Inc., which agreed to pay $1.5 billion for a package of 50,000 loans. U.S. taxpayers are still owed nearly $12 billion from the Ally bailout.

Santa Ana, California-based coal, natural gas, and wind power producer **Edison Mission Energy** ("Edison Mission") surged into the No. 2 position on the Top 10 List for 2012 when it filed a prenegotiated chapter 11 case in Illinois on

December 17 with $8.3 billion in assets. Through its subsidiaries, Edison Mission sells or trades energy from coal-fired generating facilities, natural gas-fired generating facilities, and renewable energy facilities, including one of the largest portfolios of wind projects in the U.S. The company has suffered financial losses amid low energy prices, high fuel costs, relatively weak power demand, and low power generation at coal-fired plants run by Midwest Generation, an Illinois-based subsidiary. Edison Mission is a subsidiary of Edison International, which did not file for bankruptcy. Prior to the chapter 11 filing, Edison International reached an agreement with Edison Mission and the majority of Edison Mission's noteholders whereby ownership of Edison Mission will be transferred to creditors, subject to bankruptcy-court approval.

The No. 3 spot on the Top 10 List for 2012 was captured by iconic imaging pioneer **Eastman Kodak Company** ("Kodak"), which filed for chapter 11 protection in New York on January 19, 2012, with $6.24 billion in assets and $7.3 billion in debt. At the time of the filing, the Rochester, New York-based company was running short of cash and unable to sell 1,100 digital-imaging patents that could have forestalled a bankruptcy filing. Kodak, the company that invented the digital camera nearly 40 years ago and whose late 19th-century rise to prominence and later ubiquity were owing to the technical and marketing genius of founder George Eastman, never successfully transitioned from its reliance on the photographic-film business, despite the increasing dominance of newer imaging technologies. Kodak had 17,000 employees worldwide and 8,000 in the U.S. (principally in Rochester) at the time of the filing. At its peak in the early 1980s, the company employed 62,000 people in Rochester and 130,000 worldwide. On January 11, 2013, the bankruptcy court approved the sale of Kodak's 1,100 digital-imaging patents for $527 million to a consortium that included Apple Inc., Microsoft Corp., Google Inc., Adobe Systems Inc., Research In Motion Ltd., Samsung Electronics Co., Fujifilm Corp., and Facebook Inc. The sale is a key element of the company's plans to shift its focus to commercial packaging and printing from photography.

Overseas Shipholding Group Inc. ("OSG"), one of the world's largest publicly traded tanker owners, berthed in the No. 4 position on the Top 10 List for 2012 when it foundered into chapter 11 in Delaware, along with 180 affiliates, on November 14, 2012, listing more than $4 billion in assets and $2.7 billion in debt. OSG owns or operates 111 vessels that transport oil, refined products, and natural gas worldwide. OSG and other crude oil shippers have been buffeted in recent years by slowing demand for oil, combined with a sharp fall in shipping rates for international crude and product vessels. In addition, OSG has ongoing tax problems that rendered its last three years of financial statements unreliable and created a potential for default under its loan agreements.

St. Louis, Missouri-based **Patriot Coal Corp.** ("Patriot") excavated its way into the No. 5 spot on the Top 10 List for 2012 when it filed for chapter 11 protection on July 9, 2012, together with 98 affiliates in New York, listing $3.8 billion in assets and $3.1 billion in debt. Patriot produces and markets coal products in the eastern U.S., with operations and coal reserves in the Appalachian and Illinois Basin coal regions. The company struggled in recent years because of decreased demand for coal, due largely to an increase in natural gas and other energy sources. At the same time, Patriot's liabilities increased because of rising costs due to "more burdensome environmental and other regulations" as well as "unsustainable labor-related legacy liabilities." In addition, due to an adverse court ruling, Patriot is obligated to build water-treatment facilities that will cost hundreds of millions of dollars. On November 27, 2012, the bankruptcy court in New York ordered venue of Patriot's chapter 11 cases to be transferred to Missouri, where Patriot's corporate headquarters and executive offices are located.

Houston, Texas-based **ATP Oil & Gas Corporation** ("ATP"), which acquires, develops, and produces oil and natural gas assets in the Gulf of Mexico, the North Sea, and the Mediterranean, drilled its way into the No. 6 position on the Top 10 List for 2012 when it filed for chapter 11 protection in Texas on August 17, 2012, listing $3.4 billion in assets and $3.1 billion in debt. Prior to its bankruptcy filing, ATP had estimated net proved reserves of 118.9 million barrels of crude oil equivalent and 241.5 billion cubic feet of natural gas. ATP stated that it filed for chapter 11 to manage debt it incurred because of the five-month moratorium on most U.S. offshore drilling after the deadly 2010 Gulf of Mexico oil spill.

First Place Financial Corp. ("FPF"), the bank holding company for First Place Bank, was deposited into the No. 7 position on the Top 10 List for 2012 when it filed for chapter 11 protection in Delaware on October 28, 2012. Based in Warren, Ohio, First Place Bank was a federally chartered stock savings association with more than 40 branches in Ohio, Michigan, Indiana, and Maryland. On October 26, 2012, FPF entered into an agreement to sell First Place Bank to Talmer Bancorp ("Talmer") as a means of complying with certain directives issued by the Office of the Comptroller of the Currency and the Office of Thrift Supervision ("OTS") (which merged on July 21, 2011). The bankruptcy court approved the sale of First Place Bank to Talmer on December 14, 2012. Although FPF's most recent public financial statements showed $3.2 billion in assets, the company listed only $175 million in assets and $64.5 million in debt in its bankruptcy filings.

Hawker Beechcraft, Inc. ("Hawker") crash-landed into the No. 8 spot on the Top 10 List for 2012 when it filed for chapter 11 protection in New York on May 3, 2012, with $2.8 billion in assets and $3.7 billion in debt. Wichita, Kansas-based Hawker manufactures business, special mission, and trainer/attack aircraft as well as parts and aviation products. At the time of the filing, the company had 5,400 employees and 100 service centers supporting a fleet of 34,000 aircraft. Hawker was formed in 1994 when Raytheon Company merged its Beech Aircraft Corporation and Raytheon Corporate Jets units. In 2006, Raytheon sold Hawker to Goldman Sachs and Onex Corporation, leaving the company with a heavy debt burden that it struggled to support from the 2008 economic crisis onward. Hawker filed for chapter 11 protection after defaulting on interest payments.

In July 2012, the Chinese company Superior Aviation Beijing offered to purchase Hawker for $1.79 billion, but the deal fell through in October 2012 due to a combination of regulatory concerns and labor issues. In early November 2012, Hawker announced that it would lay off more than 400 of its remaining workers, close various service facilities, and trim its business operations to concentrate on its core manufacturing and maintenance activities. Hawker later filed a chapter 11 plan proposing a restructuring pursuant to which it would emerge from bankruptcy under a new name, Beechcraft Corporation, with significantly scaled-back operations and $525 million in exit financing.

Textbook publisher **Houghton Mifflin Harcourt Publishing Company** ("Houghton Mifflin") booked position No. 9 on the Top 10 List for 2012 when it and 20 affiliates filed prenegotiated chapter 11 cases in New York on May 21, 2012, listing $2.7 billion in assets and $3.5 billion in debt. Boston-based Houghton Mifflin publishes textbooks used at all grade levels. It also publishes novels, nonfiction books, children's books, and reference works, including such classics as J.R.R. Tolkien's *The Lord of the Rings* and H.A. and Margret Rey's *Curious George* books for children. The company's educational software unit developed popular computer games such as "The Oregon Trail." Houghton Mifflin struggled financially for years, laden with debt taken on when Education Media and Publishing Group, an Irish private-equity concern, borrowed heavily to finance the acquisitions of Houghton Mifflin in 2006 and Harcourt in 2007. Venue of the chapter 11 cases was transferred to Massachusetts, but only after the bankruptcy court in New York confirmed a chapter 11 plan for Houghton Mifflin on June 21, 2012, effectively ending the company's 32-day stay in bankruptcy. Under the plan, Houghton Mifflin swapped its existing bank and bond debt for 100 percent of the equity in the restructured company.

The final spot on the Top 10 List for 2012 belongs to **United Western Bancorp, Inc.** ("UW Bancorp"), a Denver-based holding company that owned United Western Bank until January 21, 2011, when the Federal Deposit Insurance Corporation was appointed receiver for the bank by OTS and oversaw the sale of the bank's eight branches to First-Citizens Bank & Trust Company of Raleigh, North Carolina. UW Bancorp responded by suing OTS, claiming that the seizure was an abuse of power. UW Bancorp filed for chapter 11 protection in Colorado on March 2, 2012. Although the company's most recent public financial statements listed $2.5 billion in assets, UW Bancorp scheduled assets valued at no more than $10 million in its bankruptcy filings.

Other notable debtors (public and private) in 2012 included:

Hostess Brands, Inc. ("Hostess"), the iconic baker of Wonder Bread, Twinkies, and HoHos, which filed for chapter 11 protection for the second time in a decade (Hostess was known as Interstate Bakeries at the time of its 2004 chapter 11 filing) in New York on January 11, 2012, citing soaring costs and weakened demand for its products. Founded in 1937 and based in Irving, Texas, privately held Hostess had 18,500 employees, 33 bakeries, 565 distribution centers, and nearly $1 billion in assets at the time of the filing. On November 16, 2012, one week after one of its biggest unions went on strike to protest a labor contract, 82-year-old Hostess announced plans to wind down operations and sell its portfolio of well-known brands.

LightSquared Inc. (f.k.a. SkyTerra Communications), a privately owned telecommunications company that filed for chapter 11 protection in New York on May 14, 2012, listing $4.5 billion in assets after its plan to deliver high-speed wireless to as many as 260 million people ran afoul of U.S. regulators.

Houston, Texas-based ***Dynegy Inc.***, a privately owned company whose subsidiaries produce electric energy from 16 coal- and gas-fired power facilities located in six states, which filed for chapter 11 protection on July 6, 2012, in New York, listing $4.1 billion in assets. The filing was part of a settlement agreement with creditors involving a merger of Dynegy, Inc., with its largest subsidiary, Dynegy Holdings (which had filed for chapter 11 on November 7, 2011), and the sale of Dynegy, Inc.'s remaining assets to satisfy creditor claims.

Arcapita Bank BSC (f.k.a. First Islamic Investment Bank) ("Arcapita"), a Bahrain-based privately owned manager of Islamic-compliant (Shari'ah-compliant) investments with $7 billion under management, which filed for chapter 11 protection in New York, listing $3 billion in assets and $2.6 billion in debt after failing to reach an agreement with creditors on the refinancing of a $1.1 billion syndicated Shari'ah-compliant loan. In December 2012, the bankruptcy court overseeing Arcapita's chapter 11 case authorized the first-ever Shari'ah-compliant debtor-in-possession financing.

Pinnacle Airlines Corp., a Memphis-based regional air carrier that operates a jet and turboprop fleet under agreements with Delta Air Lines, Inc., United Continental Holdings, Inc., and US Airways Group, Inc., which filed for chapter 11 protection on April 1, 2012, in New York, listing $1.5 billion in assets and $1.4 billion in debt.

The City of Stockton, California, which became the largest city in U.S. history to seek bankruptcy protection when it filed a chapter 9 petition on June 28, 2012, in California to manage a $26 million budget deficit. The filing came after a breakdown in negotiations with creditors in compliance with A.B. 506, a newly effective California law that allows municipalities in financial distress to negotiate with creditors to restructure debts and agreements to avoid filing for bankruptcy. In its bankruptcy filings, Stockton listed assets of more than $1 billion and liabilities of more than $500 million.

The City of San Bernardino, California, 65 miles east of Los Angeles and home to about 210,000 residents, which became the third California city to file for bankruptcy protection in 2012 when it filed a chapter 9 petition on August 1, listing assets and liabilities in excess of $1 billion. In late July, San Bernardino reported that it had $56 million in debt payable from its general fund, including payments on a $50 million pension bond. The city also had $195 million in unfunded pension obligations, $61 million in unfunded retiree health care, and $40 million in workers' compensation and general liabilities.

A123 Systems Inc. ("A123"), a manufacturer of electric-car batteries and the recipient of nearly $250 million in U.S. government grants, which filed for chapter 11 protection on October 16, 2012, in Delaware, listing $626 million in assets, with a plan to sell its auto-business assets to auto-parts maker Johnson Controls Inc. ("Johnson"). However, previous suitor Wanxiang America Corp., the U.S. arm of Chinese auto-parts conglomerate Wanxiang Group, outbid Johnson, offering $257 million for the assets—more than doubling Johnson's initial offer. The bankruptcy court approved the sale to Wanxiang on December 11, but Johnson appealed. A123's defense-related business assets will be sold separately for $2.25 million to Navitas Systems.

Dewey & LeBoeuf ("Dewey"), a private law firm crippled by financial miscues and partner defections, which filed for chapter 11 protection on March 28, 2012, in New York, punctuating the largest law-firm collapse in U.S. history. Dewey unraveled after lower-than-expected profits—and debt mountainous by law-firm standards—forced it to slash partners' salaries. Already owed millions from previous years, the partners became concerned about Dewey's finances and eventually began a mass exodus that destroyed the firm. At its peak, Dewey employed more than 2,500 people, including roughly 1,400 lawyers in 26 offices across the globe.

LEGISLATIVE/REGULATORY DEVELOPMENTS

COMMISSION TO STUDY PROPOSED CHANGES TO CHAPTER 11

On April 19, 2012, a commission established by the American Bankruptcy Institute (the "ABI Commission") to study the reform of chapter 11 of the Bankruptcy Code held its first public meeting in Washington, D.C. On July 2, the ABI Commission released the names of nearly 130 corporate restructuring experts to serve on one of 13 advisory committees. The ABI Commission expects to issue a report of its recommendations in April 2014. It convened five public hearings in 2012 and anticipates holding as many as seven field hearings in 2013, with topics for discussion to include: (i) employee benefits; (ii) labor and management and the treatment of collective bargaining agreements; (iii) valuations; (iv) unsecured trade credit; (v) safe harbors for derivatives; (vi) changes from the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 and their effect on trade credit, landlords, and others; (vii) governance of troubled companies; and (viii) entrenched management.

BANKRUPTCY-FEE GUIDELINES PROPOSED

On November 2, 2012, the U.S. Trustee, a unit of the U.S. Justice Department entrusted with overseeing bankruptcy cases, proposed new guidelines for attorneys' fees in large chapter 11 cases (defined as debtors with at least $50 million in assets and $50 million in liabilities). A previous proposal from 2011 was roundly criticized by bankruptcy attorneys, some of whom deemed it overreaching and out of touch. The new proposal, to take effect in the summer of 2013, incorporates some changes suggested by professionals, such as narrowing which chapter 11 cases are affected, but includes other provisions deemed objectionable, including a provision that would call for attorneys to submit budgets estimating the cost and type of work they intend to perform. The guidelines are not binding law but are likely to act as a benchmark.

AMENDED BANKRUPTCY RULES

On April 23, 2012, the U.S. Supreme Court approved amendments to the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") that became effective on December 1,

2012. Several of the amendments involve technical and conforming changes to eliminate inconsistencies within the existing Bankruptcy Rules, as well as changes designed to make the Bankruptcy Rules consistent with the Federal Rules of Civil Procedure and the Federal Rules of Appellate Procedure.

Additional amendments to the Bankruptcy Rules were proposed in August 2012 by the Committee on Rules of Practice and Procedure of the U.S. Judicial Conference, including a rule that would require parties in all bankruptcy cases to consent to judgments issued by bankruptcy courts to help eliminate confusion over court authority in light of the U.S. Supreme Court's landmark 2011 decision in *Stern v. Marshall*, 132 S. Ct. 56 (2011). The proposed amendments would become effective December 1, 2014 (with certain exceptions).

STERN V. MARSHALL PROMPTS NEW COURT RULES/ORDERS

Several federal district courts have amended their standing orders referring bankruptcy cases to bankruptcy courts in response to *Stern*. Local-court rules have also been altered to account for the decision. For example, the U.S. District Court for the Southern District of New York issued an amended standing order of reference on January 31, 2012, and the Local Rules Committee for the district proposed new Local Bankruptcy Rules in response to *Stern*. Both require litigants to state expressly whether or not they consent to entry of final orders by bankruptcy courts in core proceedings if the court is deemed to lack constitutional authority to enter a final judgment or order. The U.S. District Court for the District of Delaware similarly amended its standing order of reference on February 29, 2012.

EC INSOLVENCY REGULATION REFORM

On December 12, 2012, the European Commission ("EC") proposed reforms to the EC Insolvency Regulation (Council Regulation (EC) No 1346/2000) (the "EC Regulation") designed to modernize the rules governing cross-border insolvency proceedings. The preamble to the proposal states that "the new rules will shift focus away from liquidation and develop a new approach to helping businesses overcome financial difficulties, all the while protecting creditors' right to get their money back."

Key elements of the proposed reforms include: (i) broadening the scope of the EC Regulation by revising the definition of "insolvency proceedings" to include hybrid and pre-insolvency proceedings, as well as debt-discharge proceedings and other insolvency proceedings for natural persons; (ii) more efficient administration of insolvency proceedings by: (a) giving courts the discretion to deny a petition to commence a secondary (nonmain) proceeding if it is deemed unnecessary to protect the interests of local creditors, (b) abolishing the requirement that secondary proceedings be winding-up proceedings, and (c) improving coordination between main and secondary proceedings; and (iii) enhanced public access to court decisions in cross-border insolvency cases and standardization of creditor claim forms.

ITALIAN INSOLVENCY ACT AMENDMENTS

Italian law decree No. 83 of June 22, 2012 (the "Decree") introduced significant amendments to several provisions of the Italian Insolvency Act governing: (a) a debt-restructuring agreement (*accordo di ristrutturazione dei debiti*) pursuant to Article 182-*bis* ("Art. 182-*bis* Agreement"); and (b) an arrangement with creditors (*concordato preventivo*) pursuant to Article 160 ("Arrangement with Creditors"). Among other things, the Decree provides: (i) easier access to an Arrangement with Creditors consistent with the key principles underlying the chapter 11 process in the U.S. Bankruptcy Code; (ii) a new form of Arrangement with Creditors aimed at ensuring the continuity of an insolvent debtor as a going concern (*concordato con continuità aziendale*); (iii) enhanced protection of new financing granted in connection with restructuring proceedings; and (iv) certain amendments to provisions regulating the payment of dissenting creditors under an Art. 182-*bis* Agreement.

FRENCH INSOLVENCY LAW AMENDMENTS

On September 20, 2012, the French government issued a decree amending the requirements for the commencement of an accelerated financial safeguard proceeding (*procédure de sauvegarde financière accélérée* ("SFA")). An SFA combines the elements of a "conciliation" (an out-of-court pre-insolvency proceeding involving a court-appointed mediator widely used to restructure distressed businesses in France) and a "safeguard" proceeding, which is a court-supervised proceeding culminating in the implementation of a plan restructuring a company's debt. With the changes, an SFA may now be commenced by a solvent company with either: (i) a balance-sheet surplus exceeding €25 million; or (ii) a balance-sheet surplus exceeding €10 million, provided it controls a company satisfying 150-employee or €20 million-turnover thresholds. Thus, an SFA, which will facilitate financial restructurings in distressed leveraged-buyout scenarios, is now available to most holding companies.

RUSSIAN BANKRUPTCY LAW AMENDMENTS

On July 28, 2012, Russian president Vladimir Putin gave his imprimatur to Federal Law No. 144-FZ, which amends Russian bankruptcy, financial, and banking legislation, with the goal of improving regulations governing asset returns and interim management of insolvent banks. Among other things, the amendments change Russian insolvency law to remove executive compensation and bonuses from the list of priority claims in cases involving insolvent companies. The new law, which took effect in November 2012, amends regulations governing interim administrations of financial and banking entities that have forfeited their operational licenses. It also revises the powers of the Russian federal deposit insurance agency.

NOTABLE BUSINESS BANKRUPTCY DECISIONS OF 2012

ALLOWANCE/DISALLOWANCE/PRIORITY/DISCHARGE OF CLAIMS

"Key employee" retention plans proposed by bankrupt companies have been subject to rigorous scrutiny since Congress amended the Bankruptcy Code in 2005 to add section 503(c), which makes it much more difficult to implement such programs. Several notable court rulings were handed down in 2012 concerning the propriety under section 503(c) of payments to key employees. Many of these decisions concern the increasing frequency with which chapter 11 debtors have characterized proposed payments to personnel as a key employee incentive program ("KEIP"), which is generally governed by the less stringent requirements of section 503(c)(3), rather than as a key employee retention plan ("KERP"), which is strictly regulated by section 503(c)(1).

During 2012, several courts adopted the "business judgment" standard applied to a proposed nonordinary-course use, sale, or lease of estate property pursuant to section 363(b) of the Bankruptcy Code as a litmus test for payments governed by section 503(c)(3). *See, e.g., In re Dewey & LeBoeuf LLP*, 2012 WL 3065275 (Bankr. S.D.N.Y. July 30, 2012); *In re Global Aviation Holdings Inc.*, 478 B.R. 142 (Bankr. E.D.N.Y. 2012); *In re Velo Holdings Inc.*, 472 B.R. 201 (Bankr. S.D.N.Y. 2012).

In *Velo Holdings*, the court concluded that the chapter 11 debtors' proposed KEIP established incentive targets that, although tied to the debtors' compliance with a debtor-in-possession budget, required key employees to "stretch" in order to qualify for plan payments, so as not to constitute a retention plan subject to the restrictions set forth in sections 503(c)(1) and (2). The court ruled that the debtors met their burden of proving that the proposed KEIP was primarily incentive-based as it related to key employees and that implementation of the plan was a valid exercise of sound business judgment under sections 363 and 503(c)(3).

In *In re Hawker Beechcraft, Inc.*, 479 B.R. 308 (Bankr. S.D.N.Y. 2012), the court denied the debtor's motion to implement a KEIP that would have paid bonuses of up to $5.3 million to a "senior leadership team" and concluded that, although the KEIP included elements of incentive compensation, "when viewed as a whole, it set[] the minimum bonus bar too low to qualify as anything other than a retention program for insiders."

In *In re Residential Capital, LLC*, 478 B.R. 154 (Bankr. S.D.N.Y. 2012), the court denied the debtors' bid to pay more than $7 million in bonuses to 17 top executives and ruled that the plan had been improperly structured to ensure that top management would not leave the company rather than to incentivize them to meet performance goals. "Ultimately, the Debtors have failed to carry their burden," the court wrote, pointing to a provision that 63 percent of the bonus money could be earned simply by the debtors' closing the sales of two loan portfolios that had been substantially negotiated prepetition. However, the court later approved the payments after the debtors made changes to the KEIP designed to make it more incentivizing.

In *In re Blitz U.S.A., Inc.*, 475 B.R. 209 (Bankr. D. Del. 2012), the court concluded that a bonus plan proposed by the debtor was an ordinary-course transaction, and therefore not subject to section 503(c), because the debtor had implemented similar plans for the three years preceding its chapter 11 filing and because other manufacturers had employed similar plans.

In keeping with courts' narrow construction of what constitutes "substantial contribution" in a chapter 11 case within the meaning of section 503(b)(3)(D) of the Bankruptcy Code, the bankruptcy court in *In re AmFin Financial Corp.*, 468 B.R. 827 (Bankr. N.D. Ohio 2012), denied administrative-expense priority to the fees and expenses of senior noteholders, noting, among other things, that "the efforts by the Senior Noteholders to settle their own claims [were] not properly characterized as a substantial contribution to the case."

In *Machne Menachem, Inc. v. Spritzer (In re Machne Menachem)*, 2012 WL 8570 (3d Cir. Jan. 3, 2012), the Third Circuit, addressing the power of a court to recharacterize debt as equity, affirmed a bankruptcy court's ruling that certain advances made by a purported lender to a not-for-profit debtor were not loans. The bankruptcy court had looked to the intent of the parties as it existed at the time of the transaction; analyzed the parties' intent in keeping with the Third Circuit's earlier ruling in *Cohen v. K.B. Mezzanine Fund II (In re SubMicron Sys. Corp.)*, 432 F.3d 448 (3d Cir. 2006); and held that the advances were donations. The Third Circuit ruled that the bankruptcy court's determination was not clearly erroneous because: (i) "there [was] no written instrument for the court to analyze and determine whether the terms suggest[ed] an expectation of repayment," even though some of the checks had "loan" written on them; and (ii) there was "no evidence of intent on behalf of [the debtor] to accept or authorize the purported loans, such as a resolution from the board of directors, or evidence that the board was aware of the loans."

In *Wright v. Owens Corning*, 679 F.3d 101 (3d Cir. 2012), the Third Circuit held that, although it had previously reversed the rule stated in *Avellino & Bienes v. M. Frenville Co. (In re M. Frenville Co.)*, 744 F.2d 332 (3d Cir. 1984), governing when a "claim" arises for purposes of discharge in bankruptcy, due-process considerations mandated that the claims of certain unknown defective-product claimants not be discharged—thereby resuscitating *Frenville*'s results in certain circumstances and adding another layer of complexity to the analysis of discharged claims.

In *In re Heritage Highgate, Inc.*, 679 F.3d 132 (3d Cir. 2012), the Third Circuit ruled that, in a chapter 11 reorganization, the term "value," as applied to section 506(a), should mean the fair market value of collateral as of plan confirmation. In so ruling, the court of appeals rejected the market-based, or "wait and see," approach recommended by a group of secured creditors, whose subordinated claims would be rendered unsecured unless the court included projected revenues from the debtor's chapter 11 plan in the valuation analysis. Applying the fair-market-value approach to calculate the amount of a creditor's secured claim, the Third Circuit held, does not constitute impermissible lien stripping. In addition, the court adopted a burden-shifting approach to the question of who bears the burden of demonstrating value.

In *Statek Corp. v. Dev. Specialists, Inc. (In re Coudert Bros. LLP)*, 673 F.3d 180 (2d Cir. 2012), the Second Circuit considered as a matter of first impression which choice-of-law rules should apply when a bankruptcy court sitting in one state is resolving a bankruptcy claim arising from a state-law action previously filed in another state. The court ruled that: (i) where a claim is wholly derived from another legal claim pending in a parallel nonbankruptcy proceeding in another state; and (ii) where the pending original claim was filed in a court prebankruptcy, the bankruptcy court must apply the choice-of-law rules of the state where the underlying prepetition claim was filed (in this case, Connecticut).

AVOIDANCE ACTIONS/TRUSTEE'S AVOIDANCE AND STRONG-ARM POWERS

In *Senior Transeastern Lenders v. Official Committee of Unsecured Creditors (In re TOUSA, Inc.)*, 680 F.3d 1298 (11th Cir. 2012), the Eleventh Circuit ruled that the bankruptcy court's findings that subsidiaries of residential construction company TOUSA, Inc., did not receive reasonably equivalent value in exchange for liens they granted to secure financing to fund the parent company's settlement with its joint-venture lenders were not clearly erroneous. Accordingly, the Eleventh Circuit held, those findings supported the bankruptcy court's determination that the transaction was a fraudulent transfer under section 548(a)(1)(B) of the Bankruptcy Code. The TOUSA litigation has been closely followed by the loan market because of the significant implications for both lenders and borrowers when structuring loan transactions with comparable structural features, such as upstream guarantees with standard "savings clauses."

Reconciling discordant orders issued in the same chapter 11 case, a Delaware bankruptcy court ruled in *Industrial Enterprises of America v. Burtis (In re Pitt Penn Holding Co., Inc.)*, 2012 WL 204095 (Bankr. D. Del. Jan. 24, 2012), that the two-year statutory "look-back" period during which a fraudulent transfer may be avoided pursuant to section 548 of the Bankruptcy Code cannot be "equitably tolled."

BANKRUPTCY-COURT POWERS/JURISDICTION

Putting it mildly, the U.S. Supreme Court's 2011 ruling in *Stern v. Marshall*, 132 S. Ct. 56 (2011), cast a wrench into the day-to-day operation of bankruptcy courts scrambling to deal with a deluge of challenges—strategic or otherwise—to the scope of their "core" authority to issue final orders and judgments on a wide range of disputes. In *Stern*, the Court ruled that, to the extent that 28 U.S.C. § 157(b)(2)(C) purports to confer authority on a bankruptcy court to finally adjudicate a state-law counterclaim against a creditor that filed a proof of claim, the provision is constitutionally invalid. The mayhem among bankruptcy and appellate courts continued throughout 2012.

In *Onkyo Electronics v. Global Technovations Inc. (In re Global Technovations Inc.)*, 694 F.3d 705 (6th Cir. 2012), the Sixth Circuit became the first court of appeals to consider whether, in the aftermath of *Stern*, a bankruptcy court has authority to enter a final judgment in an action seeking to avoid a fraudulent transfer. The Sixth Circuit held that the bankruptcy court did have authority to do so because the creditor had filed a proof of claim. According to the court, it was "crystal clear that the bankruptcy court had constitutional jurisdiction under *Stern* to adjudicate whether the sale [to the debtor of a subsidiary of Onkyo] was a fraudulent transfer" because Onkyo's proof of claim could not be resolved without addressing the fraudulent-transfer question. Thus, the Sixth Circuit wrote, this "case is fundamentally unlike [*Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33 (1989)], where the bankruptcy estate reached out to file a fraudulent-transfer claim against a party who had filed no claim against the estate."

However, the Sixth Circuit also stated that "[w]hat is not crystal clear is whether the bankruptcy court had jurisdiction under *Stern* to make the additional finding that Onkyo was a 'good-faith transferee' and a 'good-faith obligee' under [the Florida Uniform Fraudulent Transfer Act]." The bankruptcy court never reached the issue below because it disallowed Onkyo's claim for the balance of the purchase price in its entirety. The Sixth Circuit held that even though a good-faith-transferee determination was not necessary to resolve Onkyo's proof of claim, the bankruptcy court nonetheless had authority to make the determination. According to the Sixth Circuit, it did not read *Stern* to require a court "to determine, in advance, which facts will ultimately prove strictly necessary to resolve a creditor's proof of claim." Thus, the mere possibility that a claim dispute will be resolved in a way that requires the bankruptcy court to address unrelated matters does not deprive the court of authority to issue a final ruling.

The Sixth Circuit reprised its role as interpreter of *Stern* in *Waldman v. Stone*, 698 F.3d 910 (6th Cir. 2012). In a surprising ruling that reinvigorated the ongoing debate about *Stern*'s scope, the Sixth Circuit adopted a broad view of the case, holding that the limitations imposed on bankruptcy courts by

Article III of the Constitution cannot be waived by a party's failure to object at the trial-court level. In addition to rejecting the waiver principle as a basis for bankruptcy courts to issue final judgments in certain proceedings, the Sixth Circuit suggested that a "statutory gap" in 28 U.S.C. § 157 may prevent a bankruptcy court from issuing proposed findings of fact and conclusions of law in core matters. The decision renewed uncertainty regarding the constitutional limits of a bankruptcy court to adjudicate both core and noncore claims.

In *Executive Benefits Insurance Agency, Inc. v. Arkison (In re Bellingham Insurance Agency, Inc.)*, 2012 WL 6013836 (9th Cir. Dec. 4, 2012), the Ninth Circuit ruled that, even though federal law empowers bankruptcy judges to enter final judgments in fraudulent-conveyance actions against a "non-claimant" (i.e., someone who has not filed a proof of claim), the U.S. Constitution forbids entry of a final order because those claims do not fall within the "public rights exception." However, the court explained, defendants in such avoidance proceedings may (and in this case did) consent to the entry of a final judgment by the bankruptcy court, even if that consent was implied from the defendant's failure to assert its right to entry of final judgment by an Article III court. In addition, the Ninth Circuit emphasized that a bankruptcy court may still hear and make recommendations regarding any statutorily "core" proceedings in which the court lacks the authority to enter a final judgment.

In *KHI Liquidation Trust v. Wisenbaker Builder Servs., Inc. (In re Kimball Hill, Inc.)*, 480 B.R. 894 (Bankr. N.D. Ill. 2012), the court suggested that bankruptcy courts do have the authority to enter final judgments in both fraudulent-transfer and preference litigation, whether or not: (i) the defendant filed a proof of claim; (ii) the fraudulent-transfer and preference claims are related to those initial claims; and (iii) the parties consented to final adjudication by the bankruptcy court. The court concluded that the vast majority of the Supreme Court's decision in *Stern* (and the ruling in *Ortiz v. Aurora Health Care, Inc. (In re Ortiz)*, 665 F.3d 906 (7th Cir. 2011), by which the *Kimball Hill* court was bound), was mere dicta and therefore not controlling authority for cases differing from the unique set of facts in *Stern*.

According to the *Kimball Hill* court, the proceeding before it did not involve counterclaims and was in no way "steeped in state law." Furthermore, the court wrote, it "[did] not share anything in common with the proceedings that *Stern* and *Ortiz* held [were] unconstitutional other than that they are all adversary proceedings in a bankruptcy case," a commonality that was "not sufficient to expand [*Stern*'s] explicitly narrow holding." The court remarked that "[a]s the right to avoid a fraudulent transfer is steeped in bankruptcy law, the bankruptcy court's entering final orders on the proceeding does not chip away at the authority that the Constitution vested to the Article III courts."

A Florida bankruptcy court ruled in *In re Pearlman*, 462 B.R. 849 (Bankr. M.D. Fla. 2012), that "substantive consolidation"—the merging of the assets, liabilities, and creditors of related entities—is purely a bankruptcy remedy and that a bankruptcy court does not have the power to consolidate the estate of a debtor in bankruptcy with the assets and affairs of a nondebtor. In doing so, the court staked out a position on a contentious issue that has created a widening rift among bankruptcy and appellate courts regarding the scope of a bankruptcy court's jurisdiction over nondebtor entities. For example, in *In re LLS America, LLC*, 2012 WL 2042503 (B.A.P. 9th Cir. June 5, 2012), a bankruptcy appellate panel affirmed a bankruptcy-court order substantively consolidating the estates of debtor and nondebtor entities without comment regarding the power of the court to order the remedy.

In *Continental Ins. Co. v. Thorpe Insulation Co. (In re Thorpe Insulation Co.)*, 671 F.3d 1011 (9th Cir. 2012), the Ninth Circuit ruled that a bankruptcy court has discretion, even in a "core" proceeding, to decline to enforce an otherwise valid and applicable arbitration provision, but only if arbitration would conflict with the underlying purposes of the Bankruptcy Code.

CHAPTER 11 PLANS

In *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 132 S. Ct. 2065 (2012), a unanimous U.S. Supreme Court upheld a ruling by the Seventh Circuit denying confirmation of a "cramdown" chapter 11 plan that contemplated the sale of encumbered assets free and clear of all liens without giving a secured creditor the right to credit-bid its claim in connection with the sale. By its ruling, the Supreme Court resolved a circuit split on the proper application of the "indubitable equivalent" prong of section 1129(b)(2)(A) of the Bankruptcy Code.

In a prelude (and a corollary) to the highly anticipated ruling in *RadLAX*, the Seventh Circuit in *In re River East Plaza, LLC*, 669 F.3d 826 (7th Cir. 2012), affirmed a bankruptcy court's ruling that a debtor could not "cram down" a chapter 11 plan over the objection of an undersecured creditor which had made a section 1111(b) election by substituting a lien on 30-year U.S. Treasury bonds as the "indubitable equivalent" of the creditor's mortgage lien on the property.

"Mootness" is a doctrine that precludes a reviewing court from reaching the underlying merits of a controversy. In federal courts, an appeal can be either constitutionally or equitably moot. Constitutional mootness is derived from Article III of the U.S. Constitution, which limits the jurisdiction of federal courts to actual cases or controversies and, in furtherance of the goal of conserving judicial resources, precludes adjudication of cases that are hypothetical or merely advisory. In contrast, "equitable mootness" bars adjudication of an appeal when a comprehensive change of circumstances occurs such that it would be inequitable for a reviewing court to address the merits of the appeal. In bankruptcy cases, equitable mootness is often invoked in an effort to preclude appellate review of an order confirming a chapter 11 plan.

In *In re Thorpe Insulation Co.*, 671 F.3d 980 (9th Cir. 2012), *amended and superseded on denial of rehearing en banc*, 677 F.3d 869 (9th Cir. 2012), the Ninth Circuit, in a matter of first impression, held that an appeal by certain nonsettling asbestos insurers of an order confirming a chapter 11 case was not equitably moot. According to the Ninth Circuit, the insurers used due diligence in seeking a stay, the plan had not been substantially consummated (as defined in section 1101 of the Bankruptcy Code), remedies short of reversing confirmation would not inequitably affect the interests of third-party asbestos claimants or a lender that had extended credit to the reorganized debtor, and a remedy could be fashioned for the insurers by a multitude of options other than complete plan reversal.

In *In re Philadelphia Newspapers, LLC*, 690 F.3d 161 (3d Cir. 2012), the Third Circuit held that the foremost consideration in ruling on a challenge to plan confirmation on the basis of equitable mootness is "whether allowing the appeal to go forward will undermine the plan, and not merely whether the plan has been substantially consummated." According to the Third Circuit, the district court erred by: (i) finding equitable mootness relying only on the plan's substantial consummation under the Bankruptcy Code's definition; (ii) failing to perform an analysis of whether a ruling favorable to the appellants would upset the confirmed plan; and (iii) faulting the appellants for not seeking a stay, without explaining whether a stay was critical, given the progression of the debtors' bankruptcy cases.

In *In re Charter Communications, Inc.*, 691 F.3d 476 (2d Cir. 2012), the Second Circuit deepened a split between the circuits with respect to the standard of review and burden of proof to be applied in equitable-mootness cases. The court held that once a chapter 11 plan has been substantially consummated, an appeal is presumed to be equitably moot unless the appellant can demonstrate that it has met all five of the criteria delineated in its previous ruling in *Frito-Lay, Inc. v. LTV Steel Co. (In re Chateaugay Corp.)*, 10 F.3d 944 (2d Cir. 1993). By appearing to abandon the balancing approach employed by other circuits in this context, the Second Circuit now stands alone in presuming that an appeal is equitably moot following substantial consummation of a chapter 11 plan. This deepening rift may be a compelling invitation to review by the U.S. Supreme Court.

The strategic importance of classifying claims and interests under a chapter 11 plan is sometimes an invitation for creative machinations designed to muster adequate support for confirmation of the plan. A prominent bone of contention in the ongoing plan-classification dispute concerns the legitimacy of separately classifying similar, but arguably distinct, kinds of claims in an effort to create an accepting impaired class or to prevent a dissenting creditor from dominating a class because its claim is so substantial that the creditor can ensure that the class votes to reject a plan. Sometimes referred to as class "gerrymandering," this practice was the subject of a ruling handed down by a bankruptcy appellate panel in *In re Loop 76, LLC*, 465 B.R. 525 (B.A.P. 9th Cir.

2012). The panel affirmed a bankruptcy-court ruling that an unsecured-deficiency claim should be classified separately from the claims of other unsecured creditors because the undersecured creditor had recourse to a guarantee for payment of its deficiency claim, such that the claims were not substantially similar.

In *In re 18 RVC, LLC*, 2012 WL 5336733 (Bankr. E.D.N.Y. Oct. 22, 2012), the court ruled that the existence of a personal guarantee for an unsecured claim of a partially secured lender is insufficient to support separate classification of that claim under section 1122(a) of the Bankruptcy Code as one that is not "substantially similar" to all other unsecured claims. The ruling was the first outside the Ninth Circuit to decline to follow *Loop*. In doing so, the *18 RVC* court agreed with the reasoning articulated in *In re 4th Street East Investors, Inc.*, 2012 WL 1745500 (Bankr. C.D. Cal. May 15, 2012), the first decision rejecting *Loop*, where the bankruptcy court held that the existence of a nondebtor guarantee is an insufficient basis to separately classify unsecured claims.

In *Federal National Mortgage Assoc. v. Village Green I GP*, 2012 WL 6045896 (W.D. Tenn. Dec. 5, 2012), the district court ruled that a bankruptcy court improperly rejected outright the "doctrine of artificial impairment," which refers to the manipulation of classes of claims in order to artificially create an accepting class of impaired claims. Reversing and remanding the decision below, the district court concluded that the determining factor should be not whether the impairment was artificial, but whether the impairment was *without justification*. The court rejected the majority view that artificial impairment "runs afoul" of the requirements for chapter 11 confirmation, including sections 1129(a)(3) and 1129(a)(10).

In *In re American Capital Equipment, LLC*, 688 F.3d 145 (3d Cir. 2012), the Third Circuit held as a matter of first impression that a bankruptcy court may, in certain circumstances, resolve confirmation issues at the disclosure-statement hearing. The court of appeals affirmed a bankruptcy court's ruling at the disclosure-statement stage that: (i) a chapter 11 plan did not satisfy the Bankruptcy Code's requirements that a plan be "feasible" and proposed in "good faith"; and (ii) the debtors' chapter 11 cases should be converted to chapter 7 liquidations due to the plan's "patent unconfirmability."

In *In re Federal-Mogul Global Inc.*, 684 F.3d 355 (3d Cir. 2012), the Third Circuit held that a debtor could assign insurance policies to an asbestos trust established under section 524(g) of the Bankruptcy Code, notwithstanding anti-assignment provisions in the policies and applicable state law. Like the courts below, the Third Circuit determined that it had already held in *In re Combustion Engineering, Inc.*, 391 F.3d 190 (3d Cir. 2004), that section 1123 of the Bankruptcy Code preempts anti-assignment provisions which would otherwise bar the transfer of insurance rights to an asbestos trust. The Third Circuit rejected the argument that section 1123's preemption scope should be based on section 1142 of the Bankruptcy Code (providing that the debtor shall implement the plan "[n]otwithstanding any otherwise applicable nonbankruptcy law, rule, or regulation relating to financial condition") and the Ninth Circuit's ruling in *Pac. Gas & Elec. Co. v. California ex rel. California Dept. of Toxic Substances Control*, 350 F.3d 932 (9th Cir. 2003). The court saw no reason to read sections 1123 and 1142 coextensively. In addition to finding *Pacific Gas* distinguishable, the Third Circuit was "unconvinced" that sections 1123 and 1142 are so similar that they must be read together.

In *In re Caviata Attached Homes, LLC*, 481 B.R. 34 (B.A.P. 9th Cir. 2012), the court considered as a matter of first impression whether unforeseen circumstances prevented a chapter 11 debtor from complying with the terms of a chapter 11 plan confirmed in a previous chapter 11 case. Section 1127(b) of the Bankruptcy Code prohibits the modification of a substantially consummated plan. Even so, some courts have held that serial chapter 11 filings are not per se impermissible and that a second plan may modify the first plan where there has been an unforeseeable or unanticipated change in circumstances.

In *Caviata*, the court considered an appeal from a bankruptcy-court order dismissing a serial chapter 11 filing 15 months after confirmation of a plan in the debtor's previous chapter 11 case. The appellate panel cautioned that "[e]ven extraordinary and unforeseeable changes will not support a new Chapter 11, if these changes do not substantially impair the debtor's performance under the confirmed plan." It left undisturbed the bankruptcy court's finding that a decline in the U.S. economy between 2010 and 2011 was not an unforeseeable changed circumstance that substantially impaired the debtor's ability to perform under its confirmed chapter 11 plan.

CLAIMS/DEBT TRADING

A Delaware bankruptcy-court ruling in 2012 reignited the debate concerning whether sold or assigned claims can be subject to disallowance under section 502(d) of the Bankruptcy Code on the basis of the seller's receipt of a voidable transfer. In *In re KB Toys, Inc.*, 470 B.R. 331 (Bankr. D. Del. 2012), the court rejected as unworkable the distinction between a sale and an assignment of a claim for purposes of disallowance that was drawn by the district court in *Enron Corp. v. Springfield Associates, L.L.C. (In re Enron Corp.*), 379 B.R. 425 (S.D.N.Y. 2007) ("*Enron II*"), *vacating Enron Corp. v. Springfield Associates, L.L.C. (In re Enron Corp.)*, 2005 WL 3873893 (Bankr. S.D.N.Y. Nov. 28, 2005), and *Enron Corp. v. Avenue Special Situations Fund II, LP (In re Enron Corp.)*, 340 B.R. 180 (Bankr. S.D.N.Y. 2006).

In *KB Toys*, the bankruptcy court ruled that several transferred trade claims should be disallowed under section 502(d) because the transferors had received voidable preferences. According to the court, "The plain language, legislative history, and decisional law support the view that a claim in the hands of a transferee has the same rights and disabilities as the claim had in the hands of the original claimant. Disabilities attach to and travel with the claim." The court also wrote that "the assertion that subjecting transferred claims to § 502(d) disallowance would cause disruption in the claims trading market is a hobgoblin without a house to haunt."

In *Longacre Master Fund, Ltd. v. ATS Automation Tooling Systems Inc.*, 2012 WL 4040176 (2d Cir. Sept. 14, 2012), the Second Circuit handed down an unpublished ruling that might have addressed the claims-trading section 502(d) controversy head-on but did not. In *Longacre*, the debtor objected to a traded claim (among others) under section 502(d) for the purpose of preserving its ability to prosecute preference actions associated with the claim. The objection was ultimately settled, but the buyer of the claim sued the seller, arguing that the claim had been "impaired," thereby triggering the seller's obligation under the claims-assignment agreement to repurchase the claim.

The district court ruled in favor of the seller, reasoning that the debtor's objection under section 502(d) did not amount to "impairment" under the agreement because it merely preserved the debtor's right to object, rather than being "substantive." Moreover, the district court wrote, "because the Agreement [e]ffected a sale and not a pure assignment of the Claim, for the reasons stated in [*Enron II*], no section 502(d) objection (even if one were to have been made) would have constituted an Impairment in the first instance." The court also determined that the assignor had not breached its representations and warranties regarding the absence of potential preference actions because it had no knowledge of such actions.

The Second Circuit vacated the judgment, ruling that "nothing in the language of [the agreement] requires that the objection be meritorious" to constitute impairment triggering the repurchase obligation. The court also faulted the district court's decision regarding the absence of any breach of warranty, finding that a disputed material issue of fact existed as to the assignor's knowledge of a possible preference action and related objection. The Second Circuit briefly discussed whether the agreement constituted a sale rather than an assignment. However, it did not rule on this issue, nor did it address the district court's observations regarding *Enron II* and the purported protection from disallowance under section 502(d) of claims that have been sold rather than assigned.

CREDITOR RIGHTS

In *Akanthos Capital Mgmt., LLC v. CompuCredit Holdings Corp.*, 677 F.3d 1286 (11th Cir. 2012), the Eleventh Circuit reversed a district-court decision declining to dismiss claims brought by noteholders under Georgia's Uniform Fraudulent Transfers Act ("UFTA") to avoid fraudulent transfers allegedly made by the issuing company. The primary issue confronting the Eleventh Circuit involved the circumstances under which a "no-action" clause in a bond indenture precludes noteholders from taking legal action against a debt issuer. In enforcing the terms of the no-action clause to bar noteholders from bringing UFTA claims, the court refused to deviate from legal precedent that generally discourages efforts to circumvent the provisions of a contract and refused to alter the terms of an agreement in cases not involving an indenture trustee's demonstrated conflict of interest.

In *In re Windmill Durango Office, LLC*, 481 B.R. 51 (B.A.P. 9th Cir. 2012), a bankruptcy appellate panel ruled that a bankruptcy court did not abuse its discretion in denying, for lack of "cause" under Bankruptcy Rule 3018(a), the motion of a secured creditor that had been assigned another creditor's claim, whereby the secured creditor sought to withdraw the assignor's vote in favor of the debtor's chapter 11 plan and to submit a substitute ballot rejecting the plan. The secured creditor had admittedly purchased the claim as a means to block confirmation of a plan providing for cramdown treatment of its secured claim. The bankruptcy court below explained that it is not appropriate for creditors "to wait 'til the plans [were] balloted and then decide what claims [they were] going to buy" and that the bank's attempt to change its vote to block confirmation was improperly motivated and "did the process violence." Accordingly, the bankruptcy court denied the bank's motion to change its vote for failure to show "cause" under Rule 3018(a). The appellate panel affirmed.

CROSS-BORDER BANKRUPTCY CASES

October 17, 2012, marked the seven-year anniversary of the effective date of chapter 15 of the Bankruptcy Code. Governing cross-border bankruptcy and insolvency cases, chapter 15 is patterned after the Model Law on Cross-Border Insolvency (the "Model Law"), a framework of legal principles formulated by the United Nations Commission on International Trade Law in 1997 to deal with the rapidly expanding volume of international insolvency cases. The Model Law has now been adopted in one form or another by 19 nations or territories. There were several notable rulings handed down in 2012 in connection with cross-border bankruptcy cases.

For example, addressing an apparent matter of first impression concerning the ability of a U.S. bankruptcy court presiding over a chapter 15 case to examine foreign-court decisions for the purpose of determining whether litigants received their due-process rights, the court in *SNP Boat Service S.A. v. Hotel Le St. James*, 2012 WL 1355550 (S.D. Fla. Apr. 18, 2012), concluded that the bankruptcy court abused its discretion in ordering discovery for the purpose of examining whether a creditor's interests were sufficiently protected in a French *sauvegarde* proceeding. It accordingly reversed the bankruptcy court's dismissal of the debtor's chapter 15 case as a sanction for failing to comply with its discovery orders.

A New York district court held in *CT Investment v. Carbonell and Grupo Costamex*, 2012 WL 92359 (S.D.N.Y. Jan. 11, 2012), that because a U.S. bankruptcy court had recognized a foreign debtor's Mexican insolvency proceeding under chapter 15, "comity" should be extended to the Mexican insolvency court's orders by staying litigation commenced in the U.S. district court by the Mexican debtor's secured creditors seeking to recover on guarantees issued by the debtor's nondebtor affiliates. The court concluded that the Mexican court order staying collection actions against nondebtor guarantors was not "manifestly contrary" to U.S. public policy. The court reached this conclusion in light of, among other things, several U.S. bankruptcy-court rulings extending the automatic stay, under appropriate circumstances, to nondebtor parties in order to assist in and maintain the integrity of the administration of a debtor's bankruptcy case.

A contrary conclusion was reached by the bankruptcy court in *In re Vitro S.A.B. de C.V.*, 473 B.R. 117 (Bankr. N.D. Tex. 2012). In *Vitro*, one of several court rulings involving the same chapter 15 debtor, the court ruled that releases of nondebtor guarantors included in the Mexican plan of reorganization of Mexican glassmaker Vitro S.A.B. de C.V. ("Vitro") were unenforceable as being contrary to U.S. public policy. On direct appeal to the Fifth Circuit, the court affirmed, ruling in *Ad Hoc Group of Vitro Noteholders v. Vitro S.A.B. de C.V. (In re Vitro S.A.B. de C.V.)*, 2012 WL 5935630 (5th Cir. Nov. 28, 2012), that such releases *could* be enforceable in the U.S. under section 1507 of the Bankruptcy Code as a form of "additional assistance" to a foreign representative in a foreign bankruptcy proceeding recognized by a U.S. bankruptcy court under chapter 15 of the Bankruptcy Code, but only under "exceptional circumstances" not present in the case before it.

In *In re Metcalfe & Mansfield Alternative Investments*, 421 B.R. 685 (Bankr. S.D.N.Y. 2012), the court, by way of "additional assistance" in a chapter 15 case involving a Canadian debtor, enforced a Canadian court's order confirming a restructuring plan that contained nondebtor releases and injunctions, even though it was uncertain whether a U.S. court would have approved the releases and injunctions in a case under chapter 7 or 11 of the Bankruptcy Code. The court reasoned that such uncertainty was of little consequence in the case before it, which involved not the propriety of nondebtor injunctions and releases in a plenary bankruptcy case, but rather a request to enforce a foreign judgment in a chapter 15 case. The court concluded that "principles of enforcement of foreign judgments and comity in chapter 15 cases strongly counsel approval of enforcement in the United States of the third-party non-debtor release and injunction provisions included in the Canadian Orders, even if those provisions could not be entered in a plenary chapter 11 case."

In *In re Vitro, S.A.B. de C.V.,* 470 B.R. 408 (N.D. Tex. 2012), the district court affirmed a bankruptcy court's decision that an individual appointed by foreign debtor Vitro, rather than the Mexican bankruptcy court, could serve as Vitro's "foreign representative" under chapter 15 of the Bankruptcy Code and was thus authorized to commence a chapter 15 case on Vitro's behalf. The Fifth Circuit later upheld the ruling on appeal. *See In re Vitro, S.A.B. de C.V.*, 2012 WL 5935630 (5th Cir. Nov. 28, 2012).

In *In re Vitro Asset Corp.*, 2012 BL 317004 (Bankr. N.D. Tex. Dec. 4, 2012), the court ruled that the decision by Vitro to shift property secretly out of the U.S. and to reincorporate a number of subsidiaries offshore amounted to fraud under U.S. law justifying the commencement of involuntary bankruptcy cases against the subsidiaries. The court held that the actions, including the reincorporation of five subsidiaries in the Bahamas and failure to disclose information to U.S. courts in an effort to frustrate a bid by a group of hedge-fund bondholders to push Vitro's U.S. subsidiaries into bankruptcy, constituted "special circumstances" allowing creditors to file an involuntary bankruptcy case against a company "when there is fraud, trick, artifice, or scam by an alleged debtor." The court also ruled that, on the basis of rulings handed down by New York State courts, the bondholders' claims were not subject to bona fide dispute within the meaning of section 303(b)(1) of the Bankruptcy Code.

In *In re Elpida Memory, Inc.*, 2012 WL 6090194 (Bankr. D. Del. Nov. 20, 2012), the court ruled that, when evaluating a transfer of assets located in the U.S. as part of a "global" transaction previously approved by a foreign court in a bankruptcy proceeding recognized under chapter 15 of the Bankruptcy Code, the U.S. bankruptcy court must review the transaction under the "business judgment" standard applied to a proposed transfer by a bankruptcy trustee outside the ordinary course of the debtor's business under section 363(b) of the Bankruptcy Code. According to the court, requiring a U.S. bankruptcy court to defer in all instances to a foreign-court decision would "gut" section 1520 of the Bankruptcy Code, which makes section 363 applicable to proposed transfers of U.S. assets.

In *In re Lee*, 472 B.R. 156 (Bankr. D. Mass. 2012), the court, addressing an apparent matter of first impression, ruled that a foreign representative bears the initial burden of establishing that he is entitled to turnover of the debtor's U.S. assets under sections 1521(a)(5) and 1521(b) of the Bankruptcy Code, as well as the initial burden of demonstrating that the interests of the foreign debtor and creditors are sufficiently protected in connection with such relief, as provided in section 1522. However, the court also held that the ultimate burden of establishing the absence of sufficient protection rests on the parties opposing the relief.

In *Trillium (Nelson) Properties Ltd v Office Metro Ltd* [2012] EWHC 1191 (Ch) (09 May 2012), the English High Court for the first time ruled on the requirements governing the existence of an "establishment" under the EC Regulation. Under the EC Regulation—like the Model Law and chapter 15—"main" insolvency proceedings may be commenced on behalf of a debtor only in the single jurisdiction in which the debtor's "centre of main interests" is located. Where a main proceeding has been instituted in one EU Member State, the EC Regulation provides that "secondary" proceedings may be commenced in another Member State if the debtor "possesses an establishment within the territory of that other Member State." "Establishment" is defined by the EC Regulation as "any place of operations where the debtor carries out non-transitory economic activity with human means and goods." In *Trillium*, the English court ruled that a foreign debtor whose main insolvency proceedings had been opened in Luxembourg carried on no more than "transitory" functions in the U.K. that did not amount to "economic activity" necessary to create an "establishment."

In *Rubin v. Eurofinance SA* [2012] UKSC 46 (24 Oct. 2012) and *New Cap Re v. AE Grant* [2012] UKSC 46 (24 Oct. 2012), the U.K. Supreme Court handed down judgments in two cases where insolvency practitioners were seeking to enforce foreign (non-EU) court judgments arising from insolvency proceedings in their jurisdictions (the U.S. and Australia) against English defendants in English courts. The majority held that *Cambridge Gas Transportation Corporation v. Official Committee of Unsecured Creditors of Navigator Holdings Plc* [2007] 1 AC 508, which previously promoted the idea of universality of recognition in insolvency proceedings, was wrongly decided. Instead, the Supreme Court held that insolvency judgments are subject to standard common-law principles relating to recognition and enforcement. According to the court, a foreign judgment cannot be enforced under either the Cross-Border Insolvency Regulations 2006 (enacting the Model Law in the U.K.) or section 426 of the Insolvency Act because, in the court's view, neither expressly provides for the enforcement of judgments. The decision will make it more difficult to enforce foreign insolvency judgments in England and may lead to an increase in the volume of parallel insolvency proceedings filed in English courts in cross-border bankruptcy cases (e.g., "nonmain" proceedings under the Model Law) for the purpose of obtaining recognition of (and enforcing) such judgments.

ESTATE PROPERTY

In *Lowry v. Croft (In re Croft)*, 2012 BL 321154 (W.D. Tex. Dec. 10, 2012), the district court considered, as a matter of first impression, whether the right to appeal a judgment entered prior to bankruptcy on a claim asserted against the debtor is property of the estate, as defined in section 541(a) of the Bankruptcy Code, and thus subject to sale by a bankruptcy trustee under section 363(b). The court ruled that such a "defensive appellate right" is a salable asset of the estate. In doing so, the court was persuaded by *In re Mozer*, 302 B.R. 892 (C.D. Cal. 2003), in which the district court came to a similar conclusion, and rejected the contrary decision in *In re Morales*, 403 B.R. 629 (Bankr. N.D. Iowa 2009).

EXECUTORY CONTRACTS AND UNEXPIRED LEASES

The Seventh Circuit held as a matter of first impression in *Sunbeam Products, Inc. v. Chicago American Manufacturing, LLC*, 686 F.3d 372 (7th Cir. 2012), *cert. denied*, 2012 WL 4812510 (Dec. 10, 2012), that when a trademark license is rejected in bankruptcy, the licensee does not lose the ability to use any licensed intellectual property. In doing so, the court expressly rejected the holding in *Lubrizol Enters., Inc. v. Richmond Metal Finishers, Inc.*, 756 F.2d 1043 (4th Cir. 1985), providing what appeared to be a compelling invitation to U.S. Supreme Court review of this important issue to resolve the resulting split in the circuits. However, the Supreme Court declined to hear the case December 10, 2012, when it denied a petition for a writ of certiorari.

In *In re Spansion, Inc.*, 2012 WL 6634899 (3d Cir. Dec. 21, 2012), the debtor, a computer-memory manufacturer, sued Apple Inc. ("Apple") and Samsung Electronics Co., Ltd., for patent violations. Apple settled with the debtor in an agreement whereby the debtor promised to dismiss the complaint as to Apple and to not sue Apple in the future for use of the intellectual property involved. The debtor subsequently filed for chapter 11 protection and rejected the settlement agreement. Apple claimed that the agreement provided it with an intellectual property "license" entitled to the protections of section 365(n) of the Bankruptcy Code. The Third Circuit upheld the lower courts' rulings that Apple's rights under the agreement were protected by section 365(n). According to the Third Circuit, " '[A] license . . . [is] a mere waiver of the right to sue by the patentee,' " such that a covenant not to sue and a license are effectively equivalent. Because the settlement agreement provided Apple with such a license, the court concluded that the debtor's rejection of the agreement triggered Apple's right to elect to retain its licensing rights under section 365(n).

Courts disagree as to whether the rights of a nondebtor lessee or sublessee under section 365(h)(1) of the Bankruptcy Code to remain in possession are effectively extinguished if the leased real property—or the lease itself, rather than being rejected—is sold free and clear of any "interest" under section 363(f). In *In re Zota Petroleums, LLC*, 482 B.R. 154 (Bankr. E.D. Va. 2012), the bankruptcy court distinguished the Seventh Circuit's arguably contrary decision in *Precision Industries, Inc. v. Qualitech Steel SBQ*, 327 F.3d 537 (7th Cir. 2003), ruling that "[t]he rights of the tenant may not be extinguished by a § 363 sale; to hold to the contrary would give open license to debtors to dispossess tenants by utilizing the § 363 sale mechanism."

In *In re Hostess Brands, Inc.*, 477 B.R. 378 (Bankr. S.D.N.Y. 2012), the court ruled that, where a collective bargaining agreement has expired prebankruptcy, the agreement cannot be assumed or rejected under section 1113 of the Bankruptcy Code, which governs assumption or rejection of bargaining agreements in bankruptcy. Instead, the parties are left to the "fallback regime" of otherwise applicable law, including the National Labor Relations Act. As a consequence, the court dismissed the debtors' motion under section 1113 to reject an expired bargaining agreement for lack of subject-matter jurisdiction. However, the court separately granted the debtors' motion pursuant to section 1113(e) to implement interim changes to the terms of expired agreements and granted their motion to reject collective bargaining agreements that had not expired.

FILING ELIGIBILITY

In *In re Northern Mariana Islands Retirement Fund*, Case No. 12-00003 (Dist. N. Marianas June 13, 2012), the court ruled that the Northern Mariana Islands Retirement Fund, a significantly underfunded public-employee pension plan expected to fail in 2014, is not eligible to be a chapter 11 debtor. The case is noteworthy because it is the first time that a court has addressed whether a public pension fund with significantly underfunded defined-benefit liabilities can file for bankruptcy protection. The ruling turned on the fund's lack of autonomy and its limited function, leading the court to conclude that the fund was a "governmental unit" rather than a "person" eligible for bankruptcy relief.

FINANCIAL CONTRACTS/SETOFFS

"Safe harbors" in the Bankruptcy Code designed to insulate nondebtor parties to financial contracts from the consequences of a bankruptcy filing by the debtor counterparty have been the focus of a considerable amount of scrutiny in recent years, including 2012. Some of these rulings addressed the "settlement payment" defense to avoidance of a transfer provided by section 546(e) of the Bankruptcy Code.

For example, in *AP Services LLP v. Silva*, 483 B.R. 63 (S.D.N.Y. 2012), the court held that payments made in connection with a leveraged buyout to holders of privately held securities were safe-harbored under section 546(e), notwithstanding the fact that the payments passed directly from the purchaser to the seller rather than through a financial intermediary. The decision is consistent with the trend among the federal circuit courts of appeal interpreting section 546(e) broadly. *See In re Enron Creditors Recovery Corp. v. Alfa, S.A.B. de C.V.*, 651 F.3d 329 (2d Cir. 2011); *In re Plassein Int'l Corp.*, 590 F.3d 252 (3d Cir. 2009); *In re QSI Holdings, Inc.*, 571 F.3d 545 (6th Cir. 2009); *Contemporary Indus. Corp. v. Frost*, 564 F.3d 981 (8th Cir. 2009).

In *Lightfoot v. MXEnergy Electric (In re MBS Management Services, Inc.)*, 690 F.3d 352 (5th Cir. 2012), the Fifth Circuit ruled that an agreement between a property-management company and a power company for the purchase of "full electric requirements" for specified properties was a "forward contract" within the meaning of section 101(25) of the Bankruptcy Code. As a consequence, the management company's payments to the power company pursuant to the agreement within 90 days of the power company's chapter 11 filing were exempt from preference recovery under section 546(e), despite the contention that the agreement did not specify exact quantities and delivery dates. According to the Fifth Circuit, neither the statutory definition of "forward contract" nor section 546(e) contains limitations regarding a specific quantity and delivery date.

In *In re Quebecor World (USA) Inc.*, 480 B.R. 468 (S.D.N.Y. 2012), the district court ruled that payments made to redeem outstanding notes by a company on the verge of bankruptcy qualified as "settlement payments" under section 546(e) and thus could not be clawed back in an avoidance action. The court upheld the bankruptcy court's application of the Second Circuit's decision in *Enron* and confirmed that section 546(e) broadly encompasses cash transfers made to "complete a securities transaction."

MUNICIPAL DEBTORS

The contrasts between chapter 9 and other chapters of the Bankruptcy Code were highlighted in a ruling handed down in 2012 by the Alabama bankruptcy court presiding over the largest municipal bankruptcy in U.S. history. In *In re Jefferson County, Alabama*, 474 B.R. 228 (Bankr. N.D. Ala. 2012), the court denied a state-court-appointed receiver's request to retain control of the debtor's sewer system, holding that the bankruptcy court had exclusive jurisdiction over the property and that the automatic stays imposed by sections 362 and 922 of the Bankruptcy Code precluded continuation of the receiver's stewardship. The bankruptcy court also refused to abstain from hearing the bankruptcy case or to modify the automatic stays. However, the court ruled that the stays did not preclude the continuation of payments to warrant holders from the sewer system's pledged revenue stream, net of any necessary operating costs.

In *In re City of Stockton, California*, 478 B.R. 8 (Bankr. E.D. Cal. 2012), the court held that: (i) the debtor city could unilaterally reduce the benefits of its retirees without offending the Contracts Clause of the U.S. Constitution (even where those benefits otherwise may be considered contractual in nature under state law); and (ii) the court was not permitted to enjoin the debtor from implementing the benefit reductions due to the express limitations on a bankruptcy court's jurisdictional mandate in chapter 9 cases. The ruling is an additional blow to the rights of municipal employees and retirees in the wake of the ruling in *In re City of Vallejo, California*, 432 B.R. 262 (E.D. Cal. 2010). In *Vallejo*, the district court affirmed a bankruptcy-court ruling that section 1113 of the Bankruptcy Code does not apply in chapter 9, potentially making it easier for a municipal debtor to reject a collective bargaining agreement.

Several courts in Alabama have considered the issue of eligibility to file for chapter 9 relief under Alabama law. In another ruling involving Jefferson County, Alabama, *In re Jefferson County, Ala.*, 469 B.R. 92 (Bankr. N.D. Ala. 2012), the court ruled that a municipal debtor was eligible for chapter 9 relief even though it issued sewer warrants rather than bonds. According to the court, resort to a bankruptcy court "is not constrained by the types of debts outstanding on the day a bankruptcy case is initiated."

The *Jefferson County* ruling contravened an earlier ruling by another Alabama bankruptcy judge, who held that the City of Prichard, Alabama, was not eligible to be a chapter 9 debtor because it did not have outstanding bonds. *See In re City of Prichard, Ala.*, No. 1:09-BK-15000 (Bankr. S.D. Ala. Aug. 31, 2010). *Prichard* was appealed to the district court, which asked the Alabama Supreme Court to weigh in on the question in May 2011.

The Alabama Supreme Court did so in *City of Prichard v. Balzer*, 95 So. 3d 1 (2012), ruling that state law "does not require that an Alabama municipality have indebtedness in the form of refunding bonds or funding bonds as a condition to eligibility to proceed under Chapter 9." According to the court, "It is clear that the legislature intended to authorize every county, city, town, and municipal authority . . . to file for federal bankruptcy protection."

SOVEREIGN DEBTORS

In *NML Capital, Ltd. v. Republic of Argentina*, 699 F.3d 246 (2d Cir. 2012), the Second Circuit upheld a lower-court order enjoining the Republic of Argentina from making payments on restructured debt without making comparable payments to bondholders who did not participate in the restructurings in accordance with an "equal treatment" or "*pari passu*" clause in the bond indenture. The Second Circuit remanded the case below for the purpose of clarifying how the injunction was to operate.

On November 21, 2012, the district court on remand ordered Argentina to pay holdout bondholders approximately $1.33 billion. *See NML Capital, Ltd. v. Republic of Argentina*, 2012 BL 329784 (S.D.N.Y. Nov. 21, 2012). However, Argentina received a reprieve of its obligation to make the payments on November 28, 2012, when the Second Circuit stayed the ruling until it has an opportunity to hear Argentina's appeal, which has been scheduled for argument on February 27, 2013. The emergency stay quelled investor fears of a default by Argentina on December 15, 2012, when $3.3 billion in debt repayments were due.

On December 4, 2012, the Second Circuit denied an emergency motion by old bondholders to modify the stay by requiring Argentina to post $250 million in security. On December 28, 2012, Argentina asked the Second Circuit to reconsider its *pari passu* ruling, claiming that the decision violates Argentina's sovereignty. The U.S. government filed an "amicus" brief backing Argentina's request, arguing that the ruling impacts U.S.-Argentina relations, threatens future debt restructurings, and blocks the legal immunity given to a sovereign country.

VENUE

Under 28 U.S.C. § 1408, a bankruptcy case (except a case under chapter 15) may be filed in any federal district in which the debtor's "domicile, residence, principal place of business . . . or principal assets in the United States . . . have been located for the one hundred and eighty days immediately preceding" the filing of the case. The debtor may also file for bankruptcy in the district in which a case is pending concerning any affiliate, general partner, or partnership of the debtor. Consistent with general rules governing the proper venue for litigation in federal courts, a corporation's "domicile" is generally held to be its state of incorporation.

Under 28 U.S.C. § 1412, "[a] district court may transfer a case or proceeding under title 11 to a district court for another district, in the interest of justice or for the convenience of the parties." Most bankruptcy courts have interpreted 28 U.S.C. § 1406 (regarding cure or waiver of venue defects) to require transfer of venue to an appropriate district if the debtor, faced with an objection to venue, cannot establish compliance with the requirements of 28 U.S.C. § 1408.

In *In re Houghton Mifflin Harcourt Publishing Co.*, 474 B.R. 122 (Bankr. S.D.N.Y. 2012), the debtor and 24 of its affiliates filed for chapter 11 protection in the Southern District of New York to seek confirmation of a prepackaged chapter 11 plan. According to the debtors, venue was proper in that district under the "affiliate rule" because one debtor had a "residence" in New York City and a second had its "principal asset" there. No creditors objected to the venue selected by the companies. In fact, creditors unanimously approved the debtors' prepackaged plan of reorganization and signed plan support agreements that required the cases to be filed in the Southern District of New York.

The U.S. Trustee objected to the chosen venue. The bankruptcy court was critical of the U.S. Trustee's objection, noting that "a transfer would be more expensive and much less convenient for the Debtors' creditors—especially since we here have a prepack, where the case otherwise would be over in 30 days." However, the court felt constrained by 28 U.S.C. § 1406 to rule on the U.S. Trustee's objection. It ultimately held that: (i) the "residence" basis for venue in 28 U.S.C. § 1408 applies only to natural persons and thus could not apply to the first debtor; and (ii) the second debtor's principal asset was its ownership interest in its subsidiaries, and such property was located outside New York.

Despite its determination that venue in the Southern District of New York was improper, the court realized that "a transfer would be destructive to creditor interests, to the great expense and inconvenience of the parties (especially creditors), and the exact opposite of the interests of justice." It accordingly fashioned a creative solution. The court confirmed the debtors' chapter 11 plan while the U.S. Trustee's objection was still pending and ordered venue of the cases to be transferred to another district *after the effective date of the plan*.

In *In re Patriot Coal Corp.*, 482 B.R. 718 (Bankr. S.D.N.Y. 2012), the court held that the debtor parent company's incorporation of two subsidiaries in New York shortly before its bankruptcy filing, while technically complying with the "affiliate rule" in 28 U.S.C. § 1408, was inconsistent with the intent of the rule. "Whether one characterizes the creation of venue as exploiting a loophole or as simply not fair," the court wrote, "one thing is clear: It is not the thing which the statute intended." According to the court, although the debtors complied with section 1408, how they complied with the statute must be taken into account when considering the "interest of justice" prong of section 1412. The court directed that venue be transferred to Missouri because the debtors' corporate headquarters and executive offices were located there and because it would offer the most convenience to the greatest number of parties.

FROM THE TOP

The U.S. Supreme Court handed down only two rulings in 2012 concerning bankruptcy issues. In *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 132 S. Ct. 2065 (2012), a unanimous Court upheld a ruling by the Seventh Circuit denying confirmation of a "cramdown" chapter 11 plan that contemplated the sale of encumbered assets free and clear of all liens without giving a secured creditor the right to credit-bid its claim in connection with the sale. By its ruling, the Supreme Court resolved a circuit split on the proper application of the "indubitable equivalent" prong of section 1129(b)(2)(A) of the Bankruptcy Code.

In *Hall v. U.S.*, 132 S. Ct. 1882 (2012), the Court considered whether federal capital-gains-tax liability resulting from the sale by "family farmer" debtors of their farm property during a chapter 12 case was "incurred by the estate" under section 503(b) of the Bankruptcy Code. This is required to enable the debtor to strip the federal government's corresponding tax claim of its priority, pay the claim pro rata with other general unsecured claims, and discharge any remaining obligation to the government under section 1222(a)(2)(A)—the priority-stripping provision added to the Bankruptcy Code in 2005. The Court, affirming a ruling below by the Ninth Circuit, held by a 5-4 margin that "[t]he federal income tax liability resulting from petitioners' postpetition farm sale is not 'incurred by the estate' under § 503(b) of the Bankruptcy Code and thus is neither collectible nor dischargeable in the Chapter 12 plan."

On October 29, 2012, the Supreme Court agreed to review a case concerning the kinds of trustee misconduct that qualify as "defalcation" under section 523(a)(4) of the Bankruptcy Code and thus constitute a basis to deny discharge of a debt. In *Bullock v. BankChampaign N.A. (In re Bullock)*, 670 F.3d 1160 (11th Cir.), *cert. granted*, 2012 BL 282292 (Oct. 29, 2012), the Eleventh Circuit aligned itself with the Fifth, Sixth, and Seventh Circuits by ruling that defalcation under section 523(a)(4) requires a showing of recklessness by the fiduciary.

CONTINUED RECESSION NOT "EXTRAORDINARY CIRCUMSTANCE" JUSTIFYING MODIFICATION OF CONFIRMED CHAPTER 11 PLAN

David G. Marks

Affirming the bankruptcy court below in a case of first impression, in *In re Caviata Attached Homes, LLC*, 481 B.R. 34 (B.A.P. 9th Cir. 2012), a Ninth Circuit bankruptcy appellate panel held that a relapse into economic recession following a chapter 11 debtor's emergence from bankruptcy was not an "extraordinary circumstance" that would justify the filing of a new chapter 11 case for the purpose of modifying the debtor's previously confirmed plan of reorganization.

MODIFICATION OF A CONFIRMED CHAPTER 11 PLAN

Section 1141(a) of the Bankruptcy Code provides that the terms of a confirmed chapter 11 plan are binding on all parties. Section 1127(b) provides that a confirmed chapter 11 plan may be modified only before the plan has been substantially consummated. Under section 1101(2), "substantial consummation" occurs when: (i) substantially all of the property to be transferred under the plan has been transferred; (ii) the debtor or its successor has assumed the business or management of substantially all of the property dealt with by the plan; and (iii) distributions under the plan have commenced. Taken together, sections 1127(b) and 1141(a) impose an important element of finality in chapter 11 cases that allows stakeholders to rely on the provisions of a confirmed chapter 11 plan.

Although section 1127(b) prohibits modification of a substantially consummated plan, some courts have ruled that "serial" (successive) chapter 11 filings are not per se impermissible and that a second plan may modify the first plan if there has been an unforeseeable or unanticipated change in circumstances. *See Elmwood Dev. Co. v. Gen. Electric Pension Trust (In re Elmwood Dev. Co.*), 964 F.2d 508 (5th Cir. 1992); *In re 1633 Broadway Mars Rest. Corp.*, 388 B.R. 490 (Bankr. S.D.N.Y. 2008). However, as noted by the court in *In re Adams*, 218 B.R. 597 (Bankr. D. Kan. 1998), "[e]ven extraordinary and unforeseeable changes will not support a new Chapter 11, if these changes do not substantially impair the debtor's performance under the confirmed plan." Examples of unforeseen changed circumstances justifying a second chapter 11 filing and modification of a previous plan have included federal-law changes affecting tenancy of an apartment building, termination of service by major airlines that had provided vital customers for an airport hotel, crops or livestock lost due to weather or natural disaster, and substantial adverse judgments. The bankruptcy appellate panel considered this question in *Caviata Attached Homes*.

CAVIATA ATTACHED HOMES

In 2005, Caviata Attached Homes, LLC ("Caviata") obtained a $40.7 million recourse loan from California National Bank ("CNB") to develop a 184-apartment housing complex. In exchange, Caviata executed a promissory note and deed of trust, which assigned Caviata's right, title, and interest in the apartment complex to CNB. Caviata soon defaulted on the loan. In response, the parties entered into a series of forbearance agreements. Caviata, however, defaulted yet again. This time, CNB sued in state court to foreclose. CNB subsequently sold the loan to U.S. Bank, N.A. ("U.S. Bank").

In 2009, before the scheduled foreclosure trial, Caviata filed for chapter 11 protection in Nevada. The company filed a chapter 11 plan proposing to make payments on U.S. Bank's $27.5 million secured claim at a reduced rate of interest for three years, by the end of which Caviata would either sell the apartment complex or refinance the loan.

In its approved disclosure statement, Caviata expressly warned of the risks posed by a continued downturn in the economy on the value of the property and on Caviata's ability either to refinance the U.S. Bank loan or to realize sufficient value from a sale in three years to pay the secured claim of U.S. Bank in full.

U.S. Bank objected to confirmation, arguing that the plan was not feasible, because of, among other things, the declining value of the apartment complex and continued uncertainty in the real estate market. The bankruptcy court overruled U.S. Bank's objections and confirmed the plan. In so ruling, the court agreed with Caviata's witnesses that the apartment complex could be sold for at least $34 million within three years, "when the cycle of downturn would improve."

Caviata filed a second chapter 11 petition in Nevada 15 months later, in August 2011. Although it had not yet defaulted under its confirmed chapter 11 plan, Caviata contended that it would soon be unable to perform, due to an "unexpected" relapse into recession, particularly in the real estate market. At the time of Caviata's second chapter 11 filing, the value of the apartment complex was appraised at $21 million to $23 million.

U.S. Bank sought dismissal of the second chapter 11 case, arguing that the filing was a bad-faith attempt to circumvent the prohibition in section 1127 against modifications to a substantially consummated plan. Caviata countered that section 1127's prohibition does not apply where "extraordinary circumstances" substantially impair a debtor's ability to perform under its confirmed plan.

The bankruptcy court dismissed the case for "cause" under section 1112(b) of the Bankruptcy Code. The court ruled that, although Caviata did not act in bad faith by filing a second chapter 11 case, section 1127 barred the modifications that Caviata sought to make to its confirmed plan. According to the court, "[T]he fact that the economy changes doesn't relieve people from their contractual obligations." It added that "in 2010 there were certainly inklings that the economy was very bad" and that "just being wrong that the economy is worse than [Caviata] thought it was going to be is [not] a basis for filing a new plan." Caviata appealed the dismissal order.

THE BANKRUPTCY APPELLATE PANEL'S DECISION

The bankruptcy appellate panel affirmed, holding that changed market conditions cannot justify a second chapter 11 filing unless the changes were both unforeseeable and fundamental to the market itself. In Caviata's case, the court explained, the risk that the real estate and lending markets would not improve as expected was specifically identified by both Caviata in its disclosure statement and U.S. Bank in its objection to confirmation. It could not be said, therefore, that those conditions were unforeseeable. According to the appellate panel, Caviata did nothing wrong by using its "best guess" for an economic recovery when formulating its chapter 11 plan. Guessing wrong, however, was not an excuse to undo the plan once it was confirmed.

NEWSWORTHY

Last November, for the eighth time in the 12 years of the survey, ***Jones Day*** topped The BTI Consulting Group's "Client Service A-Team" ranking, which identifies the top law firms for client service through a national survey of corporate counsel. For all 12 years of the survey, the Firm has won a place among BTI's "Client Service 30," the elite group within the "A-Team," never ranking below the top four.

Jones Day's Business Restructuring & Reorganization Practice was designated a *Law360* 2012 Practice Group of the Year.

Best Lawyers in America designated ***Peter J. Benvenutti (San Francisco)*** San Francisco "Lawyer of the Year" for 2013 in the practice area of Bankruptcy Litigation.

Kevyn D. Orr (Washington) was included among "Washington, D.C. & Baltimore's Best Lawyers" for 2013 by *Best Lawyers*.

Juan Ferré has joined Jones Day to spearhead the Firm's ***Madrid Business Restructuring & Reorganization Practice***. Mr. Ferré is a leading bankruptcy lawyer in Spain, with more than 15 years of experience in restructuring and insolvency. He arrives at Jones Day from the boutique restructuring firm Pluta in Madrid, where he was Partner-in-Charge.

Joseph M. Tiller (Chicago) was named an Illinois "Rising Star" for 2013 by *Super Lawyers*.

Heather Lennox (New York and Cleveland), ***Brett Barragate (New York)***, ***Rachel Rawson (Cleveland)***, ***David G. Heiman (Cleveland)***, ***Todd Swatsler (Columbus)***, and ***Charles M. Oellermann (Columbus)*** were selected as Ohio "Super Lawyers" for 2013.

An article written by ***Brad B. Erens (Chicago)*** and ***Timothy W. Hoffmann (Chicago)*** entitled "The Triumph of the Trade Creditor in Chapter 11 Reorganizations" was published in the January 2013 edition of *Pratt's Journal of Bankruptcy Law*.

Jones Day's Business Restructuring & Reorganization Practice received a nationwide "Band 1" ranking in *Chambers USA* for 2012.

Brad B. Erens (Chicago) and ***Mark A. Cody (Chicago)*** were named Illinois "Super Lawyers" for 2013.

Thomas A. Wilson (Cleveland) was designated an Ohio "Rising Star" for 2013 by *Super Lawyers*.

An article written by ***Corinne Ball (New York)***, ***Kay V. Morley (London)***, and ***Paul D. Leake (New York)*** entitled "Notable Court Rulings Regarding Cross-border Debt" was published in the January 2013 issue of *Financier Worldwide*.

David G. Heiman (Cleveland) was named a "Top 50 Cleveland, Ohio, Super Lawyer" for 2013.

Heather Lennox (New York and Cleveland) and ***Rachel Rawson (Cleveland)*** were named "Top 50 Women Ohio Super Lawyers" for 2013.

An article written by ***Charles M. Oellermann (Columbus)*** and ***Mark G. Douglas (New York)*** entitled "*In Re Zota*'s Place in the 363 Sale Debate" was published in the January 16, 2013, editions of *Bankruptcy Law360*, *Real Estate Law360*, and *Contract Law360*.

Brett Barragate (New York) was named a "Top 100 Ohio Super Lawyer" for 2013.

OUTLOOK

From a creditor's perspective, *Caviata Attached Homes* underscores the importance of testing a plan proponent's assumptions in a proposed chapter 11 plan with a view toward blocking confirmation if the plan is unfeasible for whatever reason. Building a strong evidentiary record in connection with plan confirmation can forestall subsequent assertion in a serial chapter 11 filing that an eventuality was unanticipated or unforeseeable.

As in other contexts (e.g., orders approving asset sales), the finality of an order confirming a chapter 11 plan is an important part of U.S. bankruptcy jurisprudence. *Caviata Attached Homes* indicates that such finality is not easily skirted (regardless of how the subsequent challenge is formally framed), and stakeholders seldom receive another bite at the apple absent compliance with the Bankruptcy Code's strict requirements or, in some cases, a showing of extraordinary circumstances.

EUROPEAN FOCUS

I'M ABOUT TO GO INSOLVENT AND I'M NOT A BANK—CAN AND WILL THE GOVERNMENT BAIL ME OUT?

Matt Evans

The financial crisis following the collapse of Lehman Brothers and the subsequent sluggish European economy have thrown a spotlight on European Union ("EU") state aid rules and, in particular, the circumstances under which governments can and will intervene to support a firm in difficulty. This article looks beyond the banking sector and provides an overview of the rules governing state aid to all other firms in difficulty.

STATE AID—THE BASICS

The rules governing the provision of state aid form an important limb of EU competition policy and go to the heart of the goal of providing a single market across the EU. The aim, in a nutshell, is to protect competition between firms across the EU and to prevent subsidy races between Member States, the effects of which can include not only the waste of public resources, but the protection of inefficient companies at the expense of their competitors.

State aid comes in many forms, most typically a capital grant, a soft loan or a loan guarantee. It is defined in Article 107(1) of the Treaty on the Functioning of the European Union as:

> any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods . . . , insofar as it affects trade between Member States.

Member States (not the aid beneficiary) must notify the European Commission (the "Commission") of proposed state aid and await clearance before granting the aid. This is referred to as the "standstill obligation", which applies to all aid proposals unless a proposal:

(i) falls within the terms of the General Block Exemption Regulation;

(ii) falls within the scope of the Commission's De Minimis Regulation; or

(iii) is awarded pursuant to an aid scheme which has received prior Commission clearance.

In the months following the onset of the financial crisis, the Commission showed itself to be flexible in applying its state aid approval procedures. In addition to taking the pragmatic step of allocating more staff within DG Competition (the part of the Commission responsible for competition law enforcement) to process state aid applications flooding in from Member States, the vast majority of which related to aid for the banking sector, the Commission issued new guidelines as to how it would apply the state aid rules during the financial crisis. Chief among these were a temporary framework for state aid measures to support access to finance during the financial crisis and a range of new guidance on the application of state aid rules to measures to support banks.

Excluding the financial sector, however, it is important to note that, if a firm is "in difficulty", it will not be eligible for state aid under any of the exemptions listed above. In fact, of the myriad frameworks setting out the legal bases upon which the Commission will approve state aid, only one can be used for aid to firms in difficulty—"rescue and restructuring" aid.

RESCUE AND RESTRUCTURING AID—THE PRINCIPLES

Outside the banking sector, the legal framework governing the award of state aid to firms experiencing financial difficulties has not changed since 2004. The Commission has twice consulted third parties as to whether to amend the rescue and restructuring aid guidelines—first in autumn 2007 and more recently in December 2010—but to date has chosen to leave the guidelines unchanged. At the beginning of October 2012, the Commission decided to extend the 2004 guidelines indefinitely, pending the outcome of a wider review, or "modernisation", of EU state aid rules.

The key principles determining whether a Member State may grant rescue or restructuring aid are summarised below.

Firms in Difficulty

The starting point for assessing the availability of aid is determining whether the proposed aid beneficiary is a "firm in difficulty". If it is not, then in theory a wide range of aid may be available, under different parameters, and this should be explored fully with public (and publicly funded) bodies, which may already be administering approved aid programmes. By contrast, if a potential aid beneficiary constitutes a "firm in difficulty", the only aid available is rescue and restructuring aid.

There is no EU definition of "firm in difficulty". However, rescue and restructuring aid guidelines identify three circumstances in which a firm qualifies as such:

(i) the company meets local legal criteria for being subject to insolvency proceedings;

(ii) a limited liability company has lost more than half of its registered capital, more than one quarter of which has been lost over the preceding 12 months; or

(iii) a company of which at least some members have unlimited liability has lost more than half of its capital, more than one quarter of which has been lost over the preceding 12 months.

Even if a firm does not fulfil one of these three criteria, it may still be deemed to be in difficulty if the company can demonstrate that it cannot recover using either its own resources or funds that it can obtain from owners/shareholders or market sources. Finally, a newly created firm—a company operating for fewer than three years—is not eligible for rescue or restructuring aid, regardless of its financial condition.

KEY POINTS:

- **Rescue and restructuring aid is the only state aid option for firms in or close to insolvency.**
- **Aid recipients must downsize or otherwise suffer some pain in return for the aid.**
- **Special rules apply to banks; everyone else has been subject to the same rules since 2004.**

The Commission has also sought to limit the availability of rescue and restructuring aid by establishing a rule that a firm belonging to or being taken over by a larger business group is not eligible for rescue and restructuring aid unless it can be demonstrated that the firm's difficulties are intrinsic and not the result of an arbitrary allocation of costs within the group. Furthermore, the financial difficulties must be too serious to be dealt with by the group itself.

One Time, Last Time

A final, crucial element of the regime for rescue and restructuring aid is the "one time, last time" principle. This provides that if a firm has previously received rescue and restructuring aid, it cannot do so again. In other words, there may be good reasons to intervene once in order to keep a firm afloat, but ultimately market forces should be allowed to prevail. Repeat state intervention is not permitted.

TWO DISTINCT TYPES OF AID

Rescue and restructuring aid consists of two distinct types of aid—rescue aid and restructuring aid.

Rescue Aid

Rescue aid is a form of emergency funding required to keep the beneficiary firm afloat. It is limited to liquidity support in the form of loan guarantees or loans. The loans must be granted at an interest rate at least comparable to those charged for loans to healthy firms and with reference to official reference rates published regularly by the Commission. The loans must be short-term. Loans must be repaid, and any underlying guarantee(s) must expire no later than six months after disbursement of the first aid installment. The aid must be limited to the minimum required to keep the firm in business for the period during which the aid is authorised. It must also be warranted on the grounds of "serious social difficulties", including, for example, job losses in an already economically distressed region or the cessation of essential services.

The aid must also have no unduly adverse spillover effects on other Member States. In practice, however, this condition is applied with some flexibility, such that distortions of competition brought about by the provision of rescue aid can be mitigated during the restructuring process. It is intended that Member States will notify the Commission of proposed rescue aid before it is granted, together with an undertaking that within six months of the aid authorisation, either the loan will be repaid in full and any underlying guarantee terminated or a restructuring or liquidation plan will be developed for the company.

In the real world, of course, events can move quickly, and it is not always possible to anticipate the requirement for urgent rescue aid. Member States can be persuaded to grant rescue aid forthwith and then subsequently notify the Commission of the aid package. In this eventuality, proof of either loan repayment or a restructuring or liquidation plan must be provided to the Commission within six months of implementation of the rescue aid measure.

Restructuring Aid

Following the provision of rescue aid, the Commission will undertake a separate analysis of the compatibility of restructuring aid to a firm in difficulty. The principle behind the guidelines is to ensure that a detailed restructuring plan is agreed upon with the Commission which restores the long-term viability of the firm within a reasonable time frame without undue distortions of competition. It is usually the case that, unless the aid recipient has a small market share, a condition of aid approval is the implementation of compensatory measures to outweigh the adverse effects of public-funding intervention. Such measures typically consist of divestiture of assets and/or reductions in capacity or market presence.

As with rescue aid, the amount of restructuring aid must be limited to the strict minimum required (i.e., the minimum amount necessary to implement the agreed restructuring plan) in light of the existing financial resources of the company, its shareholders or the business group to which it belongs. Aid beneficiaries are expected to make a significant contribution to the restructuring plan from their own resources by, for example, selling assets that are not essential to the firm's survival or obtaining external financing on market terms.

A version of this abridged article originally appeared in the December 2012 issue of *Corporate Rescue and Insolvency*. It has been reprinted here with permission.

NOTABLE EXITS FROM BANKRUPTCY IN 2012

Company	Filing Date (Bankr. Court)	Conf. Date Effective Date	Assets at Filing	Industry	Result
Lehman Bros. Holdings Inc.	9/15/2008 (S.D.N.Y.)	12/06/2011 CD 3/06/2012 ED	$691 billion	Financial Services	Liquidation
Washington Mutual Inc.	9/26/2008 (D. Del.)	2/24/2012 CD 3/19/2012 ED	$327.9 billion	Bank Holding	Liquidation
Ambac Financial Group, Inc.	11/08/2010 (S.D.N.Y.)	3/14/2012 CD Not Yet Effective	$19 billion	Bond Insurer Holding Company	Reorganization
BankUnited Financial Corp.	5/22/2009 (S.D. Fla.)	3/02/2012 CD 3/09/2012 ED	$15 billion	Bank Holding	Liquidation
The Tribune Company	12/08/2008 (D. Del.)	7/23/2012 CD 12/31/2012 ED	$13.2 billion	Media	Reorganization
Imperial Capital Bancorp, Inc.	12/18/2009 (S.D. Cal.)	5/24/2012 CD 6/08/2012 ED	$4.4 billion	Bank Holding	Liquidation
PFF Bancorp., Inc.	12/05/2008 (D. Del.)	4/26/2012 CD 5/04/2012 ED	$4.1 billion	Bank Holding	Liquidation
Dynegy Inc.	7/06/2012 (S.D.N.Y.)	9/05/2012 CD 10/01/2012 ED	$4.1 billion	Energy	Reorganization
NewPage Corporation	9/07/2011 (D. Del.)	12/13/2012 CD 12/21/2012 ED	$3.5 billion	Paper Manufacturing	Reorganization
The Great Atlantic & Pacific Tea Co., Inc.	12/12/2010 (S.D.N.Y.)	2/28/2012 CD 3/13/2012 ED	$2.8 billion	Retail	Reorganization
Houghton Mifflin Harcourt Publishing Co.	5/21/2012 (S.D.N.Y.)	6/21/2012 CD 6/22/2012 ED	$2.7 billion	Publishing	Reorganization
W.R. Grace & Co.	4/02/2001 (D. Del.)	6/11/2012 CD Not Yet Effective	$2.6 billion	Chemicals	Reorganization (Asbestos Trusts)
The Los Angeles Dodgers	6/27/2011 (D. Del.)	4/13/2012 CD 5/01/2012 ED	$2.15 billion	Baseball	Sale
General Maritime Corp.	11/17/2011 (S.D.N.Y.)	5/03/2012 CD 5/17/2012 ED	$1.8 billion	Maritime Shipping	Reorganization
Borders Group, Inc.	2/16/2011 (S.D.N.Y.)	12/20/2011 CD 1/12/2012 ED	$1.4 billion	Retail	Liquidation
TerreStar Networks, Inc.	10/19/2010 (S.D.N.Y.)	2/15/2012 CD 3/29/2012 ED	$1.4 billion	Telecom	Sale
TerreStar Corp. (Parent of TerreStar Networks)	2/16/2011 (S.D.N.Y.)	10/24/2012 CD Not Yet Effective	$1.4 billion	Telecom	Reorganization
Lee Enterprises, Inc.	12/12/2011 (D. Del.)	1/23/2012 CD 1/30/2012 ED	$1.16 billion	Print Media	Reorganization
Delta Petroleum Corp.	12/15/2011 (D. Del.)	8/16/2012 CD 8/31/2012 ED	$1.02 billion	Oil & Gas	Reorganization
TBS International plc	2/06/2012 (S.D.N.Y.)	3/28/2012 CD 4/12/2012 ED	$686 million	Maritime Shipping	Sale
William Lyons Homes	12/19/2011 (D. Del.)	2/10/2012 CD 2/28/2012 ED	$649 million	Homebuilding	Reorganization
Nebraska Book Company, Inc.	6/27/2011 (D. Del.)	5/30/2012 CD 6/29/2012 ED	$616 million	Publishing	Reorganization
Reddy Ice Holdings	4/12/2012 (N.D. Tex.)	5/22/2012 CD 5/31/2012 ED	$434 million	Manufacturing	Reorganization
Evergreen Solar, Inc.	8/15/2011 (D. Del.)	7/13/2012 CD 7/16/2012 ED	$424 million	Manufacturing	Liquidation
Buffets, Inc.	1/18/2012 (D. Del.)	6/27/2012 CD 7/18/2012 ED	$385 million	Restaurant	Reorganization

HIGHLIGHTS OF 2012

January 6 — The U.S. Bureau of Labor Statistics reports that the unemployment rate dropped to 8.5 percent at the end of 2011.

In a fundamental policy shift, the Securities and Exchange Commission ("SEC") announces that it will no longer allow defendants to say they neither admit nor deny civil fraud or insider-trading charges when, at the same time, they admit to or have been convicted of criminal violations. The change comes in the wake of the rejection in November 2011 by federal district-court judge Jed S. Rakoff of an SEC settlement with Citigroup over securities-fraud charges.

For the first time on record, the U.S. Treasury auctions 10-year Treasury notes yielding less than 2 percent.

The U.S. Commodity Futures Trading Commission ("CFTC") completes Dodd-Frank Act regulations to protect swap traders' collateral that is used to reduce risk in trades. This so-called segregation rule gained urgency after as much as $1.2 billion in client funds went missing as MF Global Holdings Ltd. collapsed in 2011. The rule seeks to insulate clients' collateral if their brokers default, while also allowing the customer funds to be pooled before a bankruptcy.

January 12 — RealtyTrac Inc. reports that approximately 1.9 million U.S. homes entered the foreclosure process in 2011, the lowest level since 2007, when the recession began.

January 13 — Standard & Poor's ("S&P") downgrades the credit ratings of France, Italy, and seven other European countries, a move that may have more symbolic than fundamental financial impact but serves as a reminder that Europe's economic woes are far from over. The only eurozone nations retaining their top AAA ratings are Germany, the Netherlands, Finland, and Luxembourg.

January 16 — S&P cuts its credit rating of the eurozone's rescue fund (the European Financial Stability Facility ("EFSF")), stating that the decision was all but inevitable following identical cuts three days earlier to the creditworthiness of France and Austria, two of the EFSF's guarantors.

Sean Quinn, a businessman who was once one of the richest men in Ireland, is declared bankrupt by an Irish court, where stiff regulations could prevent him from resuming his business activities for up to 12 years. The declaration concerns more than €2.8 billion, or $3.5 billion, that he owes to the former Anglo Irish Bank, now known as the Irish Bank Resolution Corporation. Anglo Irish Bank was at the center of Ireland's property collapse and was nationalized early in 2009.

January 17 — The World Bank cuts its global growth forecast by the most in three years, saying that a recession in the euro region threatens to exacerbate a slowdown in emerging markets such as India and Mexico.

Credit insurer Euler Hermes forecasts that world economic growth will slow to 2.7 percent in 2012 from 3 percent in 2011, as growth in emerging countries runs out of steam and the "submerged" countries sink further into the mire.

January 24 — During his State of the Union address, U.S. President Obama pledges to use government power to balance the scale between America's rich and the rest of the public, trying to present an election-year choice between continued leadership toward an economy "built to last" and what he calls irresponsible policies of the past that caused an economic collapse.

January 25 — The U.S. Federal Reserve, declaring that the economy would need help for years to come, says it will extend by 18 months the period during which it plans to hold down interest rates in an effort to spur growth. The Fed states that it now plans to keep short-term interest rates near zero until late 2014, continuing the transformation of a policy which began as shock therapy in the winter of 2008 into a six-year campaign to increase spending by rewarding borrowers.

January 26 — The U.K. government abandons a plan to overhaul prepackaged administrations, a practice viewed as controversial because creditors are wiped out by the administration, and the buyers are sometimes directors of the company or connected parties. The decision to scrap the changes provokes a furious response, with the British Property Federation claiming that the government has "wasted 18 months" of consultation.

As outlined by President Obama during his State of the Union address, U.S. Attorney General Eric Holder announces that a new government unit will investigate misconduct in the bundling of mortgage loans into securities that fueled the housing bubble and contributed to the financial crisis. In providing details about the new group, Mr. Holder says that the Justice Department in the past few days has subpoenaed 11 financial institutions in related investigations. The mortgage-fraud unit will "streamline" and "strengthen" current efforts to investigate fraud in residential-mortgage-backed securities.

January 30 — All but two countries of the European Union ("EU") agree to tougher measures to enforce budget discipline in the eurozone, but the bloc still shows few signs of producing a comprehensive solution for the sovereign-debt crisis or a credible plan to revive fragile economies in the Mediterranean region. The meeting of the 27 EU heads of state and government in Brussels is aimed at completing the text of a so-called fiscal compact for the 17 nations relying on or intending to join the eurozone—with only Britain and the Czech Republic opting not to adopt the measures. The fiscal pact imposes substantial fines on any signatory nation whose deficit averages more than 0.5 percent of gross domestic product over a full economic cycle.

January 31 — The U.S. Congressional Budget Office ("CBO") releases a report predicting the U.S. deficit to be $1.1 trillion by the end of the fiscal year ("FY") in September, compared to $1.3 trillion in FY 2011. The report also says that annual deficits will remain in the $1 trillion range for the next several years if Bush-era tax cuts slated to expire in December are extended.

Eurostat, the EU's statistics office, reports that unemployment across the 17 countries that use the euro ended 2011 at a record high of one person in every 10 (10.3 percent), the highest level since the euro was launched in 1999.

February 1 — Chrysler Group reports its first annual profit since 2005, capping a comeback a little more than two years after a federal bailout, a bankruptcy filing, and a takeover by Italian automaker Fiat. The automaker, which includes the Chrysler, Dodge, and Jeep brands, earned $183 million in 2011, compared with a loss of $652 million in the prior year.

President Obama outlines details of a new housing proposal that would make millions of additional mortgage borrowers eligible to refinance using historically low interest rates through government-assistance programs. The proposal would allow mortgages not guaranteed by government-sponsored enterprises Fannie Mae and Freddie Mac to be refinanced through a new program run by the Federal Housing Administration ("FHA"). The administration estimates that the cost of the plan will be in the range of $5 to $10 billion. It would pay for the refinancings by assessing a new tax on large financial institutions—a proposal that was first floated in 2010 during debate on the Dodd-Frank Wall Street Reform and Consumer Protection Act.

February 2 — The U.S. Department of Labor reports that the U.S. unemployment rate dropped to 8.3 percent at the end of January, the lowest in three years.

Freddie Mac reports that the average rate on 30-year fixed mortgages in the U.S. fell to a record low of 3.87 percent.

February 9 — U.S. government authorities and five of the nation's biggest banks agree to a $26 billion settlement that could provide relief to nearly 2 million current and former American homeowners harmed by the bursting of the housing bubble. It is part of a broad national settlement aimed at halting the housing market's downward slide and holding the banks accountable for foreclosure abuses. Under the plan, $5 billion would be paid to states and federal authorities, $17 billion would be earmarked for homeowner relief, roughly $3 billion would go for refinancing, and a final $1 billion would be paid to the FHA. If nine other major mortgage servicers join the pact, the total package could rise to $30 billion.

February 12 — Greece's Prime Minister, Lucas Papademos, wins approval from Parliament for austerity measures needed to receive a second aid package of €130 billion ($172 billion), which eurozone finance ministers must decide whether to release when they meet on February 15.

February 13 President Obama unveils his $3.8 trillion budget request for FY 2013, with tax increases on the affluent and cuts in spending, especially from the military, both to reduce deficits and to pay for priorities like education, public works, research, and clean energy. He projects a deficit for FY 2013 of $901 billion, or 5.5 percent of GDP, compared to $1.3 trillion in 2012. Looming just beyond the November election is the prospect of what some are calling "Taxmaggedon," or what Ben S. Bernanke, the Federal Reserve Chairman, has referred to as "a massive fiscal cliff." Unless Mr. Obama and a lame-duck Congress can reach agreement, all of the Bush-era tax cuts will expire on December 31, along with Obama stimulus measures like the payroll-tax holiday, just as $600 billion in deep "sequestration" cuts in federal spending would be kicking in—an event that the CBO predicts would probably put the economy back into recession.

Moody's Investors Service cuts the debt ratings of six European countries, including Italy, Spain, and Portugal, and becomes the first big ratings agency to switch Britain's outlook to negative. The move comes a month after similar downgrades by S&P and Fitch Ratings. All three agencies cite the debt crisis and its ramifications for the region's economy.

February 16 U.S.-based General Motors, the world's largest automaker, reports that it recorded its biggest profit ever in 2011, two years after emerging from bankruptcy with the help of a government bailout. The century-old carmaker says strong sales in the U.S. and China helped push its profits to $7.6 billion, easily topping the company's previous $6.7 billion earnings peak in 1997. The company continues to lose money on its operations in Europe, where the economy has slowed under the weight of the Continent's debt crisis. GM regained the top global sales mark last year over Japan's Toyota, whose manufacturing was disrupted by the earthquake and tsunami in Japan and flooding in Thailand.

February 19 Japan posts a record trade deficit as the yen's strength and weaker global demand erode profits at manufacturers and slow the nation's recovery from the earthquake and tsunami last year. The trade gap widens to ¥1.48 trillion yen ($19 billion).

February 21 Greece reaches an agreement with creditors to secure the biggest sovereign restructuring in history, paving the way for a second bailout of the debt-ridden nation and averting economic collapse. Under the terms of the $172 billion bailout, Greece will reduce its debt from 160 percent to 120.5 percent of GDP by 2020. Banks that hold Greek bonds, which had agreed in October to take a 50 percent loss on the face value of their bonds, agreed to take a 53.5 percent loss on the face value, the equivalent to an overall loss of approximately 75 percent.

February 28 The Dow Jones Industrial Average finishes above the 13,000 mark for the first time since May 2008.

March 1 The International Swaps and Derivatives Association ("ISDA") decides that Greece had not breached the terms of credit-default-swap agreements aggregating $3.25 billion by preparing to force losses on private bondholders while exempting official creditors.

March 5 A report released by the Federal Reserve Bank of New York renews concerns about the growing debt load of U.S. college students and graduates by suggesting that as many as 27 percent of the 37 million borrowers have past-due balances of 30 days or more. The report states that the total balance of U.S. federally insured student loans is $870 billion, with the average outstanding debt totaling $23,300. Ten percent of borrowers owe more than $54,000, and 3 percent owe more than $100,000. The outstanding student-loan balance surpasses the total U.S. credit-card balance ($693 billion) and the total U.S. auto-loan balance ($730 billion). With college enrollments increasing and the costs of attendance rising, this balance is expected to continue its upward trend, with aggregate student debt projected to amount to $1.4 trillion by 2020.

March 8 *Forbes* releases its list of world billionaires for 2012, the 26th year that it has been tracking global wealth. The 2012 Billionaires List breaks two records: total number of listees (1,226) and combined wealth ($4.6 trillion). Atop the heap is Mexican telecom mogul Carlos Slim Helú. With an estimated net worth of $69 billion, he has pulled far ahead of his two closest rivals, Bill Gates, No. 2, and Warren Buffett, No. 3, who are now worth $61 billion and $44 billion, respectively.

In an apparent about-face, the ISDA decides that Greece's bond swap constitutes a "credit event" that entitles holders of Greek credit-default swaps to compensation, triggering roughly $3.25 billion in credit-default swaps.

March 12	Greece implements the biggest debt write-down in history, swapping the bulk of its privately held bonds with new ones worth less than half their original value. Bonds issued under Greek law with a total face value of €177.2 billion ($232.5 billion) are exchanged. A smaller batch worth €28.5 billion ($37.4 billion), issued under foreign law or by state enterprises, will be swapped in the coming weeks. The debt exchange opens the way for Greece's second international bailout and will transfer the majority of the country's debt from private to public ownership—its eurozone partners and the International Monetary Fund ("IMF").
	After 244 years, *Encyclopædia Britannica* announces that it is going out of print, acknowledging the realities of the digital age—and of competition from Wikipedia. *Encyclopædia Britannica* will focus primarily on its online encyclopedias and educational curricula for schools. The final print version was the 32-volume 2010 edition, which weighed 129 pounds and included new entries on global warming and the Human Genome Project.
	The U.S. Federal Reserve reports that 15 of the 19 largest financial firms have enough capital to withstand a severe recession. However, the stress tests underscore the uneven nature of the industry's recovery. Firms such as JPMorgan and Wells Fargo are proving resilient, but others, including Citigroup and Ally Financial, remain on shaky ground, grappling with soured mortgages and other troubled businesses. Banks are completing their third round of stress tests, with the Fed looking at whether they would have enough capital to weather a peak unemployment rate of 13 percent, a 21 percent drop in housing prices, and severe market shocks, as well as economic slowdowns in Europe and Asia.
	The NASDAQ Composite Index closes above 3,000 for the first time since 2000.
March 14	Goldman Sachs mid-level executive Greg Smith publicly resigns from the firm, publishing an editorial in *The New York Times* rebuking Goldman for prizing personal profit over client service and stating, "It makes me ill how callously people still talk about ripping off clients." The op-ed reignites a firestorm of debate on the internet and in other media over whether Wall Street is hopelessly corrupted by greed and excess.
March 15	Pew Research Center reports that, unable to find well-paying work in a weak U.S. economy, escalating numbers of young adults—as many as three in 10—are returning home to the family nest, resulting in the highest share of young adults living in multigenerational U.S. households since the 1950s.
	The U.S. Treasury Department announces that it finished selling $225 billion in mortgage-backed securities which it bought to help stabilize the markets during the worst of the financial crisis. The government made a $25 billion profit on the securities, which are guaranteed by Fannie Mae and Freddie Mac.
March 20	The Consumer Financial Protection Bureau created by the Dodd-Frank Act delivers its first annual report to Congress on enforcement of the Fair Debt Collection Practices Act. Among other things, the report shows that debt collection continues to be a leading subject of consumer complaints.
March 30	The Spanish government announces an annual budget that includes €17.8 billion ($24 billion) in spending cuts for the central government, one day after it faced a nationwide general strike and stated it would continue increasingly unpopular austerity measures.
April 3	The U.S. Financial Stability Oversight Council ("FSOC") votes to approve its final rule implementing the controversial Dodd-Frank Act provision that directs the federal government to identify systemically important financial institutions (SIFIs) outside the traditional banking sector which could pose a threat to the U.S. financial system. Once designated by a two-thirds majority of the FSOC (including an affirmative vote of the Treasury Secretary), each "nonbank financial company" would be placed under Federal Reserve Board supervision, as well as become subject to a host of enhanced prudential measures—including capital, liquidity, leverage, stress-testing, resolution-planning, and risk-management requirements.
April 6	The U.S. Labor Department reports that the unemployment rate ticked down 0.1 percent to 8.2 percent.
April 11	According to Thomson Reuters' *Distressed Debt & Bankruptcy Restructuring Q1 Round-up*, completed distressed-debt and bankruptcy restructuring activity totaled $38.3 billion during the first quarter of 2012, a 38.5 percent decline from the same period last year. In terms of volume, the number of completed deals decreased by 29.8 percent to 86 transactions. The largest completed transaction of the quarter was the $10.4 billion Washington Mutual restructuring, and the largest announced transaction was Greece's $272.6 billion debt-exchange transaction.
	U.S. deal activity totaled $20.8 billion during the first quarter of 2012, a 7.2 percent decrease compared to the same period last year. There were 47 restructuring transactions announced in the first quarter of 2012, a 53.9 percent increase compared to the previous year. The Financials and Media & Entertainment industries accounted for more than 70 percent of the U.S. debt-restructuring market.

April 17	In what is believed to be a first by a U.S. public pension plan, the Northern Mariana Islands Retirement Fund files for chapter 11 protection. The public defined-benefit plan is only 38.8 percent funded, thanks to low investment returns and a benefit structure that has been increased without any increase in funding. The filing is later challenged by fund participants on the basis that the pension fund is not eligible to be a chapter 11 debtor because it is a "governmental unit" rather than a "person." The court will dismiss the case on June 13, 2012, on this basis. The ruling could have widespread implications for other public pensions in the U.S.
April 19	The newly created American Bankruptcy Institute Commission ("ABI Commission") holds its first public meeting in Washington, D.C., to study the reform of chapter 11 of the Bankruptcy Code. Reforms are deemed necessary in light of the expansion of the use of secured credit, the growth of distressed-debt markets, and other externalities that have affected the effectiveness of the current Bankruptcy Code, including more complex capital structures; diverse creditors and investors with different agendas; and changes in companies and their key assets.
April 20	The IMF announces during its 2012 Spring Meetings at the World Bank headquarters that it has raised at least $430 billion in extra lending capacity to be used if the eurozone crisis worsens or global financial conditions deteriorate. By some estimates, this brings the total amount of money devoted to rescuing the world economy since the Great Recession began to more than $14 trillion and counting.
April 23	Dutch Prime Minister Mark Rutte and his cabinet resign after failing to reach agreement on reducing the country's budget to meet European guidelines.
April 25	U.S. student-loan debt surpasses $1 trillion, as lawmakers scramble to reach a compromise that will prevent student-loan interest rates from doubling (to 6.8 percent) on July 1. The average debt load of all new graduates rose 24 percent, adjusted for inflation, from 2000 through 2010, to $16,932, according to the Progressive Policy Institute. Over the same period, the average earnings of full-time workers aged 25 to 34 with no more than a bachelor's degree fell by 15 percent to $53,539.
	Official figures released by the British government indicate that Britain has fallen into its first double-dip recession since the 1970s, a development that raises more questions about whether government belt tightening in Europe has gone too far.
April 26	S&P downgrades Spain's credit rating for the second time in 2012, saying that the country's sovereign-debt levels are too high and that its banks need an infusion of aid as the country's economy contracts. The downgrade comes with Spain's emergence as a looming problem for Europe, with fears that the country will be next in line for a huge bailout, after Greece.
April 30	Spain joins seven other eurozone nations in recession, providing new evidence that austerity policies are failing to spark confidence in the region's economies, ahead of a week of expected anti-austerity protests and a string of important national elections.
	U.S. Census Bureau statistics indicate that the homeownership rate in the U.S. fell to 65.4 percent in the first quarter of 2012, hitting a 15-year low amid still-high foreclosure rates and a stronger market for rents. The rate hit a high of 69.2 percent in 2004, before the housing bubble burst.
May 2	Fannie Mae and Freddie Mac announce new guidelines to streamline the process for "short sales." The guidelines, required by the Federal Housing Finance Agency and effective June 15, would require servicers of mortgages backed by Fannie and Freddie to review and respond to requests for short sales within 30 calendar days of receipt of a buyer's offer. A "short sale" is a transaction in which a lender agrees to accept less than the amount owed on the mortgage.
	Eurostat reports that eurozone unemployment rose to a new high of 10.9 percent in March 2012.
May 4	Rules drafted by the Municipal Securities Rulemaking Board, a self-regulatory body for market participants, are approved by the SEC to rein in abusive practices by Wall Street firms, such as underwriting a state's bonds while simultaneously helping other customers trade against the bonds, or taking municipal officials on lavish junkets and billing the costs to unsuspecting local taxpayers. The rules, which will take effect in August, require bond underwriters to properly disclose the risks of the deals, as well as any potential conflicts of interest. Underwriters will also be required to tell municipal clients about any payments received from bond insurers taking part in bond transactions.

May 6 In a popular backlash against austerity measures, voters in France oust the pro-austerity administration of Nicolas Sarkozy, and Greece is plunged into political uncertainty after voters bolster the far left and the neo-Nazi right in a wave of protest involving the crushing defeat of the dominant political parties they blame for Greece's economic collapse. François Hollande is elected the first Socialist President of France since 1995, promising relief from austerity to address Europe's financial crisis. In a major shift, the Greek Socialists, who dominated for decades and were in power when Greece asked for foreign aid in 2010, win only 14 percent of the vote, or 42 seats—down significantly from their 44 percent share in 2009.

May 10 The U.S. Postal Service reports a quarterly loss of $3.2 billion and blames Congress for blocking the agency's cost-cutting efforts to offset declining mail volume and mounting costs for future retiree health benefits.

JPMorgan Chase, which emerged from the financial crisis as the biggest bank in the U.S., discloses that it had lost more than $2 billion in trading, a surprising stumble that promises to escalate the debate over whether regulators need to rein in trading by banks. The losses stemmed from wagers gone wrong in the bank's Chief Investment Office, which manages risk for the New York company. *The Wall Street Journal* reported in April 2012 that large positions taken in that office by a trader nicknamed "the London Whale" had roiled a sector of the debt markets. The bank, betting on a continued economic recovery with a complex web of trades tied to the values of corporate bonds, was hit hard when prices moved against it, causing losses in many of its derivatives positions. The losses, which by later estimates could be as much as $9 billion, occurred while JPMorgan Chase tried to scale back that trade.

Mortgage buyer Freddie Mac reports that the average rate on U.S. 30-year mortgage loans ticked down to 3.83 percent, the lowest since long-term mortgages began in the 1950s. The 15-year mortgage, a popular option for refinancing, dropped to 3.05 percent, also a record.

May 17 As investors race to buy shares of Facebook, the sprawling social network raises $16 billion in an initial public offering that values Facebook at $104 billion, the third-largest IPO ever.

The U.S. Bureau of Labor Statistics shows that the percentage of workers over the traditional retirement age of 65 is at a record high. However, job totals had fallen sharply for men under 55 during the recession and have only now begun to recover, while the proportion of women aged 25 to 54 with jobs also slid and is close to the lowest level of the last two decades.

May 20 The NASDAQ Stock Market announces that it bungled Facebook Inc.'s IPO, acknowledging that technology problems affected trading in millions of shares. The trading glitches, coupled with underwhelming investor appetite for Facebook shares, fueled doubts about Wall Street's ability to handle hot IPOs. Facebook's stock price will drop 20 percent in its first week of trading.

May 23 Egyptians go to the polls in the Arab world's first competitive presidential election, choosing among a dozen candidates spanning the nation's secular and Islamist traditions after decades of authoritarian rule.

May 24 For the fourth straight week, U.S. mortgage rates for 30-year loans fall to a record low—3.78 percent.

May 25 President Obama signs into law the Temporary Bankruptcy Judgeships Extension Act of 2012 (H.R. 4967), averting a crisis in the U.S. bankruptcy-court system by reauthorizing 29 temporary judgeships in 14 states and Puerto Rico.

May 30 Charles G. Taylor, the former President of Liberia and a once powerful warlord, is sentenced to 50 years in prison over his role in atrocities committed in Sierra Leone during its civil war in the 1990s. Mr. Taylor is the first head of state to be convicted by an international court since the Nuremberg trials after World War II.

It is reported that India's problems have dampened hopes that it, along with China and other non-Western economies, might help revive the global economy, as happened after the 2008 financial crisis. Instead, India is now facing a political reckoning, as the country's elected leaders must address difficult, politically unpopular decisions—or risk even deeper problems. India's currency, the rupee, is falling; investment is down; inflation is rising; and deficits are eating away at government coffers. India's difficulties come as the global economy is wobbling once again. Europe is grappling with a sovereign-debt crisis that could shatter the Continent's economic and political union. The U.S. is still not producing enough new jobs. China's growth has weakened, with a real estate downturn and stalling exports, while important emerging economies like Brazil are slowing down, adding to pessimism about the world economy at a critical time.

June 2 Britain celebrates the Diamond Jubilee of Queen Elizabeth II—only the second celebrated in 1,000 years of British monarchy. The queen, who is 86 and has reigned since 1952, is feted by her subjects in a four-day gala celebration of her 60-year rule.

June 4 Bankruptcy-court-appointed trustee James W. Giddens issues a 275-page report detailing how the brokerage firm MF Global fell and its money vanished, capturing the recklessness of its managers and woefully inadequate risk controls. The firm, entrusted with about $6 billion of client money, sometimes relied on "oral" reporting to track the cash it held, the report shows. The trustee states that he will decide whether to pursue litigation to recover money for customers, who are missing about $1.6 billion, within 60 days, as well as possible claims against Jon S. Corzine and other top executives over their "negligence" at the helm.

June 6 According to a report from the John J. Heldrich Center for Workforce Development at Rutgers University, only one in six U.S. post-high school youths is working full time. Three out of five live with their parents or other relatives. A large majority—73 percent—think they need more education to find a successful career, but only half of those say they will definitely pursue further education during the next few years.

Faced with a sharply slowing economy, weak exports, and faltering investment, China's central bank unexpectedly announces that it will cut interest rates by a quarter of a percentage point. The action by the People's Bank of China represents the strongest measure taken this year by the Chinese government to counteract an economic malaise that has infected Europe and the U.S. and now seems to be affecting China faster and more extensively than most policymakers or private economists had anticipated. The interest-rate cut is the first by the central bank since December 2008, the last time policymakers in China were deeply worried that they might be behind in responding to an economy slipping downhill faster than they had expected.

June 9 Spain agrees to accept a bailout for its cash-starved banks as European finance ministers offer an aid package of up to $125 billion. The decision makes Spain the fourth and largest European country to agree to accept emergency assistance as part of the continuing debt crisis. The aid offered by countries that use the euro is nearly three times the $50 billion in extra capital the IMF said was the minimum which the wobbly Spanish banking sector needed to guard against a deepening of the country's economic crisis.

June 11 The International Air Transport Association ("IATA") nearly doubles its forecast of European airline losses in 2012 to $1.1 billion, stating that the worldwide aviation industry will scrape by with thin profit margins because of high fuel prices. American and Asian airlines should make money this year, but more airlines in Europe might follow Malév of Hungary into bankruptcy if the European financial crisis worsens. The worldwide aviation industry should make a total profit this year of $3 billion on revenue of $631 billion, a 0.5 percent margin, the association says. IATA represents 240 airlines carrying 84 percent of the world's passengers and cargo, but its forecast covers the entire industry.

June 13 Spain's borrowing costs spike to euro-era highs after Moody's Investors Service downgrades the nation's credit. The yield on Spain's 10-year bonds reaches 7 percent, the level that has set off full international bailouts of some other eurozone members.

June 14 Former jet-setting Texas tycoon R. Allen Stanford is sentenced to 110 years in prison for bilking investors out of more than $7 billion over two decades.

June 15 Rajat K. Gupta, the retired head of the consulting firm McKinsey & Company and a former Goldman Sachs board member, is found guilty of conspiracy and securities fraud for leaking boardroom secrets to a billionaire hedge-fund manager. He is the most prominent corporate executive convicted in the government's sweeping investigation into insider trading. The case, which caps a wave of successful insider-trading prosecutions over the last three years, is a significant victory for the government. Mr. Gupta is one of the 66 Wall Street traders and corporate executives charged with insider-trading crimes since 2009. Of those, 60 have either pleaded guilty or been found guilty. Juries have convicted all seven defendants who have gone to trial.

A U.S. Census Bureau report indicates that U.S. household heads aged 35 to 44—the group usually saddled with mortgages and college-bound children—have watched their median net worth slump 59 percent from before the recession. Overall, average American household net worth decreased 35 percent from 2005 to 2010 to $66,740, from $102,844 in 2010 constant dollars, reflecting "drops in housing values and stock market indices." Previously, the U.S. Federal Reserve reported that the typical American family lost nearly 40 percent of its wealth from 2007 to 2010, with net worth down to $77,300 from $126,400, adjusting for inflation.

June 28 The U.S. Supreme Court leaves standing the basic provisions of the Affordable Care Act, ruling that the government may use its taxation powers to compel people to buy health insurance. The ruling upholds the "individual mandate," requiring that nearly all Americans obtain health insurance, by saying it was authorized under Congress's power to tax. The ruling is a crucial milestone for the law, which is intended to end the status of the U.S. as the only wealthy country with large numbers of uninsured people, by expanding both the private market and Medicaid.

Stockton, California, a northern California municipality with nearly 300,000 residents, becomes the largest city to file for chapter 9 protection in U.S. history, after months of negotiations with creditors fail to patch up a $26 million budget hole.

June 29 The U.S. Congress approves a measure freezing federally subsidized student-loan rates for a year, averting a doubling of rates scheduled to occur on July 1. The change is estimated to help more than 7 million students. President Obama will sign the bill into law on July 6.

July 2 The ABI Commission to study the reform of chapter 11 of the Bankruptcy Code releases the names of nearly 130 corporate restructuring experts who will be serving on one of 13 advisory committees. The work of the commission is expected to take two years.

Eurostat reports that unemployment in the 17-country euro currency bloc hit another record in May as the crippling financial crisis pushed the Continent toward the brink of recession. Unemployment rose to 11.1 percent. May's rate was the highest since the euro was launched in 1999 and adds further urgency to the eurozone countries' plan to create economic growth and cut excessive government debt.

Robert E. Diamond Jr., the chief executive of Barclays, resigns, less than a week after the British bank agreed to pay $450 million to settle accusations that it had tried to manipulate key interest rates for its own benefit. Barclays' chairman, Marcus Agius, is the first big casualty of the scandal. Lloyd's and The Royal Bank of Scotland are also among the approximately 20 major Western banks that have come under investigation by U.S. and British authorities for allegedly trying to manipulate the London interbank offered rate, or "LIBOR," a benchmark for interest rates on corporate and consumer loans. The focus of the LIBOR scandal will later turn to whether regulators allowed banks to report false rates in the run-up to the 2008 financial crisis and afterward. Criminal investigations will later be initiated in the U.S. and elsewhere.

July 3 The U.S. Federal Deposit Insurance Corporation and the U.S. Federal Reserve release "living wills" for nine of the nation's largest banks—blueprints for how they could be dismantled in the event of a collapse—but some analysts and other banking experts warn that they are still too big to fail without sending shock waves through the financial system.

July 6 The ABI Commission and Epiq Systems, Inc., report that U.S. bankruptcies decreased across the board in the first half of 2012, with commercial filings taking the biggest dip, falling 21.8 percent to 30,946, compared to 39,598 from the same six-month period in 2011. Chapter 11 filings from January to June also fell nationwide in 2012, with 5,313 cases, marking a 12.5 percent decrease from the 6,070 reported in the same period in 2011, while total bankruptcies numbered 632,130, a 13.6 percent slide from the 731,500 cases filed in the six months ended June 30, 2011.

Scranton, Pennsylvania, mayor Chris Doherty abruptly cuts all municipal employees' pay (including his own) to the federal minimum wage of $7.25 per hour, saying it is the only way for the cash-strapped city to pay its bills. Doherty is locked in a dispute with Scranton's city council over a financial recovery plan as it faces a $16.8 million budget deficit.

Italy's government approves €4.5 billion ($5.58 billion) in spending cuts for 2012 aimed at slashing the size of Italy's bloated public sector and delaying a new tax increase until after the first half of 2013. The cuts come as Prime Minister Mario Monti fights to shore up Italian finances in line with EU requests.

July 10 The CFTC takes a major step toward reining in risky Wall Street trading, approving new rules aimed at preventing a repeat of the financial crisis. The rules give regulators more control over the $700 trillion derivatives industry, an opaque business that was blamed for many of the ills of the 2008 crisis. The CFTC also approves a broad exemption from the requirement that derivatives trades go through regulated clearinghouses. The exemption applies to "commercial end users"—such as oil companies, airlines, and other firms that use swaps to counteract risk associated with a potential swing in the value of goods they buy or manufacture. Under the agency's final rule, swaps do not need to go through clearinghouses if at least one party in the trade is a "nonfinancial" entity and is using the swap to hedge against its "commercial risk." The exempt firms must still alert regulators when they enter into swap transactions. Regulators also extend the exemption to small banks and other financial firms with total assets of $10 billion or less.

Thomson Reuters reports that completed distressed-debt and bankruptcy restructuring activity totaled $335.9 billion during the first half of 2012, a 223.9 percent increase compared to the $103.7 billion from the same period in 2011. However, 242 fewer deals were announced in 2012 compared to the first half of 2011. Activity was led by Greece's $263.1 billion debt-exchange transaction, the largest restructuring deal on record. U.S. deal activity totaled $31.3 billion during the first half of 2012, a 14.7 percent decrease compared to the same period in 2011. There were 74 restructuring transactions announced in the first six months of 2012, 87 fewer than in the previous year. Europe Middle East Africa (EMEA) distressed-debt restructuring deal volume totaled $300.1 billion in the first six months of 2012. Excluding deals involving sovereign debt, activity was down by almost 50 percent. Asia-Pacific (including Japan) deal volumes during the first half of 2012 reached $6.5 billion, up 26.3 percent from the same period last year.

The city council of San Bernardino, California, votes to become the third California municipality in 2012 to seek bankruptcy protection after officials learn they may not have enough cash to pay workers. San Bernardino, which has more than 200,000 residents, follows Stockton, a community of approximately 300,000 east of San Francisco, which on June 28 became the biggest U.S. city to enter bankruptcy. Mammoth Lakes, a mountain resort of 8,200, sought court protection from creditors on July 3, saying it could not pay $43 million owed on a legal judgment, more than twice its general-fund spending for the year. Declining tax revenue, growing worker costs, accounting discrepancies, and an unemployment rate in the metropolitan area of almost 12 percent helped propel San Bernardino toward court.

Brokerage firm Peregrine Financial Group, operator of PFC Best, files for chapter 7 protection after founder Russell Wasendorf, Sr., unsuccessfully attempts suicide, with as much as $220 million in customer funds reportedly missing. Wasendorf will later be arrested after admitting responsibility in a suicide note for the fraud that led to the loss in customer funds.

July 13 China's National Bureau of Statistics reports that the nation's growth slowed for a sixth quarter to the weakest pace since the global financial crisis began, putting pressure on Premier Wen Jiabao to boost stimulus to secure a second-half economic rebound.

July 17 The nonpartisan State Budget Crisis Task Force releases a report studying the finances of California, Illinois, New Jersey, New York, Texas, and Virginia—which together represent nearly a third of the U.S. population. According to the report, these six states are facing long-term budget problems caused by rising health-care and pension costs, dwindling tax revenue, and cuts in federal funding that may raise the threat of more bankruptcies for local municipalities. The report identifies several major problems threatening states' ability to sustain financial stability: rising Medicaid costs, nearly $3 trillion in unfunded government pension liability, more than $1 trillion in health-care liabilities for public-employee retirees, budgeting gimmicks aimed at addressing short-term deficits, eroding tax revenue, and cuts in federal revenue.

The U.S. National Climatic Data Center reports that more of the U.S. is experiencing drought conditions than at any time since 1956, prompting ranchers without adequate feed to liquidate cattle herds and driving up the price of beef, corn, and related products.

July 18 The U.S. Financial Stability Oversight Council, created by Dodd-Frank to identify threats to U.S. financial stability, designates eight financial-market utilities as "systemically important": the Chicago Mercantile Exchange, The Clearing House Payments Company LLC, CLS Bank International, The Depository Trust Company, Fixed Income Clearing Corporation, ICE Clear Credit LLC, National Securities Clearing Corporation, and The Options Clearing Corporation.

July 20 A report released by the U.S. Department of Education and the Consumer Financial Protection Bureau estimates that total outstanding student-loan debt exceeded $1 trillion in 2011, composed of $864 billion in federal government loans and $150 billion in private student-loan debt. Cumulative defaults on private student loans exceeded $8 billion, a sum derived from more than 850,000 distinct loans. That total has risen in the last decade as lenders bypassed college financial-aid offices and marketed loans directly to students, who often signed on without realizing the difference between private and government loans or that government loans usually offer better terms.

July 23 An Associated Press survey of more than a dozen economists, think tanks, and academics indicates that the ranks of America's poor are on track to climb to levels unseen in nearly half a century, erasing gains from the war on poverty in the 1960s amid a weak economy and a fraying government safety net. According to the survey, which precedes U.S. Census Bureau statistics scheduled to be released in the fall, the official poverty rate will rise from 15.1 percent in 2010 to as high as 15.7 percent. Several participants predicted a more modest increase, but an increase of even 0.1 percent would put U.S. poverty at the highest level since 1965.

July 27 — Spain reports a record unemployment rate of 24.6 percent. Youth unemployment rose to 53 percent in the second quarter. The rise in Spanish unemployment underlines the challenge faced by the government of Prime Minister Mariano Rajoy: to turn around an economy that is sinking further into recession and to clean up public finances. As part of a new €65 billion ($86.5 billion) austerity package announced earlier in the year, the government is also set to reduce unemployment benefits.

President Obama's Office of Management and Budget announces that the U.S. federal budget deficit will be slightly lower for FY 2012 and for the rest of the decade than projected earlier this year. The required midyear update on the nation's fiscal health indicates that while revenues are coming in lower than projected—the consequence of a slowed economy—federal spending has been lower as well. For the fourth year since the financial crisis of 2008, the deficit will exceed $1 trillion, totaling $1.2 trillion for the fiscal year ending September 30. The updated estimate is $116 billion lower than the $1.3 trillion deficit forecast by the administration last February in President Obama's annual budget.

July 31 — India suffers the largest electrical blackout in history, affecting an area encompassing about 670 million people, or roughly 10 percent of the world's population. Three of the nation's interconnected northern power grids collapse for several hours, as blackouts extend almost 2,000 miles, from India's eastern border with Myanmar to its western border with Pakistan. For a country considered a rising economic power, Blackout Tuesday—which comes only a day after another major power failure—is an embarrassing reminder of the intractable problems still plaguing India: inadequate infrastructure, a crippling power shortage and, many critics say, a yawning absence of governmental action and leadership.

Eurostat reports that unemployment in the eurozone remained at a record high of 11.2 percent in June, significantly higher than the rate of 10 percent posted a year earlier. For the 27 nations of the EU, the unemployment rate was stable, at 10.4 percent. Eurostat estimates that 25.1 million were unemployed in the EU in June, 17.8 million of whom were in the eurozone.

August 1 — San Bernardino, California, a city of more than 200,000 residents on the eastern tip of Greater Los Angeles, files for chapter 9 protection, the third city in the Golden State to do so in 2012, stoking concerns that other cities could follow suit.

For the first time ever, the U.S. Postal Service defaults on a payment to the Treasury. The post office warned of a default in a statement on July 31, saying it would not make the $5.5 billion payment due on August 1 and that it would also default on a $5.6 billion payment due September 30. Both of those payments are federally mandated and go toward prefunding retiree health benefits.

Broker Knight Capital Group's electronic trading program runs amok over the course of 45 minutes, leading to $440 million in losses and reigniting the debate over automated trading.

August 3 — The Administrative Office of the U.S. Courts reports that bankruptcy filings for the 12-month period ending June 30 totaled 1,311,602, 14 percent less than the 1,529,560 petitions filed in the 12-month period ending June 30, 2011. Nonbusiness filings totaled 1,267,167, and business filings totaled 379,790, both down 14 percent. Chapter 11 filings fell 14 percent to 10,921 from the 12,714 chapter 11 filings in the same time period ending in 2011.

August 8 — U.S. government scientists report that July's average temperature for the contiguous United States was 77.6 degrees Fahrenheit, eclipsing the record set during the height of the Dust Bowl in 1936.

August 10 — With the worst drought in 50 years decimating U.S. crops, the government slashes its estimate of the annual corn yield to the lowest level since 1995. The failing crop will translate into higher prices for goods like processed food, animal feed, and ethanol.

August 14 — Eurostat data shows that the economy in the eurozone officially shifted to contraction from stagnation in the second quarter of 2012, portending a recession for the region later in the year that would put even more pressure on political leaders struggling to keep the common currency intact. Economists say the decline in output, caused partly by government budget cutting, means the eurozone is likely to enter recession, broadly defined as two consecutive quarters of shrinking output. Even the German economy, which helped compensate for weakness in Italy and Spain, appears to be losing momentum.

August 20 — Apple, a company that nearly filed for bankruptcy in 1996, becomes the most highly valued public company ever. Apple already boasted the largest market value of any public company, a distinction it has held since toppling ExxonMobil from that spot. However, until now, Microsoft still held on to the record for the biggest market capitalization ever, $616.34 billion, which it set at the close of trading on December 27, 1999. Apple blows past that mark today when its stock surges 2.6 percent to close at $665.15, giving it a market value of $623.52 billion.

August 22	The U.S. CBO projects a $1 trillion-plus budget deficit for the fourth straight year, estimating that the red ink will total $1.1 trillion for FY 2012, which ends September 30.
August 23	It is reported that, after three decades of torrid growth, China is encountering an unfamiliar problem with its newly struggling economy: a huge buildup of unsold goods that is cluttering shop floors, clogging car dealerships, and filling factory warehouses. The glut of everything from steel and household appliances to cars and apartments is hampering China's efforts to emerge from a sharp economic slowdown. Problems in China give some economists nightmares in which, in the worst case, the U.S. and much of the world slip back into recession as the Chinese economy sputters, the European currency zone collapses, and political gridlock paralyzes the United States. China is the world's second-largest economy and has been the largest engine of economic growth since the global financial crisis began in 2008. Economic weakness means that China is likely to buy fewer goods and services from abroad when the sovereign-debt crisis in Europe is already hurting demand, raising the prospect of a global glut of goods and falling prices and weak production around the world.
August 29	The U.S. Office of Mortgage Settlement Oversight, created as part of the $25 billion settlement over abusive foreclosure practices, reports that the five largest U.S. mortgage servicers have given approximately $10.6 billion in relief to borrowers under the terms of the settlement. Most of that aid, $8.7 billion, came in the form of "short sales" (in which customers sell their homes for less than the mortgage value). Lenders including JPMorgan Chase & Co. and Wells Fargo & Co. also forgave $749.4 million in mortgage debt, according to the report. The pact reached earlier this year requires lenders to spend $20 billion on borrower relief and an additional $5 billion in payments to states and the federal government. Unlike its competitors, Bank of America did not modify any first-lien mortgages to reduce the amount of money owed by the borrower, and it also did not complete any refinancings by June 30, according to the report. Bank of America did allow $4.8 billion of short sales, the most of the five banks.
August 31	*Health Affairs* releases a study examining the impact of race and education on past and present life expectancy and trends in disparities from 1990 through 2008, concluding that in 2008, U.S. adult men and women with fewer than 12 years of education had life expectancies not much better than those of all adults in the 1950s and 1960s. When race and education were combined, the disparity was even more striking: in 2008, white U.S. men and women with 16 years or more of schooling had life expectancies far greater than black Americans with fewer than 12 years of education—14.2 years more for white men than black men, and 10.3 years more for white women than black women.
September 5	The World Economic Forum issues its Global Competitiveness Report 2012–2013, which assesses the competitiveness of 144 economies. The report shows that Switzerland tops the overall rankings for the fourth consecutive year. Singapore remains in second position, with Finland, in third position, overtaking Sweden (fourth). These and other northern and western European countries dominate the top 10, with the Netherlands, Germany, and the United Kingdom ranked fifth, sixth, and eighth, respectively. The U.S. (seventh), Hong Kong (ninth), and Japan (10th) complete the top 10. The report emphasizes persistent competitiveness divides across and within regions, as short-termism and political deadlock continue to hold back the economic performance of many countries and regions. Looking forward, productivity improvements and private-sector investment will be key to improving global economies at a time of heightened uncertainty about the global economic outlook.
September 6	The European Central Bank announces a sweeping new program for buying the bonds of troubled euro-zone countries, giving the bank potentially unprecedented power as the lender of last resort. The program is designed to reduce the borrowing costs of Spain and Italy, to help them roll over their debts, and to get their economies moving again after two years of crisis.
September 9	It is reported that, as the number of people taking out U.S. government-backed student loans has exploded, so has the number of those who have fallen at least 12 months behind in making payments—about 5.9 million people nationwide, up about a third in the last five years. In all, nearly one in every six borrowers with a loan balance is in default. The amount of defaulted loans—$76 billion—is greater than the yearly tuition bill for all students at public two- and four-year colleges and universities, according to a survey of state education officials. To get the money back, the U.S. Department of Education last fiscal year paid more than $1.4 billion to collection agencies and other groups to hunt down defaulters.
September 10	The U.S. Treasury Department announces it plans to sell $18 billion of its stake in American International Group Inc. ("AIG"), putting it on a path to turn a profit, a remarkable feat that no one anticipated four years ago at the peak of the crisis, when the widely criticized $180 billion bailout of AIG was put in place.

September 11 — The Dow Jones reaches 13,323.36, its highest close since the end of 2007.

The U.S. CBO reports that the government ran a $192 billion deficit in August, putting the federal government $1.17 trillion in arrears for FY 2012, the fourth year in a row that it has run a deficit exceeding $1 trillion.

A U.S. bankruptcy court confirms a chapter 9 plan of adjustment for the City of Central Falls, Rhode Island, the fastest resolution of a municipal bankruptcy in U.S. history (slightly more than 13 months). At the time Central Falls was placed into bankruptcy, the city of 19,000 was the smallest and poorest city in the state, facing an operating deficit of $6 million in a budget of $16 million, as well as approximately $79 million in unfunded pension and retirement health-insurance obligations. Under the terms of the six-year plan, the city will have tax increases of approximately 4 percent annually through 2017; employee pension contributions and employee and retiree health-insurance contributions will increase; and retiree pensions will eventually be cut by up to 55 percent.

September 12 — S&P's Global Fixed Income Research reports that approximately $8 trillion in corporate debt will mature by the end of 2016, with $1.76 trillion of that amount rated below investment grade and vulnerable to default. The report evaluates only the debt rated by S&P. The largest portion of the $8 trillion in maturing debt will come due in 2014; $2.21 trillion will mature that year, of which $422 billion is speculative-grade, or junk-rated, debt.

Germany's Federal Constitutional Court rules that Germany can proceed with its contribution to the European Stability Mechanism ("ESM"), but subject to certain conditions, rejecting several applications for injunctions blocking laws approving the Treaty Establishing the European Stability Mechanism ("ESM Treaty") and the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union. The court directs that the ESM Treaty may be ratified only if, among other things, Germany's liability is limited to its share of approximately €190 billion in the authorized capital stock of the ESM. The ruling clears the way for the establishment of the ESM, to which Germany is obligated to contribute 27 percent of the authorized capital (€51.3 billion).

The U.S. Census Bureau reports that the income gap between the wealthiest 20 percent of American households and the rest of the country grew sharply in 2011, as an overwhelming majority of Americans saw no gains from a weak economic recovery in its second full year. Income for the top fifth of American households rose by 1.6 percent last year, driven by even larger increases for the top 5 percent of households. All households in the middle of the scale saw declines, while those at the very bottom stagnated. The numbers helped drive an overall decline in income for the typical American family. Median household income after inflation fell to $50,054, a level that was 8 percent lower than in 2007, the year before the recession took hold.

Dutch voters give Prime Minister Mark Rutte and his center-right Liberal Party a narrow victory over the center-left Labor Party, bringing a sigh of relief to European allies anxious about rising euro skepticism in the richer countries of the north. Voters reject more extreme calls for the Dutch to abandon the euro.

September 13 — The U.S. Federal Reserve opens a new chapter—"QE3," or "Unlimited QE"—in its efforts to stimulate the economy, announcing that it plans to buy mortgage bonds, and potentially other assets, until unemployment declines substantially. The Fed will expand its holdings of mortgage-backed securities and potentially take other steps to encourage borrowing and financial risk taking. For the first time, the Fed pledges to act until the economy improves, rather than creating another program with a fixed endpoint.

The U.S. Commerce Department issues a formal disaster declaration for the Northeastern commercial groundfish fishery, paving the way for financial relief for the battered industry and the communities that depend on it. The declaration underscores the urgency of a groundfish depletion that has become apparent to many scientists and some fishermen who work in New England's waters.

September 18 — Professor Kenneth E. Scott and economist John B. Taylor of the Hoover Institute publish a book entitled *Bankruptcy* Not *Bailout: A Special Chapter 14,* which makes a case for fundamental reform of the oversight of large financial firms by, among other things, creating a new "chapter 14" of the Bankruptcy Code to provide a credible alternative to bailouts for the resolution of such firms as a supplement to Dodd-Frank.

September 19 — Bill Gates tops the *Forbes* 400 list of the wealthiest Americans for the 19th straight year, with an estimated net worth of $66 billion. Spots two through five went to Warren Buffett ($46 billion), Larry Ellison ($41 billion), Charles Koch ($31 billion), and David Koch ($31 billion). Facebook founder and CEO Mark Zuckerberg, who ranked No. 14 on the list in 2011, fell to a tie for 36th in 2012, as the plunge in Facebook stock since the social-media company went public in May shaved $8.1 billion from the Facebook CEO's net worth (but still left him with a $9.4 billion fortune).

September 28 Consulting firm Oliver Wyman releases a Spanish bank “stress test” report concluding that Spain’s ailing banking industry could need as much as €59.3 billion ($76.4 billion) in additional capital. The report paves the way for Madrid to request bank-rescue loans that European finance ministers have agreed to extend. The number is within the range of previous estimates and well below the potential €100 billion ($128.8 billion) in bailout money that Spain negotiated with other eurozone countries in June.

October 1 Eurostat reports that unemployment in the 17-member eurozone rose to a record 11.4 percent in August, underscoring the pain inflicted by the slowing world economy and the euro crisis on citizens of the world’s largest market. The unemployment rate for the 27-member EU came in at 10.5 percent.

The U.S. Postal Service sinks deeper into debt after the agency defaults on a $5.6 billion payment due at the end of September, the second time in 2012 that it misses a deadline to set aside money for its future retiree health benefits. The agency says it expects net operating losses to be $15 billion for the fiscal year that ended September 30.

October 3 The ABI Commission reports that U.S. commercial bankruptcy filings were down 22 percent in the first three quarters of 2012 against the same span last year, citing persistent low interest rates, though experts say the unusual length of the economic slump and other factors may be at work as well. According to the commission, 2012 has seen 44,750 business bankruptcy filings through September, compared with 57,613 for the same nine months in 2011. The data, compiled by Epiq Systems, Inc., also shows an 11 percent decline in chapter 11 filings.

The IMF’s chief economist warns that the global economy will not be back in “decent shape” until at least 2018.

October 4 Facebook founder and CEO Mark Zuckerberg announces that the social-media network founded in 2004 reached 1 billion users on September 14. Approximately one in seven people on earth now uses Facebook, given the U.S. Census Bureau’s world-population estimate of 7.04 billion.

October 5 The U.S. unemployment rate falls to 7.8 percent, its lowest level since the month President Obama took office.

October 9 The IMF warns that the global economy risks skidding toward recession just three years after pulling out of the previous one, adding that fighting a renewed worldwide downturn will be much more complex than it was in 2009. “Risks for a serious global slowdown are alarmingly high,” the IMF’s World Economic Outlook report states. It is the report’s bleakest assessment of global growth prospects since the recession. The fund expects the world economy to expand by just 3.3 percent in 2012 and 3.6 percent in 2013, as growth slows in nearly every major nation.

October 12 The Obama administration reports that the U.S. federal deficit fell to $1.1 trillion in FY 2012, down from about $1.3 trillion a year earlier. It is the smallest deficit since 2008 but represents the fourth year in a row that the deficit has exceeded $1 trillion. Before the recession, which prompted huge federal spending and large tax cuts, the deficit had never exceeded half a trillion dollars.

October 17 The ABI Commission, charged with studying the reform of chapter 11, holds its first meeting in conjunction with the annual meeting of the Loan Syndications and Trading Association. Lending-industry leaders testify as to the positive effect that distressed-debt investors have had on the bankruptcy process. The commissioners deny that the commission is considering reforms which would place restrictions on claims trading in bankruptcy or weaken the rights of creditors who purchase debt on the secondary market because of a concern that distressed-debt investing has an adverse effect on the bankruptcy process. Commissioners also clarify that the commission is not considering any specific reform at the moment but is entirely in an information-gathering mode.

October 24 The trustee for Lehman Brothers Inc. reports that the remaining customers of the brokerage firm are at “the brink of a 100 percent distribution” if a bankruptcy court approves recent settlements with Lehman’s London unit resolving $38 billion in claims, meaning that all 110,000 brokerage customers would have received every cent of their $105 billion back.

The U.S. government sues Bank of America, alleging more than $1 billion in losses in connection with loans purchased by Fannie Mae and Freddie Mac. The complaint focuses on actions by the now defunct Countrywide Financial Corporation and its lending units, which Bank of America acquired in July 2008. The suit claims that Bank of America and Countrywide were both at fault for a high-speed, low-quality-control loan origination process that began in earnest in August 2007 and continued through 2009. The complaint seeks treble damages under the False Claims Act and civil penalties under the Financial Institutions Reform, Recovery, and Enforcement Act.

October 26 — Spain's unemployment rate surpasses 25 percent, with the ranks of the unemployed swelling to 5.78 million people at the end of the third quarter, compared with 2.6 million four years ago, when Spain's property bubble burst. The labor picture is so bleak that it could help Prime Minister Mariano Rajoy make the case that Germany and other lenders cannot risk imposing further austerity measures on Spain's economy in return for providing more European rescue funding.

October 30 — Hurricane Sandy (dubbed "Frankenstorm," together with an early winter storm advancing from the west) lashes the Eastern Seaboard of the U.S., killing 106 and leading, by some estimates, to as much as $50 billion in economic loss for the world's largest economy. Sandy descends on a region with 60 million people, forcing the closure of U.S. financial markets, halting air and rail service, and idling workers in the federal and state governments from Virginia to Massachusetts.

October 31 — Eurostat reports that the jobless rate in the 17-nation currency union rose to a record 11.6 percent. Spain continues to have the highest jobless rate, at 25.8 percent. Greece, where the European sovereign-debt crisis began, was next at 25.1 percent. Austria, at 4.4 percent, had the lowest unemployment rate. For the EU overall, the unemployment rate in September stood at 10.6 percent. By way of contrast, the U.S. had an unemployment rate of 7.8 percent, and joblessness in Britain was at 7.9 percent.

The U.S. Federal Deposit Insurance Corporation ("FDIC") files the first suit against an auditor of a bank brought down by the 2008 financial crisis. The FDIC, as receiver for the Colonial Bank of Montgomery, Alabama, sues PricewaterhouseCoopers and Crowe Horwath, claiming that they committed professional malpractice and breach of contract by failing to detect that two Colonial employees helped the notorious (and now defunct) mortgage lender Taylor Bean poke hundred-million-dollar holes in Colonial's balance sheet.

November 6 — Barack Hussein Obama is reelected President of the U.S., overcoming powerful economic head winds, a lockstep resistance to his agenda by Republicans in Congress, and an unprecedented torrent of advertising as a divided nation votes to give him more time. Mr. Obama's victory in the bruising campaign marks a landmark in modern election history. No sitting president since Franklin D. Roosevelt in 1940 has won reelection with a higher unemployment rate, which stands at 7.8 percent. It is also the first time since 1816 that the U.S. has had three consecutive two-term presidents.

November 7 — The Administrative Office of the U.S. Courts reports that bankruptcy filings in FY 2012 (the 12-month period ending September 30) totaled 1,261,140, down 14 percent from the 1,467,221 bankruptcy cases filed in FY 2011. Business bankruptcy filings totaled 42,008, down 16 percent from the 49,895 business filings reported in FY 2011. Nonbusiness bankruptcy filings totaled 1,219,132, down 14 percent from the 1,417,326 nonbusiness bankruptcy filings in FY 2011. Chapter 11 filings fell to 10,597, down 12 percent from the 11,979 chapter 11 filings reported in FY 2011.

November 14 — For the first time since the start of the euro crisis, labor unrest takes on a European dimension as Spanish and Portuguese workers coordinate a general strike, while unions in Greece and Italy also plan protests and work stoppages. Spain's heavy industry and large parts of its transportation network are slammed by the second general strike since the Popular Party of Prime Minister Mariano Rajoy came to power in December 2011. The Spanish strike is called by unions after Mr. Rajoy presents a tough austerity budget for 2013 and the country's jobless rate reaches a record 26 percent. Portugal faces a similar situation, with soaring unemployment and budget cuts imposed to comply with the terms of a $100 billion bailout agreement reached in 2011 with international creditors.

November 15 — Xi Jinping is elected to the post of General Secretary of the Communist Party of China ("CPC") and Chairman of the CPC Central Military Commission by the 18th Central Committee of the CPC. It is expected that he will become President, China's head of state, in March 2013, when the National People's Congress convenes.

British oil company BP agrees to pay $4.5 billion in fines and other payments to the government and plead guilty to 14 criminal charges in connection with the giant oil spill in the Gulf of Mexico in 2010. The payments include $4 billion related to the criminal charges and $525 million to securities regulators.

The U.S. Postal Service reports a record $15.9 billion net loss for the fiscal year that ended September 30, bringing the financially troubled agency another step closer to insolvency. The widely expected loss, more than triple the post office's loss last year, includes accounting expenses of $11.1 billion related to two payments that the agency was supposed to make into its future retiree health-benefits fund. Because of revenue losses, the post office, for the first time, was forced to default on these payments. Nearly $5 billion in other losses are due to a decline in revenue from mailing operations.

November 16	Iconic 82-year-old Hostess Brands, the maker of Wonder Bread, Twinkies, and HoHos, announces that it plans to wind down operations and sell off its portfolio of well-known brands, one week after one of the company's biggest unions went on strike to protest a labor contract. Hostess filed for chapter 11 protection for the second time in January 2012, as the national appetite for snack foods waned. The work stoppage by the Bakery, Confectionery, Tobacco Workers and Grain Millers Union affected nearly two-thirds of Hostess's factories across the country. Hostess will soon begin to shut down the company's 33 bakeries and 565 distribution centers, prompting a rush to hoard the remaining supply of Hostess sweets. The vast majority of its 18,500 employees will be laid off.
	New figures released by the U.S. Census Bureau show a spike in poverty during 2011, with the number of impoverished Americans increasing from 49 million in 2010 to 49.7 million in 2011. The findings contradict congressional estimates in September, which predicted that the number of impoverished Americans would drop to 46.2 million. Based on an updated formula devised by the Census Bureau to help the government better understand how to use safety-net programs, the report also states that nearly 20 percent of American children continue to live in poverty.
November 19	Moody's Investors Service downgrades France's sovereign-debt rating by one notch, to Aa1 from Aaa, citing the country's uncertain fiscal outlook as a result of "deteriorating economic prospects." S&P also downgraded France by one notch in January 2012. The loss of the top rating from two agencies poses a problem for France, as investment funds often require their best assets to have a minimum of two top-notch ratings to remain in their portfolios. On top of this, borrowing costs for France could rise.
November 20	Former UBS AG trader Kweku Adoboli is sentenced to seven years by a London judge after being found guilty of fraud in relation to a $2.3 billion loss, the largest from unauthorized trading in British history.
November 23	U.S. "Black Friday" retail sales online top $1 billion for the first time ever, as more consumers use the internet to do their early holiday shopping. Online sales jumped 26 percent on Black Friday to $1.04 billion from a level of $816 million in 2011.
November 30	The ABI Commission to study the reform of chapter 11 wraps up its hearing schedule for 2012 after holding five public hearings to examine such topics as the expansion of the use of secured credit, the growth of distressed-debt markets, and other externalities that have affected the effectiveness of the current Bankruptcy Code. The commission expects to issue a report of its recommendations in April 2014. It anticipates holding as many as seven field hearings in 2013.
December 1	This day marks the fifth anniversary of the beginning of the Great Recession, which according to the U.S. National Bureau of Economic Records began in December 2007, when the U.S. economy peaked.
December 5	George Osborne, Britain's Chancellor of the Exchequer and the architect of the nation's austerity program, tells Parliament that the government missed one of its self-imposed debt-cutting goals and will have to extend the belt tightening into 2018, a year longer than previously promised.
December 7	The U.S. Labor Department reports that employment growth was much better than expected in November, with the U.S. economy adding 146,000 jobs and the unemployment rate falling to 7.7 percent.
December 10	A report by the U.S. National Intelligence Council projects that China will outstrip the U.S. as the leading economic power before 2030 but that America will remain an indispensable world leader, bolstered in part by an era of energy independence. The report projects that Russia's clout will wane, as will the economic strength of other countries reliant on oil for revenues. One remarkable development it anticipates is a spreading affluence that leads to a larger global middle class which is better educated and has wider access to health care and new communications technologies, like the internet and smartphones. The report warns that at least 15 countries are "at high risk of state failure" by 2030, including Afghanistan, Pakistan, Somalia, Burundi, Rwanda, Yemen, and Uganda.
	The U.S. Treasury announces that it plans to sell all of its remaining 234.2 million shares of AIG in a public offering that would raise more than $7.8 billion. The stock sale would realize a goal few dreamed possible in September 2008 in the midst of the financial crisis; the government expects to walk away from AIG with a profit of more than $15 billion.

December 11 British authorities make the first arrests in the global investigation into interest-rate manipulation ("LIBOR-gate"), an inquiry that has ensnared the world's biggest banks. The U.K.'s Serious Fraud Office arrests three people in connection with rate rigging, including Thomas Hayes, a 33-year-old former trader at Citigroup and UBS, and an employee of RP Martin, a British brokerage firm that previously surfaced in the Canadian investigation into rate manipulation.

Dealing another blow to organized labor, Michigan, the heartland of the U.S. automobile industry, becomes the 24th state to pass right-to-work legislation designed to curb union power.

December 12 For the first time ever, the U.S. Federal Reserve announces that its interest-rate policy will be pegged to the unemployment rate. The Fed decides to keep the target range for the federal funds rate at 0 to 0.25 percent and anticipates that this exceptionally low range will be appropriate at least as long as the unemployment rate remains above 6.5 percent, unless core inflation rises to more than 2 percent.

December 13 EU leaders agree to place banks in the euro area under a single supervisor, calling it a concrete measure to maintain the viability of the currency as well as a step toward a broader economic union. The agreement would put between 100 and 200 major banks under the direct oversight of the European Central Bank, leaving thousands of smaller institutions to be overseen principally by national regulators. The new system is designed to strengthen oversight of a sector that, under the supervision of national regulators, failed to prevent banks from amassing debt quantities which could endanger the finances of eurozone states and threaten the future of the currency. The supervision mechanism, whose details have yet to be finalized, is to be fully operational by March 2014 and is subject to the approval of the European Parliament and national legislatures before it goes into effect.

December 17 The U.S. Treasury Department reports that total foreign holdings of U.S. Treasuries hit a record $5.5 trillion in October 2012. China, the largest holder of U.S. government debt, increased its holdings slightly to $1.16 trillion. Japan, the second-largest holder, boosted its holdings by a smaller amount to $1.13 trillion. Brazil, the country with the third-largest holdings, increased its total to $255.2 billion. The new figures show investors still seeking the perceived safety of U.S. Treasuries, even as lawmakers and President Obama remain at odds over whether to raise the U.S. borrowing limit as part of a broader deal to avert the "fiscal cliff."

December 19 UBS AG agrees to pay a record 1.4 billion Swiss francs ($1.5 billion) to U.S., U.K., and Swiss regulators to settle allegations of "pervasive" and "epic" efforts to manipulate interbank lending rates as two of its former traders face the first criminal charges in the worldwide LIBOR scandal.

The U.S. Treasury Department announces plans to sell off its entire 32 percent stake in General Motors within 15 months, eliminating another reminder of the bailouts precipitated by the financial crash of 2008.

December 20 Responding to the December 14 massacre of 20 first-graders and six teachers at Sandy Hook Elementary School in Newtown, Connecticut, private-equity fund Cerberus Capital Management announces that it will divest its ownership interest in the Freedom Group, which manufactures the Bushmaster assault rifle used in the attacks. The massacre reignited a long-simmering debate about gun control in the U.S. as well as investment in gun manufacturers.

NYSE Euronext, the owner of the 220-year-old New York Stock Exchange, agrees to an $8.2 billion deal that would give control of the longstanding symbol of American capitalism to an upstart competitor, the IntercontinentalExchange ("ICE"). The takeover signals the revival of consolidation in the world of market operators, after a wave of deals was quashed amid concerns over antitrust and nationalist sentiment. ICE had partnered with NYSE Euronext's main rival, the NASDAQ OMX Group, in an $11 billion hostile bid for the Big Board's parent, but that offer was blocked by the U.S. Justice Department. NYSE Euronext had sought to combine with Deutsche Börse, creating a global giant in the trading of derivatives, but that merger was stymied by European antitrust regulators.

December 30 The State of Michigan enacts legislation that establishes a process for troubled local governments to choose from four options to address financial emergencies. The law provides that if an independent review team finds a financial emergency and the governor concurs, the jurisdiction can choose to either sign a consent agreement, have an emergency manager appointed (who has authority to void union contracts), undergo a neutral evaluation process, or file for chapter 9 protection.

SOVEREIGN-DEBT RESTRUCTURING UPDATE

On January 10, 2013, the U.S. Court of Appeals for the Second Circuit denied a request by participating bondholders in 2005 and 2010 restructurings of the Republic of Argentina's defaulted bond debt to have New York State's highest court resolve a dispute with holdout bondholders regarding the meaning of an "equal treatment" or "*pari passu*" clause in the original bond indenture. *See NML Capital, Ltd. v. Republic of Argentina*, No. 12-105(L) (2d Cir. Jan. 10, 2013) (summary order). Participating bondholders had complained that the legal question concerning which debt takes precedence has provoked volatility in the bond markets and should be resolved by the state court whose law governs the contract. They argued that the meaning of a *pari passu* clause in a sovereign-debt case has not been decided by a New York state court and that if holdout bondholders—principally private-equity companies—are allowed to disrupt Argentina's sovereign-debt restructuring, countries may choose London or Singapore (rather than New York) as the base from which to issue debt.

On November 21, 2012, a U.S. district court ordered Argentina to pay $1.3 billion to holdout bondholders no later than December 15, 2012. *See NML Capital, Ltd. v. Republic of Argentina*, 2012 BL 329726 (S.D.N.Y. Nov. 21, 2012). The ruling came on the heels of the Second Circuit's ruling in *NML Capital, Ltd. v. Republic of Argentina*, 699 F.3d 246 (2d Cir. 2012), where the court upheld a lower-court order enjoining Argentina from making payments on its restructured debt without making comparable payments to holdout bondholders. Argentina received a temporary reprieve of its obligation to make payments to holdout bondholders on November 28, 2012, when the Second Circuit stayed the ruling until it has an opportunity to hear the merits of Argentina's appeal, scheduled for argument on February 27, 2013.

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