

LEGAL BRIEFS

Call it 'extreme restructuring'

By JAN DEAN

Bankruptcy isn't necessarily an end according to Jeffrey Carhart, partner Miller Thomson LLP. "Even if the company doesn't emerge from bankruptcy proceedings, in some way you're often saving the business," says Carhart, "it's transitioned or sold."

It's all about the orderly transition of businesses.

Carhart heads up the Miller Thomson National Insolvency Group and has been recognized by Chambers Global Guide to the World's Leading Lawyers as a leader in the field of insolvency and bankruptcy. He's also the author of The Business Owner's Guide to Bankruptcy & Insolvency Law in Canada.

Carhart has been practicing law since 1984 and has been involved in the insolvency proceedings of high profile companies like Eaton's, Confederation Life, Dylex, Royal Oak Mines, The Canadian Red Cross Society, Laidlaw, Teleglobe, AT&T Canada, Air Canada, One King West and the Asset Backed Commercial Paper restructuring. The latter was deemed "the largest and by far the most complex restructuring in Canada's history" according to the August 2008 issue of American Lawyer Magazine.

Carhart says this recession is different from the others because it is so broad-based. He notes that in past recessions, there was often one sector that was particularly hard hit - real estate, tech, automotive, printing - but other sectors stayed relatively healthy. Not this time.

It's also a global phenomenon. He says Eaton's was the last major insolvency case in Toronto that was really "almost exclusively Canadian" - now the cases and companies

heard here are international. He cites the restructuring of Asset Backed Commercial Paper - a Canadian market but even there some of the paper was held directly or indirectly all over the world. In that case, \$32 billion worth of short-term investments were restructured as longer-term securities.

The basic problem for many businesses now is tight credit. Credit has locked up in the U.S., and even in Canada lenders are cautious despite the fact that, as Carhart noted, the Canadian banking system is deservedly winning international plaudits for its stability. Carhart says the credit crunch really started in 2007 and while he knows the crunch will end, the world economy is not out of the woods yet.

Of course automotive is the sector currently under the toughest scrutiny as Chrysler, General Motors, and Ford battle for their lives. Carhart does a lot of automotive business and says that while that industry is not perfect, they were really trying to change and figured they had another few years to make it happen. Then came the credit crunch, the economy did a nose dive,



Jeffrey Carhart

and suddenly they were out of the kind of time they thought they had because almost nobody was buying cars anymore.

Ford has been able to get by without government bailouts because of a move it made about two years ago, says Carhart. Ford drew down on its loan facilities and credit lines and at the time some people questioned the move.

"Now in retrospect it is seen as a brilliant move - the company accessed all that credit when they could and it has stood them in good stead," says Carhart. "There was a window of opportunity that has slammed shut."

The struggles of the Big Three automakers have a ripple effect. Last summer Oakville-based Polywheels and Concord-based Progressive Moulded Products Ltd. went into insolvency proceedings and simply closed their doors. Carhart was involved in the Polywheels process. This was a company that had twice made the Financial Post's list of the 50 best managed private companies in Canada. "Usually you can find some way to transition at least part of the business, but these two companies essentially shut down." He says every case is unique but the vast

majority of businesses that end up in trouble didn't get there by behaving irresponsibly. "Instances of real recklessness or worse are rare," says Carhart. Whether it was a loan or an expensive acquisition or expansion of a facility, "at the time those decisions usually made sense."

Carhart is adamant that business people should know about the regulations and processes of bankruptcy. "I don't care how perfect you are as a company, you will probably be touched by insolvency at some point," says Carhart. "It could be a customer or a supplier, but unless you live in a bubble you're probably going to deal with it. It's not something most people want to know about, but it's something they should learn about."

The Canadian system isn't perfect, but he says it can often be a "little more nimble than the American Chapter 11". While he has appeared with local counsel in New York and other U.S. courts, when it comes to more distant venues like China, he works with someone local. He says the Chinese legal system is still evolving; everything is relatively new there. He also says that he wouldn't be surprised if it's the Chinese economy that leads the world out of this recession - they have the cash.

Meanwhile, he's watching the American government spending billions on stimulus and bailouts - money they don't have and borrow to get - and wondering what the impact of running a two-trillion dollar deficit this year will be on the U.S. That he finds a bit disconcerting - that kind of borrowing and spending is what can sometimes get companies in trouble - and it is vital for everyone that the U.S. manages its efforts wisely. Countries can effectively go bankrupt - it happened to Argentina and New Zealand.

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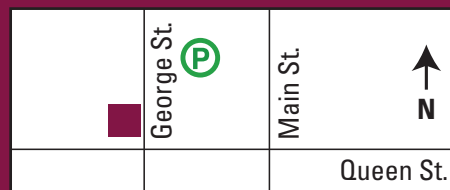
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