



U.S. AND LATIN AMERICAN RESTRUCTURING, INSOLVENCY AND FINANCIAL CRISIS MANAGEMENT

By: Mary Rose Brusewitz

THE CRISIS WE FACE NOW

The current global financial crisis is unprecedented in depth and scope. Financial regulators worldwide have been forced to inject liquidity, nationalize or otherwise seek ways to support the basic underpinnings of financial systems. We are all grappling with financial and regulatory uncertainty and its impacts on existing and future business models. In the '80s, a global crisis erupted and created threats to the global financial system. Since then, several "bubble" cycles have come and gone. The current crisis seems deeper and unnervingly more serious. Every day, new wrinkles and impacts of the crisis are unveiled. Even the basic lifelines of domestic and international finance, like trade and interbank lines, have been interrupted, despite heroic efforts of governments and multilaterals. Many of the most basic underpinnings of financial relationships may have changed forever. For example, the most common means of setting interest rates, Libor and the prime rate, may no longer reflect the cost of funding or even be relevant. Lack of certainty, reluctance to make new lending commitments and/or closed capital markets are contributing to global illiquidity. New approaches are needed to face these new challenges, and to safely navigate the turbulent and uncharted waters ahead. Within this context, we need to continue to dialogue and exchange ideas. We are actively rendering our expertise and engaging with market participants and clients in this process.

Decoupling

Until 2008, many believed that the emerging markets had decoupled from markets such as the U.S. The fundamentals of several of these larger emerging markets economies appeared poised to dodge the larger impacts of the credit crunch. Now it is clear that the emerging markets have not escaped unscathed. The impacts of this crisis continue to worm their way through the world's financial and commercial markets. Impacts on emerging economies echo what is happening in the U.S. and Western Europe, despite local distinctions in regulatory systems, degree of over-leverage and other circumstances. These economic problems stem from a global phenomenon which encompasses credit contraction and the numerous effects of de-leveraging on a colossal scale, compounded by falling asset valuations and commodities prices, lower overall consumption and consumer confidence and decreases in trade flows and other sources of cash for emerging economies, such as worker remittances.

Strasburger & Price, LLP

330 Madison Avenue, 9th Floor • New York, New York 10017.5002 • 646.495.5096 tel • 646.495.5097 fax • www.strasburger.com
Austin • Collin County • Dallas • Houston • San Antonio • New York, N.Y. • Washington, D.C. • Strasburger & Price, SC - Mexico City

Liquidity

Even those who were not obviously over-leveraged are suffering from the intense disruption in the financial markets. Major, world class companies are facing difficulties rolling over or paying debt when due because financing sources are scarce and more restrictive. Gone are the days when financing was easy to come by, with relatively low interest rates, long maturities and little or no collateral security or other guarantees. Concerns about the health of participants in the financial industry have caused parties to recognize risks that previously were not always apparent, such as counterparty risk, the risk of lender defaults and threats to liquidity. "Old fashioned" lending may be back!

Derivatives

Many companies made significant bets against the dollar through complex derivatives transactions that have created huge financial liabilities and losses and spawned accusations and legal actions against senior executives, boards and the financial institutions that sold the products. Uncertainty as to amounts owing under some derivatives and challenges as to legitimacy of the instruments or the contracts entered into in connection with them have already resulted in controversies and litigation. Warren Buffett's line that derivatives are financial instruments of mass destruction never rang truer.

The Valuation Mystery

Valuation techniques are in a state of flux. Clearly many assets were over-valued. Marking to market has surely undervalued some investments. Some experts trumpet that we are at the bottom and that prices are cheap. Many would-be investors are waiting on the sidelines because the bad news has not stopped for long enough and their confidence is at an all-time low. Commodities prices have been falling generally, creating the risk of deflation and potential gaps in export revenues and incomes.

Globalization and Discontent

Globalization is vastly more deeply-rooted than suspected by many as recently as 2008. Local factors continue to play a role in how this crisis will play out in each country. Some central banks and monetary authorities have reserves or other tools left in their arsenals and are finding creative ways to diminish negative impacts. But it is clear that the infrastructure and architecture of financial and economic systems the world over will be significantly reshaped. Capital and financial markets participants need to be enterprising to find new ways to structure financings and other transactions, make acquisitions and dispositions and restructure, refinance or reprofile liabilities and commitments.

WE CAN HELP YOU

When a company faces economic difficulties, approaches the zone where default risk begins to exist or actually defaults outright, the company and its shareholders need to be proactive. It is imperative to have open formal and informal lines of communication with and among

creditors and other stakeholders. A trusted legal advisor can facilitate these dialogues. When a creditor faces its own funding crises and, at the same time, potential defaults from its debtors, it needs to work closely with experienced and trusted legal advisors who understand the nature and complexity of the situation and can offer practical solutions that accommodate the interests of all parties. Market players need well-thought through, strategic legal advice to make the most informed decisions, and avoid additional, unnecessary complications going forward.

Obtaining legal advice from seasoned attorneys with in-depth knowledge and years of experience in facing similar challenges is critical to making it through, and even perhaps capitalizing on, this very tough, transformational period. Strasburger & Price offers companies, creditors and other stakeholders innovative, practical legal advice based on deep experience in workouts, restructurings, bankruptcies, insolvencies, litigation, arbitration, mediation, conciliation, structured financing and complex derivatives in the U.S. and throughout Latin America. On the international front, you will find our experience in the region, including in Mexico, Argentina, Brazil and Venezuela, spans many decades, many industries and many previous crises. In places in the U.S. where we do not have offices, we work with trusted co-counsel. Internationally, we frequently work on matters in Mexico with or through our Mexican joint venture, Strasburger & Forastieri, and throughout the world with a variety of well-qualified firms with which we have close relationships. We look forward to working with you, finding you solutions and helping guide you through the legal and practical complexities of these uncertain times.

WE ARE EXPERIENCED

The current crisis requires the expertise of many specialized practices. Our International, Bankruptcy, Litigation, Finance, Securities, Intellectual Property, Tax and Derivatives lawyers work cooperatively to help our clients meet their goals.

Our experience includes representation of creditors, debtors and other stakeholders in restructurings (both sovereign and non-sovereign), U.S. bankruptcies and local insolvency proceedings throughout Latin America. We have also represented indenture trustees under bond indentures and agents for syndicated loans. We have years of experience on both in-court and out-of-court negotiations and resolutions of cases involving defaulted indebtedness including single-lender loans, syndicated loans, bonds, securitizations and linked-debt instruments, project finance and other securities and lending structures.

We work with debtors, creditors and other stakeholders of all types in distressed situations. We coordinate with clients and their financial advisors, consultants, accounting firms and other experts to support stakeholders of entities facing problems. We also help our clients understand their exposure as counterparties to complex derivatives transactions, including the circumstances in which the transactions can be terminated if the other party has become a credit risk.

Circumstances we have experience with include lack of liquidity, excessive debt burdens, the need to make divestitures or down-size, the need to re-profile maturities, adjust interest rates and financial or other covenants or to renegotiate agreements, such as loan or credit agreements, bonds or indentures and other types of contractual arrangements.

We help our debtor and/or creditor clients with all aspects of workouts, restructurings, insolvencies and bankruptcies and other circumstances involving distressed assets and companies, including the following:

- Analyzing legal and other aspects of troubled circumstances, both macro-economic and particular, and defining alternatives and strategies.
- Helping creditors, trustees and agents to be proactive in identifying issues and strategies with debtors and shareholders in troubled circumstances.
- Structuring and organizing relationships and communications among debtors, creditors and other stakeholders, including where applicable, identifying and determining how to relate to creditors or other stakeholders with common or differing interests.
- Retaining financial advisors, consultants or other experts.
- Gathering, organizing, synthesizing and preparing financial and other strategic information packages for distribution to stakeholders.
- Dealing with challenges related to specific kinds of claims or constituencies with special rights under legal and/or insolvency regimes, such as labor and tax obligations.
- Addressing regulatory or contractual issues facing troubled companies and their creditors in regulated industries or where project financing has been used, such as penalties for ceasing operations or construction.

- Determining whether an out-of-court restructuring or re-profiling may be the best way to resolve the stressful situation or whether filing for a reorganization proceeding, bankruptcy or liquidation, in the debtor's country and/or in the U.S., is the best or most feasible or sensible option.
- Deciding whether to seek or agree to standstills, waivers, tolling agreements or similar arrangements.
- Assisting both debtor and creditor clients with analyzing their rights and obligations and potential exposure under derivatives transactions, whether the transactions are garden-variety interest rate or currency swaps or more complex instruments, such as credit default obligations, total return swaps and target redemption notes.
- Negotiating, preparing and drafting letters of intent, term sheets, waivers, consent solicitations, exchange offers, restructuring plans and agreements, amendments, modifications or other similar documentation of new or revised terms and conditions of indebtedness and/or asset or stock purchase and sale documentation.
- Filing for voluntary insolvency protection under US or local laws, in the latter case, if necessary, coordinating with counsel in multiple jurisdictions, where relevant.
- Supporting debtor clients in creating and implementing strategies for dealing with involuntary filings, other litigations or arbitrations and lender insolvencies or defaults.
- Assisting creditor, shareholder or trustee/agent clients in initiating or responding to proceedings involving debtors or financial counterparties, including filing proofs of claim and assisting in developing strategies for pursuing claims in the context of in- or out-of-court proceedings in one or more jurisdictions, including the U.S.
- Preparing communications to debtors, such as notices of default, reservations of rights and the like.
- Analyzing risks specified courses of action may present to creditor clients, such as clawback risk related to fraudulent conveyances, preferences and similar risks under applicable law.
- Assisting clients in judicial and non-judicial foreclosure actions involving a wide variety of collateral.
- Helping financial institutions develop strategies to deal with the consequences of counterparty risk.

REPRESENTATIVE CROSS BORDER EXPERIENCE

Members of our cross-border restructuring, insolvency and financial crisis management group have many years of experience in dealing with distressed situations in the US, Latin America and elsewhere. Some representative matters include:

- Representation of the Canadian auditor engaged by the Mexican Chamber of Deputies to audit all of the transactions completed by FOBAPROA since its creation in 1995.
- Preparation and negotiation of various restructuring and stand-still documentation packages for a European based bank.
- Assisting a Mexican financial institution in establishing internal procedures to govern its sale of distressed debt to third parties, and advising on issues raised by changes in the Law Regulating Credit Information Companies that were recently enacted in Mexico.
- Representing a major international banking group in connection with the acquisition of a distressed debt portfolio by a special purpose vehicle established by the group.
- Representing an international home furnishings company in connection with an exchange offer involving the issuance of bonds to distressed debt investors.
- Representing a major hedge fund manager in establishing complex derivatives transactions linked to the value of privately-traded hedge funds, and negotiating amendments with the counterparties to address declines in the value of the funds.
- Represent multilateral institution in restructuring of defaulted water recuperation project in major metropolitan area of a Latin American country.
- Represent multilateral institution in restructuring and renegotiation of project financed power project in Latin America.
- Represent equity investor in restructuring and sale of interests in project-financed gas pipeline in Latin America in which the other major equity investor was in a complex multi jurisdictional bankruptcy/insolvency.
- Represent Latin American issuer of securities in multiple restructurings of bonds, including in connection with tender and exchange offers and restructuring of local bank creditors' indebtedness.
- Represent agent and co-arrangers in restructuring of syndicated loan to borrower in Latin America, including negotiation of sale of assets subject to security.
- Represent construction companies in connection with settlement of a dispute regarding construction of a major petrochemicals plant and the renegotiation of the project indebtedness.
- Represent major oil company in restructuring of indebtedness of a pipeline project financing.
- Represent indenture trustee in Mexican bankruptcy proceeding filed by major Mexican engineering firm and its subsidiaries.
- Representative U.S. lender in restructuring of Mexican sugar producer and structuring of collateral arrangements which led to full recovery.

REPRESENTATIVE U.S. EXPERIENCE

- Representation of a national building materials manufacturer in pre-bankruptcy workout of multimillion dollar account resulting in substantial recovery for the client when other trade creditors received no recovery.
- Representation of a secured lender in restructure of loans secured by apartment complex.
- A limited partnership which owned apartment complexes located in Florida, North Carolina, Tennessee and Texas in its successful chapter 11 reorganization.
- A manufacturer of office products in its chapter 11 case which resulted in a successful sale of the business.
- A medical products company in its chapter 11 case which resulted in a successful reorganization and confirmed plan providing creditors 100% of their allowed claims.
- A major manufacturer of aluminum and vinyl windows and doors in its chapter 11 case which resulted in a successful confirmation of its plan of reorganization.
- A limited partnership which owned a 800,000 square foot distribution facility in New Jersey resulting in a plan of reorganization that recapitalized the partnership and resulted in the payment in full of all creditors.
- Super-regional enclosed retail mall in Houston in chapter 11 case.
- Texas coffee shop franchisee in chapter 11 case including, successful prosecution of claims against California-based franchisor for breach of covenants in the franchise agreement.
- A publicly-traded drilling company resulting in the successful acquisition of the company.
- A volume furniture retailer, resulting in successful reorganization.
- Lead counsel for Debtor-in-Possession representation of a high-profile Austin technology startup resulting in a successful reorganization in less than four months.
- Assisted in Debtor-in-Possession representation of Austin medical products company resulting in a successful reorganization and confirmed plan providing creditors 100% of their allowed claims.
- An international airline operating approximately 40 commercial aircraft in passenger and cargo operations in its successful chapter 11 reorganization.
- Unsecured Creditors' Committee in the reorganization of a semiconductor and microchip assembly, quality testing and outsourcing company.
- Unsecured Creditors' Committee in a Texas drilling company case where we negotiated an acquisition of the company, substantially increasing the payout to creditors.
- Unsecured Creditors' Committee representation in a retail dotcom chapter 11 of closely held steel fabrication company, successfully negotiating substantial reduction in secured creditors' claim, setting up liquidating trust, and recovery from directors and officers for breach of fiduciary duty.
- Judgment creditor representation in chapter 11 of closely held steel fabrication company, successfully ousting management and obtaining appointment of trustee, and implementing hostile takeover through creditors' plan.
- An unsecured creditor who successfully moved for dismissal of the case in a municipal bankruptcy.

- Indenture trustees in connection with various public company bankruptcies, including representation of indenture trustees with senior debt and representation of indenture trustees with subordinated debt.
- The indenture trustee for \$100 million in international bonds issued by a Mexican company which filed for bankruptcy in Mexico.
- Major truck and car manufacturers and their affiliates in dealership bankruptcies throughout the Southwest.
- Insurance companies in various bankruptcies involving matters peculiar to the insurance industry, including establishment of procedures to handle multiple personal injury claims, resolution of mass tort claims, automatic stay litigation and claims resolution with debtors with policies providing for large deductibles and/or claims indemnity, premium disputes with bankrupt agencies policy terminations, and bankruptcy related defenses to liability claims.
- Secured creditors in single asset real estate bankruptcies.
- Secured creditors in various manufacturing company bankruptcies.
- Manager of the electric power grid for the State of Texas in the Mirant and Calpine bankruptcy cases.
- Secured lender in bankruptcies involving large equipment financed assets.
- Finance companies who had leased tractors, trailers and equipment to a national motor freight company.
- Landlords of major regional malls in connection with the treatment of tenants' leases.
- Represented landlord of debtor/tenant in bankruptcy action to recover past due rent and to force acceptance of rejection of lease. Negotiated settlement providing for payment of rent and resolution of lien claims against leasehold.
- A manufacturing company in the acquisition of the real and personal property assets of a bankrupt coated fabrics manufacturer.
- An oilfield supply company in the acquisition of a furnace from a supplier.
- A pension trust in the acquisition of a bankrupt oil and gas company and an affiliate and the consolidation of the two companies.
- A company in the acquisition of general partnership interests in public limited partnerships located throughout the United States.
- Publicly traded restaurant operator as local counsel in connection with acquisition of Texas Land & Cattle Company through a competing plan of reorganization.

For more information about Strasburger's Financial Services expertise and experience with helping both domestic and international companies go through the financial crisis, please contact the following attorneys:

Strasburger Texas Offices

[Elmer Murphey](mailto:elmer.murphey@strasburger.com), Chair, Financial Services Practice Group, 469.287.3910
elmer.murphey@strasburger.com

[Robert P. Franke](mailto:robert.franke@strasburger.com), Chair, Bankruptcy Practice Group, 214.651.2099,
robert.franke@strasburger.com

[David J. Cibrian](mailto:david.cibrian@strasburger.com), Chair, International Practice Group, 210.250.6008,
david.cibrian@strasburger.com



Strasburger New York Office

[Mary Rose Brusewitz](#), Partner, International Practice Group, 646.495.5100,
maryrose.brusewitz@strasburger.com

[John E. Rogers](#), Partner, International Practice Group, 646-495-5096,
john.rogers@strasburger.com

Strasburger Mexico City Office

[Julian D. Nihill](#), Partner, International Practice Group, 011.52.55.2167.4308 ext. 249,
julian.nihill@strasburger.com