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Top Bankruptcy Cases Of 2021: A Midyear Report

By **Vince Sullivan**

Law360 (July 2, 2021, 5:59 PM EDT) -- After an onslaught of corporate bankruptcy filings crowded court dockets across the country in 2020, the first half of this year has seen a downturn that has reduced the overall number of filings to below the norm.

Bankruptcy professionals say the wind-down of the COVID-19 pandemic has created a bit more stability in the economy and that unexpectedly strong market performance has led some struggling companies — even those already in bankruptcy — to avoid liquidation.

"Chapter 11 professionals are feeling that there is a drought in terms of new cases," former bankruptcy judge James Michael Peck, currently senior of counsel with Morrison & Foerster LLP told Law360. "That's not what everybody expected in 2021."

Here, Law360 takes a look at the biggest and most important bankruptcy cases of the first half of 2021.

Hertz Rides A Wave

One of the year's greatest restructuring success stories involves car rental giant Hertz Global, which entered bankruptcy in May 2020 facing a liquidity crisis. With about $20 billion of debt and an overnight evaporation of its revenue due to the pandemic, the company's hopes for a successful reorganization seemed dim.

But in early 2021, Hertz's fortunes reversed as a red-hot equities market created a window to resolve much of its debt liability through an equity sponsorship transaction.

"It's an overall trend that even what's in trouble and has already filed seems to be overwhelmed with these higher market valuations and the ability of funds to step up and fund a plan," Lucy F. Kweskin, a restructuring partner with Mayer Brown LLP, told Law360. "We have a very different market than we did last year. In 2020 everyone was terrified and now people are hyper-bullish on valuation."

In the end, Hertz was able to confirm a plan that features a deal consisting of $2.78 billion in common equity investments from Knighthead Capital Management, Certares Opportunities and Apollo Capital Management LP; the issuance of $1.5 billion in new preferred shares to Apollo; and a fully backstopped new rights offering being made available to existing common shareholders of Hertz to purchase nearly $1.64 billion of additional common shares.

The plan eliminates $5 billion of corporate debt owed by Hertz, including all the corporate debt owed by its European affiliates, and will provide $2.2 billion in new liquidity for the company.

Two groups of hopeful sponsors engaged in a back-and-forth bidding war to fund the plan transactions, manifesting the eagerness of investors to deploy capital into the market.

The case is In re: The Hertz Corp. et al., case number 1:20-bk-11218, in the U.S. Bankruptcy Court for the District of Delaware.

NRA's Bad Faith Stifles Relocation

In a move that surprised many — including most of its board of directors — the National Rifle Association filed for bankruptcy in January with the stated goal of leaving its corporate home of New York for what it described as the friendlier regulatory environment of Texas.

At the time it filed, the gun rights organization said that it was in great financial shape and would be able to pay all of its creditors in full in the ordinary course of business.

Those statements doomed the NRA's efforts to relocate when a Texas bankruptcy judge found the organization did not act in good faith in filing its Chapter 11 petition, calling it a clear litigation tactic in its ongoing battle with the Office of the New York State Attorney General. In August, the attorney general filed a suit seeking to dissolve the NRA over allegations that its leadership — including Executive Vice President Wayne LaPierre — had misused tens of millions of dollars of donor funds for personal expenses.

The attorney general, as well as former media consulting contractor Ackerman McQueen, successfully moved to dismiss the bankruptcy case after a weeks-long trial that featured testimony from board members who said LaPierre surreptitiously amended his employment agreement to give himself the sole authority to commence a bankruptcy proceeding.

In January, he did just that, and the testimony adduced at the trial showed that only a few people at the NRA were aware that a bankruptcy filing was in the offing.

Upon dismissal, the judge overseeing the case said that if the NRA chose to refile a Chapter 11 petition, questions about the organization's governance would need to be addressed.

The case is In re: National Rifle Association of America, case number 3:21-bk-30085, in the U.S. Bankruptcy Court for the Northern District of Texas.

Texas Energy Crisis Triggers Bankruptcies

A February winter storm that dropped sub-zero temperatures across Texas caused a cascading failure of the state's energy grid, leading to spiking costs for electricity that providers couldn't sustain.

In the days following the weather event, Brazos Electric Power Cooperative Inc. and Griddy Energy LLC retreated into bankruptcy, each facing billions of dollars in generation costs caused by a monumental increase in the cost of power in the aftermath of the storm that shut down much of the state's generating capacity.

Neither provider was willing to pass those costs onto its customers and sought bankruptcy protection to deal with the unexpected liability.

The cases are In re: Griddy Energy LLC, case number 4:21-bk-30923, and In re: Brazos Electric Power Cooperative Inc., case number 4:21-bk-30725, both in the U.S. Bankruptcy Court for the Southern District of Texas.

Lightning Quick Ch. 11 Sets Record

Department store chain Belk Inc. entered bankruptcy Feb. 23 with a pre-packaged plan of reorganization and emerged less than 24 hours later, setting a new record for rapidity in restructuring.

The Charlotte, North Carolina-based company filed in Houston bankruptcy court and confirmed its plan to slash $450 million of debt from its balance sheet and emerge with $225 million in exit financing.

The fast trip through court was made possible through months of prepetition work to gain support for the plan that didn't interrupt the retailer's operations.

The case is In re: Belk Inc., case number 4:21-bk-30630, in the U.S. Bankruptcy Court for the Southern District of Texas.

Mass Tort Cases Move Toward Confirmation

A handful of cases dealing with massive liability related to tort claims continued their progress through bankruptcy court this year, with drugmakers Purdue Pharma and Mallinckrodt plc, along with youth service organization the Boy Scouts of America, heading toward confirmation of their respective Chapter 11 plans.

Purdue, which filed in September 2019, has a confirmation hearing on its plan set for August after announcing a new settlement with its owners, the Sackler family, that will provide $4.5 billion in funds to the estate. Releases for the Sacklers have been a point of contention in the case since the beginning, leading members of Congress to propose changes to the bankruptcy code that would prevent the non-consensual release of government claims against non-debtor third parties like the Sacklers.

The company's liability arises from its sale and marketing of painkiller OxyContin and the role it played in the national opioid epidemic.

In Mallinckrodt's case, a September confirmation hearing will deal with issues related to its plan to funnel opioid-related claims into a $1.6 billion trust overseen by a claims representative.

The Boy Scouts of America, facing thousands of claims from survivors of childhood sexual abuse, announced a major settlement with claimants July 1 that will see the contribution of $850 million to a claims fund for the benefit of abuse victims. The national organization that is a debtor in the bankruptcy will provide $250 million, while local scouting organizations — which are not debtors — will chip in $600 million.

The settlement forms the backbone of a restructuring support agreement that will support the debtor's Chapter 11 plan, expected to come up for court approval this summer.

The cases are In re: Purdue Pharma LP, case number 7:19-bk-23649, in the U.S. Bankruptcy Court for the Southern District of New York; In re: Mallinckrodt PLC et al., case number 1:20-bk-12522, in the U.S. Bankruptcy Court for the District of Delaware; and In re: Boy Scouts of America and Delaware BSA LLC, case number 1:20-bk-10343, in the U.S. Bankruptcy Court for the District of Delaware.

--Editing by Emily Kokoll.
