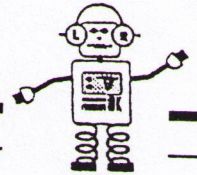


# TECHNOLOGY



## Greasing the skids: Bankruptcy auctions on the net

By **L.P. Harrison 3rd**, chair of the Bankruptcy Department at **Curtis, Mallet-Prevost, Colt & Mosle LLP**, and Associate **Stephen Z. Starr**

There has been much said about the efficiency of Chapter 11 and whether reorganization of an entity's assets is an effective means to redeploy assets of firms experiencing financial difficulty. Some believe that the process shelters current management and promotes the continuation of poor operating firms. It has been suggested in some quarters that the **Bankruptcy Code** should be amended to insist upon mandatory auctions of assets to remove certain inefficiencies in the process. See **Hotchkiss E.** and **Mooradian R.** (1999) "Auction in Bankruptcy," Working Paper, Boston College.

However, a system mandating the use of traditional auctions creates its own problems, including the sale of assets at a significant discount due to the lack of reliable and available information, as well as the high transaction costs associated with traditional auctions. With the introduction of online bankruptcy auctions in recent bankruptcy cases however, the reorganization process may have received a shot in the arm.

In the case of *Atlantic Rancher*, a Chapter 7 liquidation of an upscale catalog business and retail store, pending in the U.S. Bankruptcy Court in Boston, Mass., the online auction format is being successfully used to sell the debtor's multimillion dollar inventory of clothing and accessories on a nationwide basis. In December 1999, **Judge Tina Brozman**, the former Chief Judge of the Bankruptcy Court for the Southern District of New York, authorized the sale of a debtor's collection of fine art by online internet auction in the *AIOC Corp.* case through **eBay** ([www.ebay.com](http://www.ebay.com)).

Recently, a company called **bid4assets.com** ([www.bid4assets.com](http://www.bid4assets.com)) announced that it had launched and is conducting a website specializing in bankruptcy auctions. The site is geared particularly towards the bankruptcy community in that it has interactive, self-generating, downloadable legal forms, including a form of application to employ bid4assets, auctioneer's declaration, and report of sale. In addition, the site also allows sellers to scan

due diligence documents and post them at the website (in a password protected area, if requested).

The online auction format presents the opportunity to sell property which typically can be difficult to liquidate, such as time shares, promissory notes, causes of action, domain names, and intellectual property. The online format offers the opportunity for meaningful participation by the general public purchasing for its own use, which can result in higher sale prices than in a traditional auction format where the buyers are usually "bottom fishers" specializing in purchase of distress inventory.

Online internet auctions may also be a way of ensuring that the highest possible value is obtained for equity in a Chapter 11. In the recent Supreme Court case of *Bank of Am. Nat'l Trust and Sav. Ass'n v. 203 N. LaSalle St. Partnership*, 119 S.Ct. 1411, 1424 (1999), the Court held that reorganization plans that allow junior interests (e.g., management) exclusive bidding rights do not fall within the absolute priority rule. The Court found fault with the reorganization plan's failure to allow anyone other than the Debtor's partners an opportunity to compete for equity or to propose a competing reorganization plan.

While the Court did not expressly mention auctions as a means to ensure competition for the equity or "going concern value," internet sales or auctions would seem to be an ideal way of overcoming the *LaSalle* problem in "new value" plans. Particularly in smaller cases, the internet format may offer the equity for sale to the largest possible market with a minimum of traditional auction related expenses. An important caveat for the success of such auctions would be that the auction be subject to sufficient pre-bidding conditions (such as pre-bidding deposits, etc.) and protections to ensure that only qualified and financially able prospective purchasers participate.

The online auction format offers exciting possibilities for the liquidation of all types of interests of bankruptcy estates, in both Chapter 7 and 11 cases, and is clearly the wave of the future. The use of

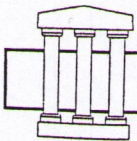
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such format for sales of property of limited value, or property which otherwise would be difficult to market, will likely increase dramatically in the future. It also offers exciting prospects for use in reorganization cases as a means to obtain the highest and best price for the sale of a debtor as a going concern.

Internet auctions may also become a means to facilitate claims trading. A new internet firm called "ereorg" recently launched an internet site for internet-based, business-to-business auction of trade claims, bank loans, and sovereign bank debt (www.ereorg.com). The company offers online posting of due diligence documents, standardized transaction documentation, and a low commission structure. A company called **E-Debt Exchange Inc.** also recently announced plans to launch a website for the trading of distressed credit card and installment debt.

Undoubtedly as a result of the significant costs savings associated with online auctions, we will likely see dramatic changes in the way auction professionals conduct business in the near future. It would not be surprising if the larger professional auction companies, which are typically involved in major liquidations, establish their own internet auction sites, or joint ventures with internet companies. The general increased use of the internet in connection with bankruptcy, such as for claims trading, will likely facilitate this process. We can also expect new local bankruptcy rules in a number of jurisdictions authorizing the use of internet auctions and the increased use of such auctions in coming years.



### Announcements

**Keith J. Shaprio**, a shareholder with **Greenberg Traurig** in Chicago and president-elect of the **American Bankruptcy Institute**, will be inducted into the Eleventh Class of Fellows of the **American College of Bankruptcy** at a ceremony planned for March 2000 at the U.S. Supreme Court in Washington, D.C.

**Jean Robertson** has been elected to the partnership of **Hahn Loeser & Parks LLP** in Cleveland, Ohio. Robertson, a graduate of **The Ohio State University State College of Law**, will continue to concentrate her practice in the Creditors' Right, Reorganization and Bankruptcy area.

### Purina Mills, Inc. files reorganization plan

St. Louis, Mo.-based **Purina Mills, Inc.** announced Jan. 18 that it had filed a reorganization plan before **Judge Sue Robinson** (D. Del.).

February 1, 2000

A hearing on the adequacy of the disclosure statement is expected to occur in February.

Under terms of the plan, the equity interest in Purina Mills' parent company, **PM Holdings Corp.**, held by **Koch Agriculture Co.** will be canceled and Koch will provide a one time \$60 million capital contribution to Purina.

Holders of the company's senior subordinated notes, together with the holders of other allowed general unsecured pre-petition claims, will receive new common stock in reorganized Purina. The plan contemplates that the new common stock will be listed on or quoted through a national securities exchange.

**Richard Cieri** of **Jones, Day, Reavis & Pogue** represents the debtor. **Thomas Ambro** of **Richards, Layton & Finger** is local counsel.

Purina Mills, which filed Chapter 11 Oct. 28, is America's largest producer and marketer of animal nutrition products with 49 plants and 2,500 employees nationwide. It is not is not affiliated with **Ralston Purina Co.**

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"We're very happy with our clients who have stayed with us and we intend to move forward," said H&C Managing Partner **Allen Lev**. "We're just very pleased to be able to provide service without other distractions."

Pratter expressed similar sentiments. "Our firm obviously is quite pleased that it was finally brought to an end," she said. "We now have 24 lawyers — 12 partners and 12 associates in Chicago. Everybody from our side is looking forward to doing good work for good clients."

When the suit was filed, Lev said that H&C's partnership agreement required partners to give 60 days notice before leaving the firm. However, he said the partners who left gave no notice and hosted a reception the day after they left to entice associates and other partners to leave the firm and go work for them. He said the departing partners copied documents over a long period of time, took client files, and did not attempt to have clients pay bills owed the firm.

The partners who left disputed the validity of the partnership agreement and Pratter said the lawsuit was nothing but a negotiating technique.

"We intend to fight every one of these allegations," she said at the time. "They are without any merit. We were surprised that any law firm with the reputation that Holleb apparently had would stoop to this."

In addition to DM and Bonovitz, H&C named the following as defendants in its now defunct lawsuit: **Cheryl Blackwell Bryson, Lawrence I. Davidson, Eric M. Fogel, Paul A. Gilman, Howard M. Hoffmann, Brian P. Kerwin, Daniel Kohn, Kenneth A. Latimer, Nicholas J. Lynn, Michael A. Reiter** and **Michael J. Silverman**.