

Wednesday, March 17, 2010

Uno's Bankruptcy-Exit Plan Includes Creditor Settlement, Rights Offering

By Rachel Feintzeig

Uno Restaurant Holdings Corp. debuted a restructuring plan that contemplates the use of a rights offering, backstopped by two private-equity firms, to facilitate the company's exit from bankruptcy.

The plan, filed Monday with the U.S. Bankruptcy Court in Manhattan, diverges somewhat from the reorganization proposal Uno originally outlined upon seeking Chapter 11 protection in January. Holders of \$142 million in notes will still swap their debt for 100% of the common stock in the new Uno, plus \$1.75 million in cash - proceeds from the sale of the collateral securing their claims. But unsecured creditors, originally forecast to receive nothing, are now guaranteed a 10% recovery because of a deal they negotiated last month with the restaurant chain.

Uno has essentially agreed to "purchase" the unsecured creditors' claims for 10% of their listed value, according to the plan. The company pledged to distribute at least \$1 million in total to unsecured creditors but warned that the pot of cash designated for the group will max out at \$1.75 million.

The company also integrated a rights offering into its reorganization strategy, saying it might opt to issue \$27 million in new second-lien notes. Proceeds from the rights offering would be used to repay outstanding debt under the company's \$52 million bankruptcy loan, provided by a group of lenders led by Wells Fargo Capital Finance Inc.

Twin Haven Capital Partners LLC and Coliseum Capital Management LLC, which hold nearly 60% of the \$142 million in notes that Uno issued prior to its bankruptcy filing, are promising to buy up any notes that go unsold during the rights offering, the company said.

The two private-equity firms came to Uno's defense last month after unsecured

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Wilmington: Electroglas exclusivity hearing

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Wilmington: Parking Co. of America Airports omnibus hearing

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Manhattan: Crunch disclosure statement hearing

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Wilmington: Tology creditors' investigation hearing

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Wilmington: Tology sale hearing

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Downey Seeks Restructuring Partners After DCHS Walks Away

By Jacqueline Palank

Downey Regional Medical Center-Hospital Inc.'s attorney said the hospital is "very encouraged" about the expressions of interest from potential restructuring partners it's received in the few days since the California hospital found out its first pick was walking away.

After the Daughters of Charity Health System said Friday it was no longer interested in adding Downey to its network of nonprofit hospitals, Downey is now seeking to extend the time in which it has the exclusive right to propose a restructuring plan so it has time to launch negotiations with other would-be suitors.

Lisa Hill Fenning, who is representing Downey in its Chapter 11 proceeding, said in an interview Tuesday that the hospital has reached out to the two potential partners Downey received offers from before deciding to exclusively pursue a deal with Daughters of Charity - Presbyterian Intercommunity Hospital and Prime Healthcare Services Foundation. She said

the hospital has received expressions of interest from "several other parties" as well as a lender looking to provide a new loan but declined to identify the entities.

Mike Sarrao, Prime Healthcare's general counsel, confirmed that Downey has reached out to the company and that Prime Healthcare remains interested in a transaction. Prime Healthcare expects to respond to Downey by the end of the week, he said.

In court papers filed Monday, Downey said a two-month extension of its exclusive plan-filing rights, through May 17, will allow it "to develop another proposal to provide the financial restructuring that will enable the hospital to continue to serve the medical needs of the community, and to meet the needs of its various constituencies."

The U.S. Bankruptcy Court in Los Angeles is slated to consider Downey's proposed extension at a hearing slated for April 6.

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Swoozie's Unsecured Creditors Ask Judge To Reconsider Loan

By Kristina Doss

The unsecured creditors of **Swoozie's Inc.** are urging a bankruptcy judge to reconsider letting the luxury gift and stationery retailer borrow money under a \$3.5 million loan from Wells Fargo & Co.

The committee representing unsecured creditors in Swoozie's bankruptcy case said in court papers Monday that the bankruptcy loan is the reason the retailer is moving toward a "fire-sale" of its assets - one that may not yield enough proceeds to repay unsecured creditors.

The company is poised to accept offers from liquidators and companies that want to continue to operate the retailer at an auction on March 25. Liquidator Hudson Capital Partners LLC will lead the bidding at auction with its offer guaranteeing Swoozie's at least \$5.3 million from the proceeds of store-closing sales.

The Wells Fargo loan requires the company to close a sale deal by March 30.

Although the Hudson offer will be enough to pay off secured creditors, including Wells Fargo, administrative claims and part of the retailer's tax debt, it won't be enough to repay unsecured creditors, the committee said.

Also, with the sale taking place only a month after Swoozie's filed for bankruptcy protection, the quick time frame has prevented the retailer's financial adviser from fully exploring alternatives - such as reorganizing the retailer by closing nonperforming stores and renegotiating above-market leases - that may yield more money to repay creditors.

The unsecured-creditors committee recommends that Swoozie's use cash collateral securing its lenders' claims instead of the \$3.5 million bankruptcy loan to fund its operations while it tries to sell its assets. Or, the committee says, it would like the bankruptcy judge to modify terms of the bankruptcy loan.

"The committee seeks to undo this very bad deal so that the debtor might conduct a more orderly liquidation of its assets and possibly reorganize around a core group of performing stores," the unsecured-creditors committee said.

Swoozie's filed for Chapter 11 protection on March 2, one day after Wells Fargo terminated the retailer's access to a line of credit. A downturn in the U.S. economy and ill-timed purchase of 13 stores from the bankruptcy estate of the Blue Tulip stationery and gift chain also contributed to the retailer's financial woes.

Firefly Energy Board Pulls Plug Amid Failed Fundraising Effort

By Mara Lemos Stein

Failure to raise fresh funding has driven **Firefly Energy Inc.** to cease operations and liquidate the company, Chief Executive Ed Williams said in a statement.

The Peoria, Ill., company, which developed a technology that replaces conventional lead plates on batteries with carbon-based foam, had been on the market seeking a \$20 million Series D round of equity financing, but it was unsuccessful as the financial markets made investors risk-averse. The company also failed to secure U.S. Department of Energy funding under battery manufacturing grant and loan programs.

"After 15 months of unsuccessful attempts to raise \$20 million in equity capital, in the midst of this world-wide financial crisis, funds that would have enabled the company's transition to full production and commercial sales, the Firefly Energy board has decided to cease operations and voluntarily file for Chapter 7 bankruptcy," Williams said in the statement.

The demise of the company comes barely three months since venture-backed Imara Corp., a maker of high-power lithium-ion batteries, also closed its doors. The failures reflect the challenges faced by U.S. advanced battery technology companies trying to set up a domestic industry to compete with established suppliers from Asia, even as the DOE is showering the sector with incentives.

Like Imara, Firefly had applied for \$130 million under the DOE's \$2.4 billion grant program for advanced battery and components, but it wasn't among the selected companies.

Firefly had raised \$34 million in venture capital financing since 2003, and its last funding round, according to !!!VentureWire!!! archives, was in mid-2008, when Firefly raised \$15 million from the hedge fund Quercus Trust, and venture capital investors Khosla Ventures and Infield Capital. Previous investors in the company include Caterpillar Inc., BAE Systems PLC, Husqvarna AB, KB Partners, the Illinois Finance Authority, and the Tri-County Venture Capital Fund.

Most advanced battery technology developers have been focusing on lithium-ion batteries, but Firefly's technology falls under what is generally described as advanced lead-acid batteries, in which the lead plates are replaced with foam plates throughout the battery pack, making it lighter and more environmentally sound.

The technology in Firefly's batteries was developed by a scientist at Caterpillar's research and development department, when the company was looking for a battery system that could withstand the vibration and severe temperatures that Caterpillar's heavy construction equipment imposes on its engines. In 2003, Caterpillar seeded Firefly to house the new technology.

Hilco Continues Fighting For Breakup Fee Over Penn Traffic Sale

By Rachel Feintzeig

Hilco Merchant Resources LLC is appealing a recent court ruling that barred it from receiving a breakup fee in connection with its ill-fated bid to buy some of **Penn Traffic Co.'s** assets.

The company wants the U.S. District Court in Delaware to take a second look at Judge Peter Walsh's decision to deny Hilco the \$300,000 payment it claimed to have earned by putting in an offer to liquidate 57 Penn Traffic stores. Though Penn Traffic ultimately abandoned Hilco's \$19.75 million offer in favor of an \$85 million going-concern deal with Tops Markets LLC, Hilco said the company never would have secured such a transaction without Hilco's initial bid.

Hilco and Penn Traffic faced off in bankruptcy court on March 3, where Walsh quickly ruled that Hilco did not deserve the breakup fee - generally promised to parties that commit to serve as stalking horse bidders during bankruptcy auctions. Penn Traffic never named Hilco a stalking horse, choosing Tops Markets instead in an 11th-hour move right before the company's bid procedures hearing.

"The plain fact was, Hilco was never a stalking-horse bidder," Walsh said at a hearing Wednesday. "I think it

would be a terrible, terrible precedent" to allow the company to collect the fee, he added.

Representatives from Hilco declined to comment on the appeal, but an attorney for Penn Traffic said the company was determined to fight the move.

"We believe we'll be successful," Lenard M. Perkins, of Haynes and Boone LLP, said in an interview Monday.

He said the ongoing court fight would not have an effect on the company's restructuring, adding that the requested \$300,000 breakup fee represents a small portion of the company's assets.

"We just didn't think it was justifiably owed," he said.

Penn Traffic also remains locked in a court battle with Price Chopper Operating Co., which offered \$54 million to buy 22 stores from Penn Traffic before Tops swooped in with its \$85 million offer. Price Chopper sued Penn Traffic on Jan. 26, seeking more than \$1.6 million in damages for the "significant economic losses" it said it sustained as a result of the canceled transaction. Penn Traffic has since asked the court to throw out the lawsuit, calling it a "desperate emotional attempt" to collect funds.

Penn Traffic, of Syracuse, N.Y., sought Chapter 11 protection in November 2009 with plans to sell its 79 P&C, Quality and BiLo grocery stores located throughout the Northeast.

S&P Lowers \$4.8 Million Vallejo Debt To Highly Speculative

By Stan Rosenberg

Vallejo, Calif., a city that has filed for bankruptcy protection, had its bond rating for a 1999 issue lowered Tuesday by Standard & Poor's Ratings Services to highly speculative from simply speculative.

The McGraw-Hill unit warned that the rating could drop to default status if the reserve fund for the bonds should be drained or if a bond payment isn't made on time.

Vallejo filed for Chapter 9 municipal bankruptcy protection in May 2008, citing a lack of reserves, an inability to generate additional revenue and the burden of fixed labor contracts. It marked the first time a bankruptcy court ruled against labor unions in a municipal bankruptcy dispute, and that decision is now being appealed.

The case is being closely watched for that reason. Should the city prevail, it might then become easier for others to take the same path instead of trying to work out their problems.

Involved in the latest downgrade, however, are just \$4.8 million of certificates of participation - bonds that pay no interest but accrete value over time - issued in 1999. They

were lowered to "C" from "B" by S&P. The so-called COPs carry a guaranty by a state motor vehicle license fee intercept program meant to funnel revenues to bond payments.

"The rating action reflects our expectation that the city will make only a partial interest payment on July 15, 2010, and that...the city's December 2009 bankruptcy workout plan indicates zero principal or interest payments will be made for three full years," said S&P analyst Paul Dyson. "We also expect that, given these forecasted partial and non-payments, the debt service reserve fund will be unable to cover the payments scheduled for July 15, 2011."

If the reserve fund is depleted or a bond payment secured by pledged revenues or reserves isn't made in full and on time, the rating likely will be lowered to "D," default, Dyson said.

Vallejo's unaudited fiscal 2009 fund balance totaled \$1.5 million, or 2% of expenditures, and is projected by the city at no higher than 3% by fiscal 2014, S&P said. Its reserve position stood at 0.9% in fiscal 2008.

General fund revenues dropped 20% between fiscal 2008 and 2010, and city management projects property tax declines for fiscal 2011 and 2012, according to S&P.

International

Court To Decide Thursday Whether Mariella Burani Is Insolvent

By [Alessandro Mocenni](#) and [Chiara Vasarri](#)

An Italian court has said it needs more time to decide whether Mariella Burani Fashion Group is insolvent, people with knowledge of the situation said.

The decision from the court in Reggio Emilia, Italy, where the beleaguered fashion group's headquarters are located, is expected to come around Thursday, the people said. If the company is declared insolvent, the court will have to evaluate whether the fashion group meets the requirements to enter the procedure for bankruptcy protection.

If the company is admitted to bankruptcy protection, the Industry Ministry is ready to pick three experts as possible bankruptcy commissioners, the people said. The people

said the candidates are a lawyer, Giampiero Marti, and two business consultants, Rossella Trippoli and Francesco Ruscigno.

Mariella Burani's board, which resigned last month, would welcome the possibility of bankruptcy protection, the people said.

The fashion group, which employs about 2,000 workers in Italy and is struggling to stay afloat, has been suffering financial troubles for months.

The company's controlling shareholder, the Burani family, failed to come up with EUR50 million (\$68.8 million) as part of a planned capital increase, which exacerbated its financial difficulties.

—Salvatore Pizzo contributed to this report.

Firm Retention Summary

East West Resort Development V LP

This is a summary of a request from East West Resort Development V LP to hire Richards Layton & Finger PA as co-counsel, filed Feb. 22 with the U.S. Bankruptcy Court in Wilmington, Del.

COMPANY: East West Resort Development V LP

FIRM TO BE HIRED: Richards Layton & Finger PA

PRINCIPAL ASSIGNED TO THE CASE: Paul N. Heath

DUTIES: The firm will provide the following services:

- advise the debtors of their rights, powers and duties as debtors and debtors in possession;
- take all necessary action to protect and preserve the debtors' estates, including the prosecution of actions on the debtors' behalf, the defense of any actions commenced against the debtors, the negotiation of disputes in which the debtors are involved, and the preparation of objections to claims filed against the debtors' estates;

- prepare on behalf of the debtors all necessary motions, applications, answers, orders, reports, and papers in connection with the administration of debtors' estates; and

- perform all other necessary legal services in connection with the bankruptcy cases.

HOURLY COMPENSATION:

Members of the firm will be compensated at the following hourly rates:

Daniel J. DeFranceschi	\$600
Paul N. Heath	\$525
Dana L. Reynolds	\$290
Jaime Schairer	\$195

BONUS POTENTIAL: Not applicable.

CASE BACKGROUND: East West Resort, a developer of luxury ski resorts, filed for Chapter 11 protection on Feb. 16.

Condos In Downtown Orlando Sell For \$25.9 Million At Auction

By James R. Hagerty

A package of 165 condominiums in downtown Orlando, which was developed by **Vue-Orlando LLC**, sold for \$25.9 million at an auction there Monday, according to auctioneer Fisher Auction Co.

The winning bid compared with a minimum of \$20 million set before the auction of units at a building called the Vue at Lake Eola and shows investors are pouncing on what they see as bargains even in glutted condo markets like Orlando.

The winner among the nine registered bidders was Condo Developer LLC. Michael Messersmith, a Chicago-based lawyer representing that firm, said it was owned by a family trust but he declined to identify the family. The owners of Condo Developer are interested in acquiring

more condo developments in large metropolitan areas across the U.S., Messersmith said.

The winning bid works out to about \$125 per square foot. That compares with an original price of \$350 to \$450 on the condos several years ago, said Jeff Morris, a managing director at Jones Lang LaSalle, a broker that wasn't involved in the sale.

The 35-story building contains 375 condos, of which 210 already had been sold. The package sold Monday was all the remaining condos plus a vacant retail space of about 8,000 square feet on the ground floor.

Vue-Orlando, which spent about \$100 million to construct the tower and opened it in 2007, owes about \$53 million to lenders, according to Scott Shuker, a lawyer for the developer. The banks forced the developer into bankruptcy proceedings in November.

New Chapter 7 Bankruptcy Filings

The following is a list of some new Chapter 7 bankruptcy filings made during the week ended March 12.

Company	Court	Location	Contact	
Ararat International Training Inc.	San Fernando Valley, Calif.	Chatsworth, Calif.	Roland H. Kedikian	626-445-2411
Austin Graphics LLC	Austin, Texas	Round Rock, Texas	Charles R. Nettles Jr.	512-443-5545
Clever Dog Properties LLC	Orlando, Fla.	Clermont, Fla.	L. Todd Budgen	407-481-2888
Clock World of Florida Inc.	Orlando, Fla.	Orlando, Fla.	L. Todd Budgen	407-481-2888
Coates Construction & Engineering Inc.	Salt Lake City	Salt Lake City	Stephen G. Stoker	801-359-4000
Concept Dynamics Inc.	Orlando, Fla.	Orlando, Fla.	David L. Robold	407-426-6999
Condor Pools, Spas & Irrigation Inc.	Tampa, Fla.	Spring Hill, Fla.	Sheila D. Normal	813-251-6666
Desperauto LLC	Phoenix	Gilbert, Ariz.	Benjamin Loren Dodge	480-656-8333
Drum Recyclers Inc.	Tampa, Fla.	Auburndale, Fla.	Thomas Joel Chawk	836-686-8151
DYG Inc.	San Fernando Valley, Calif.	Canoga Park, Calif.	Anthony J. Rothman	310-461-1395
Forte Residential Inc.	Riverside, Calif.	La Quinta, Calif.	Dennis E. McGoldrick	310-328-1001
FSC Properties LLC	Los Angeles	Santa Monica, Calif.	Sam Tabibian	310-439-9153
Gibraltar Manufacturing Inc.	Worcester, Mass.	Lawrence, Mass.	Robert L. O'Brien	603-459-9965
The Gutman Pain/Accident Center Inc.	Orlando, Fla.	Orlando, Fla.	David R. McFarlin	407-648-0058
Hafa Adai Tours Inc.	Riverside, Calif.	Corona, Calif.	Michael R. Totaro	310-573-0276
Hendricks Homes LLC	Fort Myers, Fla.	Fort Myers Beach, Fla.	Robert L. Vaughn	239-936-9393
JB Curb & Concrete LLC	Kansas City, Kan.	Overland Park, Kan.	Byron Loudon	913-663-1300
Lacy Corp.	Los Angeles	San Dimas, Calif.	Curtis R. Aijala	909-983-0877
Leonardino Inc.	White Plains, N.Y.	Pleasantville, N.Y.	Jan V. Farensbach	202-964-3453
Roger's Construction & Development Inc.	San Fernando Valley, Calif.	Sylmar, Calif.	Jan Peter Quaglia	818-846-2748
TNT Home Services Inc.	Phoenix	Peoria, Ariz.	D. Jeffrey Craven	480-222-2225
Ultraverte LLC	San Antonio	San Antonio	Joris Robert Vanhemelrijck	210-804-1529

Viewpoint

One of a series of opinion columns by bankruptcy professionals

The 5-Step Turnaround Process: Humboldt Creamery Case Study

By Russell K. Burbank

In February 2009, the chief executive of Humboldt Creamery, an 80-year-old Northern California milk cooperative, resigned abruptly, leaving the rural community in which it operated shocked and stunned. In an instant, the creamery went from what was perceived to be a flourishing enterprise to a company whose very existence became uncertain and threatened. Six months later, the creamery's assets were sold in a Section 363 bankruptcy sale for far less than the \$80 million to \$100 million the cooperative members thought it was worth, but nevertheless avoided a potentially devastating liquidation and economic blow to the already depressed region. When all was settled, fewer than a dozen jobs were lost, cows continued to be milked, generational families stayed intact, and a community remained hopeful.

The Humboldt Creamery case is an excellent example of how a team of restructuring, bankruptcy and investment professionals came together under a committed board of directors to handle a crisis and stave off a disaster. It also demonstrates how a time-proven five-step process, which is part of the training of Certified Turnaround Professionals, can lead managers, investors, and lenders in a crisis from a set of carefully considered alternatives to an optimal solution.

Step One: Situation Analysis

Humboldt Creamery had grown from a local enterprise to an iconic marketer of milk products with \$130 million in sales in 2008. After the former CEO resigned, he alleged that there were irregularities in the company's financial reports that made the company appear better than it actually was. (Criminal charges were later brought against the former CEO, who pleaded not guilty.)

At that moment, there was no certainty that the company was viable or that it could continue in its previous form, if at all. With that knowledge and fear, the board of directors hired a certified restructuring professional to guide it through the inevitably painful process of analyzing past performance and creating alternatives for going forward.

As with nearly every restructuring engagement, the first step was to determine whether there was a viable core business and the resources to implement a turnaround. With the help of creamery personnel, the restructuring professional recreated the prior year's financial results from a detailed product profitability analysis and current valuation of working capital. This analysis showed that the creamery was deeply insolvent and the novelty

products produced in its Los Angeles facility were not worth saving. However, the milk and ice cream products produced in its Ferndale, Calif., facility were profitable and the enterprise value of its Ferndale operations substantially exceeded its liquidation value.

Step Two: Management Change

Virtually every study of corporate failure points to management as the probable cause of distress and most likely key to recovery. The goal of the restructuring adviser is to ensure that capable management remains and those who caused the failure or impede the turnaround are removed.

In the case of Humboldt Creamery, the board quickly elevated the Creamery's chief operating officer, an effective and respected leader, to interim CEO. He worked closely and cooperatively with the professionals who became involved with the case. No other management changes were deemed necessary.

Step Three: Emergency Action

After confirming the existence of conditions for a turnaround, restructuring teams will typically implement emergency actions to ensure short-term survival, and this often includes laying the groundwork for a possible bankruptcy. In the Humboldt Creamery case, the dairy farmer cooperative that depended on the creamery agreed in an emergency meeting to defer \$2 million of milk payments to buy time. WARN notice, required by law to notify employees 60 days in advance of a plant closing or layoff, was given to the Los Angeles facility employees to set in motion the steps necessary to close the facility, reduce expenses and release cash from working capital.

Forbearance discussions were initiated with the creamery's secured lenders and interviews with qualified bankruptcy attorneys commenced. The creamery retained bankruptcy counsel, and in April 2009 it filed for Chapter 11 bankruptcy in the U.S. Bankruptcy Court in Santa Rosa, Calif.

Step Four: Business Restructuring

The goal of a business restructuring is to restore the enterprise's capital structure and long-term profitability. Working with the interim CEO and the existing management team, the turnaround professional developed projections and funding requirements for a potential fresh

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Viewpoint

One of a series of opinion columns by bankruptcy professionals

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start under a plan of reorganization. However, the difficulty of developing credible historical information made fresh start reorganization problematic.

In April 2009, the debtor engaged an investment banker to solicit buyers under a Section 363 asset sale process, and in August 2009 Foster Farms Dairy emerged as the successful bidder for the Ferndale operation. In December 2009, the court approved a liquidating plan for the remaining assets.

Step Five: Return to Normalcy

A return to normalcy is the usual end of the turnaround process for the professionals and the start of a new beginning for the company, provided that the process includes time to replace the legacy shortcomings that caused the company to fail. Today, the Humboldt Creamery is a unit of the largest privately-owned dairy in California.

Uno [continued from page 1](#)

creditors protested the company's restructuring strategy. The official committee representing unsecured creditors questioned the legality and fairness of the original plan and attempted to force the company to move forward with a sale. But Twin Haven and Coliseum disputed the creditors' claims, saying the criticism amounted to a "slash-and-burn campaign" against the private-equity firms.

Ultimately, the unsecured creditors backed down from their arguments, opting to support the company's reorgan-

Downey [continued from page 2](#)

First, however, the court must rule on Prime Healthcare's motion to terminate Downey's exclusive plan filing rights. Prime Healthcare filed its request in February when Downey was barred from negotiating with any other potential restructuring partners but Daughters of Charity.

Prime Healthcare didn't think it was fair that it was precluded from putting its offer - which it deemed "quantitatively and qualitatively superior" to Daughters of Charity's - on the table. It sought the exclusivity termination so it could propose a rival restructuring plan under which it would acquire Downey and help it emerge from bankruptcy.

Lesson Learned

If an enterprise has slipped into distress, investors and lenders should know that trained Certified Turnaround Professionals are available to employ a time-tested process to ascertain and, when feasible, restore a company's value. For even in the darkest circumstances, with professional help and a proven process, brighter days may still lie ahead.

Opinions expressed are those of the author,
not of Dow Jones & Company, Inc.



Russell K. Burbank, a certified turnaround specialist and partner in the consulting practice of Burr Pilger Mayer Inc. in San Francisco, worked on the restructuring of Humboldt Creamery. He can be reached at 415-677-4530 or rburbank@bpmcpa.com.

ization efforts in exchange for the 10% recovery.

Uno still requires permission from a bankruptcy judge as it seeks to send its disclosure statement, or plan outline, out to creditors for a formal vote. A disclosure statement hearing date has not yet been set.

Uno, of West Roxbury, Mass., sought bankruptcy protection on Jan. 20 after seeing sales suffer during the economic downturn. It serves Chicago-style, deep-dish pizza at its Pizzeria Uno and Uno Chicago Grill restaurants, as well as in Uno Express kiosks located in movie theaters, food courts, sports complexes, airports and other locations.

Fellow would-be suitor Presbyterian Intercommunity supported Prime Healthcare's call for more openness in the restructuring negotiations but said it wouldn't go so far as seeking the right to file a rival restructuring plan.

Lawyers representing Presbyterian Intercommunity and Prime Healthcare weren't immediately available for comment Tuesday.

Fenning said the bankruptcy judge issued a "tentative denial" of Prime Healthcare's request, but that was before the developments of the past few days. She said she expects the parties to discuss the matter in court.

Sarrao, Prime Healthcare's attorney, said the company's request doesn't preclude it from working with Downey and that a "consensual" resolution can be reached.

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From The Tape

News from around the country

Firethorne Country Club Files For Bankruptcy

Firethorne Country Club LLC filed for Chapter 11 protection Monday as the club narrowly avoided a hearing on a lender's petition to have the club handed over to a receiver, the *Charlotte Business Journal* reported. Textron Financial Corp. filed suit against Firethorne last week in U.S. District Court in Charlotte, N.C. That suit contends the course near the Union County community of Marvin defaulted on an \$8 million loan and says the club is insolvent. The club owes more than \$5.5 million on the loan, which was taken out in December 2004, Textron says, adding that Firethorne has made no payments since last June. Firethorne's management notified members in a letter on Friday of plans to file for Chapter 11. The letter to members describes Textron's suit as an attempt by the lender to take over the club. That letter said the filing would not affect club operations. In its Chapter 11 petition, filed in U.S. Bankruptcy Court in Charlotte, Firethorne listed assets and liabilities each at between \$1 million and \$10 million. The club's 124 creditors include a broad range of vendors including golf equipment makers, including Titleist, Mizuno and Nike USA.

Kitchen Gadgetry To Liquidate Under Chapter 7

A North Carolina kitchen-and-restaurant supply company that filed for bankruptcy this month left dozens of customers without merchandise and has amassed more than 200 complaints with the Better Business Bureau and state Attorney General's Office, the *News & Observer* reported. Kitchen Gadgetry entered Chapter 7 bankruptcy on March 4 and has received 168 complaints -106 of which were for undelivered merchandise - with the Better Business Bureau in the past 12 months. The Attorney General's Office also has received 46 complaints about the company, which alerted the Attorney General's Office last month that it was trying to liquidate assets. The company said in that notice that it would not contest charge-back claims from customers whose products had not been delivered. Officials for the company, which filed under the name **Supply Market Inc.**, didn't return requests for comment Monday. The Better Business Bureau has been keeping tabs on Kitchen Gadgetry since March 2008, but complaints and inquiries started to soar last fall, President and Chief Executive Beverly Baskin said. The company had been rated F by the BBB but now has no rating as it has shut down its operation. Along with complaints, the number of people inquiring about the company jumped from 639 for all of 2009 to 707 so far in 2010.

Off-Track Betting Groups Seek Pact With NYC OTB

Faced with increased competition from casinos and the continued impact of the weakened economy, three off-track betting regions have banded together to form a joint operating agreement, the *Business Review* reported. The pact between the Western Regional Off-Track Betting and its two counterparts could also serve as a template for the state's three other OTB operations, including **New York City Off-Track Betting Corp.**, which is in bankruptcy. Martin Basinait, president and chief executive of Western Regional OTB, confirmed the three off-track betting groups have reached out to the financially beleaguered NYC OTB, as well as to Nassau Downs OTB and Catskill OTB, to see if they wanted to join in the pact. Those talks are ongoing, Basinait said. NYC OTB filed for bankruptcy protection in the U.S. Bankruptcy Court in Manhattan on Dec. 3, 2009. The company's restructuring plan centers on its push for legislative changes that will allow the company to cover its operating expenses before distributing its wagering revenues to New York City, the state and the state's racing industry, as the law currently requires it to do first.