

PRACTICE POINTER



Is There A Chapter 9 In Your Future?

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Municipal bankruptcies are quite rare. In fact, only nine such cases were filed in the year ending September 1993. That's partly why the Chapter 9 filing by the city of Bridgeport, Conn., in 1991 attracted such widespread attention.

But now, thanks to a recent trend toward joint ventures between municipalities and commercial developers, there are indications that Chapter 9 could become an investor's worst nightmare — and a source of new business for bankruptcy attorneys. Two recent cases — one recently dismissed in New Hampshire, the other still pending in California — may be harbingers of filings to come.

The New Hampshire case, *In re Sullivan Company Regional Refuse Disposal District*, involved a privately owned "waste to energy" plant in Claremont, N.H. Twenty-nine cities and towns in New Hampshire and Vermont banded together in two separate waste disposal municipal "districts" and entered into a long-term "put or pay" contract in 1985 to induce the building of the plant by the private concern. Over a period of two years, the districts fell further and further behind on their obligations under the contract. When arrearages exceeded \$1 million, the owner threatened to terminate the districts' right to use the facility to dispose of their trash. To prevent termination, the two districts sought relief under Chapter 9 in September 1993.

In the California case, *In re Ventura Port District*, the debtor is a municipal port district created in 1952 to develop the Ventura Harbor within the city of San Buenaventura, Calif. The development included over 1,500 commercial and recreational boat slips, fishing facilities, a hotel, and retail store and restaurant area. As part of the development plan, the port district leased certain parcels of land to private contractors for them to develop. The port filed for Chapter 9 relief in August 1993 after one of the private lessees obtained a judgment against the port in excess of \$15 million and instituted a state court action seeking a writ of mandate to compel the port to adopt a budget providing for payment of the judgment.

Both cases should remind privateers that Chapter 9 offers powerful medicine for curing the finan-

cial ills of a municipality that is eligible for such relief. Like Chapter 11, Chapter 9 provides a municipality with a safe haven from creditor action while the municipal debtor tries to resolve its financial problems by implementing the terms of a "plan of adjustment." If certain requirements are met, the plan is binding on dissenting creditors.

In other respects, the provisions of Chapter 9 are quite different from Chapter 11 in that court control and creditor participation are minimal. A Chapter 9 debtor's activities are not subject to court approval and it may borrow money without court authority; a trustee may not be appointed in a Chapter 9 case; the case may not be converted to a liquidation proceeding; and creditors may not propose a plan of adjustment. The municipal debtor has a much freer reign in Chapter 9 than debtors in Chapter 11.

Congress made eligibility for Chapter 9 relief an intentionally difficult task. Section 109 of the Bankruptcy Code states that the municipal debtor must be "generally authorized" by state law to file a bankruptcy petition and must negotiate in good faith with its creditors prior to filing for bankruptcy. A municipal debtor also must be insolvent to qualify for relief. Unlike Chapter 11 or Chapter 7, Chapter 9 also contains an explicit requirement that the bankruptcy petition be filed in good faith.

The unique provisions concerning eligibility to file and the limited role of the court in a Chapter 9 proceeding are a result of Tenth Amendment constitutional concerns about allowing a municipality — a state created entity — to obtain relief under Federal bankruptcy law.

In the New Hampshire and California bankruptcy cases, the aggrieved creditors moved to dismiss the bankruptcy case on the grounds that the municipality did not satisfy the eligibility standards. In the New Hampshire case, a nationally known municipal bond fund and the State of New Hampshire also moved to dismiss the case.

The California court denied the motion to dismiss in open court. In contrast, the New Hampshire court granted the motion to dismiss on the
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grounds that the petitions were not filed in good faith and that the districts had failed to negotiate in good faith with their creditors in advance of the filing. The bankruptcy court was troubled that the municipal districts had not attempted to use their taxing or borrowing powers to solve their financial crisis prior to filing for Chapter 9 relief:

"Municipalities that wish to come into bankruptcy under Chapter 9 must...demonstrate that before filing...they used their taxing powers to a reasonable extent or in their prepetition negotiations have committed to the use of those powers as part of a comprehensive and appropriate workout of their financial problems."

Both cases are currently on appeal.

With privatization, public-private joint ventures are replacing taxation and bonded indebtedness by municipalities as the means to provide capital improvements and services that were once the sole province of municipal governments. As the landscape changes, so do the risks. These two new Chapter 9 cases should illustrate to bankruptcy attorneys that these municipal ventures may have a "downside" as well as an "upside" and that Chapter 9 may be an unanticipated avenue of relief for a municipality and an unexpected detour for creditors.

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contacts, educational resources and mentoring services.

"I think it's important to build social and personal relationships in the same practice area, and to use those relationships as the basis for professional dealings," Neville said. "For women, this group is going to be the equivalent of the golf course."

Neville was inspired by a group of women judges and senior bankruptcy lawyers in Southern California who formed a similar group, the **Southern California Women's Bankruptcy Lawyer Group**. Neville attended the group's luncheon last October and was impressed with what she heard.

"They understand the value of networking," Neville said. "They refer cases to each other, and help each other find jobs."

When Neville returned home, she decided to form a similar chapter. She began cornering her friends at Christmas parties and asking them to make a list of every women bankruptcy professional they knew.

"If there is real networking to be done, the group should include women accounting professionals, financial advisers, in-house bank professionals and traders in distressed securities," she said.

The group's first dinner on Jan. 13 attracted 70 women.

"It was wonderful," Neville said. "There was no planned program. I just said a few words about the intention of the group, and everybody just mingled."

The women filled out surveys in which they were asked what they wanted the group to accomplish, and how often they should meet. Neville said she also asked the women to complete a short biography of their professional interests and achievements for a local directory.

Neville hopes the group will spread beyond the borders of New York and Southern California and become a national network.

Although the group has met only once, Neville said members have already begun referring clients to each other. In addition, Neville said group members are finding it's easier to call each other and negotiate problems rather than filing adversarial motions in court.

The group's next meeting is at 7:30 p.m., May 5, at the **Williams Club** at 24 E. 39th St. in New York, and it will feature three speakers:

Martha Fetner, vice president of recovery and restructuring at **Chase Manhattan Bank** New York, will discuss the pros and cons of multinational lending agreements. **Stephanie Rogers** of **Dai-Ichi Kangyo Bank Limited** in New York will discuss the restrictions Japanese banks impose on claims and restructuring agreements. And **Selinda Melnick** of New York's **Rogers & Wells** will talk about the June 5 meeting of a new group, **The International Women's Insolvency and Restructuring Confederation**, in London.

Neville also hopes the group will be a way to promote the success of women in insolvency-related professions and will help women feel less isolated.

"Many of us are partners, and we have been recognized to a certain degree, but we don't have the same firm and national recognition that the men have," Neville said. "Once women receive greater recognition [with]in their own community, it will spread to the firm culture as well."

Chicago Theater Files Chapter 11

Chicago Theater Restoration Associates, the limited partnership that owns and operates the **Chicago Theater** and the neighboring **Page Brothers Building**, recently filed for Chapter 11 in the Northern District of Chicago.

Terry J. Malik of **Winston & Strawn** in Chicago is the bankruptcy counsel for the debtor. **Paul Fox** of **Holleb & Coff** in Chicago is the general counsel for the debtor. **Richard W. Burke** of **Burke, Warren and MacKay** represents the city of Chicago.