2017 Likely to Bring Change—and Opportunities

BY BRADFORD J. SANDLER, JANUARY/FEBRUARY GUEST EDITOR

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This is now the third year that I have had the honor to serve the TMA as guest editor of the *Journal of Corporate Renewal*, and while every year has its unique issues, both positive and negative, I do not recall seeing a year in which the United States has been so divided in almost half a century. We are not unique. Divisions reside across the Atlantic Ocean, most notably in Britain, which resulted in the surprise Brexit vote. Divisiveness, whether sparked by good or bad motives, often leads to changes, and from the perspective of restructuring professionals, change usually presents opportunities. This year will be no different.

As 2017 unfolds we are likely to see the continued rise of oil prices, the slow rise of interest rates, and decreased regulation from a Trump presidency. The new administration will likely also be a boon to industries that help infrastructure and defense. It is expected that tax rates for both corporations and individuals will be cut. All of this on the surface sounds of good news to everyone but restructuring professionals; however, we can all take comfort that there is no lack of bad management and uncertainty, which both a new administration and the global economy promise to deliver.

Additionally, there are still industries that are experiencing structural issues, such as steel, retail, and healthcare. So in a nutshell, there will be opportunities for distressed investors, although they may be more limited and focused than in past years, which is why it will be critically important to attend the TMA's 2017 Distressed Investing Conference in February. Until then, we have this edition of the *JCR* focusing on distressed investing, and we have a broad range of topics.

Our issue opens with my friend, Jay Goffman, and his colleague Christine Okike, both of Skadden, discussing lessons from the *Hanjin* bankruptcy case, and specifically the issues that arise in cross-border insolvency proceedings when the substantive laws of the United States and a foreign jurisdiction collide. In *Hanjin*, they concerned maritime liens.

We then turn to the next article by my colleague, Peter Keane, and me that discusses the developing use of participation fees in bankruptcy cases to encourage distressed investors to take part in a sale process. We describe several cases that illustrate how creative sale and auction procedures have benefited distressed investors, as well as debtors and their creditors.

The next article serves as a guide to lenders who are seeking to control the right of a borrower to file for bankruptcy, co-written by my friend, Mark Fisher, and his colleague, Andrew Minear, both of Schiff Hardin. They provide not only cautionary advice, but also a possible solution to lenders to give them more control over when a borrower could file for bankruptcy.

Lastly, we are afforded some practical business advice from Robert Angart of Sues & Angart on turning around nonprofit businesses. We have seen no shortage of nonprofit bankruptcies, from educational and healthcare-related institutions to various cultural institutions, and this article should be read by anyone seeking to rescue a stressed or distressed nonprofit institution.

We concisely cover some timely and developing areas of distressed investing, and on behalf of all of us at the TMA, I hope that you enjoy and find useful this edition of the *JCR*. See you at the Distressed Investing Conference in Las Vegas February 1-3!