

## Top Bankruptcy Cases Of 2018

By **Alex Wolf**

*Law360 (December 20, 2018, 8:01 PM EST)* -- The world of corporate restructuring has much to reflect on as 2018 comes to a close. Lawyers at some of the top bankruptcy practices brought several major Chapter 11 cases to a successful end, while others spent a large chunk of the year dealing with the fallout of a failed effort to turn around retail giant Toys R Us Inc. Additionally, the U.S. Supreme Court opened up more avenues for creditors to claw back prepetition transfers.

Here, Law360 looks back on some of the most important bankruptcy cases of 2018.

### **Toys R Us Inc.**

Perhaps the most instantly identifiable bankruptcy saga of 2018 is the one that unspooled in the Chapter 11 case for Toys R Us. The iconic chain, which entered bankruptcy in free fall in September 2017 with more than \$5 billion in funded debt, quickly saw its hopes of reorganizing or selling the business as a going concern dashed this year following an abysmal holiday sales season.

After announcing in March that it would close more than 700 stores in the U.S. and wind down operations, attorneys for the company quickly adjusted case objectives to come up with a consensual liquidation plan. To do so, the debtors reached settlement terms with vendors who held administrative claims, other unsecured creditors and groups of lenders.

Over the last few months, Toys R Us successfully ran going-out-of-business sales at its locations across the country, sold off leases and its own property holdings, negotiated purchase deals for its businesses in Canada and Asia, and confirmed Chapter 11 plans built on a web of settlements and negotiations with its stakeholders that will allow the brand name to survive.

The case attracted attention not just because it was the final chapter for a beloved American retail brand that had existed for 60 years, but also because it underscored the difficulties facing legacy retailers with a large physical footprint and considerable debts. By being forced to liquidate, the company and its private equity owners had to lay off more than 30,000 employees and deal with public scrutiny over how the leveraged buyout of the corporation in 2005 contributed to its demise.

Last month, private equity giants KKR & Co. Inc. and Bain Capital LP announced that they had established a \$20 million fund to provide severance pay for some of the chain's former workers.

## **Merit Management Group LP v. FTI Consulting Inc.**

In the most consequential Supreme Court ruling of 2018 to affect the restructuring practice, the justices unanimously rejected the notion that a securities transaction can be insulated from avoidance actions in a bankruptcy case as long as it involved a financial institution.

In a decision with hefty economic implications, the court **ruled in February** that a transaction can be undone in bankruptcy if funds simply move through a financial institution without benefiting it. The decision resolved a circuit split over how to interpret the “safe harbor” provision of the Bankruptcy Code, and instructed courts to look at the overarching transfer instead of its component parts when deciding whether it can be clawed back.

In simple terms, the rule “dictates that the only relevant transfer for purposes of the safe harbor is the transfer that the trustee seeks to avoid,” the justices said.

The ruling is expected by some to have ripple effects that could affect market participants. Before the high court weighed in, former shareholders of Lyondell Chemical Co. and Tribune Co. facing 10-figure clawback suits warned that it could inject uncertainty into transactions and drastically disrupt the marketplace.

“It’s going to have an impact on recoveries and how those actions move forward, and you might see a lot more aggression on the side of plaintiffs with respect to potential claims,” Cooley LLP attorney Jay Indyke told Law360 earlier this year. “To a certain extent, there could be a feeling that the balance of the scales shifted more equitably.”

Just a month after ruling in Merit Management, the Supreme Court urged the Second Circuit to re-examine its March 2016 decision in a case brought by Tribune creditors that the safe harbor protections did in fact apply to any transaction that passed through a financial intermediary, regardless of whether the banks and brokers at issue received any of the funds themselves.

## **Westinghouse Electric Co.**

Nuclear contracting giant Westinghouse is no longer part of Japanese conglomerate Toshiba Corp. after being purchased out of bankruptcy this year by publicly-traded utility holding company Brookfield Business Partners LP for \$4.6 billion.

Westinghouse landed in bankruptcy in March 2017 after Toshiba reported that the unit would have to book a \$6.1 billion write-down for cost overruns at its two nuclear reactor construction sites in the United States, the first to be built domestically since the 1970s.

The company said it sought Chapter 11 protection to address “a series of unforeseen challenges that significantly delayed and increased the cost of construction” of four reactors at the Alvin W. Vogtle Electric Generating Plant near Augusta, Georgia, and the Virgil C. Summer Nuclear Generating Station near Columbia, South Carolina.

While in bankruptcy, the company rid itself of obligations to finish the U.S.-based nuclear reactor projects — which have since been shuttered — thanks to multibillion-dollar severance payments from Toshiba. It then confirmed a consensual restructuring plan at the end of March after agreeing to pay in full a class of allowed general unsecured claims, while providing a recovery on \$7.6 billion in claims

asserted by other unsecured creditors.

Since the plan was approved, attorneys for the estate have fought to cut off or limit claims asserted by subcontractors and employees who have brought class action suits over being laid off without sufficient warning.

### **Takata Corp.**

The \$1.6 billion sale of Takata Corp. to Key Safety Systems Inc., now Joyson Safety Systems, closed in mid-April after a labyrinthine global negotiation process that enabled the troubled manufacturer to continue operating under new ownership without the weight of extensive product liability litigation stemming from defective air bag inflators.

The Japanese manufacturer was pushed into bankruptcy in 2017 following the onset of multidistrict litigation and massive global recalls over its widely used vehicle air bag inflators. Facing a potentially ruinous fate as claims and class actions piled up, the company engaged its large automaker customers to take part in the restructuring process and ensure its Chapter 11 sale would be successful.

Through its bankruptcy case, Takata developed a plan that uses the proceeds of the sale to pay the original equipment manufacturers in part, as well as wrongful death and personal injury claimants through a trust akin to the way recoveries are handled in an asbestos Chapter 11 case. Other settlements also emerged in the run-up to confirmation, including a deal with 44 states and the District of Columbia, to resolve enforcement actions through a \$650 million claim subordinated below general unsecured claims.

Takata gained enough support across its creditor classes to turn what could have been a multiday fight over plan confirmation into a one-day court hearing in February at which it received approval to execute the restructuring scheme.

### **IHeartMedia Inc.**

IHeartMedia Inc. filed the largest bankruptcy case in terms of assets and liabilities in 2018 when it hit Chapter 11 in March with more than \$20 billion worth of debt. The San Antonio-based broadcast company and largest radio station owner in the country filed for bankruptcy in Texas after several attempts over the years to rework its balance sheet issues and push out its debt maturities.

Though the company entered bankruptcy with a restructuring agreement in hand, it took several months before it was cleared to solicit creditor votes on its plan to reorganize by splitting from its billboard unit Clear Channel Outdoor Holdings Inc. and emerging from bankruptcy with \$5.75 billion in new debt secured by substantially all of its assets.

IHeart has amended its Chapter 11 plan numerous times, most recently after piecing together a cash pool for a group of unsecured creditors. It announced earlier this month that more than 90 percent of the votes cast by creditors and shareholders were in favor of the plan, and that it now anticipates exiting bankruptcy in early 2019 after a plan confirmation hearing in January.

The debtor's unsecured creditors had objected to a previous version of the plan, and in July they mounted a bid to sue iHeartMedia's secured lenders on their own behalf, arguing that the debtor was leaving claims potentially worth billions of dollars on the table to appease them and push through a

restructuring scheme.

Should its Chapter 11 plan be confirmed, iHeartMedia will join Cumulus Media Inc. as a national broadcast radio giant to successfully reorganize in bankruptcy over the past 12 months in the face of a changing media landscape.

### **The Weinstein Co.**

The bankruptcy of Harvey Weinstein's movie studio in March became a reality after a proposed out-of-court sale of the company fell through at the beginning of the year. The Weinstein Co. had been in a tailspin for several months after explosive stories came out alleging a pattern of sexual harassment and abuse by the co-founder. The myriad allegations against Weinstein, which energized the nation's #MeToo movement, led to his ouster from the company, a growing list of lawsuits and a high-profile criminal case.

The Delaware bankruptcy judge overseeing the case approved a sale of most of the company's assets to an affiliate of private equity firm Lantern Capital for a diminished \$289 million over the summer. The sale included a minimum commitment from Lantern to fund at least \$8.75 million in contract cure costs.

Sorting out a plan to liquidate the Chapter 11 estate is now in the hands of the unsecured creditors committee, a group that includes lead plaintiffs in class action cases currently pending against the disgraced movie mogul and others stemming from the abuse allegations.

The bankruptcy proceedings have overlapped with the New York criminal case against Weinstein and civil suits filed on behalf of accusers, as evidence has been sought from the Chapter 11 estate in those actions. Additionally, the successor to TWC has worked to resolve old contract claims against the company in the bankruptcy case.

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