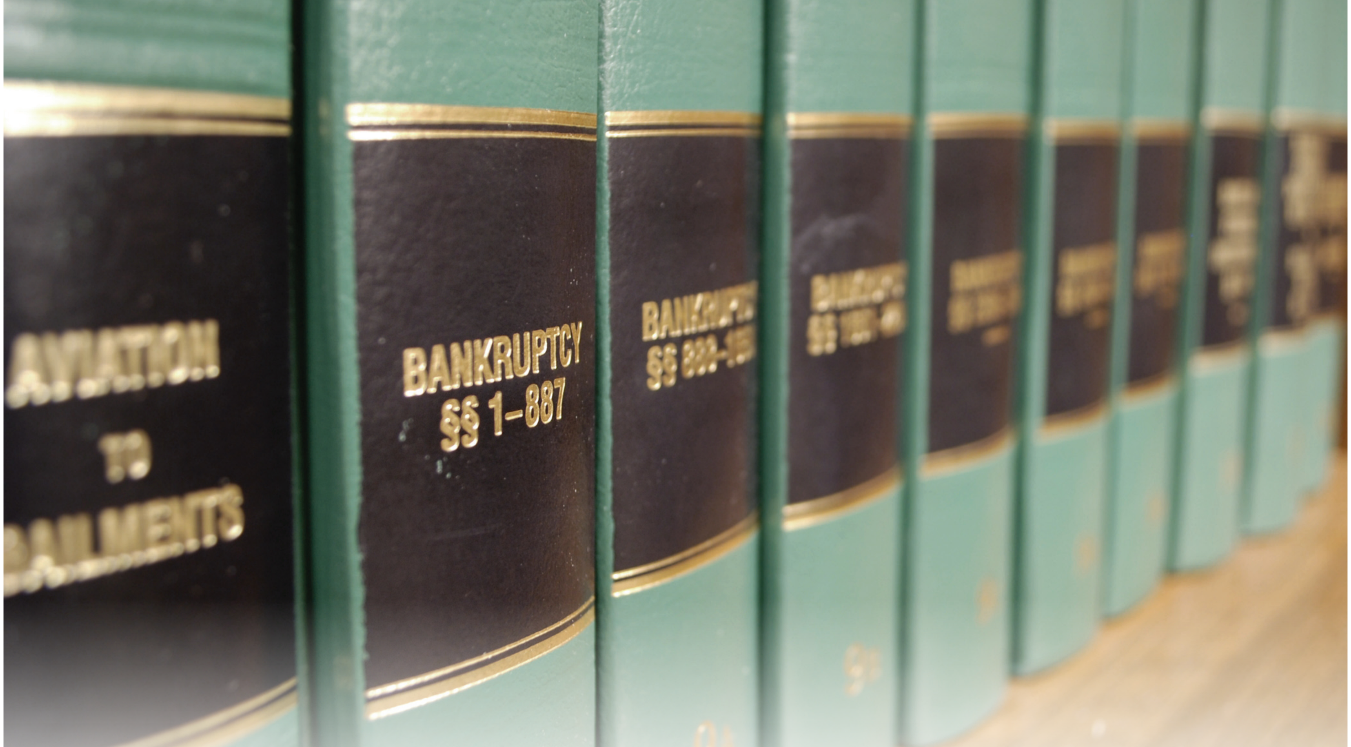

Boom for Bankruptcy Law

BY LARRY NAGENGAST

In a troubled economy, everyone struggles.

For bankruptcy attorneys, the struggle comes with managing an ever-growing workload, one that shows no sign of slowing down.

"It's keeping all of us busy, extremely busy. I envision we will continue to be busy for at least the next two years. It [the economy] will get worse before it gets better," says Stephen M. Miller, chairman of the Bankruptcy and Restructuring Group at Morris James LLP in Wilmington.

"I don't know how closely this can be compared to the Great Depression, but we're headed down the path of having more distress than we've seen at any time since then," says Jeffrey M. Schlerf, head of the Financial Restructuring and Bankruptcy Practice at the Wilmington office of Fox Rothschild LLP.

Just look at the numbers. As the economy has spiraled downward, bankruptcy filings have soared.

In 2006, 244 business bankruptcy cases, including 203 Chapter 11 reorganizations, were filed in U.S. Bankruptcy Court in Wilmington. In 2007, there were 306 filings, including 222 Chapter 11s. Last year, business filings totaled 1,198 cases – more than double the total of the previous two years; 531 of the 1,068 Chapter 11 filings came in the last three months of the year. In January and February of this year, 232 more Chapter 11 cases were filed.

In years past, according to Miller and Charlene D. Davis, vice chair at Bayard, P.A., and vice chair of the Bankruptcy Section of the Delaware State Bar Association, bankruptcy filings would tend to be concentrated in a single industry. "Now, it's affecting all business sectors," Davis says.

"For the bankruptcy lawyer, this is almost the perfect storm," Schlerf says.

Chapter 11 reorganizations, the most common business bankruptcy filing, occur for several key reasons, and all have come into play during the current recession, Schlerf explains. Some companies are in distress because of the sharp downturn in the business cycle, others are suffering because the collapse of the financial markets has made it impossible for them to borrow funds needed for operations, and still others are in distress because their business model is not working, either because the model is flawed or because its top managers are not making the right decisions.

Delaware's prominence as a venue for corporate bankruptcy filings is directly linked to its corporation law and the century-long popularity of the state's Court of Chancery as the nation's premier venue for resolving corporate disputes. The state where a business is incorporated is one of the three criteria for determining where a bankruptcy case may be filed. More than 850,000 business entities have their legal home in Delaware, including more than 50 percent of all U.S. publicly-traded companies and 63 percent of the Fortune 500.

Delaware's U.S. Bankruptcy Court, whose bench expanded from two judges to six in March 2006, has a reputation for efficiency and consistency. "Our bankruptcy judges are experienced, consistent, pragmatic and generous with their time," says Jeffrey Wisler, chair of the Bankruptcy Section in the Business Law Group at Connolly Bove Lodge & Hutz LLP in Wilmington. "Other jurisdictions also have great judges, but our reputation is more well-known."

"Every one of our judges is top-notch," adds Miller. "They have practiced bankruptcy law. They're not far removed from the daily grind."

That daily grind is quite familiar to a substantial number of Delaware attorneys. Of the bar association's 4,000 or so members, 462 — nearly 12 percent of the total — belong to its Bankruptcy Section, Davis says.

Bankruptcy cases are complex, so Delaware firms have many ways of participating in the litigation. They can be lead counsel for the debtor, although in the biggest cases this role is often assumed by a larger out-of-state firm that has previously worked with the company declaring bankruptcy. But court rules require that debtors or creditors represented by an out-of-state firm have a local counsel too. More often, Davis and Schlerf say, Delaware firms serve as counsel for creditors or for some of the interested groups involved in the case — the banks, vendors, landlords, lien holders, suppliers shareholders, retirees and pension funds that can stake a claim to some of the debtor's remaining assets.

Another point of entry, Davis adds, is as "conflict counsel," a situation that develops as the roster of creditors unfolds and a law firm realizes that it already has an affiliation with a claimant other than the one it has been hired to represent in the case.

Davis says she has also been involved in several "cross-border" cases — those in which claimants are incorporated in other countries and the laws of those countries must also be taken into account. In these complex matters, it can sometimes take several years to come up with a reorganization plan for the debtor company, she says.

One trend Schlerf has noticed in the practice of bankruptcy law that hasn't hit Delaware yet is for law firms to develop specialties representing debtors in a specific industry. "There's a handful of New York firms that have developed a name for themselves representing retailers," he says. Others might specialize in airlines, or the energy industry, he adds.

"Being familiar with the industry helps attorneys better understand a case in its early stages, but learning about new industries is one of the benefits of this type of work," Wisler says.

In the current economic climate, there's no shortage of opportunities for learning. A sampling of cases on the court's docket early this year includes: Magna Entertainment (owner of the Pimlico and Laurel racetracks in Maryland), Muzak LLC, IMCO Management (and affiliated recycling businesses in seven states), Ritz Camera Centers, the Tribune Co. (whose holdings include newspapers, television stations and the Chicago Cubs), KB Toys and Tweeter.

Businesses that support Delaware's bankruptcy lawyers — hotels, restaurants and copy services, among others — are also benefiting from the surge in filings, Wisler notes, and he expects that to continue.

"Even if the economy recovers, credit will not be as available as it was two years ago," he says, "and companies will continue to opt for Chapter 11 as a way to maintain or sell their businesses." ■