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## **Reinstatement Emerges as Leading Issue in Bankruptcy Litigation: Q&A with Robert Grien and Maureen Chakraborty of Analysis Group**

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**New York, July 20, 2009** — Since the onset of the credit crisis, bankruptcy filings have skyrocketed as large, leveraged loans come due and available financing remains scarce. In May 2009 alone, U.S. business bankruptcy filings jumped 40 percent from the previous year. Further complicating bankruptcy and restructuring proceedings, the complex issue of loan reinstatement has emerged as a significant topic in reorganization negotiations. As debtors and creditors jockey for position on this issue, the first few Chapter 11 reinstatement cases are setting critical precedents. The plan confirmation hearing for the Charter Communications case, scheduled to begin today, could clarify important questions concerning pre-packaged bankruptcy plans, reinstatement, credit agreements, and which creditors should retain the most influence during restructuring.

Bankruptcy and restructuring experts [Robert Grien](#), Managing Director and Head of the Finance and Restructuring Advisory Group of TM Capital Corp. and an affiliate with Analysis Group and leveraged finance expert, and [Maureen Chakraborty](#), a managing principal with Analysis Group who specializes in bankruptcy-related matters and solvency analysis, answer pressing questions about the increasingly prominent role of reinstatement in bankruptcy litigation and negotiation:

### **In the current world of bankruptcy and restructuring, there has been a lot of talk about “reinstatement” of debt and “cram-up.” What do these terms mean?**

**Chakraborty:** “Bankruptcy and restructuring proceedings are complex matters that have developed their own lingo. Two terms, ‘reinstatement’ and ‘cram-up,’ have recently emerged as particularly important. ‘Reinstatement,’ or renewal, of debt is a specific action that can occur if the only default on a particular creditor is the act of filing for bankruptcy. In other words, for that particular creditor, the debtor is current on the loan’s principal and interest and not in breach of other loan covenants. It is possible, in this circumstance, for the loan simply to be reinstated under all of the original terms as long as the junior lenders demonstrate that the senior lenders are receiving the full value for their secured claim.”

**Grien:** “A ‘cram-up’ is a new wrinkle on the more familiar ‘cram-down’ in which the more senior creditors impose their plan, or ‘cram it down’ on dissenting junior creditors. This is possible because bankruptcy law allows for a plan to be confirmed over the objections of a dissenting class of creditors if one impaired class has voted in favor of the plan. We say a class is impaired if it is receiving less than 100 percent of its claim in the plan. A ‘cram-up’ is the opposite phenomenon, and occurs when junior creditors try to force a plan on more senior creditors by reinstating their debt. Many of the loans put in place in the few years leading up the credit collapse are very attractive to the borrowers, so we expect more of them to attempt to utilize this strategy going forward as a means of preserving that debt in their capital structures.”

### **Please explain this recent reinstatement phenomenon in bankruptcy filings. What is it and why has it grown so quickly?**

**Chakraborty:** “In this economy, companies filing for bankruptcy are not always in technical default on their senior loans. They often preemptively declare bankruptcy as a means to reorganize and achieve favorable financing terms. (MORE)

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“Reinstatement has not, historically, been battled out in bankruptcy court, and there is no formal case law on this topic. We expect to see a lot more of this type of contentious litigation because, as Rob just explained, reinstatement of debt has become particularly favorable for debtors and unpopular with senior creditors.”

### What factors have contributed to this phenomenon?

**Grien:** “There are a few factors. The credit boom allowed companies to borrow too much money at historically low interest rates. Many of these loans were put in place with loose restrictions, or covenants, and ambiguously written loan agreements. As the economy has weakened, many of these over-leveraged companies are running into liquidity problems. Due to the loose covenants, however, they may not be in default under their senior loan agreements. Because these loans are so attractive, debtors are willing to fight hard to keep them in place. This explains the uptick in reinstatement battles that Maureen mentioned.”

### Why would senior creditors object to this cram-up?

**Grien:** “Money. Lenders at the peak of the credit market assumed that borrowers would default before filing for bankruptcy, thereby giving them an opportunity to renegotiate these loans. As we have discussed, this does not always occur. When reinstatement is suggested, the outcome is even worse for the senior lenders than traditional bankruptcy proceedings. Those lenders are, in effect, stuck in a below-market loan. Senior lenders have significant reason to want to fight back. As we have seen in both the Spectrum and Charter bankruptcy litigations, senior creditors had strong views that the proposed reorganization of the junior debt would lead to a change in control of the company, an event of default under the existing terms of the Senior Creditor Agreements. Furthermore, under certain circumstances, senior lenders might view a restructuring of the junior creditors’ debt as a violation of the traditional senior–junior subordinated structure, where senior lenders should be paid before junior lenders.”

### How will bankruptcy courts likely evaluate these proposed restructurings?

**Chakraborty:** “For a reinstatement plan to be approved over the objection of a creditor group, it is necessary that the debtor demonstrate that the plan conforms to the bankruptcy code and to the absolute priority rule, where the claims of senior creditors should take precedence over shareholders’ or junior creditors’ claims, which Rob just noted. Courts will also have to assess the viability of the plan and whether the plan would create events of default, such as a change of control or prepayment of junior debt before senior lenders have been paid in full.”

### What does that mean in practice?

**Chakraborty:** “Courts will look at the specific terms of each case, taking into account arguments about the viability of the reorganization plan. A court’s ruling will be influenced by the specific terms of the original credit agreement, the value of the company coming out of bankruptcy, and the terms granted to other creditors.”

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