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The Brink: Distressed Creditors Put Asset Transfers on Trial
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[Link]

Collateral Damage

In the dog-eat-dog world of distressed debt, collateral is king. Strip assets beyond creditors' reach, and recoveries can suffer badly.

Some lenders are fighting back in court, alleging that asset transfers are fraudulent and should be unwound. The lawsuits can also provide bargaining power when companies eventually come to the table to restructure.

Creditors to telecom billionaire Patrick Drahi's companies and Canadian satellite operator Telesat Canada are putting the law to the test.

Optimum Communications creditors in September fired off a 165-page lawsuit, alleging it improperly shifted collateral beyond their reach to benefit majority shareholders without a legitimate business purpose. It's the latest development in a tense battle in which both sides have sued each other.

Optimum, in which Drahi has a majority stake, is on the verge of filing for Chapter 11 by year-end with debt holders poised to seize control of the beleaguered telecommunications company.

Altice International creditors sued Drahi's company last month, alleging it fraudulently moved billions of euros of assets beyond their reach by transferring its Portuguese and Dominican Republic businesses to other entities controlled by Drahi.

The lawsuit comes as the two sides negotiate a restructuring of Altice International's roughly €8 billion debt pile.

Proving fraudulent transfer can be challenging and such suits can stretch on for months and months. Yet they can give creditors the upper hand in a prepackaged bankruptcy or refinancing.

"There is no one-size-fits-all metric to assess fraudulent transfer cases, as they are highly fact-dependent," said James Smith, a principal at law firm McKool Smith.

The timing of the Optimum creditors' lawsuit — amid a potential bankruptcy and after the company accused lenders of forming an illegal buyers' cartel — suggests it may be aimed at strengthening their hand in negotiations, he said.

Telesat and its creditors are also embroiled in a lawsuit as it closes in on an early-December deadline to refinance billions of dollars of maturing debt.

The dispute centers on Telesat's transfer of Lightspeed, its growing low-Earth-orbit satellite network, to an indirect subsidiary and outside the collateral backing its bonds and loans.

Creditors said the move left them exposed to a "deteriorating" geostationary-satellite business while depriving them of claims on Lightspeed.

They are seeking to unwind the asset transfers they allege moved some of its most valuable assets beyond their reach and breached lending terms. The lawsuit also alleges Telesat had taken "no action" to address its looming maturities despite creditors' attempts to engage.

Nearly 10 months since lenders took Telesat to court, talks are continuing. Chief Executive Officer Daniel Goldberg said on last week's third-quarter earnings call that advisers are seeking "good faith engagement" with Telesat GEO debtholders while evaluating other alternatives aimed at reaching a fair outcome for stakeholders.

And every so often, there is a happy outcome, like the accord involving Echostar and creditors of Dish DBS. The latter filed for Chapter 11 in June under a deal that settled litigation, resolving a long-running dispute between Dish DBS and its creditors over intercompany loans and asset transfers of wireless spectrum licenses.

Optimum declined to comment. Representatives at Altice international, Telesat and Dish didn't respond to requests seeking comment.

<u>High Alert</u>

- **Redeemer Health, a nonprofit Catholic health system with facilities in Pennsylvania and New Jersey, filed for Chapter 11 bankruptcy.**
- **Around one in 10 private credit loans held by BDCs are marked at lower than 90% of face value, according to academics at the Frankfurt School of Finance & Management.**
- **Canadian pulp producer Mercer International plans to file for Chapter 11 bankruptcy as part of a restructuring that would slash its debt and bring in $400 million of new money.**
- **The UK government is demanding answers from Gordon Brothers on why it rejected offers for struggling retailer Poundland Group.**

<u>Notes From the Brink</u>

Cerca Trova Restaurant Group, once the biggest franchisee of Outback Steakhouse restaurants, filed for bankruptcy this week, blaming factors including rising food costs and California's minimum wage law for its demise, Steven Church reports.

The San Diego-based company operates 61 Outback locations, down from a high of 99 restaurants it ran in 2018, according to court papers filed in US Bankruptcy Court in Wilmington, Delaware. It has struggled financially since the Covid-19 pandemic and its debt has jumped to about $449 million from $269 million in late 2020.

Increases in state and local minimum wages in California, where more than half of the company's employees work, pushed labor costs higher, Cerca Trova said in court papers.

Food prices have also been rising. The cost of beef, for example, jumped about 15% to 20% in 2022 and has risen as much as 5% annually since then, the company said.

The Latest on... The Children's Place

The Children's Place is preparing to file for bankruptcy and pursue a sale that could either keep the business operating or wind it down, Reshmi Basu reports.

Existing shareholders are expected to be wiped out as part of a sale to an investor consortium or liquidators.

The specialty retailer, which also owns the Gymboree clothing brand, has been struggling with declining foot traffic and a heavy debt burden. Its shares have fallen almost 90% year to date, trading around 45 cents Monday afternoon and hovering near its lowest level since going public in 1997.

The New Jersey-based chain disclosed in September it borrowed another $25 million from its largest shareholder Mithaq Capital, after drawing $15 million in July. The Saudi family office has been propping up the retailer with Shariah-compliant unsecured term loans.

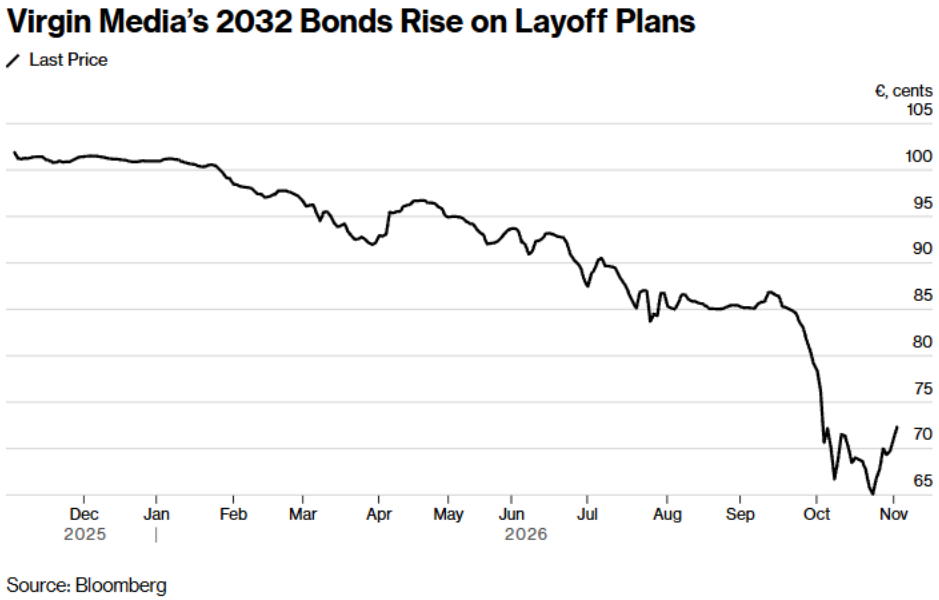
By the Numbers

Virgin Media O2's bonds rose Tuesday after the company outlined sweeping cost cuts to conserve cash as it grapples with about £22 billion of debt, Paula Doenecke reports.

VMO2, jointly owned by Liberty Global and Telefonica, will halt investment in its fiber network and target £400 million of savings in 2027, including a roughly 30% reduction in labor costs over the next two years. It aims to increase annual savings to £800 million by 2029.

Bonds issued by VMO2, many of which trade at deeply distressed levels, rose slightly on the news. Its 2032 notes climbed 1.4 cents on the euro to 72.4 in early trading, according to pricing compiled by Bloomberg.

The company has spent billions of pounds expanding and upgrading its broadband network but is now focused on savings as competition intensifies and pressure from its debt load mounts.



Source: Bloomberg

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