

THE WALL STREET JOURNAL

Bankruptcy's Spare Change

Collapsed Firms' Estates Are Finding Unexpected Assets With No One to Claim Them

March 12, 2012

By KATY STECH



Steve Dininno

Many companies that collapse under bankruptcy-court reorganization are leaving behind small pools of money—and no one knows what to do with them.

Years after a company's demise, some money can remain unclaimed by creditors who didn't cash their checks. In some cases, unexpected payments can trickle in to a bankrupt estate's accounts years after they have been wound down.

Without clear instructions in Chapter 11 cases about where the leftover money should end up, "it's nobody's money and everybody's money," says Harlan Loeb, who was the spokesman for Enron Corp. after the Texas energy company collapsed in 2001.

It is unclear how much unclaimed money has accumulated, but attorneys say the amounts can range from a few hundred dollars to more than \$50,000. Sometimes the funds come from tax rebates or returned utility deposits. Also, too much money may have been set aside for lawyers' fees because the estate's attorneys overestimated how many hours they would bill.

The issue is becoming more common because companies increasingly are choosing to liquidate under Chapter 11, which generally is used to reorganize company and keep it operating. Closing a company

under Chapter 11 gives a company's executives more control of the process than Chapter 7, which was intended for liquidation but is driven more by a court-appointed trustee.

Instructions on how to dispose of unclaimed assets of estates that liquidate in Chapter 11 were left out of the Bankruptcy Code. The Office of the U.S. Trustee, the Justice Department arm that monitors the bankruptcy court, doesn't offer guidelines. Chapter 7, by contrast, has exhaustive rules on leftover money.

Without oversight, "the money is totally off the radar," says Florida bankruptcy attorney Paul Steven Singerman. He once was handed a \$150,000 insurance rebate check for a company whose bankruptcy he handled.

Some attorneys and judges are trying to transfer leftover money from Chapter 11 cases to charity, rather than let it sit in bank accounts or transfer it to pay off the national debt, where unclaimed money from consumer bankruptcy cases generally goes.

The rebate check Mr. Singerman received ultimately went to charity after a trustee for bondholders said it was impossible to track down the bondholders so long after their investments had been extinguished.

Part of the \$19,000 that remained from the 2008 liquidation of retailers Western Warehouse and Boot Town in recent months was paid to the Justin Cowboy Crisis Fund, a Colorado charity for rodeo participants who are injured in competition.

Aware that unexpected recoveries can materialize, companies such as Chicago's Oak Point Partners Inc. offer to buy speculative rights to unclaimed assets. Bankruptcy trustees occasionally will sell those rights early in a company's bankruptcy process, getting money up front for creditors and avoiding a possible hassle years later if unclaimed assets surface and creditors can't be located.

A handful of courts have tweaked their local rules to encourage donations. Judge Laurel M. Isicoff of the U.S. Bankruptcy Court in Miami encourages lawyers writing Chapter 11 payout plans to add wording that steers leftover estate money to charities, especially nonprofit groups that help individuals file for bankruptcy protection. "We're trying to provide a convenient mechanism to do good," says Judge Isicoff, citing the economic hardship faced by many Florida families since the housing bubble collapsed.

But some people in the bankruptcy bar have expressed concern over the use of court authority to encourage charitable donations, in part because there is no defined method for choosing the recipients.

[Harvey Miller](#), who leads the bankruptcy practice at law firm Weil Gotshal & Manges LLP, says nothing in the Bankruptcy Code gives a court authority to direct proceeds to charity. "I believe that creates many problems from political and social perspectives," he says.

Judge Carol Doyle in Illinois once blocked a \$300,000 payment from a unit of financial-services company Conesco Inc. to the Vision 21 Foundation, which says it aims to support charities that "instill in our children those Christian values we hold true." The money instead went to a legal-aid group in 2010.

One of the bankruptcy bar's best-known instances of unclaimed assets came after the collapse of Chicago's Xpedior Inc. Many of the technology consulting company's creditors overestimated how much they were owed, leaving the estate with an unusually large \$842,000 once all valid claims were paid.

The money was "a true surplus that belongs to no one" U.S. Bankruptcy Court Judge Jack B. Schmetterer wrote in a 47-page ruling. Under the estate's payment plan, any excess or unclaimed cash of less than \$15,000 was supposed to go to the local chapter of the Make-A-Wish Foundation. The foundation in 2006 split the surplus with legal-aid groups.

Florida attorney John J. Ray III, who is winding down the Enron estate, says there won't be any extra money when he is done paying the company's creditors this year. Any check that is uncashed by a creditor will be turned over to the state where the creditor last was located. He says that avoids any controversy that could arise if victims of the fraud at Enron later learned that the money was given to charity, he says.

A version of this article appeared Mar. 12, 2012, on page B5 in some U.S. editions of The Wall Street Journal, with the headline: Bankruptcy's Spare Change.