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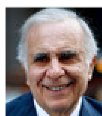
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Behind the Scenes as Dewey Tries to Save What Remains

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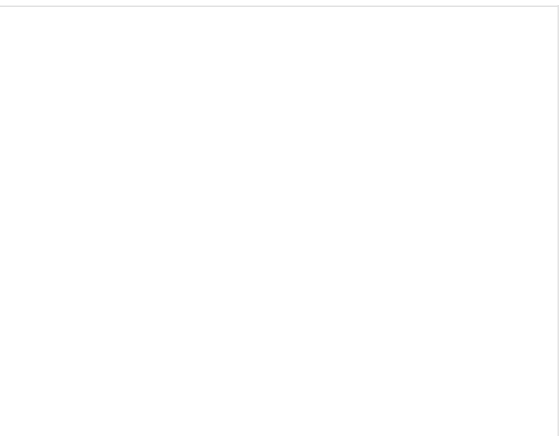


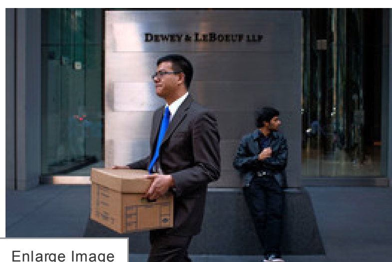
By JENNIFER SMITH And ASHBY JONES

Once one of New York's biggest law firms, Dewey & LeBoeuf LLP is on the brink of collapse following partner defections, disappointing revenue and a compensation scheme that awarded nearly one-third of the partnership with pay guarantees at the expense of rank-and-file partners.

Partner exits have been accelerating over the past month, and many employees have been told that their last day will be sometime this week. The law firm also faces an investigation by the Manhattan district attorney's office, which has declined to comment on the scope or nature of the probe.

The plan now: to liquidate the law firm without going through a formal bankruptcy process. That approach, if it works, could save money and provide a better chance of collecting unpaid bills from clients to pay off the more than $225 million that Dewey owes to creditors, according to the firm's current leadership.

The situation marks a dismal turn for Dewey & LeBoeuf, which was created in 2007 from the merger of two old-line law firms whose roots stretch back to the early 20th century: Dewey Ballantine LLP, for years run by Thomas E. Dewey, a former New York governor and presidential candidate, and LeBoeuf, Lamb, Greene & MacCrae LLP.



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Dewey hopes to avoid brankruptcy court. A man exited with box Friday.

Bankruptcy specialist Martin Bienenstock in New York and Charles Landgraf, the head of the firm's legislative and public policy group in Washington, are members of the four-partner office of the chairman, which was created in March as Dewey's troubles deepened. In an interview on Saturday, they described why the firm is unable to survive and how they have been working with lenders in recent weeks.

"It is a sad time, but the office of the chair has worked with great resolve and a collaborative spirit," said Mr. Landgraf, who expects to announce his own move to another firm soon. "As far as we can tell, we've left no stone unturned. We tried to save the firm first, and then to provide a smooth transition." Mr. Bienenstock has decided to move his practice to Proskauer Rose LLP. Here is the transcript of the interview, edited for clarity:

Departing Dewey

WSJ: In recent weeks you all must have been under tremendous pressure, both

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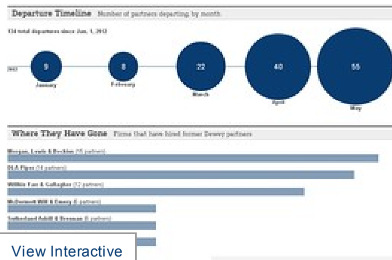

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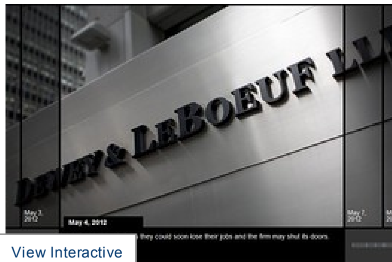

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from inside and outside the firm. Can you talk about what you were doing during those crucial weeks, the challenges you faced during talks with the banks and other law firms, and what it was like to try to steer the ship through those rough waters?

Mr. Bienenstock: The objective from the start was to preserve the going concern of Dewey & LeBoeuf as a stand-alone entity that would survive.

We knew there was a possibility we would not achieve that. But the ingredients were available. With the levels of financing we had if attorneys stayed on board and business continued to rise, we had all the ingredients that made it plausible that we could survive and thrive as a stand-alone business.

But we also knew that that might not be the end result, so we entered negotiations with several firms, including Greenberg Traurig, on a conditional basis. No one wanted to do a classic merger. So we negotiated a conditional transaction with several firms. The condition was that we wouldn't do it if [business improved so that we got to a] stand-alone, survive and thrive [position].

If we couldn't, then we would do the transaction: move many groups and departments, roughly 70% of the U.S. offices and attorneys and staff, and many of the European offices to the new firm. We would leave behind the accounts receivable and the works in progress—the collateral for the lenders—[and] the new firm would collect it with the people who moved over [on behalf of the lenders]. No one was assuming any debt.

We created a transaction so the new firm would assume the expense of collecting receivables... so that lenders would get the proceeds, and we thought it would likely pay them off. Whatever it would be would optimize the results. And meanwhile we would have saved the vast bulk of Dewey & LeBoeuf and kept it alive in the new firm.

If we couldn't achieve that, then our goal was to move partners and groups.

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We knew, however, that a merger might not work—although we thought that we had a high probability of it working—so we were dual tracking many different soft landings at the same time, and we figured the next best soft landing was to negotiate transactions with many firms that would take large groups of Dewey & LeBoeuf attorneys and offices.

But let me back up for a minute. When you're in a distressed situation, there is a universe of solutions, and you can rank them from the best to the worst based on objectives you're trying to serve. Our objectives were to take care of our clients, protect our employees, protect the associates and of counsel [attorneys] and try to save as many jobs as we could.

If you contrast what happened to Bear Stearns, which had an unfortunate result, to that of Lehman Brothers, which had the very worst result, you'll see that when in distress, often the best result is merely the "least worst" result. While we weren't sure we'd be able to get a Merrill Lynch or Bear Stearns result, where the firms stayed intact and were sold to others, we didn't want the "worst worst" result, a Lehman result, in which the firm folds and the shareholders get completely wiped out.

We wanted to get as many of the practices and jobs of the nonlegal staff saved and totally protect the clients, even if we had to work with many law firms. As you can see

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that's what we ended up doing. We've had large blocks of departments, groups, and offices go to a handful of law firms. Much of the litigation department is going to Winston & Strawn LLP, a large group is going to Sutherland Asbill [& Brennan LLP], my group is going to Proskauer [Rose LLP]. In each of these situations, we're talking about partners, associates, secretaries.

WSJ: But at the time the group [of six partners] left for Sutherland Asbill [in late March], the firm cast the departures as not a huge loss, given that the practices weren't that lucrative. So I'm surprised to hear you take credit for placing them.

Mr. Bienenstock: What I think you might be referring to is that initial exodus of 12 M&A/insurance partners to Willkie [Farr & Gallagher LLP]. We said at the time that losing that group was not a financial loss, and it wasn't. Insurance M&A work is just not that profitable, especially after taking into account compensation of the partners involved.

That said, it was an emotional thing because insurance M&A was a signature practice of the LeBoeuf side of the firm, and it was an optical nightmare because the press was all over it and made a very big deal of it. But in fact it wasn't that big a deal. It wasn't the engine generating the main profits of the firm, but the optics were terrible.

Anyway, after they left, there remained a group of litigators that got work through that M&A practice, and suddenly, without the M&A group they were neither fish nor fowl. That was the Sutherland Asbill group. We didn't get our optimal solution with landing everyone at the same firm, but we did land large groups, with Sutherland and others.

WSJ: Why didn't the mergers work out?

Mr. Bienenstock: I can't speak for Greenberg Traurig. Chronologically, what looks like the final straw before they made their decisions was word of the investigation [into the firm, by the Manhattan district attorney's office].

WSJ: In addition to the Manhattan DA's probe, the firm has launched its own internal investigation, led by lawyers who will soon be gone. What have those dual investigations focused on, and what's the status of them now?

Mr. Bienenstock: I know nothing about the DA's investigation. I really know nothing about it. Nor do I know who [from the firm] went to the DA's office, and whoever went to the DA did not share with us whatever evidence or allegations they made to the DA. Neither Charley nor any member of the office of the chairman has any knowledge, and I don't think anyone in the office of the chairman knows the identity of that person either. I don't think any member of the office of the chairman knows whether any evidence has been forwarded to the DA's office, nor what that evidence would be.

There are a lot of angry partners. I'm a very upset partner, I wouldn't consider myself angry. But a lot of partners in 2011 were paid during the year less than half of their compensation for the year. They were told the balance would be paid in January. And some of them were promised that they were first on the list to be paid in January.

In January, while some of them were paid, a lot were paid nothing. And those who weren't paid are probably among those who are angry and might be characterizing the situation as having been given false assurances by [former firm Chairman Steven] Davis or others.

My own personal view is that Steve Davis might be guilty of optimism, but I doubt, simply knowing the man, I doubt he intentionally misled anyone. But that's what our investigation is trying to find out.

In regard to the internal investigation, no one's given me any results.

Mr. Landgraf: The office of the chair has taken steps to preserve all the relevant information that we could.

Mr. Bienenstock: We've been very careful not to try to influence the investigation whatsoever. We wanted [the investigators] to look at whatever was appropriate.

Mr. Landgraf: I am not aware of any subpoenas.

WSJ: There's been a lot of talk about why Dewey failed. What's your take on what happened, and who bears responsibility?

Mr. Bienenstock: In regard to the months since December, the business continued on a very significant upswing. We earned $250 million last year, and our business continued to get better through the first part of the year.

But there were several things that led to problems that led to the result we had. For one thing, the projection of revenues for last year fell $30 million short in December. So instead of earning $820 million we were closer to $790 million for 2011. So the net income was $250 million instead of $280 million.

The second factor: The firm had a $100 million revolver from a group of lenders that was due to mature in April of 2012. In order to maximize our ability to roll the revolver over for 2012, the firm was advised not to bring the draw back up to $100 million. At the end of December, the revolver had been paid down to about $30 million, but we were advised to draw it back up only to $75 million, not all the way to $100 million.

So between the $30 million revenue shortfall and the $25 million of unavailable credit, we were looking at a working capital contraction of $55 million. This is why people weren't paid.

WSJ: So is it safe to assume you were using the credit line to pay partners, at least in part?

Mr. Bienenstock: Look, money is fungible. The $250 million in profits were real profits. Instead of using it to pay partners, a lot of it went to pay for other things, like capital that other partners were due, and pension payments to retired LeBoeuf lawyers. There were various uses for the money; we probably opened some offices, expanded some offices in Europe. The bottom line is we were $55 million short and a lot of people weren't paid.

I should point out that the firm put a plan in place to deal with the shortage of payments to partners. Jeff [Kessler] and Charley spearheaded a plan in which money would be paid off over a six or seven year period, starting in 2014. About 6% of the firm's income would be put away to pay for this, starting in 2014. A group of partners agreed to forgo a lot of compensation in order to eliminate the immediate cash shortage.

Then what happened is that the 12 insurance/M&A partners left [for Willkie Farr]. It was an optical and emotional hit, and it was magnified in the press. It led to some other groups deciding to leave, and that's really what triggered the formation of the office of the chair and everything we've done. We had to make contingency plans to take care of all the important constituencies.

WSJ: After attempts in recent weeks to find merger partners, it looks like the firm is trying to liquidate without going into formal bankruptcy. What is the plan now, as offices are shutting, staff and lawyers are being laid off and lawsuits against the firm begin to mount?

Mr. Bienenstock: Our first objective was to protect all client documents... and matters, and I think we've handled that. Our next goal was to place all nonlegal staff and associates, and I think we've handled that in relatively large groups. From the clients' point of view there has been more or less a seamless transition.

At the same time, we tried to maximize the returns on accounts receivable and inventory so we can have the largest pot of cash we possibly can have. That endeavor continues, and it continues without the need for judicial intervention. The New York office is still open, and will be at least through next week.

Mr. Landgraf: So is the Washington office.

Mr Bienenstock: The intent is to optimize the outcome for all the constituencies. Right now that's done without the use of the court. Whether it continues that way, we have to say we're not sure, but so far it's worked.

Right now, we have no plan to file a Chapter 11 bankruptcy. We've had a completely nonadversarial relationship with our lenders, and right now the cash we're using is the lender's collateral. They have blessed our use of cash collateral to pay expenses. Their

expenses, too, are much less because we are not in the courts.

WSJ: Our understanding is that the credit revolver is due to mature on Tuesday. Have you received another extension from the banks?

Mr Bienenstock: There was a time when it was important to focus on that, and that was the time when the shortage of working capital, together with the maturity of the revolver, is what made clients and lawyers worried. And if we could rewrite history and have renewed the revolver in February for a year, a lot of anxiety would have gone away and the firm might not have had to split off in so many different directions. But at this point, whether it's renewed or extended doesn't really matter because the banks are working with us.

WSJ: Does the firm have plans to dissolve anytime soon?

Mr Bienenstock: We haven't taken any votes to dissolve, and I don't know if that would come or not. Let me turn this question around: Why would we do that?

WSJ: Well, the firm doesn't have plans to continue, does it? To keep serving clients, staffing up with new lawyers, etc?

Mr Bienenstock: How can you ask that? Obviously you've seen the practice groups disperse to other firms. We are optimizing all the results and trying to pay off all our creditors.

WSJ: Well, so let me rephrase. At what point will it be necessary to end the firm?

Mr. Bienenstock: I don't know. We haven't done anything to put a dissolution into place.

WSJ: Two of the four members of the office of the chairman served on the executive committee in recent years, the body charged with overseeing firm management. To what degree does the executive committee bear responsibility for the firm's failure?

Mr. Bienenstock: The chairman had the right to give contracts, and both the executive committee and the entire firm knew of the contracts that were given to the partners, because the compensation committee, a subset of the executive committee, knew each year how much it could allocate to contracts. At firmwide partnership meetings the contracts were always spoken of. So the situation was known to all partners.

Again, I think that if Steve is guilty of anything, it's the crime of optimism. Whether he misled people—I'm sure some people would argue that he did—but I'm not going to take a position before we have the results of our investigation. But nobody said that the contracts should have been stopped. They were known about and spoken about openly. I don't recall in the four years that I was there that anyone ever raised their hand and said, "Let's terminate the contracts" or anything like that. Most of the partners with the contracts were highly respected, they were wanted by other firms, and the numbers were market numbers. Many of us were offered comparable deals before we came to Dewey.

Mr. Landgraf: I think certainly in the case of contracts for laterals [or partners hired from other firms], the lateral contracts are something we're looking at. Whether all the contracts were the subject of full discussion or simply known as a technique that was used…..is still being reviewed. But the technique of using guarantees of all forms, especially in the recruitment of laterals and retention of key business users, is pretty widespread throughout the industry.

WSJ: So if the partner pay wasn't the problem, what was? The firm has said it missed its revenue targets for each of the last four years. Were there practice areas that weren't pulling their weight or weren't performing?

Mr. Bienenstock: There were several factors. To take one example, there was a huge litigation situation in which the clients started paying 60 percent of the bill, with the other 40 percent saved until the end of the matter. But basically I don't want to point a finger at any single part of the firm that wasn't performing. You want to remember the time. In 2008 and 2009, every Wall Street law firm suffered, had layoffs and delayed their new associate start dates, so I don't think this is a matter of pointing fingers.

I think the world changed after the merger in October of 2007, and maybe some of the contracts given to people were not as prudent in the new world. And no one saw the new world coming.

WSJ: But it's true, isn't it, that the partner guarantees outstripped the firm's revenues?

Mr. Bienenstock: At the time of the merger, a lot of partners on both the Dewey and LeBoeuf sides were given four-year contracts because Steve Davis wanted to make sure that the business generators remained in place for four years.

Some people's contracts guaranteed money no matter what the firm's income was. Other deals were contingent on the firm's income. Laterals were attracted and also had other types of contracts. Some were guarantees; others were based on projections of income; others were a little of both.

When we were doing our merger negotiations, everyone wanted partners who had the deals at the same or higher prices.

Anyway, this is a long way of getting to the answer of whether payment promises outstripped the income. Since the projected income was a little high each year, often what people projected that they were earning was higher than what they actually got paid. But on two occasions, the firm said this and pledged to pay off the shortfall.

WSJ: You both functioned as firm leaders in some fashion. You were also highly compensated partners with the sort of pay agreements that in aggregate appear to have sunk the firm. You must expect to face substantial liability, both from pay clawbacks as creditors try to collect what they are owed, and in the form of lawsuits from partners who blame you for the firm's decline. How do you plan to deal with this?

Mr. Bienenstock: I made less than half of what I was supposed to be paid last year. I also have a lot of capital in the firm that I don't think I'll be able to get back. I've received virtually nothing in 2012. At the time I went to the firm in December 2007, other firms offered me the same money, and since then, other firms have offered me comparable contracts. I think that's the case with most of the laterals.

Mr. Landgraf: Those of us that joined the office of the chairman in March did so without any extra compensation, and we had one goal in mind: to save the firm or to provide as soft a landing for as many people as possible. It is a sad time, but the office of the chair has worked with great resolve and a collaborative spirit. As far as we can tell we've left no stone unturned. We tried to save the firm first, and then to provide a smooth transition.

Mr. Bienenstock: Right. In both Charley's case and mine, we were asked to take over the chairman role. Neither of us asked to do it, and we had only one goal: to carry out the objectives that I mentioned earlier.

Charley and I and Jeff and Rich, we all could have found new jobs in January and have been earning money all year, but it was more important to all of us to create the softest landing we possibly could rather than go out and earn money. Keep in mind, too, that that was after a year in which none of us were paid anything close to what we could have been paid. We're sad that the firm had to basically split itself into so many different parts and go to other firms. We feel bad, but we're each satisfied that we did everything possible that we possibly could.

WSJ: Soon three of the firm's four leaders will depart for other firms. Who will oversee the unwinding of Dewey & LeBoeuf, and is this something any of you intend to take part in from afar?

Mr. Bienenstock: Steve Horvath and [firm general counsel] Janis Meyer will take over from here.

WSJ: Charley, what are your plans?

Mr. Landgraf: My focus was on taking care of our team. I have several offers from other firms, and will probably announce in several weeks what my intention is.

WSJ: Thanks to you both for taking the time.

Write to Jennifer Smith at jennifer.smith@wsj.com and Ashby Jones at ashby.jones@wsj.com

A version of this article appeared May 14, 2012, on page B1 in some U.S. editions of The Wall Street Journal, with the headline: Behind the Scenes as Dewey Tries to Save What Remains.

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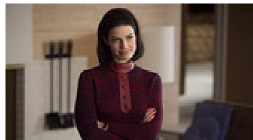
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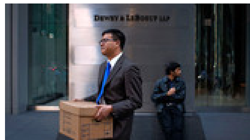

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