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# Mergers & Acquisitions

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## Report

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### Equity Holders of Bankrupt Companies Continue the Fight

Mark Cecil

Equity holders have been fighting for a piece of the bankruptcy pie lately-and in a few places they've got it.

Jim Harris, president and founder of Seneca Financial Group, advised two sets of shareholders in the last year, winning them payouts in bankruptcy court.

The latest example is with Houston-based Seitel Inc., which sells seismic data oil and gas drilling companies. Seitel was forced into bankruptcy after accounting improprieties caused a breach of its financial covenants.

Equity holders sought help after Warren Buffett's Berkshire Hathaway Inc. bought up all of the \$255 million in senior notes and planned a restructuring that would have offered bondholders 40 cents on the dollar.

Harris determined, however, that there were still strong cash flows and the value was much higher than what Buffett had agreed to pay.

The plan resulted in Mellon HBV putting up \$75 million in cash to be the guarantor of the rights offering. UBS agreed to sell \$200 million in bonds to retire unsecured claims entitled to receive cash under the plan, as well as augment the company's liquidity.

In the plan, shareholders can purchase 4.96 shares valued at 60 cents each upon closing. Buffett will be paid off in full, along with all other unsecured claims at closing, which is expected in June.

"I think bondholders have become very aggressive in how they buy these bonds and move the company through the bankruptcy process," said Harris, the former head of financial restructuring at Lehman Brothers, where he worked from 1982 to 1993.

Harris continued, "The experience has been that there are not a lot of cases where there is really value for equity." However, he said, courts are growing more receptive to that possibility.

Meanwhile, advising equity holders can be a lucrative business.

Harris said in general the court sets the advisory fees for equity holder committees, and in the past, his firm's fees have been about \$125,000 per month, with a success fee linked to the recovery.

Seneca is now working on five other potential equity holder advisory assignments, one of which has the potential to reimburse equity holders "in the hundreds of millions," said Harris.

Seneca also counseled shareholders of IT management software maker Peregrine Systems Inc., which emerged from bankruptcy in August last year.

In that case, bondholders estimated the company was worth \$150 million. Harris said he spoke with the company's clients, discovered the company had a viable product and advised equity holders and the court that the value of the company was closer to \$300 million. The court agreed, giving equity holders the chance to claim up to 37% of the company rather than the 1% of the original plan.

Another recent case where equity was rewarded was the bankruptcy of Kasper A.S.L. Ltd. last year. In that case, shareholders were rewarded a minimum of \$6.82 per share, or \$46 million, as it was bought out of bankruptcy by Jones Apparel Group Inc.

Kasper's counsel contended at the time that the company was never insolvent and its assets always outweighed its debts.

Speaking generally of bankruptcy cases, "There's stuff that gets thrown in the chute that probably doesn't belong there," said Harris. And that's when equity committees have a shot.