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NEW YORK (Reuters) - Hedge funds, private equity firms and institutional investors left on the sidelines in pre-bankruptcy negotiations are asking the courts to let them help divide up the remains anyway.

They argue that bankrupt businesses are not really as battered as they say and that there is enough value to pay back not only corporate bank debt, but the second-tier debt these investors own too.

And the requests are paying off. Investors, including buyout group Apollo, left out of Six Flags Inc's <SIXFQ.OB bankruptcy plan that would have given 93 percent of the reorganized company to its top lenders were included in subsequent negotiations. On November 9, they submitted a new reorganization plan more favorable to them.

As was the case in Six Flags, companies often do not include investors who own lower level debt in their lender talks before

bankruptcy based on the idea that they probably will not be paying them back anyway.

The shift means more fights in bankruptcy court about how much a company is worth, its so-called valuation. At stake is a company's survival -- the longer it is in bankruptcy, the more expensive it is and the harder it can be to emerge.

Judges are increasingly agreeing to requests from lower level creditors to present their own restructuring plan for a company rather than allowing just one exclusive plan crafted by the company and its biggest lenders, said William Derrough, a managing director and Co-Head of Restructuring at investment bank Moelis & Company. And that is likely to continue.

"I think that you're going to see judges be more open to competing plans ... especially in a prepackaged or prearranged deal where the company filed bankruptcy having 'cut a deal with the secured lenders,' leaving no recovery for creditors below the secureds," Derrough said.

When a company files for bankruptcy, it first pays back its so-called "secured" lenders, whose loans are backed by assets. It then pays back "unsecured" lenders, whose loans are considered riskier, then other creditors and equity holders.

LBO HANGOVER

Before the financing and economic boom of the last decade, debt and revenue levels were fairly stable. But as companies' revenues rose and money was easier to borrow, they acquired more debt and leveraged buyouts soared.

The fights are yet another hangover from LBOs that created long lists of creditors, experts say. Now companies are unable to support these debt payments or pay for new financing.

"You have to go back to when these deals got done. I think those LBOs in some respect are a true failure for the lower tier in the capital structure," said Kris Hansen, co-chair of the nationwide financial restructuring group

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at Stroock & Stroock & Lavan LLP in New York.

With financing markets so tough, courts are more open to creating a path for financing that is available, even if it is from creditors near the bottom of the list of those to be paid back, he said.

The idea is that there is little harm in letting junior creditors put up money to make an investment in the company since they are paying senior creditors in full, Hansen explained. His firm has represented both the top lenders against whom competing plans have been filed and the so-called junior lenders, who filed a competing plan in the cases of Pliant Corp (PLIAP.PK) and Trump Entertainment Resorts Inc (TRMPQ.PK), respectively.

PUT A NUMBER ON IT

At the same time, putting a value on these and other businesses has become difficult due to an uncertain economy.

"I think that the courts are struggling with how you value companies where earnings may have dramatically dropped in the last year and half; where credit has become much harder to get and much more expensive," said Rick Wynne, a partner at Jones Day.

In the end, allowing or not allowing the second group to make a plan is about getting everyone talking to each other, which is how Pliant and Six Flags' latest plans were built.

"I think they are looking at substantively whether it's going to advance the case toward a resolution, or whether it's going to just add more fighting," Wynne added.

(Reporting by Caroline Humer; editing by Andre Grenon)

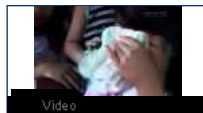
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