

Bankruptcy Update

Expert Analysis

Uptick in Filings in Precious Metal Mining Sector

This article focuses on precious metal mining bankruptcies, including the recent chapter 11 filings of Atna Resources Ltd., Santa Fe Gold Corp., Midway Gold Corp. and Allied Nevada Gold Corp. The sector saw a significant uptick in bankruptcy filings as gold prices suffered a substantial drop over the last few years, capital access in the sector decreased and the market for idled mining equipment declined.

Mining and Gold Prices

On Nov. 19, 2015, Atna Resources Ltd. and affiliated debtors filed petitions for relief under chapter 11 in the U.S. Bankruptcy Court for the District of Colorado.

The debtors attributed their restructuring needs to a recent default on a \$22 million prepetition loan, unfavorable equity markets for gold mining and liquidity constraints. The debtors' available cash dissipated from \$2.2 million on Dec. 31, 2014, to \$200,000 by Nov. 17, 2015. Indirect parent company Atna Canada simultaneously sought bankruptcy relief in Canada under the Companies' Creditors Arrangement Act.

EDWARD E. NEIGER is a co-managing partner at ASK LLP, a national law firm. He can be reached at eneiger@askllp.com. MARIANNA UDEM, counsel at the firm, assisted in drafting this column.

By
**Edward E.
Neiger**



The debtors own and operate mining facilities in California and Nevada. They also own mining resources and rights in Montana, Wyoming, Yukon and British Columbia. The debtors reported that they significantly scaled back operations and reduced work forces at the mines last year as gold prices reached a six-year low.

The debtors are seeking approval for a \$4 million debtor-in-possession

The debtors in 'Atna Resources' reported that they significantly scaled back operations and reduced work forces at the mines last year as gold prices reached a six-year low.

financing facility to be provided by the debtors' prepetition lender, Waterton Precious Metals Fund II Cayman LP.

The debtors state that they intend to pursue sale of core and noncore assets and simultaneously work to address operational challenges during their chapter 11 proceeding.

Atna Resources Ltd. (Bankr. D. Colo. Case No. 15-22848)

Mining Exploration

On Aug. 26, 2015, Santa Fe Gold Corporation and three of its wholly owned subsidiaries filed petitions for relief under chapter 11 of the Bankruptcy Code in the U.S. Bankruptcy Court for the District of Delaware.

The debtors are a group of mining and mineral exploration companies headquartered in Lordsburg, New Mexico. Their principal project is the Summit Project, a copper exploration initiative. For the past several years, the debtors pursued a strategic or financial partner, but were unable to reach a successful combination. Prior to the bankruptcy filings, the debtors pursued a transaction with Tyhee Gold Corp. and alleged that Tyhee failed to pay a \$300,000 break-fee owed as a result of the failure to consummate the merger, failed to advance required funds under the parties' loan agreement, and failed to return Santa Fe's confidential information pursuant to the terms of a confidentiality agreement between the parties.

The debtors secured approximately \$1.6 million in debtor-in-possession financing from their prepetition lender, Waterton Global Value LP to fund operating under chapter 11 and a sale marketing process.

On Sept. 25, 2015, the debtors filed a motion seeking approval of bidding procedures in connection with the sale of substantially all of their assets and, on Oct. 20, 2015, the bankruptcy court entered an order approving the bidding procedures. Under the approved bidding procedures, Waterton will act as the stalking horse bidder and competing bids must be submitted on or before Jan. 11, 2016.

Santa Fe Gold Corp. (Bankr. D. Del. Case No. 15-11761)

Developing Properties

On June 22, 2015, Midway Gold Corp. and affiliated debtors filed petitions for relief under chapter 11 of the Bankruptcy Code in the U.S. Bankruptcy Court of the District of Colorado.

The debtors are engaged in the acquisition, exploration and development of mineral properties located in the states of Nevada and Washington. The debtors currently have one gold-producing property: the Pan gold mine located in White Pine County, Nev., and several exploratory stage projects where gold mineralization has been identified in Nevada and Washington.

The construction of the Pan gold mine began in January 2014, and gold production began on March 26, 2015. However, Pan mine's performance was lower than expected under the geological model, and the debtors project that significant additional time and resources are needed to reach profitability.

The debtors also have a 30 percent interest in Spring Valley, a gold property located in Pershing County, Nev., subject to a joint venture with Barrick Gold Exploration Inc.

On Oct. 15, 2015, the debtors commenced an adversary proceeding against Barrick seeking authority to sell 100 percent of the Spring Valley property. On Nov. 12, 2015, the debtors announced that they reached an agree-

ment in principle to sell their 30 percent interest in the Spring Valley joint venture to a subsidiary of Waterton Precious Metals Fund II Cayman, LP for at least \$25 million. Waterton simultaneously announced that it intends to acquire the remaining 70 percent interest in the Spring Valley project from Barrick in a separate transaction. According to the debtors, a letter of intent has been issued, and they will work to close the transaction, which will be subject to bankruptcy court approval, by Dec. 15, 2015.

Midway Gold Corp. (Bankr. D. Colo. Case No. 15-16835)

In 'Midway Gold,' the construction of the Pan gold mine began in January 2014, and gold production began on March 26, 2015. However, Pan mine's performance was lower than expected under the geological model, and the debtors project that significant additional time and resources are needed to reach profitability.

Expansion Plan

On March 10, 2015, Allied Nevada Gold Corp. and affiliated debtors filed petitions for relief under chapter 11 in the U.S. Bankruptcy Court for the District of Delaware.

Allied Nevada Gold Corp. is a publicly traded gold and silver producer engaged in mining, developing and exploring properties in the State of Nevada. According to the debtors' initial bankruptcy filings, in September 2011, the debtors began a plan for a mill expansion project, which would allow the debtors to process sulfide (mill) ores and extend the operating life of the Hycroft mine. However, due to declining metal prices and the reduced cash flow generated by the debtors' mining operations, the debtors deferred the

construction of the Hycroft mill and other expansion plans.

As of Dec. 31, 2014, the debtors also controlled 75 exploration properties throughout Nevada but were not engaged in exploration activities at those locations as of the petition date. These interests were sold to Clover Nevada LLC for \$17.5 million in cash consideration pursuant to section 363 of the Bankruptcy Code.

The debtors entered chapter 11 after reaching an agreement with certain of their unsecured noteholders to finance their operation under chapter 11 and to exchange the notes for approximately 75 percent of new common stock in the reorganized debtors. Trade creditors were initially projected to be paid in full. However, the initial reorganization strategy was altered after Allied Nevada suspended operations at the Hycroft mine. Instead, the debtors proposed a plan whereby allowed unsecured claims would be swapped for 100 percent equity in a reorganized Allied Nevada subject to dilution (an estimated 8 percent recovery for unsecured creditors).

The debtors faced opposition to confirmation from the official committee of equity holders as well as individual shareholders. Ultimately, the debtors were able to reach a settlement of the equity committee's objections by including an equity warrant option in the plan of reorganization. At the confirmation hearing, the bankruptcy court overruled objections by individual shareholders who disagreed with the debtors' enterprise valuation. In confirming the plan, the court noted that there was no evidence that the plan was not proposed in good faith and shareholders would receive no distributions under a liquidation.

Allied Nevada Gold Corp. (Bankr. D. Del. Case No. 15-10503)