

America Now!

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Big cases, big conflicts

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1. Introduction
2. Four Cases
3. Suggestion Box

“Happy families are all alike, but every unhappy family is unhappy in its own special way.”

— Tolstoy, *Anna Karenina*

US law generally treats each member of a group independently...

- Plaintiffs face tough standards to disregard the corporate form
 - Veil-piercing
 - Substantive consolidation
- Fiduciary duties are governed by law of state of organization
 - Still substantial differences, especially near insolvency
- Creditors bargain for structural seniority and asset ‘silos’
- Foreign operations are held in complex structures
- Exceptions are few:
 - Taxes
 - Qualified pensions

...but in bankruptcy, separateness degrades

- Joint administration of diverse groups
 - Same court and judge
 - Same attorneys and financial advisors
 - Often, same management team and directors
- Cash management and case financing can combine affairs of companies even before claims process
 - Special concern for non-debtor affiliates
- In plan context, group dynamics influence results
 - Intercompany claims settled on 'lowest level of reasonableness'
 - Impaired accepting class rule in Southern District of New York
- Who pays what cost for consensus? What behavior is encouraged?

We will examine four big cases...

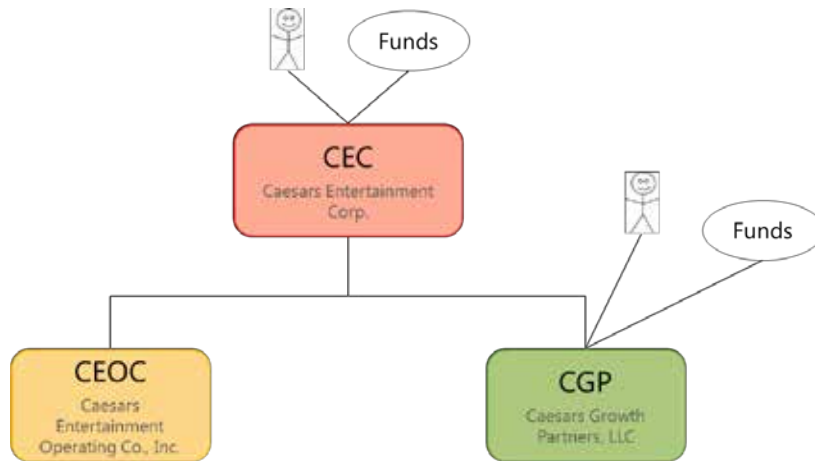
- Caesars
 - insolvent subsidiary, solvent parent
- SunEdison
 - insolvent parent, solvent subsidiaries
- EFH
 - insolvent sister, maybe solvent sister
- Abengoa
 - insolvent parent, world subsidiaries insolvent via guarantees

... and ask some related questions

- Who was put in control of each main company? By whom? Why?
- What was the function of independent directors? What was their scope of activity? Who found the 'independents'?
- Was there independent management for each main company?
- Was an examiner appointed? Considered? Did creditors support the examiner appointment?
- How did these initial choices affect the strategy pursued?
- How were intercompany claims eventually resolved?
- Would a different initial set-up have changed the outcome?

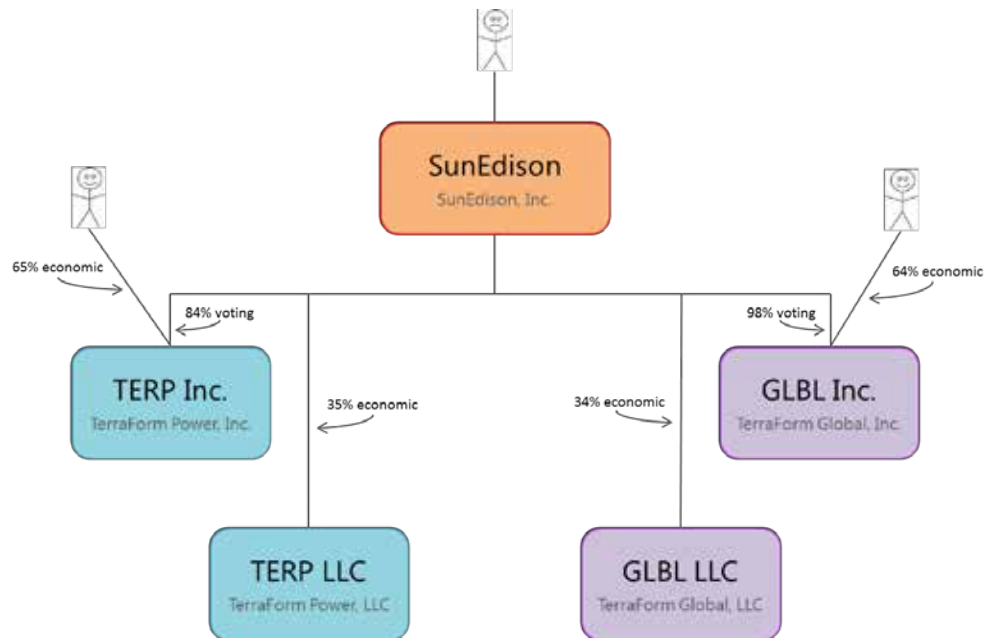
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Caesars



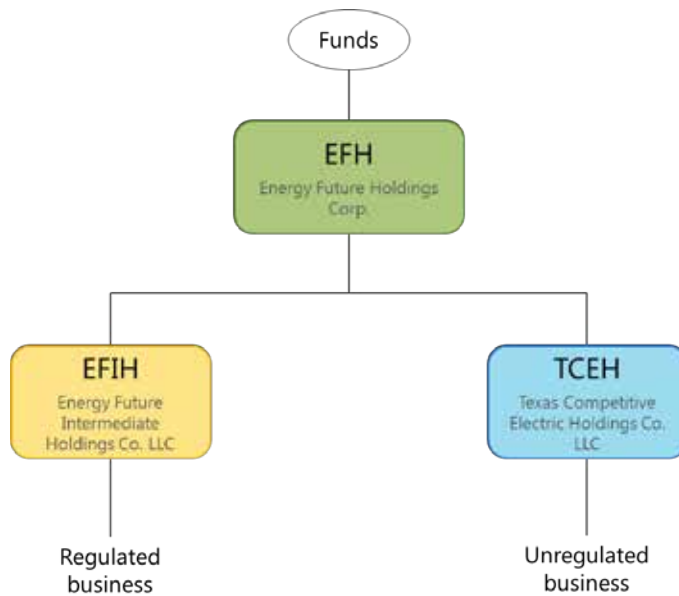
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SunEdison



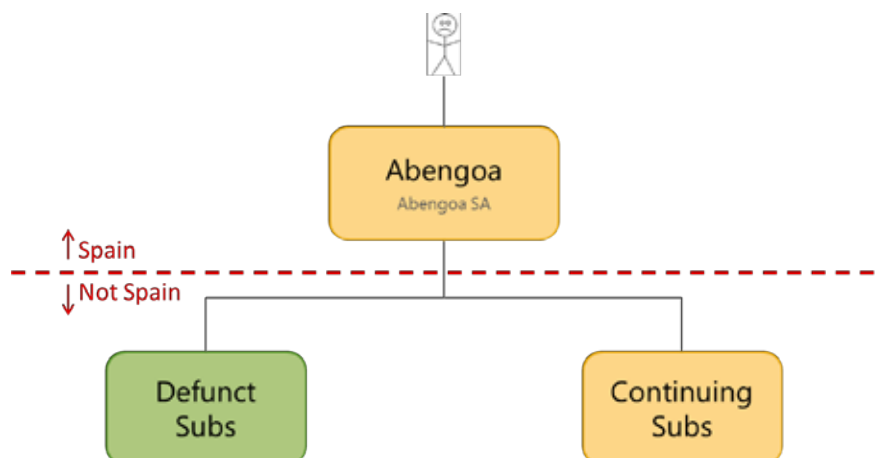
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Energy Future Holdings



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Abengoa



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