AMERICAN BANKRUPTCY INSTITUTE

New York City
Bankruptcy Conference

Anatomy of a Hundred-Cent Case: Deconstructing *Hertz* and *Garrett Motion*

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CONCURRENT SESSION

2022

Outline for ABI Conference

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Overview

The panelists will contrast the Hertz and Garrett bankruptcies with a focus on the role of auction process. The panelist will also examine how Hertz and Garrett bankruptcies ended up with full creditor recovery and substantial value to equity holders. What happened and are there lessons that can be applied to other bankruptcies?

I. Introduction

Panel 1: **2:45 – 4:00 pm**

- Stephen E. Hessler – Kirkland & Ellis - - Knighthead Capital Management and Certares
- David Hilty – Houlihan Lokey - - Financial Advisor to Oaktree and Centerbridge in Garrett
- Brian Resnick—Davis Polk & Wardwell - Represented KPS in Garrett

Panel 2: 4:15 – 5:30 pm

- Andrew G. Dietderich – Sullivan & Cromwell. – Garrett Motion Inc.
- Barak Klein – Moelis & Company- valuation opinion in Hertz

II. Key Issues and Questions

Hertz

Hertz entered bankruptcy near the height of the pandemic in May 2021, and exited more than one year later. When it entered bankruptcy, the debt was trading at a deep discount. When the company exited bankruptcy, there was substantial equity value. [What structural changes were made to the company in bankruptcy to help unlock that value?]

Garrett

Garrett Motion is a company involved in the engineering, development and manufacturing of automotive turbochargers. The company was spun off from Honeywell in October 2018 with headquarters in Switzerland. As part of the spin-off, Honeywell transferred to Garrett an obligation to fund legacy asbestos claims.

Garrett filed for voluntary Chapter 11 bankruptcy reorganization on Sept. 20, 2020, in connection with a $2.1 billion stalking-horse rescue offer from KPS Capital Partners.

A competitive auction process followed after which a group led by Centerbridge and Oaktree were selected to lead the company out of Chapter 11.

The plan of reorganization also eliminates the previous asbestos indemnity and all related liabilities to Honeywell incurred by Garrett in its 2018 spin-off, and settles all litigation between Garrett and Honeywell. The elimination of the 30-year indemnity substantially reduces Garrett's effective leverage and increases its operational, financial and strategic flexibility. In return for elimination of the indemnity, upon emergence, Garrett made an initial cash payment to Honeywell of $375 million and issued to Honeywell Series B Preferred Stock that entitles Honeywell to certain cash payments from 2022 to 2030.

I. Background Questions

Hertz

- How did Hertz end up in bankruptcy? How was Hertz doing before the COVID-19? What did its capital structure look like?
- Does Hertz have a unique financing structure with primary source of funding is securitization?
- Who are the main stakeholders, and where did the different stakeholders stand at the start of the process?
- Briefly discuss the steps that needed to happen to get Hertz's house in order.
    - Lease rejection process.
    - Access to the market was critical – there was a competitive market for DIP financing and plan sponsorship.
    - Role of Centerbridge, Apollo and Knightview at this point in the process.

Garrett

- How did Garrett end up in bankruptcy?
- Who are the main stakeholders and where did the different stakeholders stand at the start of the process?
- Garrett went into bankruptcy with a "stalking horse" bid from KPS Capital. That stalking horse plan was opposed by Centerbridge and Oak Tree.
    - Discuss the dispute over the stalking horse bid approval. What was the dispute about, and how do courts think about approving the stalking horse bid in cases like this?
    - Garrett's financial advisors advised the court to approve the plan. Discuss the rationale for the recommendation.

- What structural changes was Garrett able to make in bankruptcy?
- How did the agreement with Honeywell affect the bankruptcy process?
    - Besides the Honeywell obligation, what other issues were addressed in the bankruptcy?

II. Role of the Competitive Bidding Process & Assessment of the Bids

Hertz

- What did you do to create competition? Both cases relied on the auction process
- How did the bidders differentiate themselves?
- How were the bids evaluated?
- What was the process of designing the packages for various securities holders? For example, many of the Hertz shareholders were retail investors.
- How did the bidding process evolve over time? What were the main factors driving the rapidly evolving understanding of value?

Garrett

As with Hertz, ultimately there was a competitive bidding process leading to an acquisition that provided value to equity holders. Garrett's shareholders were able to either convert the old company shares into new company shares, or receive $6.25 to have their equity cancelled. All other claim holders (besides Honeywell) had obligations met in full.

- What were the keys to fostering a competitive bidding environment?
- What was the key difference in the KPS Capital Partners bid and the Centerbridge and Oaktree transaction?
- Besides the sticker-price of the plans, how did the bidders differentiate themselves?
- How were the bids evaluated?

- There was a third potential restructuring plan from the equity holders. However, the proposed Honeywell settlement could not be transferred to that plan.
- Why couldn't the Honeywell settlement be transferred to the equity plan?

III. Changes in Valuation

Hertz

At the start of bankruptcy, debt traded at a deep discount. Around May 2020, Hertz share price briefly increased to a high of around $5.50 per share. The company asked the bankruptcy court for approval to issue equity which was granted by the bankruptcy court

- Was there any precedent for this sort of equity issuance in bankruptcy?

Ultimately, the plan was abandoned when the SEC had "comments" on the registration filings.

- How might things have been different if the offering had gone forward?
- Can you imagine circumstances where an equity issuance could happen in the future? For example, a commodity company where the commodity price drops sharply then recovers.

By May 2021, the value of the debt had increased significantly, but equity appeared to be still out of the money. The initial plan sponsored by the company provided a high return to debt holders, but left equity in the cold. The valuation opinion from Moelis supported that view.

- Question for Moelis: Discuss the view on value at that time. How much is it being informed straight from the valuation models, and how much is it informed by what changes in the views of market – either the proposed plan, the recovery in automobile prices, or any other market factors.

IV. Outcome and Implications for Future Cases

Hertz

- Paid all debt in cash in full – $18 billion in debt. (including asset-based financing of car fleet.) De-leveraged the balance sheet and came out with 2.5 billion in cash. Knightview /Centerbridge bid was approved.
- Looking back, there appear to be a lot of winners with the debtholders being repaid the principal balances and the equity holders receiving more than $8 per share in value. Were there any losers?

Garrett

- What lessons would you draw for stakeholders that are hoping for larger recoveries in future cases? What are the most important factors for trying to replicate the outcome in other bankruptcies?

Faculty

Andrew G. Dietderich is a partner with Sullivan & Cromwell LLP in New York and is one of the leading debtor-side restructuring lawyers in the U.S. He started the firm's chapter 11 practice with a focus on empowering management. Mr. Dietderich has helped debtors, plan sponsors and proactive creditors navigate some of the largest and most challenging chapter 11 cases in U.S. history, including Garrett Motion, Eastman Kodak, Chrysler, Caesars and General Growth Properties. A substantial part of his practice is focused on helping clients avoid situations that could lead to chapter 11. Mr. Dietderich regularly counsels solvent companies considering liability management, balance-sheet optimization, spin-offs, carve-outs and other strategic initiatives. Many of his projects feature special issues relating to the structure of corporate groups, corporate ring-fences, bankruptcy remoteness, intercompany transactions, cross-border financial arrangements and related fiduciary duty matters. He joined the firm in 1996 and was elected partner in 2003. Mr. Dietderich has been recognized in *Chambers USA* and *Chambers Global*, *Law360*, *Turnarounds & Workouts*, *The Legal 500 US*, *IFLR 1000* and *New York Super Lawyers*, among others. He received his A.B. *magna cum laude* and Phi Beta Kappa in 1991 from Harvard College and his J.D. *magna cum laude* in 1995 from Harvard Law School.

Stephen E. Hessler is a restructuring partner with Kirkland & Ellis LLP in New York, where his practice involves representing debtors, creditors and investors in large and complex corporate chapter 11 cases, out-of-court restructurings and acquisitions. He has counseled clients across a broad range of industries, including energy, gaming, hospitality and real estate, telecommunications, financial institutions and manufacturing. Mr. Hessler was recognized in the 2015-20 editions of *Chambers USA*, *IFLR1000: The Guide to the World's Leading Financial Law Firms* selected him as a 2016 leading lawyer in Restructuring and Insolvency, and *The Legal 500: The Clients Guide to the U.S. Legal Profession* listed him as a 2016 "Key Lawyer" in the area of Restructuring. In 2015, *Law360* named him one of 10 Bankruptcy MVPs, and he was selected by *Turnarounds & Workouts* as one of 2015's "Outstanding Restructuring Lawyers" and as one of 2013's "Outstanding Young Restructuring Lawyers." Mr. Hessler is a frequent lecturer and author on various restructuring-related topics. He also teaches a restructuring class each fall at the University of Pennsylvania to Law School and Wharton students. Mr. Hessler co-founded the University of Pennsylvania Institute for Restructuring Studies, a multidisciplinary initiative intended to address topical restructuring issues and influence the public policy debate in a manner that has practical application for investors, practitioners, academics and regulators. He also served as the chairman of the advisory board on Administrative Claims, Critical Vendors, and Other Pressures on Liquidity for ABI's Commission to Study the Reform of Chapter 11 from 2012-15. In 2014, 2015, and 2017, Mr. Hessler testified before the House Judiciary Committee, and in 2018 testified before the Senate Judiciary Committee, on proposed amendments to the Bankruptcy Code to provide for more effective administration of a chapter 11 filing by a major financial corporation. Relatedly, he has published multiple articles in legal and mainstream publications, and organized or participated in multiples seminars on these topics. Mr. Hessler received his B.A. in 1995 in political science and communications from the University of Michigan and his J.D. in 2001 from the University of Michigan Law School, where he was managing editor of the *Michigan Law Review* and took First Place in the Henry M. Campbell Moot Court Competition.

David R. Hilty is a managing director and global co-head of Houlihan Lokey's Financial Restructuring Group in New York. He has been with the firm for more than 25 years and has advised companies, secured lenders, bondholders and other creditor groups in out-of-court restructurings, prepackaged or prearranged chapter 11 bankruptcies, and unplanned chapter 11 reorganizations. In addition, Mr. Hilty has been involved in the financial restructuring of several European and Latin American-based companies, advising both debtors and creditors, including designing and structuring out-of-court exchange offers and prearranged reorganizations in local European and Latin American jurisdictions. In addition to assisting clients with financial restructuring services, Mr. Hilty has provided clients with a variety of other investment banking and valuation services, including debt financings for distressed and non-distressed companies, advising on the acquisition or sale of companies and/or operating divisions in a distressed and nondistressed environment, and raising debt and equity capital. Mr. Hilty received his B.S. in commerce with a concentration in finance from the University of Virginia's McIntire School of Commerce and is registered with FINRA as a General Securities Representative (Series 7 and 63).

Hon. David S. Jones is a U.S. Bankruptcy Judge for the Southern District of New York in New York. He previously clerked for Hon. Morris E. Lasker, U.S. District Judge for the Southern District of New York, from 1990-92, and was in private practice in New York from 1992-96. From 1996 until he was appointed to the bench, Judge Jones served as an Assistant U.S. Attorney for the Southern District of New York, and at different times served as the chief of the U.S. Attorney's Office's Tax and Bankruptcy Unit, the Office's chief civil appellate attorney and as deputy chief of the Civil Division. He was awarded the Justice Department's Director's Award and the New York City Bar Association's Henry L. Stimson Medal, among other awards. Judge Jones also served as an instructor at the National Advocacy Center, and as an evaluator of U.S. Attorney's Offices throughout the nation. He received his A.B. *magna cum laude* from Brown University in 1985 and his J.D. *cum laude* from Harvard Law School in 1990.

Barak Klein is a managing director at Moelis & Company in New York, where he specializes in recapitalization and restructuring advisory. He has more than 20 years of investment banking and asset-management experience, advising clients on distressed M&A and debt-financing transactions, out-of-court restructurings and chapter 11 reorganizations. Prior to joining Moelis & Company as a senior vice president, Mr. Klein was a member of the CR Intrinsic-General Distressed Group, investing in workout and special situations at SAC Capital Advisors. He has also held senior-level roles at Jefferies Asset Management and Jefferies & Company in its Restructuring & Recapitalization Group. Mr. Klein began his career at Houlihan, Lokey, Howard & Zukin in its Financial Restructuring Group. He received his B.S. in economics from the Wharton School at the University of Pennsylvania.

Brian M. Resnick is a partner in Davis Polk & Wardwell LLP's Restructuring Group in New York. He has experience in a broad range of corporate restructurings and bankruptcies, representing debtors, creditors, banks, hedge funds, asset-acquirers and other strategic parties in connection with bankruptcy cases, out-of-court workouts, DIP and exit financings, bankruptcy litigation and § 363 sales. His recent significant representations include Dean Foods, Arch Coal, Patriot Coal and Bonanza Creek Energy in their chapter 11 cases, ad hoc groups of bondholders in various energy restructurings including Blackhawk Mining, Jones Energy, Legacy Reserves, Midstates Petroleum and Memorial Production Partners, ad hoc groups of the Government Development Bank for Puerto Rico bondholders and Commonwealth Bondholders in connection with the Commonwealth's debt restructuring, and Lehman Brothers International (Europe) in the Lehman bankruptcy cases. Mr. Resnick is regularly ranked as a leading restructuring lawyer by *Chambers USA*, *IFLR*, *The Deal* and *Turnarounds & Workouts*, and in 2020 he was named an *American Lawyer* "Dealmaker of the Year" and one of *Law360*'s six Bankruptcy MVPs nationwide. He is a thought leader who regularly lectures and writes on bankruptcy topics and co-authored ABI's *Credit Bidding in Bankruptcy Sales*. He is also a contributing author of *Collier on Bankruptcy*. Mr. Resnick is a Fellow of the American College of Bankruptcy and on the boards of Her Justice and the *Columbia Business Law Review*. He was profiled in *The Wall Street Journal*'s "Bankruptcy Beat," which chronicled his transition from Juilliard-trained professional musician to partner in one of the world's top insolvency and restructuring practices, and *Bloomberg Law*'s "Davis Polk Lawyer Goes from Pit Musician to Tony Winner," regarding his 2019 Tony Award as co-producer of *Hadestown* on Broadway. Mr. Resnick received his B.M. and M.M. from The Juilliard School and his J.D. from Columbia Law School, where he was a Harlan Fiske Stone Scholar and a member of the *Columbia Business Law Review*.

Dr. Faten Sabry, APS is a managing director and chair of NERA Economic Consulting's Global Securities and Finance practice in New York and chairs its Bankruptcy Litigation Practice. She is also chair of NERA's Bankruptcy Litigation Practice and leads the Securities and Finance Practice's subprime task force. Dr. Sabry has performed analyses involving issues of class certification, econometric modeling, liability, fraudulent conveyance, and damages in cases ranging from contract disputes to valuing a portfolio of mortgages. She also has assessed risk management models and examined the prudence of investments including hedging strategies. Dr. Sabry has consulted on the valuation of fixed income securities, derivatives, businesses and litigation settlements. In particular, she has consulted on complex securities including cash and synthetic CDOs, as well as asset- and mortgage-backed securities. In addition, she has evaluated rating agencies' models, loan loss prediction models and cash-flow models. Dr. Sabry has testified as an expert at trial in state and federal courts, as well as at a FINRA proceeding. Her product-liability work includes estimating the future liabilities in cases involving asbestos, silica, pharmaceutical products, medical devices, automobiles and construction products; analyzing liabilities related to environmental contamination in cases including the Met-Coil bankruptcy Trust and the future silica and asbestos liabilities for the Tyler Pipe/ Swan Transportation bankruptcy trust; assessing recall costs and diminution of value for automobile and construction products; analyzing insurance allocation; applying statistical and content analyses to examine product identification; and analyzing class certification in consumer class actions, including actions related to consumer finance and credit as well as automobile recalls. Dr. Sabry's research has been published in the *Journal of Structured Finance*, *Journal of Investment Compliance*, *Journal of Alternative Investments*, *Business Economics*, *International Trade Journal* and others. She has been accredited as a professional statistician by the American Statistics Association and is a member of the advisory board of VALCON. She also is a member of ABI and the American Finance Association. Dr. Sabry received her B.A. *magna cum laude* and her M.A. from American University in Cairo, and her Ph.D. from Stanford Business School, where she was awarded the J.M. Olin Graduate Fellowship, the Graduate School of Business Fellowship and a Ford Foundation Fellowship.