AMERICAN BANKRUPTCY INSTITUTE

2022 Annual Spring Meeting

Challenges Facing Secured Creditors in Asset Sales

Hosted by the Asset Sales/Secured Credit Committees

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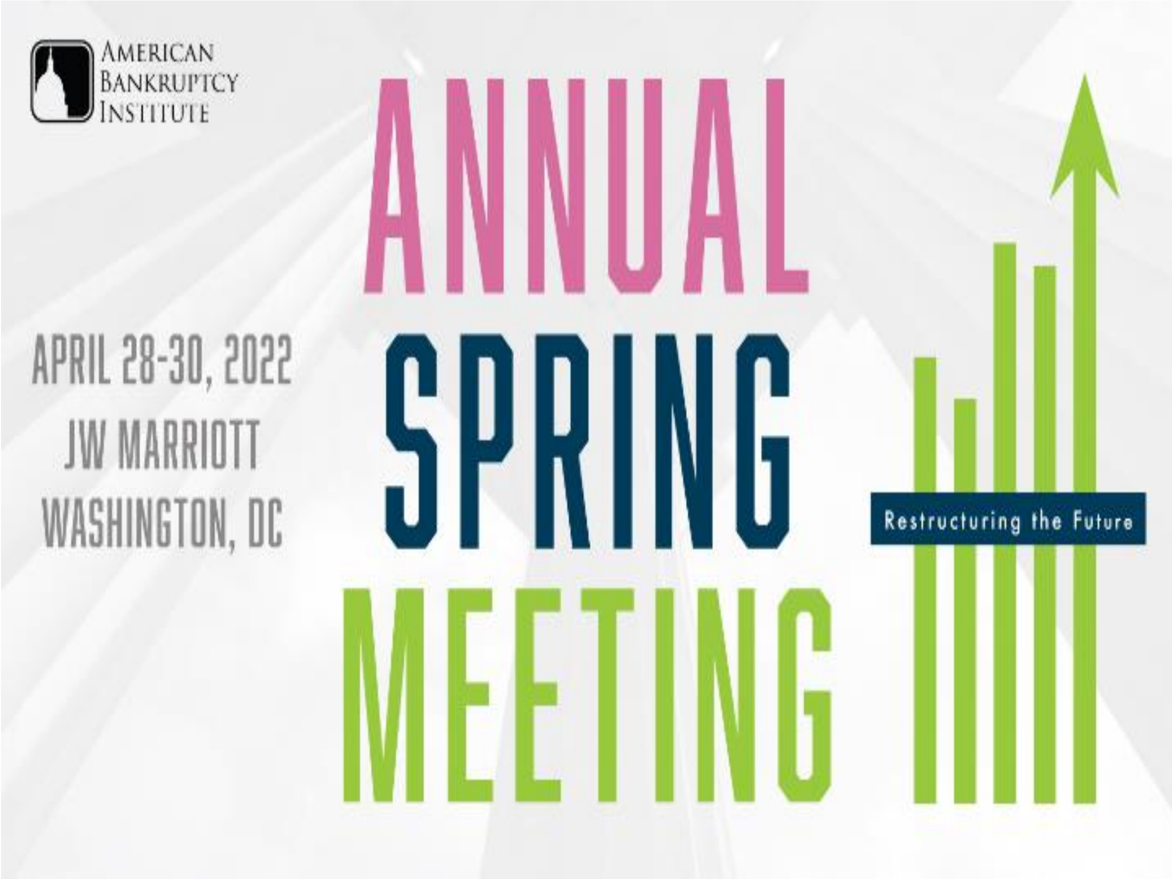
CONCURRENT SESSION

2022



<u>Challenges Facing Secured Creditors in Asset Sales</u>

Speakers

- **Justin Bernbrock, Sheppard Mullin**
- **Jeff Dutson, King & Spalding**
- **Matt Guill, Configure Partners**
- **Maja Zerjal Fink, Arnold & Porter**

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<u>Learning Objectives</u>

1. **Recent trends and pre-bankruptcy tactics used by secured lenders and debtors to maximize optionality in a sale process**

2. **Post-filing procedures and pitfalls for secured lenders in asset sales, including regulatory issues and concerns**

3. **Sale-related disputes among secured creditors, purchasers, and debtors in non-consensual asset sales**

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Learning Objective 1: Recent trends and pre-bankruptcy tactics used by secured lenders and debtors to maximize optionality in a sale process

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Pre-Filing Decision Framework: Know Thyself

Before any credit becomes stressed, lenders and their advisors are well-served to make an honest evaluation of where they sit on the spectrum of lenders and make plans accordingly

Less Flexible

- Passive investor
- Less frequent and more formal financial reporting
- No ability to deploy incremental capital
- Limited forms of acceptable consideration in an RX
- Ratings-sensitive

Knowing where a lender's institution sits on the spectrum will enable a lender to focus his or her efforts on strategies with the greatest R.O.B.D. (return on brain drain)

More Flexible

- Active investor
- Demands monthly or more frequent reporting on formal or informal basis
- Capacity to deploy incremental capital
- Flexible on acceptable forms of consideration in an RX
- Less ratings-sensitive

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Pre-Filing Decision Framework: Lender Challenges & Mitigating Strategies

Key Challenges

1 Information asymmetry

- Borrower (and sponsor) have superior information and view on KPIs, flow through to financial performance, and potential inflection points in the business

2 Capacity to evaluate information

- Size, sophistication, and experience of workout team
- Man-hours available to work through distressed credits

3 Threat of key-throwing

- Is existing management team irreplaceable?
- Do permitting, licensing, or other regulatory hurdles make ownership transfer untenable?

Less Flexible

- Use inspection rights
- Hire an FA – what's the cost of potential info asymmetry?
- Use any default to enhance financial & operational reporting
- Understand collateral package, any deficiencies, and identify leverage to improve positioning
- Cultivate a network of operators, senior advisors, and advisory professionals

More Flexible

- Use inspection rights
- Hire professionals
- Offer trades that protect economic value while improving credit quality, e.g., PIK interest for enhanced collateral
- Focus on how new capital can fix the problem or extend optionality
- Cultivate a network of operators, senior advisors, and advisory professionals

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<u>Prepetition Distressed Debt Acquisitions</u>

- Opportunistic investors frequently purchase a distressed company's debt at less than par in advance of a restructuring hoping to obtain a favorable position in the reorganized company's capital structure.
- Often this involves purchasing the ***fulcrum*** debt—that is, the most senior debt that will receive less than a full recovery on their claims (*i.e.*, where value "breaks").
  – Secured claims (*e.g.*, bank debt, secured bond debt) are not the fulcrum in chapter 11 because such claims are entitled to retain their lien, receive full payment, or receive the "indubitable equivalent" of their claim.
  – Unsecured creditors may receive less than a full recovery in bankruptcy depending upon the value available for distribution.
  – In many cases, unsecured funded debt holders receive equity in the reorganized company or post-reorg debt on favorable terms.
- Fulcrum debt holders typically have significant control over the trajectory of the restructuring given that they can serve as an impaired consenting class to confirm a "cram up" or "cram down" plan.
- To identify the fulcrum debt, the value of the company and the property which serves as collateral for secured creditors' liens must be valued to determine the extent of secured creditors' claims, the overall value available for distribution to creditors, and, as a result, where value breaks.

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<u>A Sale Process is on the Horizon: What Steps Should a Lender Take?</u>

- ***Check your liens***: Don't waste any opportunities to shore up collateral package
- ***Get good help!*** Ensure the borrower has the right professionals (investment banker, financial advisor, counsel)
- ***Independent Management***. Ensure that the Borrower has at least one independent director to oversee a sale process
- ***Liquidity***. Ensure that the Borrower maintains sufficient liquidity to run a process; a robust sale process takes time
- ***Lay the groundwork with Sponsor/Equity***. A consensual sale process will likely only come once sponsor/equity is given an opportunity to "fix things"

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When is it time to push for a sale?

- ***Market Conditions.*** Market uncertainty may dictate timing regarding sale
- ***Regulatory concerns.*** For accounting and regulatory reasons, a bank may need to exit
- ***Liquidity Constraints.*** A sale may be necessary if the Borrower has substantial future funding requirements and neither the equity holders nor lenders have the appetite for additional funding
- ***Deal Fatigue.***
- ***Management Concerns.*** If current management is incompetent or unmotivated, a sale process may be necessary

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Consensual v. Non-Consensual: Strategies to Consider

A consensual sale process is oftentimes easier, more efficient, and more attractive to potential bidders. What are some strategies to ensure a cooperative and consensual sale process?

- ***Afford Sponsor Opportunity to Fix the Business***
- ***Appoint Independent Directors***
- ***Provide funding***
- ***Incentivize management***

Pre-Filing Strategy to Maximize Optionality & Economics

Forcing the borrower to test the market informs secured lenders of "market" terms and ensures they obtain maximum economics

- Incumbent 1L lender benefits from insider status and ability to consummate deals in most frictionless manner
- Forcing borrower to solicit proposals for a financing and/or sale on pre-filing basis provides insight on:
    - Pricing of credit
    - Leveragability of assets and cash flows
    - Enterprise valuation
    - Potential hurdles to investor underwrite (contractual, financial, regulatory, etc.)
- Allows incumbent lenders to structure and price proposals to borrower to soak up maximum economics on any interim credit agreement amendment or financing while giving preview of potential roadblocks to a longer-term solution

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Can Rep and Warranty Insurance benefit a lender in an Out-of-Court distressed?

- R&W insurance provides buyers post-closing coverage for losses (including defense costs) from breaches of the seller's representations and warranties.
- R&W Insurance reduces or eliminates the seller's escrow and offers the buyer additional protection and a longer survival period than what might otherwise be available.
- This is potentially attractive for lenders that do not want to deal with significant holdbacks

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Post-filing concerns for secured lenders in asset sales

- Is there an exit strategy?
  - Funding
  - Timing
  - Control
  - Triggers
- Committee/collateral issues
- Administrative Insolvency

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Learning Objective 2: Post-filing procedures and pitfalls for secured lenders in asset sales, including regulatory issues and concerns

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<u>Credit Bidding</u>

- What is it?
- Strategic concerns. What are your goals
  - Own the asset?
  - Set a price floor?
  - Encourage bidding?
- Lien coverage and priority

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<u>*In re Fisker* and Section 363(k)'s "for cause" limitation</u>

- Section 363(k) of the Bankruptcy Code provides that "At a sale under subsection (b) of this section of property that is subject to a lien that secures an allowed claim, unless the court *for cause* orders otherwise the holder of such claim may bid at such sale, and, if the holder of such claim purchases such property, such holder may offset such claim against the purchase price of such property."
  - "Credit bidding allows the secured creditor to bid for its collateral using the debt it is owed to offset the purchase price… But the right to credit bid is not absolute. Specifically, Section 363(k) of the Bankruptcy Code provides that a party may credit bid 'unless the court for cause orders otherwise…'. The term "cause" is not defined in the Bankruptcy Code, and it is left to the court to determine whether cause exists on a case-by-case basis." *In re Aeropostale, Inc.*, 555 B.R. 369, 414 (Bankr. S.D.N.Y. 2016) (citations omitted).
- Traditional bases for limiting credit bidding include challenges to the lien itself and inequitable conduct by the secured creditor.
- The court in *Fisker* held that chilling – or freezing – the bidding could in and of itself be sufficient cause to disallow or limit credit bidding. However, since then, the court in *Aeropostale* sought to limit "for cause," finding that the possibility of chilling bidding alone did not suffice.

In re Fisker and Section 363(k)'s "for cause" limitation (cont'd)

- In *Fisker*, a case in the Third Circuit, the court held that it would limit the creditor's bid for cause, because not doing so would freeze bidding, relying heavily on the *In re Philadelphia Newspapers* decision, which found that, "A court may deny a lender the right to credit bid in the interest of any policy advanced by the Code, such as to ensure the success of the reorganization or to foster a competitive bidding environment." *In re Fisker Automotive Holdings, Inc*. 510 B.R. 55, 60 (Bankr. D. Del. 2014) (citations omitted).
  - In doing so, the court denied the argument that inequitable conduct had to be present to deny or limit credit bidding. *Id*., at 60.
- Following the *Fisker* decision, the chapter 11 debtors in *Aeropostale*, a bankruptcy case in the Second Circuit, filed a motion seeking, among other things, to limit their creditors' ability to credit bid, relying on the *Fisker* decision to argue that allowing the credit bid would chill bidding, in addition to inequitable conduct allegations against the creditor.
- There, when addressing the *Fisker* argument, the court in *Aeropostale* differentiated the facts, noting that the court in *Fisker* concluded not limiting the credit bid would "freeze," not "chill" bidding, and other problematic factors present in the case, holding that chilling bidding alone did not constitute "cause" under 363(k). *In re Aeropostale, Inc*., at 418.

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Standalone Sales

- Advantages
  - Sale closing can occur fairly quickly
  - No requirement for creditor or equity holder consent
  - Sale can close prior to approval of chapter 11 plan
  - No diligence out
  - Pursuant to section 363(f)(3), assets may be sold over the objection of the secured party if such party's interest is a lien, and the price at which the property is to be sold is greater than the aggregate value of all liens on such property
- Disadvantages
  - Sale of assets only
  - Terms of sale are public
  - Cash as consideration
  - Secured party can challenge the sale if the sales proceeds will not generate the "indubitable equivalent" of its lien on collateral

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Chapter 11 Plan Sales

- Advantages
  - Flexibility in structuring the sale (merger, stock, or asset acquisition)
  - Typically does not require an auction
  - Potential to preserve valuable tax attributes
  - Potential to issue securities exempt from SEC registration requirements
- Disadvantages
  - Requires meeting *all* confirmation requirements set forth in the Bankruptcy Code
    - One such requirement is obtaining the requisite level of support from the debtor's pre-bankruptcy creditors
  - Path to sale can be time-consuming
  - Issues unrelated to the sale can hold up confirmation and prolong the sale process
  - Protection via break-up fees are far less common
  - Some cases have denied secured creditors the right to credit bid in a sale under a cramdown plan

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Standalone Sales vs. Chapter 11 Plan Sales

	363 Sale	Plan Sale
Quick	✓	X
No Need to Meet Chapter 11 Plan Confirmation Requirements	✓	X
Most Successor Liability Protection	✓	✓
Fraudulent Transfer Protection	✓	✓
No Requirement for Equity Holder or Creditor Approval	✓	X
More Flexibility to Structure the Sale	X	✓
Bankruptcy Court Order "Blessing" the Sale	✓	✓
Breakup and Expense Reimbursement Typically Available for Stalking Horse	✓	X
Auction Often Not Required	X	✓
Change-of-Control and Anti-Assignment Provisions Not Applicable	✓	✓
Purchaser Permitted to Issue Securities Exempt from SEC Registration Requirements	X	✓
Ability to Preserve Valuable Tax Attributes	X	✓

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<u>Owning the Asset</u>

- Importance of due diligence
- Are the key assets included?
    - Licenses
        - Are they properly assumed?
            - *RPD Holdings, L.L.C. v. Tech Pharmacy Servs. (In re Provider Meds, L.L.C.)*, 907 F.3d 845 (5th Cir. 2018)
        - Federal and state government permits and/or licenses (e.g., gaming and liquor licenses)

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Learning Objective 3: Sale-related disputes among secured creditors, purchasers, and debtors in non-consensual asset sales

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<u>Collusion or collaboration? Section 363(n) issues for credit bidders</u>

- Trustee may avoid a sale or recover damages "if the sale price was controlled by an agreement among potential bidders at such sale." 11 U.S.C. § 363(n)
  - Agreement must actually control the price and have the intended consequence of obtaining a lower sale price
    - Practically, 363(n) generally applies when one bidder pays another bidder to drop out of the bidding process
  - A section 363(n) finding also precludes a section 363(m) good faith finding
  - Can result in punitive damages and criminal liability (18 U.S.C. § § 152, 157)

- If collaborating on a bid, disclose such collaboration to the relevant interested parties as soon as possible
  - Consider any NDA limitations

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<u>Sub Rosa Objections to a Standalone Sale</u>

- "A debtor cannot enter into a transaction that 'would amount to a sub rosa plan of reorganization' or an attempt to circumvent the chapter 11 requirements for confirmation of a plan of reorganization." *In re Latam Airlines Group S.A.*, 620 B.R. 722 (Bankr. S.D.N.Y. 2020).
- The term "sub rosa" is not defined in the Bankruptcy Code, but case law generally agrees on the following definition for a transaction that would amount to a sub rosa plan:
  – 1. specifies the terms of any future reorganization plan;
  – 2. restructures creditors' rights; and
  – 3. requires that all parties release claims against the Debtor, its officers and directors, and its secured creditors.

  In re Shubh Hotels Pittsburgh, LLC, 439 B.R. 637, 644-645 (Bankr. W.D. Pa. 2010) (citations omitted); *see also Latam Airlines*, at 812-813.
- Sub Rosa plan concerns are not solely limited to section 363 sales, but can be present in any transaction that adversely impacts interested parties' rights to participate in the restructuring process. (*see, e.g., Latam Airlines*, at 815-816*,* holding that the proposed terms of a DIP loan constituted an improper sub rosa plan).

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Sub Rosa Objections to a Standalone Sale (cont'd)

- Creditors and other interested parties can object to 363 sales on this basis with the argument that elements of the transaction implicate the above factors, or otherwise violate section 1129 of the Bankruptcy Code and circumvent confirmation requirements, such as in the below examples:
  - Objection on the basis that the sale agreement restructures the rights of the creditors. (*In re Braniff Airways*, 700 F.2d 935 (5th Cir. 1983) (sale denied as sub rosa plan).
  - Objection on the basis that a sale constitutes a sub rosa plan because it (i) attempts to accomplish something not allowed in a chapter 11 plan (lenders would receive a lower distribution from sale than liquidation), and (ii) attempts to dictate distribution of sale proceeds among classes of creditors. *In re GSC, Inc.*, 453 B.R. 132, 174-175 (Bankr.S.D.N.Y 2011) (objection denied).
  - Objection on the basis that a sale would result in an unsecured creditor owning part of the debtor and essentially being paid more than a secured creditor, (or violating the absolute priority rule). *In re Chrysler LLC, et al.*, 405 B.R. 84 (Bankr.S.D.N.Y. 2009) (objection denied).
  - Objection on the basis that a sale would force bondholders and disfavored unsecured creditors to take a lesser distribution, also in violation of the absolute priority rule. *In re Motors Liquidation Co.*, 430 B.R. 65, 85-86 (Bankr.S.D.N.Y. 2010) (objection denied).
- Although the result of large 363 sale transactions can inevitably have fulsome effects on plans of reorganization or liquidation, courts often don't find 363 sales to be sub rosa plans in the *Braniff* context if "it does not specifically 'dictate' or 'arrange' *ex ante*, by contract, the terms of any subsequent plan." *In re GSC, Inc.*, at 180 (*citing In re Chrysler*, at 96).

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Break-up fees

- "A break-up fee should constitute a fair and reasonable percentage of the proposed purchase price, and should be reasonably related to the risk, effort, and expenses of the prospective purchaser . . . A court should consider the prospective buyer's investment of both time and money when determining whether a break-up fee is reasonable. In general, a break-up fee is permissible if reasonably related to the bidder's efforts and the transaction's magnitude." *In re Integrated Res.*, 147 B.R. 650, 662-63 (S.D.N.Y. 1992) (internal citations omitted)
- *Approval standard*
  - Business judgment
  - Best interest of the estate
  - 503(b) standard
- *Typical ranges*

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Reverse Break-Up Fees in 363 Sales

- A **reverse break-up fee** (or "termination fee")" is a fee paid by the would-have-been acquirer to the target upon failure to close on the sale transaction
  - Is essentially a liquidated damages provision
  - Has become common in private equity transactions, *i.e.*, where a fund is the purchaser
  - Such fees are also negotiated for antitrust failure, *i.e.*, the buyer agrees to pay the seller if it is unable to close on acquisition because of inability to obtain approvals under the Hart-Scott-Rodino Antirust Improvements Act of 1976 or other antitrust laws
- In bankruptcy, a reverse break-up fee was found appropriate where a debtor favored a higher bid that was conditioned on the seller's obtaining approval, and the amount was not deemed to unjustly enrich the estate.
  - *In re Chateaugay Corp.*, 155 B.R. 636, 639n.2 (Bankr. S.D.N.Y. 1993), *order aff'd, appeal dismissed*, 198 B.R. 848 (S.D.N.Y. 1996), *aff'd,* 108 F.3d 1369 (2d Cir. 1997).

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In re Waypoint Leasing Holdings, Ltd., 607 B.R. 143 (Bankr. S.D.N.Y. 2019)

- Stalking horse bidder blamed its loss of the sale and/or a $19.5 million break-up fee plus an expense reimbursement claim on defendant acquiror, alleging acquiror had colluded with the credit bidding lender to control the sale price of the assets in violation of section 363(n)
- "Technical violation" of NDA discounted because it did not affect the bidding process and acquiror did not act in bad faith
  - Of note: bidding procedures modified a "no contact" provision in the NDA that secured creditors and prospective bidders entered into
- Stalking horse bidder lacked standing to bring section 363(n) claim as assignee of the debtors
- Stalking horse bidder pressed collusion objection at sale hearing, but did not ask for expedited discovery or a postponement and did not appeal the sale order
- Collateral estoppel barred the stalking horse bidder from pressing the same arguments in a subsequent complaint

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Case Study

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<u>Akorn Case Study – Background</u>

- Akorn is a generic pharmaceutical manufacturer that agreed to be acquired by Fresenius in 2017
- After the deal announcement, but before closing, Akorn's business entered a significant decline in financial performance and the company was alleged to have data integrity and regulatory deficiencies at its facilities
- Fresenius sought to terminate under a MAE, a Delaware chancery court found the termination valid, and Fresenius sought $123mm in damages
- Shareholder litigants organized and asserted claims
- Term loan coming due imminently and refinancing with hard to quantify claims creating an overhang on the refinancing process

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Akorn Case Study – Weaponizing the Credit Agreement

- An organized group of 1L lenders threatened to declare a default based on the MAE Fresenius declared and a judge ultimately validated
- To avoid the 1L lenders attempting to exercise remedies, the Company agreed to a standstill provision that, among other things, required:
    - A market test soliciting proposals for capital that would facilitate a full repayment of the 1L, a partial repayment, or a sale of the entire business
    - Enhanced and more frequent financial reporting
    - Renegotiated basket sizes to limit potential for value leakage
    - Enhanced economics including a one-time standstill fee, increased interest spread, and a fee for failing to enter into a comprehensive amendment satisfactory to 1L lenders by a certain date
- The standstill also created a new EOD for failing to reach a comprehensive amendment by a certain date
- The standstill and looming EOD improved economics and locked in process control for the 1L lenders

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Akorn Case Study – Outcomes & Lessons

- The Company's search for new capital to refinance the existing 1L resulted in multiple proposals, but none satisfactory to the 1L lenders
    - 1L takeaways: new knowledge on pricing of credit for senior and junior capital and a better understanding of investors' views on shareholder litigation impact to financeability of the Company
    - 1L implementation: pricing the DIP prepetition and knowledge of potential asset buyers' views on individual segments of the business and the business as a whole informing credit bid strategies
- Akorn and the 1L lenders did not achieve a comprehensive amendment by the deadline, which resulted in incremental fees to the 1L lenders
    - 1L takeaways: setting milestones within the standstill agreement created tight process control and created new opportunities to take economics and pull forward repayment
    - 1L implementation: comprehensive amendment created a partial paydown event, improved economics, and set new process milestones with penalties for failure to achieve

Faculty

Justin R. Bernbrock is a partner in the Finance and Bankruptcy Practice Group in Sheppard Mullin's Chicago office, where he concentrates his practice on all aspects of corporate restructuring, bankruptcy and financial distress. He represents clients across a wide range of matters, including debtor and creditor representations, and he has substantial experience in out-of-court and in-court restructurings, primarily in the Southern District of New York, Eastern District of Virginia, District of Delaware and Southern District of Texas. Prior to private practice, Mr. Bernbrock served with distinction as an Aviation Warfare Systems Operator in Patrol Squadron FIVE and as a Weapons Tactics Instructor in Patrol and Reconnaissance Wing ELEVEN. During his nearly 10 years of active duty in the U.S. Navy, he was awarded the Navy Commendation Medal twice, including once for meritorious service during combat operations in Iraq. He also received the Global War on Terrorism Medal for his service in Kandahar, Afghanistan. Mr. Bernbrock has been listed as one of the 500 leading U.S. Bankruptcy and Restructuring Lawyers in *Lawdragon* for 2022, was listed as Outstanding Restructuring Lawyer for 2021 in *Turnarounds & Workouts*, and was named a Rising Star in Law in *Crain's Chicago Business* for 2021. He received his B.S. *summa cum laude* in 2008 from Southern Illinois University and his J.D. *magna cum laude* in 2012 from the University of Illinois, where he served as managing editor of the *Elder Law Journal*, took third place in the 19th Annual Duberstein National Moot Court Competition and received the Rickert Award for Excellence in Advocacy.

Jeffrey R. Dutson is a partner in King & Spalding's Leveraged Finance and Restructuring Group in Atlanta, where he represents banks and other investors in connection with their most complex financings, restructurings and bankruptcy matters. He also frequently represents corporate debtors in chapter 11 bankruptcy cases throughout the country, as well as buyers and sellers in distressed M&A transactions. Mr. Dutson's practice spans a wide variety of industries, including the restaurant, health care, energy, transportation, manufacturing and aviation industries. He was honored as one of ABI's "40 Under 40," was recognized for his work in Bankruptcy and Restructuring by *Chambers USA* for 2020, and was selected as a "Rising Star" for Financial Restructuring in *IFLR 1000*'s *Financial & Corporate Guide*. Mr. Dutson is a Fellow of the American College of Investment Counsel and currently serves on ABI's advisory board for its Southeast Bankruptcy Workshop. Prior to joining the firm, he clerked for Hon. E. Grady Jolly of the U.S. Court of Appeals for the Fifth Circuit. Mr. Dutson received his B.A. *cum laude* from the University of Georgia and his J.D. with honors from the University of Chicago.

Matthew Guill is a director at Configure Partners, LLC in New York, a middle-market credit-focused investment bank providing debt-placement and capital-resolution advisory services to companies, sponsors, lenders and other stakeholders. He has advised a wide range of client, including the Commonwealth of Puerto Rico with respect to its $100+ billion of liabilities, Hyundai Merchant Marine in a $4+ billion debt and charter contract restructuring, M&G Chemicals in its $2 billion restructuring, Pacific Drilling in its $1 billion restructuring, and various ad hoc lender groups. Mr. Guill joined Configure Partners from Greenhill & Co.'s Financing Advisory and Restructuring practice, where he was a principal. Prior to joining Greenhill, he worked on the restructuring teams at Rothschild and Millstein. Mr. Guill has advised companies, lenders, sponsors and governments on an array of complex financing and restructuring issues, M&A activity and general strategic advisory assignments. He is a FINRA General Securities Representative (Series 63 & 79). Mr. Guill received his undergraduate degree Phi Beta Kappa from Hampden-Sydney College, where he was captain of the basketball team, and his M.B.A. from Columbia Business School.

Maja Zerjal Fink is a partner with Arnold & Porter Kaye Scholer LLP in New York, where represents clients in distressed situations, corporate reorganizations, distressed-investment litigation, and insolvency proceedings in the U.S. and across the globe. Recognized by ABI in its "40 Under 40" Class of 2020, *Law360* (2020), *Super Lawyers* (2020) and *The Legal 500* (2019) as a "Rising Star," she has been involved in some of the largest reorganization cases in the U.S., including the restructuring of Puerto Rico's outstanding debt load of more than $74 billion. Ms. Zerjal Fink has represented clients in a number of high-profile restructurings, including Hertz, Cineworld, Caesars Entertainment Operating Corp., MF Global Holdings, Seadrill Partners, Penn Virginia Corp., Rotech Healthcare, SIGA Technologies, Breitburn Energy Partners, Trident Microsystems and Phoenix Brands. She also represented B. Endeavour Shipping Co. in its chapter 15 case and has advised clients in several cross-border matters. Her experience includes representations of private-equity sponsors, debtors, foreign debtors and representatives, statutory and ad hoc committees, lenders, bondholders, trade creditors, landlords and equityholders in bankruptcy proceedings and in-court and out-of-court restructurings. Ms. Zerjal Fink writes extensively on restructuring topics, including in Bloomberg Law and Debtwire. She is also a member of the editorial board of *International Corporate Rescue*, a corporate restructuring and insolvency journal, in which more than 30 of her articles have been published. Ms. Zerjal Fink maintains an active *pro bono* practice and has been awarded a Pro Bono Star award by Human Rights First for her work in asylum cases. She is also an active member of the Harvard Law School Association and serves on its Executive Committee and the Board of the New York City chapter. Ms. Zerjal Fink received her B.A. from the University of Ljubljana in Slovenia, where she was first in class, and her LL.M. from Harvard Law School, where she was Dean's Scholar in Corporate Reorganization and senior editor of the *Harvard Business Law Review*.