

Chapter 22 or 33: An FA Post-Mortem

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Deloitte CRG; Los Angeles

Stanley Mastil

Gavin/Solmonese LLC; Wilmington, Del.

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Kobi Partners, LLC; Kiawah Island, S.C.

Steven L. Victor

Development Specialists, Inc.; Chicago

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Outline

Skillman:

- Panel Introductions
- Statistical Overview

Victor: Missed Forecasts

- Macro-economic reasons
- Company specific reasons
- Incentives to be too aggressive in forecasting

Mastil: Unforeseen Circumstances

- A lively discussion of all of the other reasons things go sideways
- Customer defections (GM cancels a wheel contract, as an example)
- Breach of contract/ counter party risk
- Others from the audience

Rayburn: It's the Code's fault

- Changes to the Code compress events and time for analysis
- Misaligned incentives

REVEL AC



Case History

Chapter 11 Filing: Mar 25, 2013 Case #13-16253
Chapter 22 Filing: Jun 19, 2014 Case# 14-22654
Venue: District of New Jersey

Case Details

- Owned and operated a luxury casino and resort facility in Atlantic City, NJ
- Initial filing predicated by operational difficulties, power generation problems, and significant debt coming due in 2013
- Prepackaged bankruptcy in 2013
- Liquidity Crisis in 2013 post filing
 - Management operational changes failed to reduce operating losses enough during 2013 summer season
 - 2013 Bankruptcy failed to resolve their energy agreement as well creating other non-ordinary losses like severance and litigation issues
- Lack of additional financing and inability to reach an agreement to sell company led to Chapter 22 filing

EXIDE TECHNOLOGIES



Case History

Chapter 11 Filing: Apr 15, 2002 Case #02-11125
Chapter 22 Filing: Jun 10, 2013 Case #13-11482
Venue: District of Delaware

Case Details

- One of the global leaders in stored energy solutions and of world's largest producers and recyclers of lead-acid batteries
- Initial filing predicated high leverage taken to finance acquisitions and the impact of a depressed telecommunications market on its sales of batteries powering telecom equipment allowing Exide to shed about 70% of its debt and emerge with new financing
- Exide sought a Chapter 22 filing to again de-lever its balance sheet and implement an operational restructuring
- Rising production costs, intense competition, and a European downturn constrained liquidity
- A California air pollution control agency caused their largest recycling plant in Vernon, CA to be shutdown starting in 2013 ending in an agreement to permanently close the plant in 2015

TRUMP ENTERTAINMENT RESORTS

Case History

Chapter 11 Filing: Jul 17, 1991 Multiple cases – predecessor co.'s.
Chapter 22 Filing: Nov 21, 2004 Case# 04-46898
Chapter 33 Filing: Feb 17, 2009 Case# 09-
Chapter 44 Filing: Sep 9, 2014 Case#14-12103
Venue: Districts of New Jersey and Delaware

Case Details

- Gaming and hospitality company founded by Donald J. Trump to run the family of Trump Casinos in Atlantic City
- Trump stepped down from running the company in 2009 but remained a significant stakeholder and the company continued to maintain a trademark licensing agreement
- With the closing of the Taj Mahal in October 2016, all casinos from the original family have now been sold or closed
- Carl Icahn, who purchased the assets of TER in the 2014 bankruptcy, indicated he lost approximately \$350 million trying to save the Taj Mahal

GREAT ATLANTIC & PACIFIC TEA CO.

(A&P)

Case History

Chapter 11 Filing: Dec 12, 2010 Case #10-24549
Chapter 22 Filing: July 19, 2015 Case #15-23007
Venue: Southern District of New York

Case Details

- Regional supermarket and food retailer with 28,500 employees and 300 locations (2012) across six Northeastern states

Company History

- 2010 - Filed Chapter 11 due to financial and operational difficulties
 - Financial: Overleveraged due to acquisition of Pathmark (2008) which increased store footprint by 25%
 - Operational: Inflexible supplier and labor agreements
 - Result: Closed approximately 200 stores, renegotiated supplier agreements, and modestly reduced labor costs. A&P opted against closing 60 underperforming stores to preserve jobs.
- 2012 – Emerged from Chapter 11 with 300 stores
- Interim Issues:
 - Same store sales decreased by 7%+
 - Inability to invest allotted capital for store modernization due to inefficient cost structure
 - 93% of workforce was unionized with “bumping” provisions in collective bargaining agreements (CBA's)
 - Trade creditors shortened credit terms and lead supplier (65% of goods) issued notice of default for non-payment under supplier agreement
 - Asset based lender issued notice of default which required all outstanding principal to be paid immediately
- 2015 - Filed Chapter 22 due to financial and operation difficulties

STRAUSS DISCOUNT AUTO



Case History

Chapter 11 Filing: 1979
Chapter 22 Filing: Jun 9, 1998
Chapter 33 Filing: Aug 10, 2006 Case #06-17474
Chapter 44 Filing: Feb 2, 2009 Case #09-10358
Chapter 55 Filing: Jun 5, 2012 Case #12-24414

Venue: District of New Jersey

Case Details

Regional retailer of automotive after-market parts and accessories and operator of automotive service centers

Company History

- 1979 – Filed Chapter 11
- 1983 – Strauss merged with R&S Home & Auto to form R&S Strauss
- 1988 – R&S Strauss purchased by Ward Whiting Group (WWG)
- 1993 – Ward Whiting Group (WWG) purchased by Merrill Lynch
- 1998 – Filed Chapter 22 after defaulting on \$13M loan
- 2000 – R&S Strauss purchased by Glenn Langberg
- 2006 – Filed Chapter 33 after liquidity crisis caused by resignation of senior finance staff, overdue AP, and breach of liquidity ratio on debt covenant
- 2007 – Strauss Discount Auto purchased by Autobacs Seven (Japanese retailer)
- 2009 – Filed Chapter 44 due to debt default called by parent company
- 2012 – Filed Chapter 55 due to senior secured lender cash sweep, which left the company with no ability to fund operations.

BUOY, HALL & HOWARD AND ASSOC. (BHH)

Case History

Chapter 11 Filing: Dec 4, 1989 Case #89-41946
Chapter 22 Filing: Apr 11, 1995 Case #95-40676

Venue: Southern District of Georgia

Case Details

Partnership that owns and operates a Quality Inn Hotel located proximate to the old terminal at Savannah International Airport

Company History

- 1969 – BHH secured long-term ground lease from Savannah Airport Commission through 2029
- 1979 – BHH obtained financing from Lincoln National Insurance Co.
- 1989 – Filed Chapter 11
- 1992 – Secured creditors objected to Plan due to impairment. The court confirmed and “crammed-down” the Plan
- Interim Issues
 - Major airlines discontinued routes to Savannah Airport
 - Savannah Airport relocated its terminal to the far end of the runway which disadvantaged BHH
 - BHH defaulted on its obligations to Savannah Airport
- 1995 – Filed Chapter 22
 - At issue was the question of “good faith”. The court opined on whether the Chapter 22 filing was an attack on the initial order of confirmation.



PERFORMANCE TRANSPORTATION SERVICES, INC.

Case History

Chapter 11 Filing: Jan 25, 2006 Case #89-41946
POR Confirmed Dec 21, 2006
Chapter 22 Filing: Nov 19, 2007 Case #07-4746K
Convert to 7 July 14, 2008
Venue: *Western District of New York*

Case Details

Roll up of three auto haulers, resulting in the number 2 carrier in North America.

Company History

- Over leveraged due to acquisitions.
- Price pressure from customers, high replacement capital expenditure requirements and competition from non-union carriers forced the company to seek bankruptcy protection in 2006
- Operational performance improvement included load optimization technology, terminal rationalization, pricing improvement with key customers.
- Fulcrum security acquired by Yucaipa. Yucaipa discouraged union negotiations until a change in control through plan confirmation.
- Union refused company's post-confirmation compensation and work rule changes, resulting in a strike
- Union strike precipitated a liquidation