

### 2022 Alexander L. Paskay Memorial Bankruptcy Seminar

# **Nuts & Bolts of Chapter 11 Practice**

#### Hon. Mindy A. Mora, Moderator

U.S. Bankruptcy Court (S.D. Fla.) | West Palm Beach

#### Eric J. Silver, Moderator

Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A. | Miami

#### John R. Dodd

Baker McKenzie | Miami

#### **Lara Roeske Fernandez**

Trenam Law | Tampa

### John E. Page

Shraiberg Page PA | Boca Raton

#### Hon. Michael G. Williamson

U.S. Bankruptcy Court (M.D. Fla.) | Tampa

Chapter 11
Nuts & Bolts:

# CRITICAL EVENTS FROM CASE COMMENCEMENT TO CONFIRMATION

ALEXANDER L. PASKAY MEMORIAL BANKRUPTCY SEMINAR

MARCH 29, 2022





Hon. Mindy A. Mora, Moderator U.S. Bankruptcy Court (S.D. Fla.) | West Palm Beach



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Hon. Michael G. Williamson U.S. Bankruptcy Court (M.D. Fla.) | Tampa



### **TOY STORY**

Toyco, LLC is a closely-held Florida limited liability company with its principal place of business in Fort Lauderdale, Florida.

Lasseter, John, director. Toy Story. Disney/Pixar, 2010.



#### **OWNERSHIP**

The Pixar family owns 100% of the membership interests in Toyco.

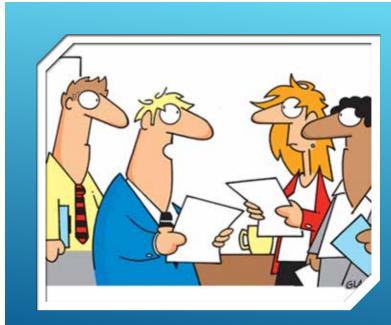
Mom Pixar = 1/3

Dad Pixar = 1/3

Son Sammy = 1/6

**Daughter Bessie** 

= 1/6



### MANAGEMENT AND EMPLOYEES

- **▶ Johnny Outsider is CFO**
- Dad Pixar is CEO
- Sonny Pixar is COO
- **▶ Bessie Pixar is CMO**
- ► Employees = 35



### **FIVE LOCATIONS:**

HOLLYWOOD – original location; owned by related entity RE Holdco

\*\*\*No Written Lease\*\*\*

**BAL HARBOUR - Above Market** 

**BRICKELL - Above Market** 

TAMPA - Below Market

MIZNER - At Market



### **DEBT:**

Land Bank holds a mortgage on the Hollywood location

\*\*\*Guaranty by Mom and Dad Pixar\*\*\*

\*\*\*Paid By Toyco\*\*\*

Expand Bank provided a secured line of credit to Toyco for purchase of inventory and expansion to additional locations

\*\*\*Guaranteed by Pixar/Toyco employees\*\*\*



### IMPACT OF EXPANSION AND PANDEMIC:

**Adverse Factors:** 

**Amazon Effect** 

**Supply Chain Woes** 

**Labor Shortages** 

**Wage Inflation** 

Result:

**Tightening of Cash Flow** 

**Decreasing Sales** 

**Longer Accounts Payable Period** 

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#### MERCHANT CASH ADVANCES TO COVER CASH FLOW SHORTFALLS

- Merchant Capital provides a merchant cash advance to Toyco.
- ▶ But, Toyco struggles to keep up with the automatic debits that Merchant Caratal charges against the operating account.



### **CHAPTER 11**

► Unable to keep with the payments to Merchant Capital, Toyco and the Pixars turn to Best Chapter 11 Lawyers for help.



"From "Shark Tank."

### TO FILE OR NOT TO FILE?

- **Type of Debtor**
- **Type of Problem**
- Financial Structure
- **Debtor's Objectives**
- **Alternatives to Chapter 11**

### **TYPE OF PROBLEM**

- **One-Time Catastrophic Loss**
- **•Unprofitable Locations or Product Lines**
- **Expanded Too Rapidly**
- **Competition**
- **Too Much Secured Debt**
- Poor Management or Lack of Financial Controls

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PETITION DATE BALANCE SHEET				
Assets	FN	Book	Liquidation	
Cash		\$0.00	\$0.00	
Account Receivable		\$650,000.00	\$325,000.00	
Inventory		\$2,750,000.00	\$1,000,000.00	
FF&E (Net of Depreciation)		\$700,000.00	\$350,000.00	
Total		<u>\$4,100,000.00</u>	<u>\$1,675,000.00</u>	
Liabilities				
Expand Bank	1	\$750,000.00	\$750,000.00	
Trade Payables		\$900,000.00	\$900,000.00	
Taxes		\$75,000.00	\$75,000.00	
Merchant Capital	2	\$900,000.00	\$900,000.00	
Total		\$2,625,000.00	\$2,625,000.00	
Footnotes:				
1. Expand Bank Secured by 1st Lien on A/R, Inventory & FF&E				
2. No UCC-1 Filed				

	PRE-BA	NKRUPTCY	P&L	
	April 2022	May 2022	June 2022	July 2022
Income From Operations	\$550,000.00	\$625,000.00	\$675,000.00	\$675,000.0
Disbursements				
Inventory	\$195,000.00	\$215,000.00	\$260,000.00	\$249,000.0
Labor Cost	\$210,000.00	\$237,500.00	\$262,000.00	\$265,000.0
Supplies	\$13,500.00	\$19,250.00	\$21,000.00	\$21,000.0
Advertising	\$14,726.00	\$24,650.00	\$22,285.00	\$10,445.0
Depreciation	\$16,666.00	\$16,666.00	\$16,666.00	\$16,666.0
Hollywood Mortgage	\$18,375.00	\$18,375.00	\$18,375.00	\$18,375.0
Rent (all other locations)	\$48,535.00	\$48,535.00	\$48,535.00	\$48,535.0
Accounting	\$3,600.00	\$3,600.00	\$3,600.00	\$3,600.0
Legal	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.0
Insurance	\$8,950.00	\$7,000.00	\$8,950.00	\$7,000.0
Repairs & Maintenance	\$10,506.00	\$12,395.00	\$18,225.00	\$13,990.0
Utilities	\$18,022.00	\$15,432.00	\$14,321.00	\$11,358.0
Expand Bank Payments	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.0
Merchant Capital	\$20,000.00	\$20,000.00	\$20,000.00	\$20,000.0
Total Disbursements	\$597,880.00	\$658,403.00	\$733,957.00	\$704,969.0
Cash Surplus / Deficit	(\$47,880.00)	(\$33,403.00)	(\$58,957.00)	(\$29,969.00
Cash at Beginnig of Period	\$0.00	(\$37,880.00)	(\$88,638.00)	(\$155,180.00
Cash at End of Period	(\$47,880.00)	(\$71,283.00)	(\$147,595.00)	(\$185,149.00

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Income From Operations Disbursements	\$550,000.00	\$625,000.00	\$675,000.00	
			00.000,570ج	\$675,000.00
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Advertising	\$14,726.00	\$24,650.00	\$22,285.00	\$10,445.00
Depreciation	\$0.00	\$0.00	\$0.00	\$0.00
Hollywood Mortgage	\$0.00	\$0.00	\$0.00	\$0.00
Rent (all other locations)	\$48,535.00	\$48,535.00	\$48,535.00	\$48,535.00
Accounting	\$0.00	\$0.00	\$0.00	\$0.00
Legal	\$0.00	\$0.00	\$0.00	\$0.00
Insurance	\$8,950.00	\$7,000.00	\$8,950.00	\$7,000.00
Repairs & Maintenance	\$10,506.00	\$12,395.00	\$18,225.00	\$13,990.00
Utilities	\$18,022.00	\$15,432.00	\$14,321.00	\$11,358.00
Expand Bank Payments	\$0.00	\$0.00	\$0.00	\$0.00
Merchant Capital	\$0.00	\$0.00	\$0.00	\$0.00
Total Disbursements	\$519,239.00	\$579,762.00	\$655,316.00	\$626,328.00
Cash Surplus / Deficit	\$30,761.00	\$45,238.00	\$19,684.00	\$48,672.00
Cash at Beginnig of Period	\$0.00	\$30,761.00	\$75,999.00	\$95,683.00
Cash at End of Period	\$30,761.00	\$75,999.00	\$95,683.00	\$144,355.00



# RETENTION ISSUES:

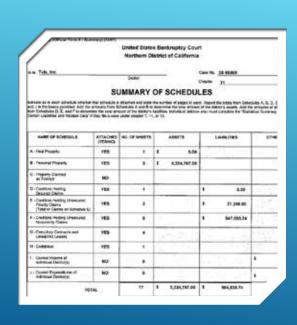
- ► Who Do You Represent?
- **▶** Retainer
- ► Engagement Letter
- ► Corporate Authority



# PRE-FILING CONSIDERATIONS:

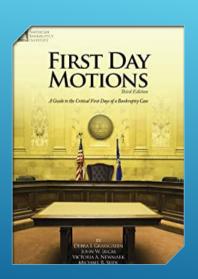
Managing employees

Negotiating with creditors



# REQUIRED DOCUMENTS:

- **Petition**
- Schedules of Assets and Liabilities
- >Statement of Financial Affairs (SOFA)
- ► Chapter 11 Case Management Summary
- Double Local Requirements



### **FIRST DAY MOTIONS:**

Pre-petition Payroll

**Employment of Professionals** 

**Critical Vendors** 

**Bank Accounts** 

Cash Collateral/DIP Financing

Leases

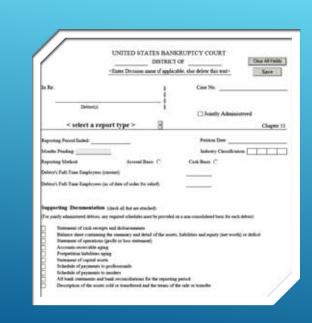
**Utilities** 

**Turnover** 



# MANDATORY MEETINGS:

- ► Initial Debtor Interview (IDI)
  - **Bank Accounts**
  - **Insurance**
- >341 Meeting
  - ▶Who appears?



# MANDATORY REPORTING:

Don't forget to file your Monthly Operating Reports (MOR's)!

#### CLASSIFICATION OF CLAIMS AND INTERESTS

Class	Description	Status	Voting Status
Unclassified	Administrative Expense Claims	Unimpaired	Not entitled to vote
Class 1	Allowed Secured Claus of Expand Bank	Impaired	Entitled to Vote
Class 2	Allowed Priority Claims of Toyco Employees	Unimpaired	Not Entitled to Vote
Class 3	Allowed General Unsecured Claims	Impaired	Entitled to Vote
Class 4	Allowed Equity Interests in the Debtor	Unimpaired	Not Entitled to Vote

### CONTENTS OF PLAN: §1123 AND FRBP 3016

Plan "shall" . . .

- Classify claims into classes
  - Substantially similar
  - Convenience class
- Impairment
- Same treatment within class
- Means for implementation



### CONTENTS OF PLAN: §1123 AND FRBP 3016

Plan "may" . . .

- Impair or leave unimpaired
- Executory contracts
- Retention of estate claims
- Sale or retention of estate property
- Modify rights of secured creditors

# CLASSIFICATION AND TREATMENT OF TOYCO'S CLAIMS

Class	Treatment
Unclassified Claims: Admins	paid in full on effective date
Class 1: Expand Bank	refinanced or cramdown
Class 2: Priority Claims	paid in full on effective date
Class 3: General Unsecured Claims	pro rata dividend from cash surplus over 3 years and chapter 5 claims
Class 4: Membership Interests	retained

# MEANS FOR TOYCO PLAN'S IMPLEMENTATION

Rejection/Assumption of Existing Leases:

- Reject above market leases
- Assume at market and below market leases

#### Compromise with Pixar Family:

- · Pixar family to contribute Exit Financing
- Refinance RE Holdco property and contribute portion of equity
- Debtors to provide releases to Pixar Family, RE Holdco and Land Bank

Establish liquidating trust for benefit of Toyco general unsecured creditors







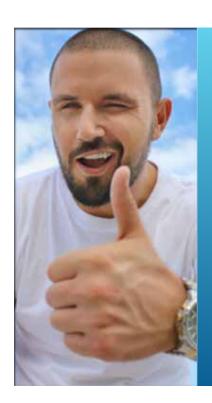
DISCLOSURE AND SOLICITATION -§1125 AND FRBP 3017:

- **Definitions**
- No solicitation until DS is approved
- Same DS for all members of a class but can differ from class to class
- ► Bankruptcy law governs adequacy of information (not securities law)

# ACCEPTANCE OF THE PLAN - § 1126 AND FRBP 3018:

- Voting is measured by how each class votes
- ▶ Holder of claim may accept or reject the plan
- >Acceptance by class requires at least 2/3 in dollar amount and more than  $\frac{1}{2}$  in number of allowed voting claims per class





### VOTING ON THE PLAN - §1126 AND FRBP 3018:

- Designation of a claim or interest
- Unimpaired class: presumed to accept the plan and solicitation is not required
- Impaired class: deemed not to accept if not entitled to receive or retain any property



### DOCUMENTS REQUIRED FOR CONFIRMATION HEARING

- Confirmation Affidavit of Plan Proponent
  - Signed by representative of the Debtor
- Certificate of Plan Proponent on Acceptance of Plan, Report on Amount to be Deposited, Certificate of Amount Deposited and Payment of Fees
  - Signed by Debtor's counsel



# PLAN CONFIRMATION - §1129(a) AND FRBP 3020

- **▶** Consensual Confirmation of Plan
  - ► Meet requirements for plan confirmation under § 1129(a)
  - Plan submitted in good faith
  - Distributions to be made under plan are feasible based on debtor's projections
  - Each holder of a claim in an impaired class has accepted the plan, or will receive or retain property under the plan that is equal to or greater than what that claimholder would receive in a chapter 7 liquidation
  - Each impaired class has accepted the plan



### PLAN CONFIRMATION -§1129(b) AND FRBP 3020

- ▶ CRAMDOWN What has to be shown?
- ▶Plan is fair and equitable and doesn't unfairly disciminate
- **▶**Secured creditors
  - ▶ Retention of liens, and
  - ▶Payments = allowed amount of claim, or proceeds from sale of collateral, or indubitable equivalent

#### **▶GUCS**

- ▶Payments = allowed amount of claim or no junior class receiving distribution on account of junior claim or interest
- ► Exception for individual chapter 1/1 cases



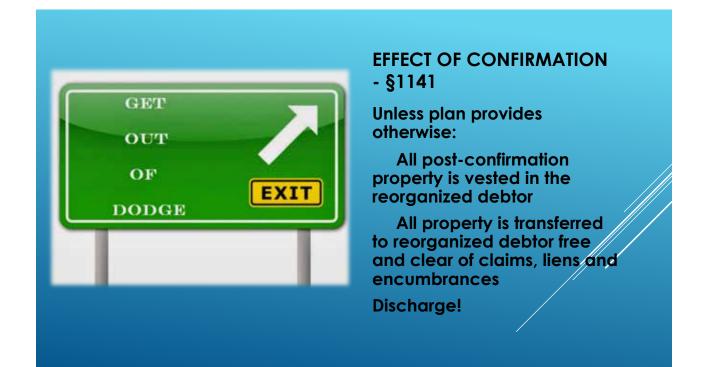
# STRATEGIES FOR OBJECTING TO CONFIRMATION

- Designation of Claims
- o 1111(b) Election
- Estimation



# EFFECT OF CONFIRMATION - §1141

- Plan is binding on debtor, creditors, equity holders and GP (if applicable) on effective date
- Substantial consummation



### **Faculty**

John R. Dodd is a partner with Baker McKenzie in Miami in its Restructuring and Insolvency Practice Group. He is experienced with handling transactions and litigations that arise in business reorganizations, liquidations, distressed-asset acquisitions and sales, financial restructurings and loan workouts. Mr. Dodd represents debtors, trustees, secured and unsecured creditors, and official committees and purchasers of troubled companies and their assets, both in and out of bankruptcy court. He is listed in the *South Florida Legal Guide* as a "Top Lawyer" (2020) and a "Top Up and Comer" (2017-19), was recognized in 2018 in the *Daily Business Review*'s "Most Effective Lawyers" list, and was listed as a *Florida Super Lawyers* "Rising Star" from 2013-19. Mr. Dodd is a member of the American Bar Association, the Bankruptcy Bar Association of the Southern District of Florida and the Leadership Miami Committee. He received his B.A. *cum laude* from Harvard College in 2001 and his J.D. *cum laude* from the University of Florida Levin College of Law in 2006.

Lara Roeske Fernandez is a shareholder with Trenam Law in Tampa, Fla. She currently serves on the firm's Executive Board and is a former practice group leader for the firm's Bankruptcy and Creditors' Rights Practice Group. Ms. Fernandez is Board Certified in Business Bankruptcy Law by the American Board of Certification, and her clients include financial institutions, fiduciaries/trustees and private-equity groups in the areas of business reorganizations, trustee representation, bankruptcy litigation, commercial foreclosures and workouts, and loan modifications. Ms. Fernandez has served as a chapter 11 trustee and liquidation trustee. Prior to joining Trenam, she clerked for Hon. Alexander L. Paskay, Chief Bankruptcy Judge Emeritus of the U.S. Bankruptcy Court for the Middle District of Florida, from 2001-04 and for a year after graduating from law school. Ms. Fernandez is AV-rated by Martindale-Hubbell and listed in *Chambers USA*, *The Best Lawyers of America*, *Super Lawyers* and *Florida Super Lawyers*. She received both her B.A. and J.D. from Emory University.

Hon. Mindy A. Mora is U.S. Bankruptcy Judge for the Southern District of Florida in West Palm Beach, appointed on April 6, 2018. She practiced in the areas of bankruptcy, commercial finance, and securitized real estate finance and litigation from 1982-2018 prior to her appointment to the bench by the Eleventh Circuit Court of Appeals. Judge Mora is a Fellow of both the American College of Bankruptcy and the American College of Commercial Finance Attorneys. She previously chaired the Business Law Section of The Florida Bar, which represents the interests of more than 5,000 business lawyers within the State of Florida. Throughout much of her legal practice, she has been active in the development of Florida's commercial laws, most recently as a member of The Florida Bar Business Law Section task force that prepared draft Florida legislation adopting a modified version of the Uniform Commercial Real Estate Receivership Act. Judge Mora is a member of NCBJ (National Conference of Bankruptcy Judges) and has served on its Technology, New Member and Education Committees. She also participates as a member of the Business Law Sections of both the American Bar Association and The Florida Bar, the Association of Commercial Finance Attorneys, the Bankruptcy Bar Association of South Florida, and the International Women's Insolvency & Restructuring Confederation. Judge Mora regularly lectures on commercial law and bankruptcy topics to lawyers and other judges throughout the U.S. From 2018-20, Judge Mora served as the judicial chair of the Local Rules Committee, which promulgated the proposed amendments to the Local Rules for consideration by the bench of the Bankruptcy Court for the Southern District of Florida. She received

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her B.B.A. from George Washington University in 1979 and her J.D. from New York University School of Law in 1982.

John E. Page is a partner with Shraiberg Page P.A. in Boca Raton, Fla., where he focuses his practice in the areas of commercial bankruptcy and complex business litigation. He has experience representing a variety of parties in interest in bankruptcy cases including chapter 7, 11 and 12 debtors, creditors' committees, trustees, landlords, secured and unsecured creditors and purchasers of assets. He has also handled a wide range of business litigation covering financial fraud, contract and shareholder disputes, fraudulent transfers, commercial foreclosures, theft of trade secrets and computer fraud law. Board Certified in Business Bankruptcy Law by the American Board of Certification, Mr. Page has experience reorganizing troubled companies through out-of-court workouts, bankruptcy and state court insolvency proceedings. He has represented real estate developers, construction companies, self-storage facilities, consumer goods companies, marinas, boat manufacturers, restaurants and golf courses, among others. He has also successfully confirmed several individual chapter 11 plans of reorganization resulting in clients eliminating millions in debt and restructuring residential and commercial mortgages. On the creditor side, he has aggressively litigated on behalf of creditors in collection matters, contesting chapter 11 plans, obtaining relief from the automatic stay, converting chapter 11 cases to chapter 7 liquidation, prosecuting fraudulent transfer actions, and contesting chapter 7 debtors' right to a discharge. He has successfully defended creditors in preference and fraudulent transfer proceedings nationally. Mr. Page is an approved bankruptcy court and Florida Supreme Court Certified Circuit Civil mediator. Prior to entering private practice, he clerked for Hon. Paul G. Hyman, Jr. of the U.S. Bankruptcy Court for the Southern District of Florida. Mr. Page has been listed in Florida Super Lawyers from 2019-21 and as a "Rising Star" from 2010-18. He received his B.S. summa cum laude in economics in 2001 from George Washington University and his J.D. magna cum laude in 2004 from the University of Miami School of Law, where he was admitted to the Order of the Coif and a member of the *University of Miami Law Review*.

Eric J. Silver is a shareholder in the Business Restructuring department of Stearns, Weaver, Miller, Weissler, Alhadeff & Sitterson, P.A. in Miami and is a member of the firm's board of directors. He handles complex commercial restructuring and related litigation matters in both federal and state courts, and he regularly represents court-appointed fiduciaries, secured and unsecured creditors, and purchasers of distressed assets. Prior to joining the firm in 2010, Mr. Silver clerked for Hon. Robert A. Mark in the U.S. Bankruptcy Court for the Southern District of Florida. He is a member of ABI and was president of the Bankruptcy Bar Association of the Southern District of Florida for 2020-21. In addition, he was the Miami chair of its *Pro Bono* Committee from 2016-19 and *Pro Bono* Committee Liaison of the FLSB Bankruptcy Lawyers Advisory Committee from 2018-19, and is a member of The Florida Bar's Business Law Section. Mr. Silver was honored as one of ABI's 2021 "40 Under 40." He received his J.D. *magna cum laude* from the University of Miami School of Law jointly with his M.B.A. from the School of Business Administration.

**Hon. Michael G. Williamson** is a U.S. Bankruptcy Judge for the Middle District of Florida in Tampa, initially appointed as bankruptcy judge in March 2000 and as chief judge from 2015-19. He currently serves as co-author of *West's Bankruptcy Law Manual* and as an adjunct professor at Stetson University College of Law, where he teaches bankruptcy law. Judge Williamson began his bankruptcy practice serving as a chapter 7 panel trustee from 1977-79. For the next 20 years,

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he represented numerous chapter 11 corporate debtors, creditors' committees and trustees in bank-ruptcy cases pending throughout the state of Florida until his appointment to the bankruptcy bench in 2000. Judge Williamson is past chair of the Committee on Creditors' Rights, Section of Litigation of the American Bar Association, past chair of the Business Law Section of The Florida Bar and that section's Bankruptcy/UCC Committee, and a Fellow of the American College of Bankruptcy. He received his undergraduate degree from Duke University in 1973 and his J.D. from Georgetown University Law Center in 1976.