



AMERICAN
BANKRUPTCY
INSTITUTE

2017 Delaware Views from the Bench

Young Lawyers Track

Nuts & Bolts on First-Day Motions

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ABI Presentation –						

First-Day Pleadings

September 13, 2017

Weil, Gotshal & Manges LLP

First-Day Pleadings

- First-day motions are typically filed on the same day as the chapter 11 petitions
- These motions, and the relief sought therein, are necessary to allow for the smoothest possible transition for Debtor into chapter 11 and to ensure that Debtor has Court authority to: (i) continue certain operations and business practices in the ordinary course; (ii) pay, in Debtor's discretion, those suppliers and other creditors that are essential to the success of Debtor's reorganization efforts; and (iii) seek certain other procedural relief
- Law Firm, in coordination with Financial Advisor, will typically prepare the following substantive first-day motions for Debtor (there may be others and not all of these motions will apply in every case), in addition to several procedural motions or other documentation:
 - First-Day Declaration (summarizes business and case and factual support for all first day motions)
 - Cash Management Motion
 - Prepetition Taxes Motion
 - Employee Wages and Benefits Motion
 - Vendor Motions
 - Critical Vendors Motion
 - Foreign Creditors Motion
 - Shippers/Lienholders Motion
 - Customer Programs Motion
 - Utilities Motion
 - Insurance Motion
 - DIP Financing Motion
 - Bar Date Motion
 - Professional Retention Applications
- Relief is requested in several first-day motions due to the automatic stay imposed by the Bankruptcy Code

First-Day Pleadings: Filing Preparation

- Law Firm and Financial Advisor will coordinate with Debtor management to establish work streams to identify the information necessary to populate the first day motions and ensure that the appropriate relief is sought from the Court.
- To prepare the first day motions, Law Firm and Financial Advisor, with the assistance of Debtor, will need to understand, among other things, the following:
 - Which Debtor-entities need to file for chapter 11 protection and any related eligibility or jurisdictional/venue concerns.
 - How Debtor is going to finance the chapter 11 case(s). Typical options include: (i) Debtor's existing cash on hand (if sufficient); (ii) debtor-in-possession (DIP) financing provided by existing creditor; or (iii) a DIP loan from other third party financing sources.
 - If DIP financing is pursued, Law Firm would prepare a motion seeking the Court's approval of the terms of the DIP loan.

First-Day Declaration

- Purpose: to summarize history and events leading up to a bankruptcy filing and to provide a factual basis and record for the bankruptcy filing and the first day relief requested upon such filing.
- Process generally includes:
 - Together with a senior Debtor official, Law Firm must prepare a First-Day Declaration describing:
 - The Debtor;
 - The Debtor's history;
 - The Debtor's corporate and debt structure;
 - The factors causing the commencement of the Debtor's chapter 11 cases;
 - The case strategy (if any); and
 - The facts setting forth the relief requested in each of the first day motions.

First-Day Pleadings: Cash Management Motion

- Purpose: to seek authority to maintain debtor's existing cash management system, including bank accounts, drop-boxes, intercompany financing arrangements, and existing business forms, to avoid any unnecessary disruption to the debtor's normal business operations.
 - Absent Court relief, the Bankruptcy Code requires debtors to close all of their existing accounts and open new debtor-in-possession accounts at authorized depositories.
- Relief requested generally includes:
 - Authority to continue the prepetition cash management system and honor prepetition obligations related thereto
 - Authority to continue intercompany funding transactions
 - Authority to maintain existing bank accounts
 - Authority to maintain existing business forms
 - Extension of time to comply with or waiver of certain investment requirements
- Information Required:
 - Detailed description of Debtor's cash collection system, cash concentration system, and cash disbursement system;
 - Include all local depository accounts, concentration accounts, daily deposits, sweeps, lock boxes, and automated debits.
 - List of Debtor bank accounts;
 - Explanation of how cash is sent from Debtor to other Debtor and non-Debtor entities; and
 - The Court may impose restrictions on sending cash outside of the Debtors during the chapter 11 cases absent compelling circumstances.
 - Summary of any investment policies that Debtor utilizes with its excess cash.

First-Day Pleadings: Prepetition Taxes Motion

- Purpose: prevent the imposition of tax penalties (many of which would receive priority treatment under the Bankruptcy Code) and tax liens (which could interfere with the debtor's operations and reduce creditor recoveries) by paying any statutory tax liabilities that relate to the prepetition period (due as of or after petition date).
 - Necessary to avoid fees and assessments, as well as potential liability for its directors and officers
- Relief requested generally includes:
 - Authority to pay "trust fund" taxes and certain other types of prepetition taxes, fees, and charges (e.g., property taxes, use taxes, franchise taxes, license, permit fees, etc.)
 - A trust fund tax is money withheld from third parties, such as employees or retail customers, that is required to be paid over to the applicable U.S. or state government. Trust fund taxes include employment taxes (income tax, social security, Medicare taxes) and sales taxes.
 - If a taxpayer fails to withhold or to pay over to the tax authority any portion of its trust fund taxes, the government may collect the deficiency directly from the person(s) responsible for collecting the taxes. These individuals are known as "responsible persons." In addition, responsible persons may be subject to a penalty of 100% of the amount of the tax due and to criminal penalties.
 - Under most statutes, "responsible persons" include not only officers and directors, but also employees who handle the financial affairs of the debtor, either directly or indirectly, including the preparation and filing of tax returns.
 - The tax motion also requests authority to pay other "personal liability" taxes that are not trust fund taxes but for which a government authority can assert personal liability against responsible persons (e.g., use taxes and excise taxes).
- Information Required:
 - Description of the various types and categories of taxes and assessments that are incurred by Debtor in the course of operations, including sales, use, property, franchise, excise, employment and other "trust fund" taxes; and
 - The amounts due as of the petition date or coming due during the case and relating to the prepetition period.

First-Day Pleadings: Employee Wages and Benefits Motion

- Purpose: to seek Court approval to make payments on account of any prepetition wages and/or employee benefit obligations to ensure the business can continue to operate.
 - Chapter 11 filing is often coordinated with the timing of the Debtor's payroll schedule to ensure that there are no substantial employee wage or benefit obligations due immediately prior to the petition date.
- Relief requested generally includes:
 - Authority to pay prepetition wages;
 - Employee wage claims earned 180 days prior to the commencement date are afforded priority status, subject to a cap of \$12,850 per employee.
 - Authority to pay prepetition amounts owed with respect to employee benefits;
 - Authority to maintain and continue employee benefits and other employee related programs (e.g., health and welfare plans, life insurance, disability, 401(k), paid time off, and collective bargaining agreements); and
 - Authority to pay severance obligations to non-insider employees.
- Information Required:
 - Description of the number, location, and type of employees in Debtor's workforce (e.g., full time, part time, hourly waged, salaried, paid weekly, bi-weekly, etc.);
 - Explanation of all employee wage and benefit programs and policies, including salary and wage policies for employees and independent contractors, health and benefit programs, paid time off, severance programs, pension plans, bonus programs and policies, and executive compensation; and
 - Summary of any prepetition wage or benefit obligations outstanding as of the petition date and any amounts that will come due during the first 30 days of the case.

First-Day Pleadings: Vendor Motions

- Critical Vendor Motion
 - Purpose: to seek Court approval to make payments to certain prepetition vendors and suppliers that are absolutely necessary for the continued operation of a debtor's business.
- Foreign Creditors Motion
 - Purpose: to seek court approval to make payments to certain foreign vendors that the debtor relies on to supply various goods and services that are crucial to the Debtor's ongoing operations in the United States (absent such relief, the foreign vendors would likely be able to pursue remedies and seek collection of prepetition amounts from the debtor).
- Shippers and Other Lienholders Motion
 - Purpose: to seek court approval to pay all prepetition amounts owed to vendors and suppliers that may be able to assert statutory or possessory liens on a Debtor's property (e.g., tooling manufacturers, shippers, warehousemen, and other bailees).
- Information Required:
 - Identification of the following vendors and suppliers:
 - all suppliers that may be able to assert statutory or possessory liens absent payment of their prepetition claims;
 - all foreign creditors with limited or no ties to, or presence within, the United States that may, despite the commencement of the chapter 11 case, take action in foreign jurisdictions that might disrupt Debtor's operations and jeopardize its ability to reorganize;
 - all suppliers who sell goods that will be delivered to Debtor in the ordinary course of business within 20 days prior to the petition date; and
 - any other creditors that, absent payment of their prepetition indebtedness in full, may (or would be likely to) withhold goods or services that could result in a shutdown of, and irreparable damage to, Debtor's operations or disrupt Debtor's reorganization efforts.
 - Review of material contracts to identify parties to executory contracts or unexpired leases that Debtor can require to continue to perform during the bankruptcy
 - Protocol should be set in place to ensure that, upon petition date, no vendor is paid on account of its prepetition claims absent confirmation and approval that (a) Debtor has Court authority to pay and (b) any vendor deemed and paid as a "critical" vendor truly is essential to Debtor's reorganization.

First-Day Pleadings: Customer Programs Motion

- Purpose: to seek authority for a Debtor to perform and honor its prepetition obligations related to its customer programs and to continue, renew, replace, and/or terminate such programs in the ordinary course of business.
 - Customer programs include rebates, product warranties, and related programs
- Information Required:
 - Understanding of Debtor's customer programs and practices as well as any other warranty or customer related programs utilized by Debtor in the ordinary course; and
 - A summary of the outstanding amounts owed under the customer programs as of the petition date.

First-Day Pleadings: Utilities Motion

- Purpose: to seek approval to provide utility providers with "adequate assurance" and to ensure uninterrupted utility services to prevent disruption to a Debtor's operations (if adequate assurance is not timely provided, the utility is permitted to discontinue services).
 - Given their significance to any company's operations, utility providers are generally prohibited from disrupting or discontinuing their services to a Debtor during the first 20 days of a chapter 11 case; however, after that period, utility service providers may discontinue their services absent "adequate assurance" of future payment from Debtor.
- Relief requested generally includes:
 - Maintenance of utility services for debtor to operate its business
 - Authority to provide utilities with "adequate assurance" of future payment within a certain postpetition time period
 - Two weeks is generally sufficient for most utility providers
- Information Required:
 - Identification of all utility providers to ensure that they receive notice of the commencement of the bankruptcy case and the adequate assurance procedures;
 - Information on deposits held by utility companies; and
 - Historical two-week run rate for each utility company.

First-Day Pleadings: Insurance Motion

- Purpose: to seek approval to pay any prepetition obligations relating to the Debtor's insurance programs and to continue, renew, and replace existing insurance policies to prevent any potential losses to the estate due to lapses in coverage.
- Relief requested generally includes:
 - Authority to continue insurance programs
 - Authority to pay all insurance obligations (including brokers fees and fees for service providers)
 - Modification of the automatic stay with respect to workers' compensation claims
- Information Required:
 - List of Debtor's existing insurance policies, including unemployment, workers' compensation, director and officer, and general liability;
 - A list of states in which workers' compensation coverage applies; and
 - A summary of any premiums or other annual amounts outstanding under Debtor's insurance policies as of the petition date and any amounts that will come due during the case.

First-Day Pleadings: DIP Financing Motion

- Purpose: to obtain court approval to enter into a DIP facility needed to finance a debtor's operations while in chapter 11. The relief requested in the DIP motion and the items required to obtain financing will differ based on the ultimate transaction Debtor intends to consummate.
- Relief requested generally includes:
 - Authority to enter into a financing agreement that includes the granting of a lien on property of the estate or priority (administrative or superpriority over all other administrative expenses)
- Required to Obtain Financing:
 - Summary of the material terms of the proposed DIP financing;
 - Copy of the DIP credit agreement;
 - Adequate borrowing base; and
 - Notice to existing creditors prior to final hearing.

First-Day Pleadings: Bar Date Motion

- Purpose: to fix a date by which all claims against the Debtor must be filed with the bankruptcy court (not typically a first-day motion).
- Relief requested generally includes:
 - Authority to establish certain notice procedures to give notice to all known claimants and unknown claimants (typically newspaper advertising) of the date by which they must file their proofs of claim;
 - Authority to establish procedures for claimants to file proofs of claim; and
 - Waiver of claims if not scheduled or if proofs of claim are not timely filed.

Professional Retention Applications

- **Debtor Professionals**
 - Law Firm
 - Local Counsel (as necessary)
 - Financial Advisor
 - Investment Banker
 - Claims and Noticing Agent
- **Ordinary Course Professionals**
- **Creditors' Committee Professionals**
 - Counsel
 - Financial Advisor
 - (Investment Banker)

CHAPTER 11 DO'S AND DON'TS

Must Do

- Appoint one or more point persons at the company for fielding questions and collecting information and circulate that information to employees within the company.
- Forward any demands for reclamation to the point person, who will forward it to bankruptcy counsel.
- Notify the point person of any refusal by a vendor or other party to perform under its contracts or any other demands for payment of prepetition claims.
- Contact the point person if anyone shows up unexpectedly to take back equipment for “servicing.”
- Contact the point person with any questions regarding payments or any other issues.
- Bankruptcy counsel reviews all equipment leases to determine if they are financings or “true leases.”
- Change bank accounts to “debtor in possession” accounts.
- Close books as of the date prior to the petition date.
- Pay quarterly trustee fees.
- Prepare and file monthly operating reports.
- Pay vendors on a current basis for postpetition goods and services.

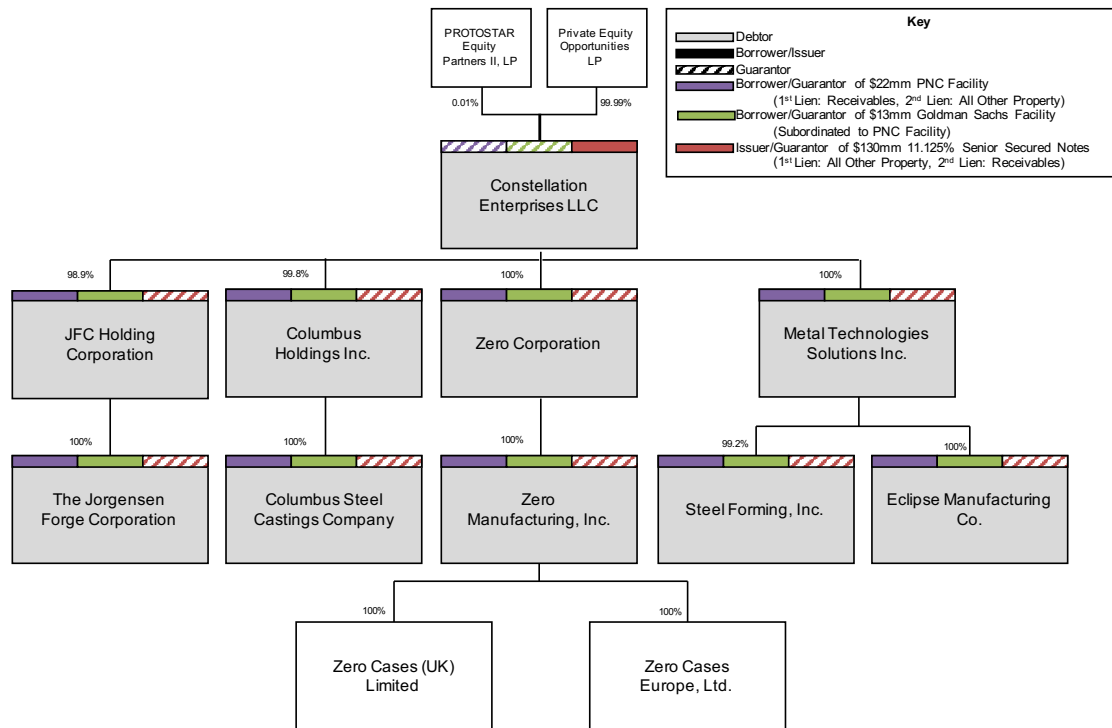
Must Not Do (Without Bankruptcy Court Approval)

- Pay any prepetition debt or other obligations.
- Prepay any amounts or post any deposits with vendors. (Deposits are technically secured credit.)
- Return any inventory, equipment, or other goods to any vendors if they request.
- Make payments under any equipment leases without approval from bankruptcy counsel.
- Represent to any party to a contract or lease that the company intends to “assume” (agree to keep) the contract or lease without first discussing with the point person and bankruptcy counsel.
- Representations to any creditor that it is a “critical vendor” or the company will pay of its claims (unless the point person states that the payments have been authorized by the Bankruptcy Court).

Bankruptcy Court Approval Required

- Incur any secured debt.
- Enter into acquisitions, contracts, and transactions “outside the ordinary course of business.”
- Assume (agree to honor) or reject (breach) any existing contracts or leases.
- Pay any prepetition debt or other obligations.

Constellation Organizational Structure



Privileged-Attorney Work Product



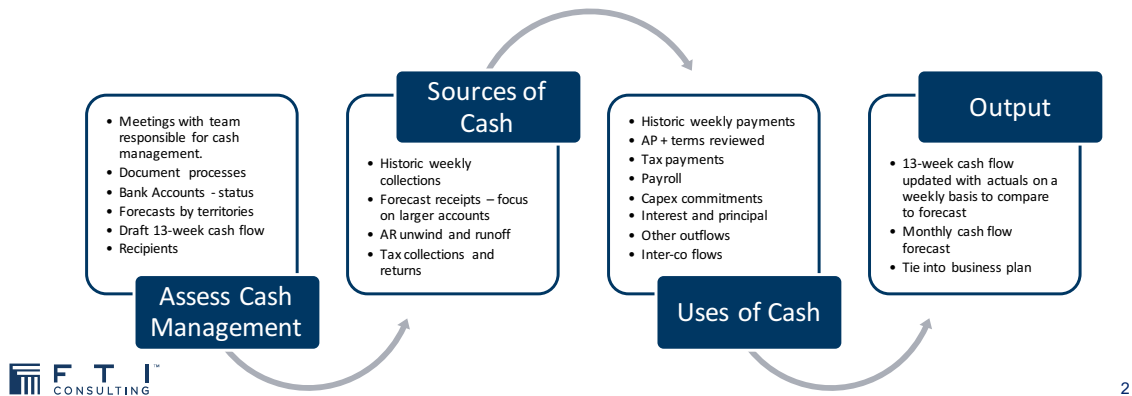
13-Week Cash Flow Budget Development

13-Week Cash Flow – Action Required

Cash Management/Preservation

■ Develop 13-Week Cash Forecast, determine resources and manage for cash.

1. Immediate: Prepare 13-week rolling cash forecasting. Review the cash trajectory and forecast the ending cash balance over the next 13-weeks. Review the timing of major cash commitments.
2. Determine ability to access revolver balance.
3. Understand covenants, sweeps and lender remedies. Review vendor terms and accounts payable.
4. Next 3-6 Months: Focus on the major cash events impacting the company over the next 3-6 months. Analyze and understand working capital changes. For example, observed recent positive changes in working capital (reduced sales and diminishing AR) likely not sustainable. Improvements in cash from working capital changes will likely provide short term cushion, but longer term impact is unfavorable.
5. Identify times when funds are at their tightest, make sure cash is managed accordingly.



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FTI Approach - Overview

- FTI takes a hands-on, bottom-up approach to any Cash Flow analysis

■ Developing a 13-Week Cash Flow Statement

- A treasury Cash Flow Forecast is a summary of the company's sources & uses of cash – it represents the bottoms-up approach also referred to as the liquidity forecast (receipts and disbursements)
- Using a GAAP Cash Flow statement does not provide you with the granularity required when forecasting 13-Week Cash Flows. The GAAP statement represents an indirect representation of cash (operations, investing and financing)

■ When building the Cash Flow Forecast, you need to understand the business:

- Cash Management System
- Major cash sources (receipts) & uses (disbursements)
- Operational structure of the company
- Primary assets (core and non-core divisions)
- Variable & fixed nature of disbursements
- Information sources – forecasting is only as good as your ability to measure actual weekly cash

The Cash Flow Forecast is typically one of the first things FTI does in any troubled situation, and is a critical tool in determining the health of the client

The same tools are used when setting up a 13-Week for the purposes of Ch.11 typical DIP (Debtor in Possession) Requirements

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Let's add to the list!

FTI Approach – Overview – Why is the 13-Week so Important?

- The Cash Flow analysis is crucial to help understand the following:
 1. Is there an immediate cash crisis? When is a cash injection needed, and how much cash is required?
 2. Is the cash crisis the result of fundamental business issues, capital structure issues or both?
 3. Is this a distressed situation or just a performance improvement scenario?
 4. Is there a chance that the company may need to file for bankruptcy?
 5. What areas of the business are the most capital intensive?
 6. Does the company have working capital problems?
 7. What are the areas for working capital improvement?
 8. What levers can be pulled to mitigate potential cash shortfalls?



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Always understand the quality of the inputs and reliability of the forecast

If a Cash Flow Forecast is already in place, find out how long it has been in operation

Pitfall: Cash forecasts cannot be taken at face value. The company forecast could have material errors/misses.

Company Cash Forecasts and Historic Financials

- Company forecasts already prepared
 - Review any short-term Cash Flow Forecasts which may already be prepared by the company
 - Obtain old forecasts and compare these to actual results
 - This will help you determine where they view the priorities
 - It will also help identify busts and potential future misses
- Historical Financials
 - Historical financials will be one of the anchors of your Cash Flow
 - Try to obtain access to the following electronic files for at least 6 months and up to 2 years if possible:
 - Annual budget
 - Bank statements by accounts
 - Audited accounts (incl. list of adjusting events)
 - Monthly financial statements (Income Statement, Balance Sheet and Cash Flow)
 - Sales by appropriate division
 - Accounts payable check runs
 - Payroll
 - List of key vendors and payment history
 - List of insiders and payment history
 - Analyze these financials to understand where the cash went
 - Try and get the data into an understandable format
 - Make sure that you understand the applied window dressing measures (e.g. ordering during last week of financial period to have a lower A/P balance and lower inventory balance)
 - Understand and analyze the cash conversion cycle



5



Building the Forecast

Design a framework by deriving the major sections

- Separate the analysis into major sections or pieces
 - Each major component should ideally be stand-alone
- The forecast should be a comprehensive “playbook” that explains:
 - Where does the company receive its cash from (receipts)?
 - Where does it spend its cash (disbursements)?
 - The timing of peaks and valleys, and the factors impacting each
 - Are the Cash Flows positive or negative?
 - How can each section be forecasted?
 - What is the accuracy of forecasting each section?
 - Are variances in forecasting typical timing or permanent?



6



Establish the Current Cash & Liquidity Position

The initial bank account list and details should be obtained from the Group CFO/ Controller in conjunction with local financial controllers

Be skeptical of roadblocks

Find every last account and dollar

- Very important to get the beginning cash position right
 - Need an opening position that you can trust, otherwise the forecast is meaningless
 - There is more than one logical cash balance:
 - Cash on account – the daily reported bank balances
 - Cash after float – determine the float by reviewing check registers and other payments cut but not yet cleared
 - Restricted cash – not available for day to day operations of the business; Comes in many forms; Find ways to release cash (security deposits)
 - Impact of inter-company movements (zero out each transaction)
 - Minimum balances and advance deposits from customers
 - Money in Escrow Accounts
- Determine complete list of company bank accounts (both active and inactive), including bank name, account number, account uses and signatories for each account
- Determine current balances for each account, check balances online where possible, and for sample of largest balances, contact the bank directly (remember there have been situations where cash was reported but did not exist)
 - Fact based
- Determine primary mode of payment:
 - Determine the costs associated with sweeping daily cash and using wires vs. checks
 - Consider intercompany cash in transit – likely a day or two
 - Consider how payroll is financed and when cash is required for payroll
 - Determine the outstanding float (if company pays entirely by wire/direct transfer then this is not an issue)
- Are there subsidiaries domiciled in countries where there are “technical” reasons for not giving immediate access to funds even though they exist?
 - Company ABC: Could not sweep excess cash from Netherlands to UK
 - Company XYZ: Funds in certain country entities were not accessible due to local insolvency rules



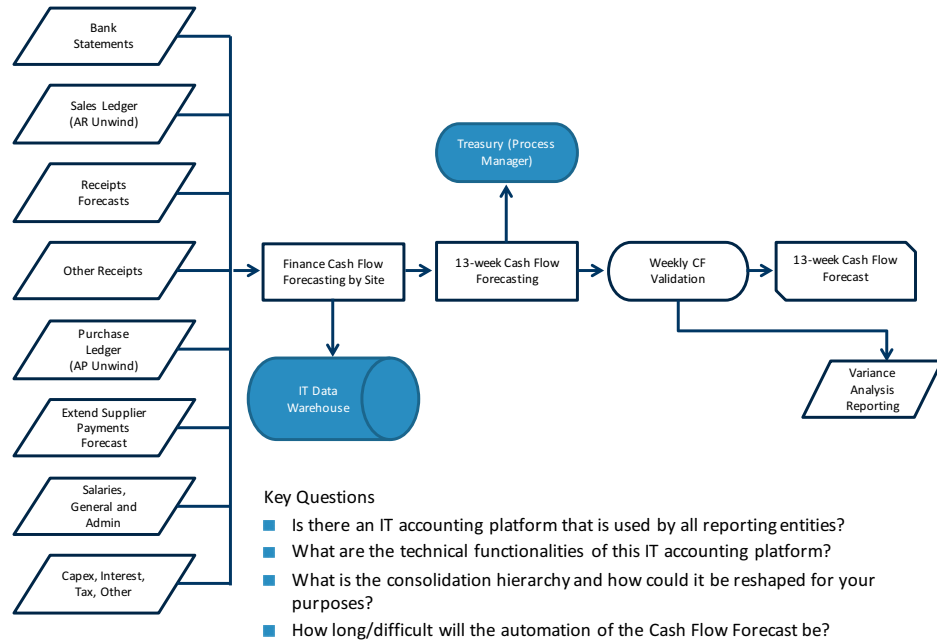
7

Preparation Steps – System Based Approach

For large clients, a system based approach is an alternative to the template approach

The template approach requires an understanding of which accounting platforms could be used to assist forecasting

Consider # of entities, currencies, time zones etc.



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Rolling 13-Week Cash Flow Forecast Template

Template for 13-Week Cash Flow Forecast, including actuals; Will need to be customized for each new opportunity

Sections and format should be similar

Note: The template does not include month-end cut-off, but that may be needed depending on the engagement

Periods – Consider splitting weeks for month end.

Week:	1	2	3	4	5	6	7	8	9	10	11	12	13	13-Week Total
Week Ending:	Jan 8, 17	Jan 15, 17	Jan 22, 17	Jan 29, 17	Feb 5, 17	Feb 12, 17	Feb 19, 17	Feb 26, 17	Mar 5, 17	Mar 12, 17	Mar 19, 17	Mar 26, 17	Apr 2, 17	
Week in Year:	1	2	3	4	5	6	7	8	9	10	11	12	13	
Operating Cash Receipts	A													
Domestic Customer Receipts														
Foreign Customer Receipts														
Other Receipts														
Total Operating Cash Receipts	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Disbursements	B													
Operating Expenses														
Weekly Payroll														
Commissions														
Benefits														
Rent														
Other														
Total Operating Expenses	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Vendor Payments	C													
Domestic														
Foreign														
Total Vendor Payments	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Operating Cash Flow	D													
Capital Cash Movements														
New expenditure														
Asset Sales														
Total Capital Cash Movements	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Debt Payments	E													
Interest														
Amortisation														
Total Debt Payments	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Restructuring Costs	F													
Professional Fees														
Severance														
Total Restructuring Costs	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Net Cash Flow	-	-	-	-	-	-	-	-	-	-	-	-	-	-



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2017 DELAWARE VIEWS FROM THE BENCH

13-Week Cash Forecast | As of July 30, 2013

Week Ended: 7/26/13															Total 13-Week Period
	Forecast Week Ended 08/02/13	Forecast Week Ended 08/09/13	Forecast Week Ended 08/16/13	Forecast Week Ended 08/23/13	Forecast Week Ended 08/30/13	Forecast Week Ended 09/06/13	Forecast Week Ended 09/13/13	Forecast Week Ended 09/20/13	Forecast Week Ended 09/27/13	Forecast Week Ended 10/04/13	Forecast Week Ended 10/11/13	Forecast Week Ended 10/18/13	Forecast Week Ended 10/25/13		
Receipts															
1	Operating	3,466,143	3,528,061	3,528,061	3,513,945	3,528,061	3,601,948	3,614,135	3,614,135	3,600,018	3,797,402	3,934,852	3,934,852	3,920,735	47,582,248
2	Other (Including Inter Account Transfers In)	19,026	(6,594)	(6,594)	(6,594)	(6,594)	(6,594)	(6,594)	(6,594)	(6,594)	6,719	6,813	6,813	6,813	(6,563)
3	Total Operating Receipts	3,485,170	3,521,468	3,521,468	3,507,351	3,521,468	3,595,255	3,607,541	3,607,541	3,593,424	3,804,121	3,941,665	3,941,665	3,927,548	47,575,685
Operating Disbursements															
4	Payroll & Benefits	355,014	2,982,585	337,269	2,975,913	356,151	2,549,500	768,530	2,983,619	356,492	2,549,500	768,530	3,104,350	361,839	20,449,290
5	Paper & Ink	2,620,816	266,560	266,560	266,560	2,266,560	275,838	275,838	275,838	2,280,858	284,623	284,623	284,623	284,623	9,925,131
6	Purchased Content	26,190	26,497	26,497	26,497	26,497	26,494	26,494	26,494	26,756	26,953	26,953	26,953	26,953	345,766
7	Outside Services	622,884	1,201,945	561,945	1,201,945	561,945	1,202,509	562,509	1,202,509	562,509	1,216,102	566,296	1,226,296	586,296	11,295,691
8	Operating Supplies & Materials	286,456	95,043	35,043	35,043	44,203	224,701	39,701	39,701	39,701	156,543	92,362	32,362	32,362	1,153,314
9	Repairs & Maintenance	241,201	49,811	49,811	49,811	97,873	85,294	85,294	85,294	85,294	195,355	54,864	54,864	54,864	1,189,631
10	Promotion and Marketing	43,777	41,054	41,054	41,054	41,054	49,913	49,913	49,913	49,913	47,298	45,337	45,337	45,337	590,954
11	Postage, Office Supplies, Dues, and Subscriptions	23,692	30,683	30,683	30,683	30,683	29,249	29,249	29,249	29,249	27,461	26,119	26,119	26,119	369,241
12	Travel, Meals, and Entertainment	30,327	32,934	32,934	32,934	32,934	33,539	33,539	33,539	33,539	36,976	39,554	39,554	39,554	451,857
13	Training, Seminars, Events, and Communications	512	792	792	792	792	306	306	306	306	546	725	725	725	7,625
14	Insurance	147,000	-	47,086	30,566	-	47,086	55,566	-	-	-	47,086	55,566	-	429,954
15	Utilities, Rent, and Lease	57,937	32,999	334,999	142,999	53,599	52,732	79,732	327,732	162,732	42,916	40,691	287,691	150,691	1,767,451
16	Taxes (non-income)	-	-	437,518	-	-	-	-	-	376,593	-	-	-	258,333	1,072,444
17	Total Operating Disbursements	4,455,807	4,760,902	2,202,189	4,834,795	3,512,379	4,530,077	1,998,192	5,486,354	1,622,069	6,580,310	1,966,054	5,175,960	1,923,261	49,048,350
Capital Expenditures and Income Taxes															
18	Capital Expenditures	10,000	22,537	22,691	22,691	12,323	62,207	64,188	34,235	7,500	18,750	18,750	18,750	18,750	333,371
19	Income Taxes	-	-	-	-	-	-	-	-	-	-	-	-	-	-
20	Total Capital Expenditures and Income Taxes	10,000	22,537	22,691	22,691	12,323	62,207	64,188	34,235	7,500	18,750	18,750	18,750	18,750	333,371
Debt related Disbursements															
21	Interest Payments	258,214	-	-	-	-	258,752	-	-	-	259,291	-	-	-	776,256
22	Principal Payments	-	-	-	-	-	-	-	-	-	-	-	-	-	-
23	Bank Fees and Other	-	-	25,000	-	-	-	-	25,000	-	-	-	25,000	-	75,000
24	Total Debt related disbursements	258,214	-	25,000	-	-	258,752	-	25,000	-	259,291	-	25,000	-	851,256
25	Other Misc Disbursements	-	-	37,000	69,900	-	-	-	-	-	-	-	-	-	106,900
26	InterAccount Transfers Out	-	-	-	-	-	-	-	-	-	-	-	-	-	-
27	Total Disbursements (Operating Account)	4,724,020	4,783,439	2,286,880	4,927,386	3,524,702	4,851,035	2,062,380	5,545,589	1,629,569	6,858,351	1,984,804	5,219,710	1,942,011	50,339,876
28	Operating Cash - Beginning	1,521,092	282,241	(979,730)	254,858	(1,165,176)	(1,168,411)	(2,424,192)	(879,031)	(2,817,079)	(853,224)	(3,907,454)	(1,950,592)	(3,228,637)	1,521,092
29	Cash Inflow from Holding Account	-	-	-	-	-	-	-	-	-	-	-	-	-	-
30	Change in Cash	(1,238,851)	(1,261,971)	1,234,588	(1,420,034)	(3,234)	(1,255,781)	1,545,161	(1,938,048)	1,963,855	(3,054,230)	1,956,861	(1,278,045)	1,985,537	(2,764,192)
31	Operating Cash - Ending	\$282,241	(\$979,730)	\$254,858	(\$1,165,176)	(\$1,168,411)	(\$2,424,192)	\$879,031	(\$2,817,079)	(\$853,224)	(\$3,907,454)	(\$1,950,592)	(\$3,228,637)	(\$1,243,100)	(\$1,243,100)



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13-Week Cash Forecast | Projected Cash Account Balances

Week Ended: 7/26/13															Total 13-Week Period
	Forecast Week Ended 08/02/13	Forecast Week Ended 08/09/13	Forecast Week Ended 08/16/13	Forecast Week Ended 08/23/13	Forecast Week Ended 08/30/13	Forecast Week Ended 09/06/13	Forecast Week Ended 09/13/13	Forecast Week Ended 09/20/13	Forecast Week Ended 09/27/13	Forecast Week Ended 10/04/13	Forecast Week Ended 10/11/13	Forecast Week Ended 10/18/13	Forecast Week Ended 10/25/13		
1 Operating Cash - Beginning	1,521,092	282,241	(979,730)	254,858	(1,165,176)	(1,168,411)	(2,424,192)	(879,031)	(2,817,079)	(853,224)	(3,907,454)	(1,950,592)	(3,228,637)	1,521,092	
2 Cash Inflow from Holding Account	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
3 Change in Cash	(1,238,851)	(1,261,971)	1,234,588	(1,420,034)	(3,234)	(1,255,781)	1,545,161	(1,938,048)	1,963,855	(3,054,230)	1,956,861	(1,278,045)	1,985,537	(2,764,192)	
4 Operating Cash - Ending	\$282,241	(\$979,730)	\$254,858	(\$1,165,176)	(\$1,168,411)	(\$2,424,192)	(\$879,031)	(\$2,817,079)	(\$853,224)	(\$3,907,454)	(\$1,950,592)	(\$3,228,637)	(\$1,243,100)	(\$1,243,100)	
Holding Account															
5 Beginning Balance	7,347,178	7,347,178	7,347,178	7,347,178	7,347,178	7,347,178	8,947,178	5,362,178	5,362,178	5,362,178	5,362,178	5,362,178	3,667,178	7,347,178	
6 Receipts	-	-	-	-	-	1,600,000	-	-	-	-	-	-	-	1,600,000	
7 (Disbursements)	-	-	-	-	-	-	(3,585,000)	-	-	-	-	(1,695,000)	-	(5,280,000)	
8 InterAccount Transfers - In (Out)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
9 Ending Balance	7,347,178	7,347,178	7,347,178	7,347,178	7,347,178	8,947,178	5,362,178	5,362,178	5,362,178	5,362,178	5,362,178	3,667,178	3,667,178	3,667,178	
Holdback \$															
10 Beginning Balance	17,452,034	17,452,034	17,452,034	17,452,034	17,452,034	17,452,034	17,452,034	17,452,034	17,452,034	17,452,034	17,452,034	17,452,034	17,452,034	17,452,034	
11 Receipts	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
12 (Disbursements)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
13 InterAccount Transfers - In (Out)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
14 Ending Balance	17,452,034	17,452,034	17,452,034	17,452,034	17,452,034	17,452,034	17,452,034	17,452,034	17,452,034	17,452,034	17,452,034	17,452,034	17,452,034	17,452,034	
15 Total Cash - Ending	25,081,453	23,819,482	25,054,070	23,634,036	23,630,801	23,975,021	21,935,181	19,997,133	21,960,988	18,906,758	20,863,620	17,890,575	19,876,112	19,876,112	



11



Do's

Make management accountable for the final work product

Plan a strawman – its helpful to generate buy-in

Reconcile the output to other sources already available at the Company – EBITDA and Operating Cash Flows are reasonable proxies for cash

- Make sure the file is ready for distribution - numerous constituents will request access
- Consider categories based on the ability of the Company to control. Companies have more control over certain disbursement items vs. receipts and payroll
- Utilize as much actual historic data as possible
- Consider the impact of a filing. Cash disbursements just prior to a filing will increase with the payment of retainers, fees, payroll and certain vendor payments. Cash disbursements immediately after filing will freeze with court approval required before bank accounts are re-opened and permission to pay certain groups is approved by the judge.
- Consider the timing and hold-backs of professional fees after filing. Forecast as accruals and then determine the cash impact on the 13 week. Some professionals may not even be paid in the first 13 weeks of a case.
- Track actuals in a single file
- Add notes on assumptions, process and data sources should be produced from day-one of the process
- Add in checks and balances
- Consider when items actually convert into cash (cash vs. accrual)
- Step-back and have others review your work product
- Consider inter-company funding and flows
- Consider the sale of assets and whether they are encumbered



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... and Don'ts

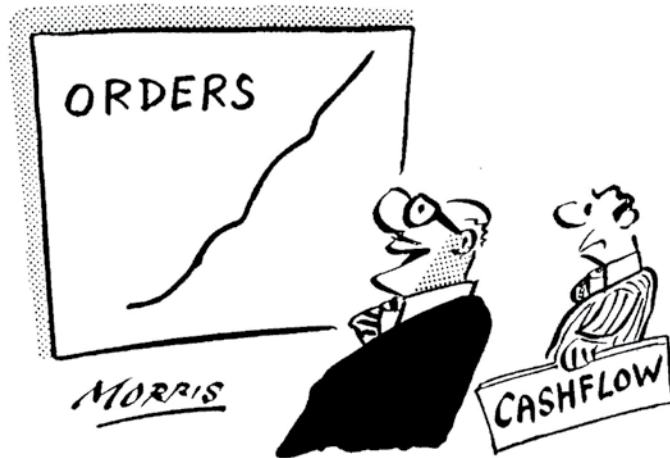
Don't over complicate the process or the model

Don't include sensitive information such as payroll and discussions on redundancies

- Assume information. Typically the best question - is the most obvious
- Distribute draft documents too widely
- Over complicate the format
- Include items that are hard to define and track
- Add contingencies to each row. And do not just randomly include contingencies
- "Sandbag" the numbers
- Have covenants set on line items and categories that are not in the Companies control
- Link the file to external files



13



"Well you can't upset me.
Timpson - what's the bad news you've got?"



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Walt L. Brown

Certifications

Certified Insolvency and Restructuring Advisor

Professional Affiliations

American Bankruptcy Institute
Association of Insolvency & Restructuring Advisors
Turnaround Management Association

Education

B.A. in Accounting, Illinois Wesleyan University
M.B.A., Graziadio School of Business, Pepperdine University



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About

Walt Brown is a managing director in the FTI Consulting Corporate Finance/Restructuring practice and is based in Dallas. He has more than 20 years of experience in finance and advisory services.

Mr. Brown has advised companies, lenders and creditors in distressed situations, including bankruptcy, operational restructuring, performance improvement and litigation support. His industry experience includes accounting, agricultural, airlines, automobile, construction, consumer products, distribution, gaming, grocery, healthcare, manufacturing, mining, law, oil and gas, retail, software development, aerospace and defense, software publishing, supply chain management, vehicle repair, and property and casualty insurance.

Most of Mr. Brown's experience is related to company-side engagements, including roles in interim management and as a court-appointed restructuring officer.

He has extensive experience assisting clients to compile, format, and report financial and operational information required by the bankruptcy court as part of the standardized creditor matrix, first day motion filings, statement of financial affairs, schedules of assets and liabilities and monthly operating reports. He also assists clients to record, categorize, review and report claim and payment information relative to various corporate bankruptcies.

Mr. Brown has experience testifying in both bankruptcy court and arbitration proceedings.

Mr. Brown holds an M.B.A. from Pepperdine University's Graziadio School of Business and a B.A. in accounting from Illinois Wesleyan University. He is a certified insolvency and restructuring advisor and a member of the American Bankruptcy Institute, the Association of Insolvency & Restructuring Advisors, and the Turnaround Management Association.



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