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The Reasonableness of Projections that Underpin Any Valuation or Solvency Analysis

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2025

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Presented by Hon. Lisa G. Beckerman (US Bankruptcy Court (S.D.N.Y.)), Manish Kumar (Province), Jessica Liou (Weil, Gotshal & Manges LLP), Hugh Murtagh (Latham & Watkins LLP), and Zain Saeed (Kroll, LLC)

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Inherent Bias May Be Imbedded In Projections

Typically, inherent bias, if any, is imbedded in the purpose why the projections were created:

- Sell side projection to facilitate a transaction,
- Buy side perspective to support a specific capitalization after thorough due diligence,
- Bank's projections prepared for its credit analysis,
- Ordinary course budgetary process to operate the business,
- Chapter 11 exit plan projections to set benchmarks where management gets rewarded by beating expectations, or
- Projections prepared for litigation purposes.

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Learning Objectives

Understand unconscious bias in the context of projections and determine if they are reasonable based on:

- Relevant Case Law
- Financial Treatises
- AICPA Guidance
- Case Studies

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Relevant Case Law

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Facts that Undermine the Reasonableness of Projections

- Courts generally deem reliable management projections prepared in the ordinary course of business, subject to certain exceptions
- Projections lack sufficient indicia of reliability, and thus reasonableness, when prepared:
    - by a management team that never before had created long-term projections
    - by a management team with a motive to alter the projections, such as to protect their jobs
    - in advance or for the purposes of litigation, including an appraisal action, particularly where such litigation likely affected the neutrality of the projections
    - using "speculative" or "arbitrary" assumptions or assumptions that suggest a "dramatic turnaround in a company despite no underlying changes that would justify such an improvement of business
    - to reflect "results that are hoped for" as opposed to "the expected cash flows of the company"
    - without a process by which the board "reviewed and discussed" the projections with management
    - using "top-down" forecasting (*i.e.*, relying on broad assumptions about the company's performance and industry trends), as opposed to "bottom-up" forecasting, which starts with detailed information drawn from business units, then aggregates such information to create a company-wide forecast

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Overly Optimistic Projections

- ***In re Paragon Offshore plc*, No. 16-10386, 2016 Bankr. LEXIS 3967 (Bankr. D. Del. Nov. 15, 2016).** Paragon was a global provider of offshore oil rigs. *Id.* at *13. Declining demand, an oversupply of rigs which severely impacted the pricing in the oil rig market, and market volatility led Paragon to file for bankruptcy. *Id.* The court held that Paragon's plan was not feasible because certain realities of the market for oil rigs would put too much pressure on Paragon's cash flow post-reorganization. *Id.* at *66. The court found that the health of the market and day rates would continue to decline due to the oversupply of available rigs. *Id.* at * 70. Further, the court found the fact that Paragon could not achieve its projected downside day rates (which were substantially lower than average projections) was evidence that it would not be able to survive even if the market for day rates improved, *id.* at * 72, and that Paragon's current projections were not reliable because they were overly aggressive even when compared to historical norms, *id.* at * 80-81.

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Overly Optimistic Projections (cont'd)

- ***In re Genco Shipping & Trading Ltd.*, 513 B.R. 233 (Bankr. S.D.N.Y. 2014).** Genco Shipping and Trading Limited, together with its affiliated debtors, (collectively, "**Genco**") was one of the world's largest dry bulk shippers, which had charter rates that were inherently volatile and changed drastically on a daily basis. The bankruptcy court held a confirmation hearing and trial over the course of several days, during which the parties presented a variety of evidence concerning valuation. Genco's equity holders argued they were entitled to receive a distribution under the plan and submitted expert testimony in support of their valuation analysis, including a DCF analysis. The court rejected the use of DCF analysis under the circumstances of the case, reasoning that DCF analysis should not be used for companies that do not have accurate projections on future cash flows, such as where there is unpredictability in rates in a volatile market. The court ultimately found that Genco's plan was fair and equitable with regard to the class of equity holders which would receive no distribution under the plan, since none of the net asset value, comparable companies, and precedent transactions methods of valuing the debtors in the dry bulk shipping industry produced a value above the mark which would entitle the equity holders to a recovery. The Court further found the equity holders' expert to be unreliable because his valuation analysis did not address the upward bias of the industry analysts on whom he relied, all of whom had an incentive to be unduly bullish because they were trying to sell securities in the shipping industry.

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Overly Optimistic Projections (cont'd)

- **<u>In *re Chemtura Corp.*, 439 B.R. 561 (Bankr. S.D.N.Y. 2010)</u>.** The bankruptcy court found that the debtors' long range plan was aggressive because it "called for levels of performance, for years after 2011, that had never before been achieved at Chemtura. And it was prepared in the context of an economy that, while certainly improved since 2008 (when the U.S. nearly faced a depression), is improving only slowly."

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Overly Optimistic Projections (cont'd)

- **<u>*In DFC Global Corp. v. Muirfield Value Partners, L.P.*, 172 A.3d 346 (Del. S. Ct. 2017)</u>:** The Delaware Supreme Court reversed and remanded the Chancery Court's appraisal decision involving a publicly traded payday lending firm that was purchased by a private equity firm, finding that the Chancery Court's decision to substantially increase the perpetuity growth rate in its model was not supported by the record. The court reasoned that, as it was, the record suggested that the management projections used in the original valuation model were optimistic and designed to encourage bidders to pay a high price (i.e., hockey stick projections). Given the nature of the projection's outyears, the fact that the payday lending industry had already gone through a period of above-market growth, and the lack of any basis to conclude that DFC Global would sustain high growth beyond the projection period, the record did not sustain the Court of Chancery's decision to make a further upward adjustment to the growth rate. Notably, the court distinguished DFC Global's projected growth rate to a startup company in a brand new industry, reasoning that DFC Global had already grown enormously in the past and thus, the record suggested that DFC Global was in a matured industry whose period of above-average growth was past.

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Overly Optimistic Projections (cont'd)

Weisfelner v. Blavatnik (In re Lyondell Chem. Co.) 567 B.R. 55 (Bankr. S.D.N.Y. 2017)

- Facts
  - The litigation trustee brought the adversary proceeding on behalf of the LB Litigation Trust to avoid alleged fraudulent conveyances made to the debtor's former shareholders in connection with a prepetition leveraged buyout.

- Holding
  - The Bankruptcy Court found that the plaintiff failed to prove that the payments were fraudulent transfers.
    - The litigation trustee failed to prove insolvency because the expert testimony was largely unreliable as it attempted to cast the refreshed EBITDA projections prepared at the time of the transfers as egregiously overstated.
    - The Bankruptcy Court held that the financial projections presented by the defendants' experts were largely in line with the views of the banks that financed the merger.
- In the words of the Court…
  - "[T]he Court finds the views and analyses of the financing banks to be of great value in this case, just as other courts have looked to sophisticated market participants as persuasive evidence in circumstances such as these. The financing banks risked billions of dollars of their own money on the future of LBI [LyonellBasell Industries AF S.C.A.] … When the merger eventually came to fruition, the banks supplemented their institutional knowledge of the companies and the industry with non-public information, and each bank employed masses of analysts to scrutinize the merits of the deal. Ultimately each bank found the merger to be worthy of investment, and received approval from the requisite management and investment higher-ups. The views of these sophisticated investors provided perhaps the clearest indication that the combined company was left with sufficient capital upon the merger closing, given that the projections prepared by both Lyondell management and the banks all reasonably showed LBI to be solvent on the closing of the merger."

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Weisfelner v. Blavatnik (In re Lyondell Chem. Co.), 567 B.R. 55, 78 (Bankr. S.D.N.Y. 2017)

Projections of Businesses in New, Volatile or Cyclical Industries

- ***Doft & Co. v. Travelocity.com Inc.,*** **2004 Del. Ch. LEXIS 75, at *20-21 (Del. Ch. May 21, 2004).** The court rejected the DCF methodology primarily because there was an absence of "reasonably reliable contemporaneous projections." *Id.* at *32. The court explained that the "degree of speculation and uncertainty characterizing the future prospects of [the company] and the industry in which it operates make a DCF analysis of marginal utility . . . ." (*Id.*) because "the industry was so new and volatile that reliable projections were impossible . . . it was difficult to forecast the next quarter, let alone five years out." *Id. at *22-23* (quotations omitted).
- ***In re Chemtura Corp.*****, 439 B.R. 561 (Bankr. S.D.N.Y. 2010):** Court noted certain challenges that arise when valuing cyclical businesses, particularly with respect to determining terminal value when utilizing the DCF methodology. For cyclical businesses, taking the business cycle into account makes for a better analysis because "trying to forecast the next cycle is not only futile but dangerous[,] and that it is far better to normalize earnings and cash flows across the cycle." The court considered the comparable companies analysis to be more meaningful than DCF, because it's "less susceptible to uncertainties in projections (in the case of DCF) or extraneous factors such as control premiums, synergies, or bidding wars (in the case of Precedent Transactions)."

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Projections Prepared In Anticipation of Litigation

- ***In re Nellson Nutraceutical, Inc.,*** **No. 06-10072, 2007 Bankr. LEXIS 99 (Bankr. D. Del. Jan. 18, 2007).**
- The bankruptcy court devoted 23 trial days to determine the enterprise value of the debtors. Each of the three experts in the case relied on the debtors' May 2006 long range business plan ("**LRP**") in reaching a conclusion as to the debtors' TEV.
- The court found that the evidence at trial overwhelmingly established that the LRP was not management's best and most honest thinking about the debtors' financial future but rather was manipulated at the direction of and in cooperation with the debtors' controlling shareholder to bolster the perceived value of the debtors' business solely for purposes of the litigation.
- Moreover, the court found the evidence established that the debtors' business had not stabilized but was continuing the deterioration that began in 2004. The court further provided that "[a]s a direct result of the fact that the experts' conclusions as to enterprise value are based upon the unrealistic [LRP], all of the experts have necessarily arrived at concluded enterprise values for the debtors that are themselves somewhat unrealistic."

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Projections Prepared In Anticipation of Litigation (cont'd)

- ***Iridium IP LLC v. Motorola, Inc. (In re Iridium Operating LLC)*****, 373 B.R. 283 (Bankr. S.D.N.Y. 2007).**
- In a fraudulent transfer/preference action commenced by the creditors' committee, the bankruptcy court found that the plaintiff-committee failed to prove insolvency by a preponderance of the evidence because of the existence of conflicting market evidence that could not be credibly explained away and that, throughout the relevant period (even as bankruptcy was imminent), pointed to a positive enterprise value for Iridium. *See id.* at 183.
- The bankruptcy court explained that the committee's experts were "unable to account for, to adequately explain or to reconcile the abundant market data that conflicts with their opinion, other than to question what the market knew about service limitations and to claim market judgments were not meaningful for a start-up company, particularly a company such as Iridium that required huge capital expenditures and a long development stage before generating any revenue." *See id.* at 293.
- The bankruptcy court determined the usefulness and credibility of the committee's experts' opinions was diminished because they elected not to test and validate their valuation opinions by utilizing any accepted methodologies other than the DCF approach, and based their opinion on restated cash flow projections that were tailored for litigation purposes well after commencement of the adversary proceeding.

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Special Considerations for Valuing Start-Ups

- Projections for start-up companies typically require a different set of methodologies and considerations, particularly because these companies do not have a current revenue stream on which to rely. For this reason, courts typically reject the DCF methodology for start-up companies.
  - *See, e.g., In re DBSD N. Am., Inc.*, 419 B.R. 179, 199 (Bankr. S.D.N.Y. 2009) (rejecting DCF analyses for a debtor satellite start-up prepared by opposing expert witnesses where one expert relied on negative cash flow projections for four years and the other relied on projections from a business plan assuming a $1.5 billion capital investment that would not materialize).
- Instead, courts have looked to the comparable companies methodology to inform its determination of the enterprise value of a start-up.
  - *See, e.g., In re DBSD N. Am., Inc.*, 419 B.R. at 198 (finding trading comparables analyses to be most reliable where the two comparables used shared the debtor's developmental status, were subject to the same or similar specialized regulatory parameters and on-going funding requirements, and their businesses involved the development and utilization of next-generation wireless communication technology similar to the debtor's business).
  - Under the comparable companies analysis, value is calculated by examining the value of comparable publicly-traded companies, for which economic data (stock value, revenue, EBITDA, EBIT, etc.) is readily available.
  - Additional valuation issues may arise by relying on this methodology, as many start-ups emerge in new or developing industries where established historical data useful for comparison may not be available.

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Special Considerations for Valuing Start-Ups (cont'd)

- Furthermore, other intangible factors may be relevant for valuing a start-up
  - ***Pettie v. Ringo (In re White)*, 2018 Bankr. LEXIS 1452, *34 (Bankr. N.D. GA 2018).** In a chapter 7 fraudulent transfer action commenced by a chapter 7 trustee, the court found that the plaintiff-trustee failed to show by a preponderance of the evidence that the debtor's interest in the transferred start-up company had any value where the company did not have a finished product to sell, did not have state approval to install the product, had not generated any sales, did not have any contracts, and was indebted to creditors at the time of the transfer. The court noted that when valuing a start-up, or "pre-revenue company," there are a few additional factors for courts to consider. First, it is the execution of the ideas — not the ideas themselves — that hold value. Second, personnel are key, as it is up to a team to bring promising technology to fruition. Finally, because some investments are riskier than others, an appropriate discount rate should reflect the risk involved. *Id.* at *31.

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Special Considerations for Valuing Start-Ups (cont'd)

- **In the Matter of Rockley Photonics Holdings Limited (Case No. 23-10081 (LGB))**
- Facts
  - Debtor is a start-up company with no commercial products being sold and no revenue as of the filing date. It was developing biomarkers for various diseases, but none had completed clinical trials. Debtor filed a plan of reorganization. Objections to confirmation were filed by a group of shareholders, the Office of the United States Trustee, Securities Exchange Commission, Ritter Prince and Ronald G. Nation. The Court held a contested confirmation hearing on March 8 and 9. On March 10, the Court rendered its decision from the bench confirming the plan. The shareholder group did not object to confirmation on the basis of feasibility. **However, the Court raised the issue of feasibility beginning on the first day of the confirmation hearing because the business plan required additional capital and only approximately half of the capital had been committed.**
- Feasibility
  - Both the Debtor's management and the Debtor's financial advisor testified that the Debtor's financial projections were reasonable and achievable.
    - The projections showed that the Debtor would run out of cash in 2024 unless it was able to raise additional funds beyond the funds committed by the noteholders and the deleveraging under the plan.
    - The Debtor's CEO, Mr. Meier, had extensive experience with companies in the medical technology and health care field and testified that he was confident that the Debtor would be able to raise the additional funds in 2024 and 2025.
  - The Court acknowledged that there was a meaningful risk that the debtor will be unable to raise the additional capital needed or the Rockley Group will be unable to develop commercially viable products.
- In the words of the Court…
  - The Court ultimately concluded that: "Based on the experience of senior management of the Rockley Group, Mr. Meier's confidence that the business plan is achievable, the debtor's track record with respect to being able to raise capital, coupled with a more attractive capital structure post-emergence, the possibility of finding a strategic partner, if the debtor is able to develop a commercially viable product, the possibility of additional NRE projects and/or the possibility of a transaction with Monarch that results in royalty stream, in each case not included in the projections, the Court finds that the plan satisfies the feasibility test." Page 35, March 10, 2023 transcript.

In the Matter of Rockley Photonics Holdings Limited, Case No. 23-10081 (LGB)

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Financial Treatises

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Financial Treatises

Financial projections are a principal basis from which a determination is made as to the value of a company. Those projections derive from assumptions that must be reasonable at the time they are made. That reasonable projections (and the assumptions underlying them) are central to the credibility of a valuation is substantiated by any number of highly regarded treatises:

- Valuing a Business (Fifth Edition) Shannon P. Pratt (2007), 176
- Guide to Business Valuations, Practioners Publishing Company, Fishman, Pratt, et al. (2003), 5-51, 5-52
- The Handbook of Advanced Business Valuation, Robert F. Reilly, Robert P. Schwartz (2000), 331
- Business Valuation – An Integrated Theory (Second Edition), Z. Christopher Mercer (2004), 29
- Handbook of Business Valuation (Second Edition), Thomas L. West, Jeffrey D. Jones (1999), 280

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AICPA Guidance

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AICPA Guidance

The AICPA provides the following guidance to entities that issue prospective financial information.

Prospective financial information should be prepared:

- In good faith;
- With appropriate care by qualified personnel; and
- Using appropriate accounting principles.

The process used to develop prospective financial information should:

- Be based on the best information that is reasonably available at the time;
- Be consistent with the plans of the entity;
- Identify any key factors as basis for assumptions;
- Rely upon appropriate assumptions
- Provide the means to determine the relative effect of variations on the major underlying assumptions
- Provide adequate documentation of both the prospective information and the process used to develop it
- Include, where appropriate, regular comparison of the prospective information with attained results; and
- Include adequate review and approval by the responsible party at the appropriate levels of authority.

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AICPA Guidance

Forecast Basics

Prospective financial information is prepared in good faith and with appropriate care.

The information used in preparing prospective financial information is consistent with the plans of the entity.

Forecasts should be consistent with the expected economic effects of anticipated events. For example, forecasts should consider whether labor is a variable expense if a slow period is projected.

The process used to develop prospective financial information provides for seeking out the best information that is reasonably available at the time.

Information relevant to the forecast comes from sources both internal and external to the entity.

The cost of acquiring certain information should be weighed against the benefit that having such information provides in increasing the reliability of a forecast.

Prospective financial information can only be based on information that was reasonably available (e.g., known or knowable) at the time it was prepared. Even if relevant information becomes available after the forecast has been completed or issued, or after the forecast period, that information is only relevant if it was available to the preparers of the forecasts at the time.

Data reliability should be considered, especially when there are multiple different sources of information.

Forecasters should consider what level of detail is appropriate in order to provide the most reliable forecast. 22

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AICPA Guidance

Key factors are identified as basis for assumptions.

"Key factors are those significant matters upon which an entity's future results are expected to depend."
After identifying all key factors, forecasters should develop assumptions related to those factors.

Assumptions used in preparing prospective financial information are appropriate.

Assumptions should be reasonable and suitably supported. Support may include: market surveys, general economic indicators, trends/patterns from the entity's operating history, and internal data/analysis.
Conditions assumed in a forecast should be consistent throughout. For example, a slowdown in economic activity will likely cause a slowdown in sales volume but may also affect cost of resources.
Forecaster should exercise care to make sure that appropriate costs and revenues have been considered, sufficient capacity and resources would be available to produce prospective revenues, capital expenditures are appropriate, provision has been made for applicable taxes, and the need for financing has been considered.

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The process used to develop prospective financial information provides the means to determine the relative effect of variations in the major underlying assumptions.

- Forecasts are relatively more sensitive to certain assumptions and less sensitive to others.
- An understanding of the relative sensitivity of the results to certain assumptions allows review by persons of higher authority to focus on those areas with the most significant effects.
- Sensitivity testing of assumptions should focus on instances where:
  - Small variation in an assumption has a large effect on projections; and
  - The probability of variation of the assumption is high.

The process used to develop prospective financial information includes, where appropriate, the regular comparison of the prospective financial information with the attained results.

- Comparing projections with actual results for prior periods for which projections were prepared provides a historical measure of success in developing a forecast and may be a useful indication of the reliability of future forecasts.
- Comparison also provides a basis for making improvements to future forecasts.
- The comparison should not be limited to overall financial results but should also include a comparison of the key factors and assumptions

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Impact of Tariffs on Company's Financials

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Key Reasons on the Impact of Tariffs

1. *Revenue:*
   - *Tariffs can lead to increased prices for imported goods, reducing demand and revenue.*
   - *Export tariffs can make a company's products less competitive in foreign markets, decreasing sales.*
2. *Costs:*
   - *Import tariffs increase the cost of raw materials and components, leading to higher production costs.*
   - *Companies may need to find alternative suppliers or materials, which can be more expensive.*
3. *Earnings:*
   - *Higher costs and reduced revenue can lead to lower profit margins and earnings.*
   - *Companies may need to adjust their pricing strategies, which can impact overall profitability.*

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Suggestions on How to Factor Tariff Related Uncertainty in Developing Projections and Cost of Capital

1. Scenario Analysis
   - Develop multiple scenarios based on different tariff rates and their potential impact on costs and revenue.
   - Use these scenarios to create a range of projections for financial performance.
2. Sensitivity Analysis
   - Analyze how sensitive the company's financials are to changes in tariff rates.
   - Identify key variables that are most affected by tariffs and focus on managing these risks.
3. Risk Management
   - Implement risk management strategies such as hedging, diversifying suppliers, and exploring new markets.
   - Continuously monitor tariff developments and adjust projections accordingly.
4. Cost of Capital
   - Incorporate the potential impact of tariffs into the company's cost of capital calculations.
   - Adjust discount rates to reflect the increased risk associated with tariff uncertainty.

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Case Studies

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Furniture Company

Mandate: Our team was retained by counsel to Furniture Company owners, defendants, to provide litigation support respecting the exchange of reasonably equivalent value and solvency analyses to assess the fraudulent transfer and breach of fiduciary duty claims alleged by the Chapter 7 Trustee in litigation related to the sale of the Furniture Company to Private Equity Firm for $620 million.

Highlights:

- Provided litigation support to Furniture Company owners with respect to fraudulent transfer analysis evaluating the Private Equity Firm's acquisition of Furniture Company
- Determined the reasonableness of projections by analyzing the company's historical financial results and furniture industry outlook
- Evaluated contemporaneous evidence, including lenders' credit analyses, third party quality of earnings reports, and investor's assessment of business to determine enterprise value and assess the company's ability to pay its debts
- Developed reasonably foreseeable stress cases after analyzing the furniture industry operating and financial results over previous economic contractions to assess capital adequacy
- At mediation, we defended our analyses, refuted the Trustee's expert's arguments, and assisted the mediator's valuation expert in understanding the facts in the matter, which unequivocally proved solvency
- The matter was settled in mediation that was extremely favorable for our client

Founded in the 1950s, Furniture Company was the #1 furniture and mattress retailer in the Midwest, which was acquired by Private Equity Firm in 2017 and subsequently filed for Chapter 11 in 2020 before converting to a Chapter 7. The Chapter 7 Trustee sued the Furniture Company owners claiming that the 2017 $620 million transaction resulted in a fraudulent transfer.

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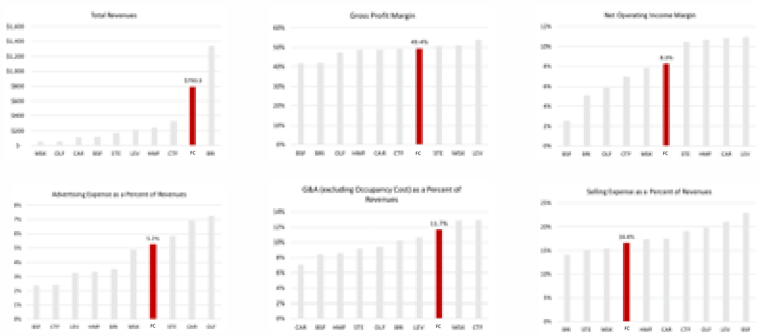
Furniture Company's 2016 Drivers Comparison

- Furniture Company was a member of The Drivers ("Drivers"), a brainstorming, networking, and benchmarking group, which, as of 2016, was composed of 10 family-owned furniture retailers. In 2016, Furniture Company was the second largest company in Drivers by revenues.
- Furniture Company ranked 4th among the Drivers' members in gross profit margin and 5th in net operating income and had slightly above average profit margins.
- Furniture Company's selling expense as a percentage of revenue was better than most of those in its peer group.
- Furniture Company invested more in advertising and had a higher G&A expense in comparison to the other Drivers' members



Sources: Driver's Financial Composite

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Furniture Company's 2016 Drivers Comparison

- Six different sets of projections were considered in connection with our analysis:
  1. Furniture Company base case projections prepared by Private Equity Firm (the "Private Equity Firm Base Case");[1]
  2. Furniture Company financing case projections prepared by Private Equity Firm (the "Private Equity Firm Financing Case");[2]
  3. Furniture Company recession case projections prepared by Private Equity Firm (the "Private Equity Firm Great Recession Case");[3]
  4. Furniture Company downside case projection prepared by Lender (the "Lender Downside Case");[4]
  5. Furniture Company projections jointly prepared by Furniture Company's management and RBC (the "Management Projections"); and[5]
  6. Furniture Company projections prepared by Accounting Firm for purchase accounting purposes (the "Accounting Firm Projections").[6]
- The Private Equity Firm Base Case projections are the most relevant and reasonable set of projections and are considered to determine Furniture Company's solvency after the LBO.
  - The Private Equity Firm Base Case projections were created by Private Equity Firm to estimate expected cash flows, pro forma the sale-leaseback transactions, after extensively diligencing the operations of Furniture Company, and are the basis upon which Private Equity Firm acquired Furniture Company.
  - The Private Equity Firm Base Case projections were shared with the Transaction lenders and were relied upon by the lenders to extend a $100 MM[7] Term Loan, with a $30 MM delayed draw feature, and provide a $60 MM[8] ABL facility in connection with the Transaction.
  - The Private Equity Firm Base Case projections included estimated sale-leaseback related rental expenses in deriving Furniture Company's EBITDA post-LBO, which the Management Projections did not.
- The Private Equity Firm Financing Case projections were created by Private Equity Firm to estimate expected cash flows. The EBITDA estimates do not appear to factor in sale-leaseback related lease expenses.
- It appears that Private Equity Firm may have considered a "great recession" scenario as part of its purchase diligence. Although this scenario is considered in assessing capital adequacy, it is a worst-case scenario and therefore not a reasonable downside case.
- The Lender Downside Case projections were created by Lender to illustrate the impact of a cyclical downturn beginning in 2018 and reaching a trough in 2019.
- Although the Management Projections were created by Banker and Furniture Company management, and therefore have evidentiary value, they were not used to assess solvency because the projections do not account for the lease expenses related to the LBO. However, these projections were provided to Private Equity Firm and were used by Private Equity Firm in connection with developing its various projections.
- The Accounting Firm Projections were informed by financial results generated after March 1, 2017, including 2017 fiscal year-end results and the transaction price for the Comfort Mattress divestiture. Accordingly, these projections are not relied upon as they were influenced by hindsight information.

1. Model Lender.
2. Private Equity Firm –Pro forma excel spreadsheet received in production
3. Furniture Company Furniture Recession Case.
4. Furniture Company IC Memo
5. Model vCurrent. Projections consistent with Management Presentation.
6. Furniture Company Acquisition Accounting.
7. Commitment Letter, Lender, § 3 (p. 3) and Exhibit B (p. B-1).
8. Commitment Letter, Lender, § 3 (p. 2) and Exhibit B (p. B-1).

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Summary of Furniture Company Projections

- Six different sets of projections were considered in connection with our analysis:
  1. Furniture Company base case projections prepared by Private Equity Firm (the "Private Equity Firm Base Case");[1]
  2. Furniture Company financing case projections prepared by Private Equity Firm (the "Private Equity Firm Financing Case");[2]
  3. Furniture Company recession case projections prepared by Private Equity Firm (the "Private Equity Firm Great Recession Case");[3]
  4. Furniture Company downside case projection prepared by Lender (the "Lender Downside Case");[4]
  5. Furniture Company projections jointly prepared by Furniture Company's management and RBC (the "Management Projections"); and[5]
  6. Furniture Company projections prepared by Accounting Firm for purchase accounting purposes (the "Accounting Firm Projections").[6]
- The Private Equity Firm Base Case projections are the most relevant and reasonable set of projections and are considered to determine Furniture Company's solvency after the LBO.
  - The Private Equity Firm Base Case projections were created by Private Equity Firm to estimate expected cash flows, pro forma the sale-leaseback transactions, after extensively diligencing the operations of Furniture Company, and are the basis upon which Private Equity Firm acquired Furniture Company.
  - The Private Equity Firm Base Case projections were shared with the Transaction lenders and were relied upon by the lenders to extend a $100 MM[7] Term Loan, with a $30 MM delayed draw feature, and provide a $60 MM[8] ABL facility in connection with the Transaction.
  - The Private Equity Firm Base Case projections included estimated sale-leaseback related rental expenses in deriving Furniture Company's EBITDA post-LBO, which the Management Projections did not.
- The Private Equity Firm Financing Case projections were created by Private Equity Firm to estimate expected cash flows. The EBITDA estimates do not appear to factor in sale-leaseback related lease expenses.
- It appears that Private Equity Firm may have considered a "great recession" scenario as part of its purchase diligence. Although this scenario is considered in assessing capital adequacy, it is a worst-case scenario and therefore not a reasonable downside case.
- The Lender Downside Case projections were created by Lender to illustrate the impact of a cyclical downturn beginning in 2018 and reaching a trough in 2019.
- Although the Management Projections were created by Banker and Furniture Company management, and therefore have evidentiary value, they were not used to assess solvency because the projections do not account for the lease expenses related to the LBO. However, these projections were provided to Private Equity Firm and were used by Private Equity Firm in connection with developing its various projections.
- The Accounting Firm Projections were informed by financial results generated after March 1, 2017, including 2017 fiscal year-end results and the transaction price for the Comfort Mattress divestiture. Accordingly, these projections are not relied upon as they were influenced by hindsight information.

1. Model Lender.
2. Private Equity Firm –Pro forma excel spreadsheet received in production
3. Furniture Company Furniture Recession Case.
4. Furniture Company IC Memo
5. Model vCurrent. Projections consistent with Management Presentation.
6. Furniture Company Acquisition Accounting.
7. Commitment Letter, Lender, § 3 (p. 3) and Exhibit B (p. B-1).
8. Commitment Letter, Lender, § 3 (p. 2) and Exhibit B (p. B-1).

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Summary of Projections

Furniture Company and Certain Related Companies
($ MM)

Net Sales	2013	2014	2015	2016	2017P	2018P	2019P	2020P	2021P	2022P	2023P	2024P	2025P	2026P
	Historical Period				Projection Period									
Private Equity Firm Base Case[1]	$ 570.1	$ 639.1	$ 721.7	$ 794.0	$ 856.2	$ 892.5	$ 953.2	$ 1,017.5	$ 1,085.4					
Private Equity Firm Financing Case Summary	570.1	639.1	721.7	794.0	855.7	890.9	950.6	1,013.7	1,080.6					
Private Equity Firm Recession Case[2]	570.1	639.1	721.7	794.0	794.8	740.5	683.3	667.1	583.7	691.6	776.5	862.1		
Management Projections[3]	570.1	639.1	721.7	799.1	867.6	989.4	1,177.7	1,363.2	1,556.9					
Accounting Firm Projections Prepared for Purchase Accounting[4]	572.6	641.6	725.2	796.3	825.5	816.5	818.3	842.3	834.5	842.9	859.7	885.5	912.1	939.5
Lender Downside Case[5]				794.0	834.6	765.5	668.6	766.4	832.8					
EBITDA														
Private Equity Firm Base Case[1]	$ 20.6	$ 22.2	$ 35.8	$ 48.4	$ 58.8	$ 63.1	$ 70.4	$ 77.6	$ 85.1					
Private Equity Firm Financing Case Summary	48.7	51.6	66.3	80.3	91.3	95.1	102.0	108.7	115.6					
Private Equity Firm Recession Case[2]	14.6	16.6	28.5	41.8	40.9	28.8	34.3	30.4	10.0	24.5	34.7	44.0		
Management Projections[3]	48.7	52.4	66.9	80.9	103.5	116.1	134.8	154.8	176.5					
Accounting Firm Projections Prepared for Purchase Accounting[4]	26.6	27.6	39.0	54.9	49.3	45.3	51.3	52.9	46.4	46.8	47.8	49.2	50.7	52.2
Lender Downside Case[5]				54.8	59.6	44.6	24.8	41.1	52.1					
Net Sales Growth Rate														
Private Equity Firm Base Case[1]		12.1%	12.9%	10.0%	7.8%	4.2%	6.8%	6.7%	6.7%					
Private Equity Firm Financing Case Summary		12.1%	12.9%	10.0%	7.8%	4.1%	6.7%	6.6%	6.6%					
Private Equity Firm Recession Case[2]		12.1%	12.9%	10.0%	0.1%	-6.8%	-7.7%	-2.4%	-12.5%	18.5%	12.3%	11.0%		
Management Projections[3]		12.1%	12.9%	10.7%	8.6%	14.0%	19.0%	15.8%	14.2%					
Accounting Firm Projections Prepared for Purchase Accounting[4]		12.0%	13.0%	9.8%	3.7%	-1.1%	0.2%	2.9%	-0.9%	1.0%	2.0%	3.0%	3.0%	3.0%
Lender Downside Case[5]					5.1%	-8.3%	-12.7%	14.6%	8.7%					
EBITDA Margin														
Private Equity Firm Base Case[1]	3.6%	3.5%	5.0%	6.1%	6.9%	7.1%	7.4%	7.6%	7.8%					
Private Equity Firm Financing Case Summary	8.5%	8.1%	9.2%	10.1%	10.7%	10.7%	10.7%	10.7%	10.7%					
Private Equity Firm Recession Case[2]	2.6%	2.6%	4.0%	5.3%	5.1%	3.9%	5.0%	4.6%	1.7%	3.5%	4.5%	5.1%		
Management Projections[3]	8.5%	8.2%	9.3%	10.1%	11.9%	11.7%	11.4%	11.4%	11.3%					
Accounting Firm Projections Prepared for Purchase Accounting[4]	4.6%	4.3%	5.4%	6.9%	6.0%	5.5%	6.3%	6.3%	5.6%	5.6%	5.6%	5.6%	5.6%	5.6%
Lender Downside Case[5]				6.9%	7.1%	5.8%	3.7%	5.4%	6.3%					
Capital Expenditures														
Private Equity Firm Base Case1					$ (6.9)	$ (13.4)	$ (13.8)	$ (13.8)	$ (14.3)					
Private Equity Firm Financing Case Summary					(6.9)	(13.3)	(13.8)	(13.8)	(14.2)					
Management Projections[3]	(29.2)	(29.6)	(31.8)	(26.5)	(22.5)	(36.0)	(52.0)	(44.8)	(47.7)					
Accounting Firm Projections Prepared for Purchase Accounting[4]					(6.9)	(13.4)	(13.8)	(13.8)	(14.3)	(14.4)	(14.7)	(15.2)	(15.6)	(16.1)
Lender Downside Case[5]					(3.8)	(2.5)	(2.5)	(6.0)	(6.5)					
Depreciation & Amortization														
Private Equity Firm Base Case[1]					$ (8.6)	$ (8.9)	$ (9.5)	$ (10.2)	$ (10.9)					
Private Equity Firm Financing Case Summary					(8.6)	(8.9)	(9.5)	(10.1)	(10.8)					
Management Projections[3]	(15.7)	(19.0)	(21.2)	(25.0)	(26.7)	(30.3)	(35.8)	(41.2)	(46.7)					
Accounting Firm Projections Prepared for Purchase Accounting[4]					(9.6)	(10.8)	(11.2)	(11.6)	(11.9)	(12.3)	(12.6)	(13.0)	(13.4)	(13.8)
Lender Downside Case[5]					(3.2)	(4.3)	(4.3)	(4.3)	(4.3)					
Tax Rate														
Private Equity Firm Base Case[1]					40.0%	40.0%	40.0%	40.0%	40.0%					
Private Equity Firm Financing Case Summary					40.0%	40.0%	40.0%	40.0%	40.0%					
Accounting Firm Projections Prepared for Purchase Accounting[4]					38.2%	38.2%	38.2%	38.2%	38.2%	38.2%	38.2%	38.2%	38.2%	38.2%

- Management Projections have the highest revenue projections for the 2021 period.
- Private Equity Firm Base Case and Private Equity Firm Financing Case revenues are about the same.
- 2021 Accounting Firm Projections seem to be similar to Lender Downside Case Projections.

- Private Equity Firm's Financing Case EBITDA is much higher than the Private Equity Firm Base Case EBITDA as the Private Equity Firm Financing Case does not include sale leaseback related rent expenses.

- Private Equity Firm Base Case projected net sales growth appears reasonable and conservative in light of Furniture Company's historical performance.
- Management Projections appear aggressive, and Accounting Firm Projections appear pessimistic.

- Private Equity Firm Base Case EBITDA margin shows marginal improvement, which is in line with EBITDA margins of comparable companies.
- Private Equity Firm Financing Case and Management Projections do not factor in sale leaseback related rents.

- Capital expenditures in the Private Equity Firm Base Case projections are conservative in light of Furniture Company's historical investments.
- Management Projections show aggressive Capex spending.
- Accounting Firm Projections show Capex spending at the same level as the Private Equity Firm Base Case, however, do not show similar growth in sales which appears unreasonable.

1. Model Lender.
2. Furniture Company Recession Case.
3. Model vCurrent. Projections consistent with Management Presentation.
4. Furniture Company Acquisition Accounting.
5. Furniture Company IC Memo

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Oil Logistics Company

Mandate: Our team provided expert witnesses testimony for (i) financial statement reconstruction and (ii) valuation and solvency in an ongoing litigation.

Highlights: In our capacity as expert witnesses, we:

- Prepared reports on the reconstruction of financial statements, which reviewed activity recorded in three different accounting systems, to serve as a foundation for the valuation and solvency report
- Authored a valuation and solvency report that assessed Oil Logistics Company and provided a solvency analysis immediately after Buyer's acquisition
- Reviewed documents, communications, financial and industry data, and provided declarations to support counsel's arguments
- Consult on reasonably equivalent value was exchanged between at the time of transactions

Oil Logistics Company moving crude oil across the United States, was acquired by Buyer in June 2015. The plaintiff asserted that a subsidiary of Oil Logistics Company was insolvent or otherwise not capitalized for providing services.

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Oil Logistics Company June 24, 2015 Projections Overview

- Projections for Oil Logistics Company can be ascertained from estimates prepared contemporaneous to the Acquisition Date by various sources (collectively, the "Contemporaneous 2015 Projections") (See Appendix 5 (A))
  - Oil Logistics Company provided to Buyer the Seller's Projections, a granular business model for Oil Logistics Company's operations
  - Investment banker ("Selling Banker"), presented Oil Logistics Company projections to Oil Logistics Company's board of directors in its May 29, 2015 presentation with respect to the proposed Acquisition, ("Selling Banker's Projections")[1]
  - Buyer prepared the Buyer's Projections, a budget for Oil Logistics Company's 2016 fiscal year for the period beginning August 2015 through July 2016
  - Buyer's Investment Banker ("Buyer's Banker"), presented its base case Oil Logistics Company projections to Buyer in assisting Buyer with the Acquisition, the ("Buyer's Banker's Projections")[2]
  - Valuation Expert presented projections for Oil Logistics Company (the "Valuation Expert Projections") in its valuation report assessing certain intangible assets related to the acquisition of Oil Logistics Company as of June 23, 2015 ("Valuation Expert Intangible Asset Valuation Report")[3]

1. *Selling Banker Presentation*
2. *Buyer's Banker's Presentation to Buyer; Engagement Letter between Buyer's Banker and Buyer, Inc.*
3. *Valuation Expert's Valuation of Certain Intangible Assets Report; Engagement Letter between Valuation Expert and Buyer*

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Oil Logistics Company June 24, 2015 Projections Overview

- The Buyer's Projections, in conjunction with the Valuation Expert Projections, are a reasonable basis to form contemporaneous views of Oil Logistics Company's reasonable economic expectations on June 24, 2015 ("Oil Logistics Company Base Case Projections") because they were diligenced by third parties and are consistent with contemporaneous Wall Street earnings expectations
  - The Buyer's Projections are informed by the granular Seller's Projections[1]
  - Buyer's diligence of Logistics was assisted by the following organizations: Consultant respecting the economic feasibility of Oil Logistics Company's operations, Buyer's Banker for acquisition advisory, Lender for financing, and Environmental Expert for environmental diligence in its assessment of Oil Logistics Company[2]
  - Buyer's Projections are consistent with the 2016 EBITDA estimate Buyer provided to Wall Street analysts[3] and to Valuation Expert for its assessment presented in the Valuation Expert Intangible Asset Valuation Report[4]
  - The Buyer's Projections are consistent with the contract-based EBITDA, net of due diligence adjustments, in Consultant's May 2015 due diligence report[5]
  - The Buyer's Projections are also reasonable in light of Oil Logistics Company's historical results (See Appendix 5 (A))

1. *Buyer's Projections*
2. *Buyer's Banker's Presentation to Buyer, p. 4*
3. *Lender and Buyer Research Report; Consultant and Buyer Research Report; Lender and Buyer Research Report Report; Consultant and Buyer Research Report; and Consultant and Buyer Research Report*
4. *Valuation Expert Valuation of Certain Intangible Assets Report*
5. *Lender, Project Patriot, financial, tax and human resource Due Diligence Report, p. 24, 25. Also see engagement letter between Lender and Buyer. Individual also confirms the Buyer's Projections in a conference call with Wall Street analysts*

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Oil Logistics Company Base Case Projections

Oil Logistics Company Base Case Projections							
USD in 000's	**2H 2015E**	**2016E**	**2017E**	**2018E**	**2019E**	**2020E**	**Terminal**
Revenue	$67,413	$126,004	$130,793	$135,240	$139,297	$142,918	$144,745
Growth (%) [1]			*3.8%*	*3.4%*	*3.0%*	*2.6%*	*1.3%*
Gross Profit	$21,589	$41,014	$42,573	$44,020	$45,341	$46,520	$46,123
Margin (%)	*32.0%*	*32.5%*	*32.5%*	*32.5%*	*32.5%*	*32.5%*	*31.9%*
Operating Expenses	($2,805)	($5,400)	($5,605)	($5,796)	($5,970)	($6,125)	($6,203)
Margin (%)	*4.2%*	*4.3%*	4.3%	4.3%	4.3%	4.3%	4.3%
Gross EBITDA	**$18,784**	**$35,614**	**$36,967**	**$38,224**	**$39,371**	**$40,395**	**$39,920**
Margin (%)	*27.9%*	*28.3%*	*28.3%*	*28.3%*	*28.3%*	*28.3%*	*27.6%*
(-) Corporate Overhead	($1,793)	($3,516)	($3,602)	($3,691)	($3,781)	($3,874)	($3,923)
Margin (%)	2.7%	2.8%	2.8%	2.7%	2.7%	2.7%	2.7%
Net EBITDA	**$16,991**	**$32,098**	**$33,365**	**$34,534**	**$35,590**	**$36,521**	**$35,997**
Margin (%)	*25.2%*	*25.5%*	*25.5%*	*25.5%*	*25.5%*	*25.6%*	*24.9%*
EBIT	**$15,671**	**$29,555**	**$30,819**	**$31,983**	**$33,035**	**$33,962**	**$33,434**
Margin (%)	*23.2%*	*23.5%*	*23.6%*	*23.6%*	*23.7%*	*23.8%*	*23.1%*
(-) Tax Expense	($790)	($1,491)	($1,554)	($1,613)	($1,666)	($1,713)	($1,686)
(+) D&A	$1,319	$2,543	$2,546	$2,550	$2,555	$2,559	$2,563
(-) Increases in NWC	($263)	$146	($251)	($233)	($213)	($190)	($15)
(-) Capex	($1,336)	($2,595)	($2,609)	($2,613)	($2,617)	($2,622)	($2,626)
Unlevered FCF	**$14,601**	**$28,158**	**$28,951**	**$30,074**	**$31,094**	**$31,996**	**$31,669**

Assumptions	
Terminal Growth[2]	1.3%
Tax rate[3]	5.0%

1. *Valuation Expert Valuation of Certain Intangible Assets Report; Exhibit C-1*
2. *Terminal value growth rate sensitized using 54.5% of WSJ long-term GDP projections. 1st quartile was used for low, median for mid, and 3rd quartile for high*
3. *Buyer FY13 and FY14 average tax rate*

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Oil Logistics Company Base Case Projections Granular Overview (3Q15 – 4Q16)

					3Q15	4Q15	2H15	1Q16	2Q16	3Q16	4Q16	CY 2016	NTM
Pipeline													
				Utilization									
[Redacted] Volume	4,000 bpd			50%	8,000	6,000	14,000	6,000	6,000	6,000	6,000	24,000	26,000
[Redacted] Gross Margin	$0.50				$99,000	$92,000	$191,000	$91,000	$91,000	$92,000	$92,000	$366,000	$373,000
[Redacted] Volume	2,000 bpd			50%	4,000	3,000	7,000	3,000	3,000	3,000	3,000	12,000	13,000
[Redacted] Gross Margin	$1.65				$163,350	$151,800	$315,150	$150,150	$150,150	$151,800	$151,800	$603,900	$615,450
Pipeline Gross Margin					$262,350	$243,800	$506,150	$241,150	$241,150	$243,800	$243,800	$969,900	$988,450
Less: Opex					-	-	-	-	-	-	-	-	-
Pipeline EBITDA					**$262,350**	**$243,800**	**$506,150**	**$241,150**	**$241,150**	**$243,800**	**$243,800**	**$969,900**	**$988,450**
Pipeline Terminals													
				Utilization									
Total [Redacted] Volume	18,000 bpd			100%	72,000	54,000	126,000	54,000	54,000	54,000	54,000	216,000	234,000
Gross Margin	$0.50				$891,000	$828,000	$1,719,000	$819,000	$819,000	$828,000	$828,000	$3,294,000	$3,357,000
[Redacted]	45,000 bbl			100%	5,903	4,403	10,306	4,455	4,452	4,403	4,403	17,713	19,213
Gross Margin	$0.25				$36,375	$33,750	$70,125	$33,750	$33,750	$33,750	$33,750	$135,000	$137,625
[Redacted]	45,000 bbl			100%	5,903	4,403	10,306	4,455	4,452	4,403	4,403	17,713	19,213
Gross Margin	$0.97				$141,068	$130,887	$271,955	$130,887	$130,887	$130,887	$130,887	$523,550	$533,730
[Redacted]	45,000 bbl			100%	5,903	4,403	10,306	4,455	4,452	4,403	4,403	17,713	19,213
Gross Margin	$0.10				$14,550	$13,500	$28,050	$13,500	$13,500	$13,500	$13,500	$54,000	$55,050
[Redacted]	5,000 bpd			100%	20,000	15,000	35,000	15,000	15,000	15,000	15,000	60,000	65,000
Gross Margin	$0.35				$173,250	$161,000	$334,250	$159,250	$159,250	$161,000	$161,000	$640,500	$652,750
[Redacted]	5,500 bpd			100%	22,000	16,500	38,500	16,500	16,500	16,500	16,500	66,000	71,500
Gross Margin	$0.15				$81,675	$75,900	$157,575	$75,075	$75,075	$75,900	$75,900	$301,950	$307,725
[Redacted]	45,000 bpd			100%	180,000	135,000	315,000	135,000	135,000	135,000	135,000	540,000	585,000
Gross Margin	$684,800				$2,214,187	$2,054,400	$4,268,587	$2,054,400	$2,054,400	$2,054,400	$2,054,400	$8,217,600	$8,377,387
[Redacted]	1,000 bpd			100%	4,000	3,000	7,000	3,000	3,000	3,000	3,000	12,000	13,000
Gross Margin	$0.75				$74,250	$69,000	$143,250	$68,250	$68,250	$69,000	$69,000	$274,500	$279,750
Gross Margin					$3,626,354	$3,366,437	$6,992,792	$3,354,112	$3,354,112	$3,366,437	$3,366,437	$13,441,100	$13,701,017
Less: Opex	$450,000				($1,455,000)	($1,350,000)	($2,805,000)	($1,350,000)	($1,350,000)	($1,350,000)	($1,350,000)	($5,400,000)	($5,505,000)
Pipeline Terminal EBITDA					**$2,171,354**	**$2,016,437**	**$4,187,792**	**$2,004,112**	**$2,004,112**	**$2,016,437**	**$2,016,437**	**$8,041,100**	**$8,196,017**
Rail Transloading	Revenue	COGS	Margin	Utilization									
[Redacted] Volume (bpd)					72,800	54,600	127,400	54,600	54,600	54,600	54,600	218,400	236,600
[Redacted] Revenue	$2.10		18,200	100%	$4,013,100	$3,516,240	$7,529,340	$3,478,020	$3,478,020	$3,516,240	$3,516,240	$13,988,520	$14,485,380
[Redacted] Gross Margin		$1.27	$0.83		$1,495,494	$1,389,752	$2,885,246	$1,374,646	$1,374,646	$1,389,752	$1,389,752	$5,528,796	$5,634,538
[Redacted] Volume (bpd)					30,000	-	30,000	-	-	-	-	-	30,000
[Redacted] Revenue	$2.10		10,000	100%	$1,449,000	$0	$1,449,000	$0	$0	$0	$0	$0	$1,449,000
[Redacted] Gross Margin		$1.80	$0.30		$207,000	$0	$207,000	$0	$0	$0	$0	$0	$207,000
[Redacted] / Other > T/P Volume (bpd)				100%	107,200	80,400	187,600	80,400	80,400	80,400	80,400	321,600	348,400
[Redacted] / Other > Revenue	$2.10		26,800		$5,571,720	$5,177,760	$10,749,480	$5,121,480	$5,121,480	$5,177,760	$5,177,760	$20,598,480	$20,992,440
[Redacted] / Other > T/P Gross Margin		$1.50	$0.60		$1,591,920	$1,479,360	$3,071,280	$1,463,280	$1,463,280	$1,479,360	$1,479,360	$5,885,280	$5,997,840
[Redacted] Volume (bpd)				100%	80,000	60,000	140,000	60,000	60,000	60,000	60,000	240,000	260,000
[Redacted] Revenue	$2.10		20,000		$4,158,000	$3,864,000	$8,022,000	$3,822,000	$3,822,000	$3,864,000	$3,864,000	$15,372,000	$15,666,000
[Redacted] Gross Margin		$1.00	$1.10		$2,178,000	$2,024,000	$4,202,000	$2,002,000	$2,002,000	$2,024,000	$2,024,000	$8,052,000	$8,206,000
[Redacted] Volume (bpd)				100%	260,000	195,000	455,000	195,000	195,000	195,000	195,000	780,000	845,000
[Redacted] Revenue	$2.55		65,000		$16,409,250	$15,249,000	$31,658,250	$15,083,250	$15,083,250	$15,249,000	$15,249,000	$60,664,500	$61,824,750
[Redacted] Gross Margin		$2.25	$0.30		$1,930,500	$1,794,000	$3,724,500	$1,774,500	$1,774,500	$1,794,000	$1,794,000	$7,137,000	$7,273,500
Rail Transloading Gross Margin / EBITDA					**$7,402,914**	**$6,687,112**	**$14,090,026**	**$6,614,426**	**$6,614,426**	**$6,687,112**	**$6,687,112**	**$26,603,076**	**$27,318,878**
Total Gross EBITDA					**$9,836,618**	**$8,947,349**	**$18,783,968**	**$8,859,688**	**$8,859,688**	**$8,947,349**	**$8,947,349**	**$35,614,076**	**$36,503,345**
Total Revenue					**$35,752,124**	**$31,661,037**	**$67,413,162**	**$31,341,162**	**$31,341,162**	**$31,661,037**	**$31,661,037**	**$126,004,400**	**$130,095,487**

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Oil Logistics Company Projections Overview – June 24, 2015

- The Oil Logistics Company Base Case Projections are constructed using Buyer's Projections and the granular Seller's Projections. The monthly projections run from the Acquisition Date through December 31, 2016
  - Pipeline
    - Volume and gross margin are sourced from the Seller's Projections; however the Buyer's Projections approximate a 50% utilization rate in the pipeline segment

Pipeline	Volume[1]	Gross Margin[1]	Utilization[2]
[Redacted]	4,000 bpd	$0.50	50%
[Redacted]	2,000 bpd	$1.65	50%
Operating Expenses	-		

  - Pipeline Terminals

Pipeline Terminal	Volume[1]	Gross Margin[1]	Utilization
[Redacted]	18,000 bpd	$0.50	100%
[Redacted]	45,000 bbl	$0.25	100%
[Redacted]	45,000 bbl	$0.97	100%
[Redacted]	45,000 bbl	$0.10	100%
[Redacted]	5,000 bpd	$0.35	100%
[Redacted]	5,500 bpd	$0.15	100%
[Redacted][3]	45,000 bpd	$684,800	100%
[Redacted]	1,000 bpd	$0.75	100%
Monthly Operating Expenses	$450,000		

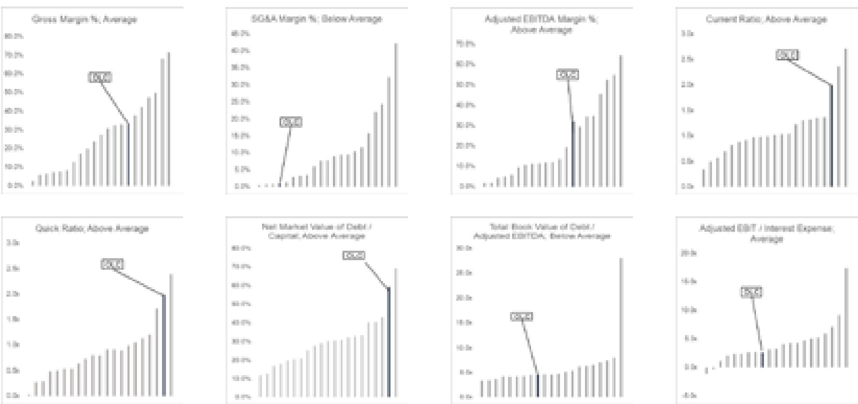
  - Rail Transloading

Rail Transloading	Volume[1]	Revenue[1]	COGS[1]	Gross Margin	Utilization
[Redacted]	18,200 bpd	$2.10	$1.27	$0.83	100%
[Redacted]	10,000 bpd	$2.10	$1.80	$0.30	100%
[Redacted]	26,800 bpd	$2.10	$1.50	$0.60	100%
[Redacted]	20,000 bpd	$2.10	$1.00	$1.10	100%
[Redacted]	65,000 bpd	$2.55	$2.25	$0.30	100%
Operating Expenses	-				

Note: Seller's Projections list barrels per day as "bpd" and barrels for month as "bpl"
1. *Seller's Projections*
2. *Buyer's Projections*
3. *[Redacted] terminal is a fixed monthly charge*

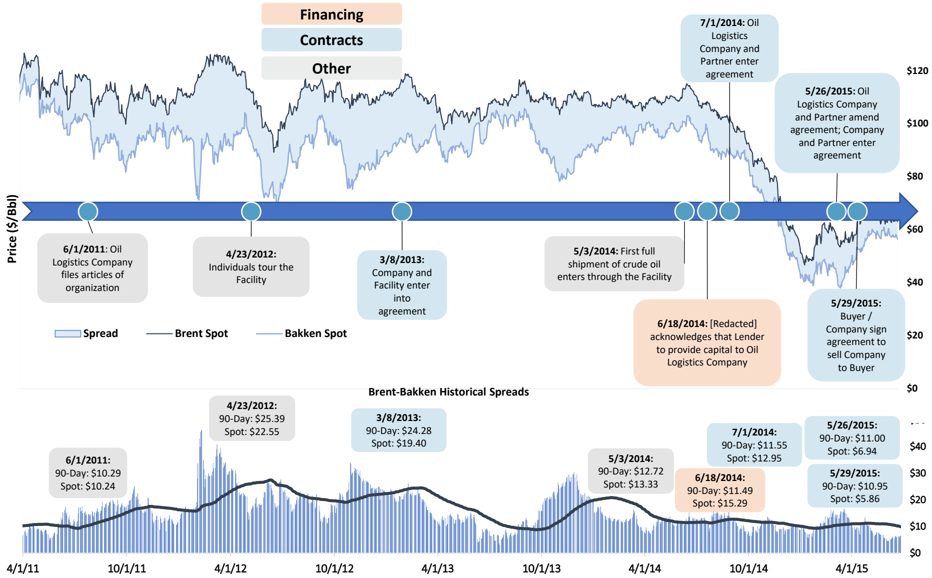
Market Approach: Guideline Public Companies Method Ratio Analysis – June 24, 2015

- The Oil Logistics Company's ratios lie within a reasonable range of all 20 comparable companies



Sources: Capital IQ, Oil Logistics Company's Reconstructed Financial Statements as of Acquisition Date
Note: Oil Logistics Company's leverage ratios were calculated using portion of debt allocated to Oil Logistics Company and the projected ability to pay down such debt

Timeline



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AIRA

Chemical Company M&A

Mandate: Retained as financial advisor to the principal lenders in litigation relating to the failed Buyer / Seller merger transaction.

Highlights:

- Provided litigation support and expert testimony on solvency, valuation and other issues, including expert and rebuttal reports
- Engaged to perform solvency and valuation analysis by Counsel to Lenders, which refused to finance the acquisition of Seller by Buyer on the grounds that the resulting entity, which would have been one of the largest chemical manufacturers in the world, would be insolvent
- This major litigation was settled on terms favorable to our clients

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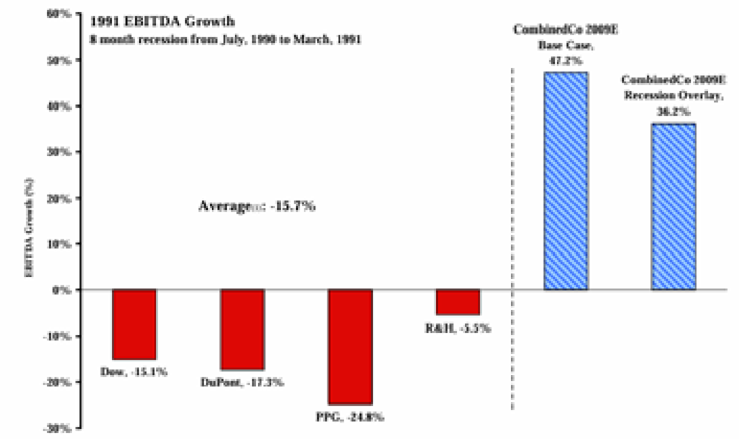
Introduction

<u>Methodology As To Solvency</u>

- Projections are the basis on which a solvency analysis is performed.
- With Seller's projections as to the business of CombinedCo not reasonable, we scrutinized some of the fundamental assumptions underlying those projections.
  - Our starting point was Buyer's and Seller's own projections, as of October, 2008, relating to sales volume, pricing and revenue in 2008. While I did not question Buyer's and Seller's pricing assumptions as to any year in the projection period, given the economic outlook at October 28, 2008,
  - We modified revenue projections for CombinedCo in future years based on growth rates published by the leading independent chemical industry research service, SRI Consulting, and by the International Monetary Fund ("IMF").
  - At the same time, we reduced CombinedCo's projected EBITDA margin for 2009 to a level consistent with the chemical industry's historical performance in a recession (despite the fact that in October, 2008 the current recession was anticipated to be far more severe than the prior two recessions and even though Seller underperformed its peers in the chemical industry in the last recession:
    - ➢ Seller's EBITDA, for example, declined by 38.1% in 2001 vs. an EBITDA decline that year of 23.5% among CombinedCo's peers).
    - ➢ We also projected that CombinedCo's EBITDA margins in 2010-2013 would trend to approximate Buyer's and Seller's average historical performance in 2006 through 2008, a period of both high and low natural gas and oil prices.

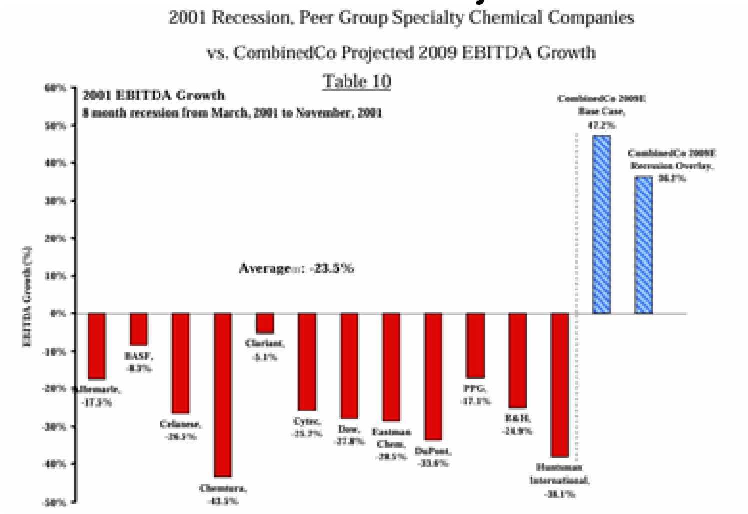
Assessing Reasonableness of Seller's Projections for CombinedCo

1991 Recession, Peer Group Specialty Chemical Companies
vs. CombinedCo Projected 2009 EBITDA Growth
<u>Table 9</u>



(1) Average of 1991 EBITDA growth of Dow, DuPont, PPG, and Rohm & Haas
Sources: Capital IQ; National Bureau of Economic Research; Bloomberg; CombinedCo forecast inclusive of realized synergies, per Seller, October, 2008.

Assessing Reasonableness of Seller's Projections for CombinedCo



(1) Peer Group average of 2001 EBITDA growth
Source: Capital IQ; National Bureau of Economic Research; Bloomberg; Seller 2002 SEC Form 10K; Seller 2002 SEC Form 10K; CombinedCo forecast including realized Synergies, per Seller.

Faculty

Hon. Lisa G. Beckerman is a U.S. Bankruptcy Judge for the Southern District of New York in New York, sworn in on Feb. 26, 2021. From May 1999 until she was appointed to the bench, she was a partner in the financial restructuring group at Akin Gump Strauss Hauer & Feld LLP. From September 1989 until May 1999, she was an associate and then a partner in the bankruptcy group at Stroock & Stroock & Lavan LLP. Prior to her appointment, Judge Beckerman served as a co-chair of the Executive Committee of UJA-Federation of New York's Bankruptcy and Reorganization Group, as co-chair and as a member of the Advisory Board of ABI's New York City Bankruptcy Conference, and as a member of ABI's Board of Directors of from 2013-19. She is a Fellow and a member of the board of directors of the American College of Bankruptcy, as well as a member of the National Conference of Bankruptcy Judges (NCBJ) and the 2021 NCBJ Education Committee. She also is a member of the Dean's Advisory Board for Boston University School of Law. Judge Beckerman received her A.B. from University of Chicago in 1984, her M.B.A. from the University of Texas in 1986 and her J.D. from Boston University in 1989.

Manish Kumar, CVA is a managing director with Teneo in New York and a senior corporate finance professional with more than 30 years of diverse experience in financial forensics, damages, valuation, solvency and related analyses. He has provided expert testimony on damages, valuation, exchange of reasonably equivalent value, and solvency-related disputes in a variety of engagements. Additionally, Mr. Kumar has advised debtors, banks, senior lenders, unsecured creditors, and private-equity sponsors on matters spanning a wide range of industries. Among his many engagements, he led the forensic financial investigation in the Taylor Bean & Whitaker Mortgage Corp. matter, and he was a key member of the Goldin team in the Worldcom/Intermedia, Lyondell and Hexion/Huntsman matters. He also has served as a testimonial witness on solvency and fraudulent conveyance issues. Mr. Kumar received his B.S. with honors from the Sri Ram College of Commerce at Delhi University and his M.B.A. in finance and operations management from NYU Stern School of Business.

Jessica Liou is a partner in the Restructuring Department at Weil, Gotshal & Manges LLP in New York, where she represents debtors, creditors, lenders, investors and asset-purchasers in all aspects of distressed situations. She has served as debtors' counsel in several of the largest and most significant chapter 11 cases in history, including PG&E, Sears and Westinghouse. Ms. Liou has extensive experience advising private-equity funds, portfolio companies and Fortune 500 companies in out-of-court workouts, in-court proceedings and cross-border restructurings across various industries, including cryptocurrency, power, oil & gas, and retail. Her other recent debtor representations include Sears Holdings Corp., Westinghouse Electric Co. LLC, Catalina Marketing Corp., Claire's Stores, Inc., Fieldwood Energy LLC, Basic Energy Services Inc. and Paragon Offshore plc. In 2019, Ms. Liou was recognized by The M&A Advisor as one of its "Emerging Leaders" and named among *Turnarounds & Workouts*' Outstanding Young Restructuring Lawyers in the same year. She is one of the editors of the Weil Bankruptcy Blog, has served on the firm's task force focused on Dodd-Frank financial legislation, and practices *pro bono* in the areas of family law and criminal appeals, where she successfully argued before the New York State Appellate Division to uphold an order of protection and was part of a team that successfully overturned a death penalty conviction for a mentally impaired defendant after 19 years. She has been recognized for her *pro bono* contributions by Sanctuary for Families

Center for Battered Women's Legal Services as a recipient of its 2012 Pro Bono Achievement Award. Ms. Liou received her B.A. *magna cum laude* from New York University, where she was awarded the Albert Gallatin Scholarship and Founder's Day Award, and her J.D. from Boston College Law School, where she served as a legal writing teaching assistant and articles editor of the *Third World Law Journal* and was awarded the inaugural Commitment to Change Award.

Hugh K. Murtagh is counsel in the Restructuring and Special Situations Group at Latham & Watkins LLP in New York, where he represents creditors and debtors both in and out of court in a broad array of disputes and transactions. He represents creditors, shareholders, purchasers and distressed companies in all facets of the restructuring and reorganization process, with a particular focus on bankruptcy litigation. Mr. Murtagh's clients are those in chapter 11 proceedings, out-of-court financial and operational restructurings, chapter 15 and cross-border restructurings, and bankruptcy-related litigation. Prior to his commercial practice, he clerked for Hon. Kevin P. Castel of the U.S. District Court for the Southern District of New York. Mr. Murtagh regularly writes on bankruptcy-related issues, including in *Pratt's Journal of Bankruptcy Law*, the *New York Law Journal* and *Law360*. He received his J.D. from New York University School of Law.

Zain R. Saeed is a senior director in Kroll, LLC's Expert Service Practice in Morristown, N.J., and has more than 16 years of experience assisting clients in business valuation and economic and financial analyses in various industries. He has been involved in numerous dispute matters advising clients on a wide variety of topics, including valuation, solvency and economic damages. Mr. Saeed has performed analyses in a broad range of industries and engagements, including evaluating the fairness of the consideration of equity in a new company, estimating the contingent liabilities associated with a major opioid-producing pharmaceutical manufacturer, evaluating the solvency of a commodities-trading broker dealer as of various dividend dates, and assessing the solvency of a multibillion-dollar commercial real estate financial company as of the date of its leveraged buyout. Notable examples of the level of his experience in the field of financial analytics include valuing the commercial real estate portfolios of Lehman Brothers, analyzing a large bank's conduct with respect to assumed contingent liabilities, estimating fair and reasonable settlement payments for various RMBS trustees, and presenting loan-level put-back claims into Lehman Estate with respect to various RMBS deals that were sponsored by Lehman pre-financial crisis. He also analyzed financial transactions to determine anti-trust damages for some of the largest U.S. retailers, measured the valuation impact of fraudulent conduct, and assessed the purchase price fairness in an international bank acquisition. Mr. Saeed received his B.A. in computer science from Duke University and his M.B.A. in corporate finance and strategy at New York University's Stern School of Business.