



AMERICAN
BANKRUPTCY
INSTITUTE

2017 Winter Leadership Conference

The Role of Financial Advisors and Investment Bankers in Bankruptcy Sales

*Hosted by the Asset Sales and
Financial Advisors and Investment
Banking Committees*

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ABI Winter Leadership Conference

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Topic

The panel will discuss the anatomy of the bankruptcy sales process and focus on optimizing value by drawing on the expertise of attorneys, investment bankers, financial advisors and real estate advisors.

Moderator

- Soneet R. Kapila KapilaMukamal

Speakers

- Harold Bordwin Keen-Summit Capital Partners LLC
- James Cassel Cassel Salpeter & Co., LLC
- Marianne Mortimer Stradling Yocca Carlson & Rauth, P.C.
- Bradley Sharp Development Specialists, Inc.

Overview



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Assembling the Team of Professionals

Professionals



Role of Professionals - Overview

- Exploring, evaluating, and recommending financial, legal and strategic alternatives in efforts to assist a company in the return to profitability or in the salvaging of valuable assets
- Developing a comprehensive financial restructuring program
- Leading negotiations with relevant constituencies
- Anticipating the many variables associated with restructuring and bankruptcy proceedings
- Communicating the process and resolving issues associated with such proceedings, as it relates to a sales process
- Interacting and negotiating with the various, often conflicting, parties involved in a bankruptcy, as it relates to a sale or reorganization
- Understanding restructuring dynamics and providing insights into the attitudes and positions of the parties-in-interest

Professionals



Role of Professionals – The Bankruptcy Attorney

- Assess and advise on restructuring / sale options
- Assist in obtaining appropriate professionals
- Negotiate with the stalking horse bidder and other constituencies
- Draft / prepare sale documents and related pleadings
- Develop strategy for seeking Bankruptcy Court approval; assess bidding procedures and sale options
- Coordinate auction and manage bid process
- Assist in assessing whether potential bids meet bid criteria
- Assist in sale approval process and closing/post-closing issues

Professionals



Role of Professionals – The Real Estate Professional

Bankruptcy Real Estate Professional		Traditional Real Estate Broker
Focused, targeted efforts to close a deal for a limited number of clients	Business Model	Get as many listings as possible
Acquired during due diligence and, by marketing to local real estate brokerage community, realize benefits of their local market knowledge	Local Market Knowledge	Has local market knowledge
Aggressive marketing plan to generate market excitement	Marketing Approach	Calling the usual suspects, installing a sign, and listing on internet
Loyalty to Debtor's Estate, given repeat business with bankruptcy professional	Loyalty / Financial Incentives	Loyalty and financial incentives aligned with buyer in a liquidation
Expert at running process	Overbid Process	Unfamiliar with process

Professionals



Role of Professionals – The Financial Advisor

- Provide additional bandwidth, and quality control, for the debtor's management involved in the due diligence and closing process.
- Additional resources in the event of an "insider" transaction
- If acting as the CRO, provide interface and client direction to other professionals
 - Strategic Issues: Fitting the sale into the restructuring process
 - Tactical Issues: Managing the business through the sale process and, most importantly, through the close.
- Analytical support with historical data and forecasts
- Support sale process

Professionals



Role of Professionals - The Investment Banker

- Maximize value by coordinating unbiased sales process among all interested parties
- Evaluating the financial condition and operations of a company
- Renegotiating with existing lenders
- Refinancing with new lenders
- Pursuing debt exchanges, debt/equity swaps, tenders, etc.
- Obtaining new equity capital
- Coordinate auction and manage bid process
- Evaluation of other available strategic alternatives

Professionals

Timeline of Events

Timeline of Events

When is the best time to engage professionals for a sales process?

Earlier is better. Recommend engagement of a professionals (attorney, financial advisor, real estate professional, investment banker) 60 to 90 days before filing.

- Benefits – saves time and expedites matters
- Possibly avoid bankruptcy altogether if there is sufficient interest
- Find a stalking horse bidder, which will expedite the process
- Help with DIP financing, if required
- Find a sponsor who will participate in a prenegotiated / prepackaged plan of reorganization

Timeline of Events



Steps in a Sale Process (i.e. 363 Sale)

1. Hire advisors and get court approval
2. Review and evaluate financial condition, industry environment, and current market dynamics
 - Valuation and assessment
3. Set proposed time frame
 - Understand interests of all constituencies
4. Prepare sales material
 - Model current liquidity and financial position
 - Determine enterprise or firm value
 - Determine debt capacity and identify optimal capital structure
 - Understand relative bargaining position of each constituency
5. Prepare buyers list

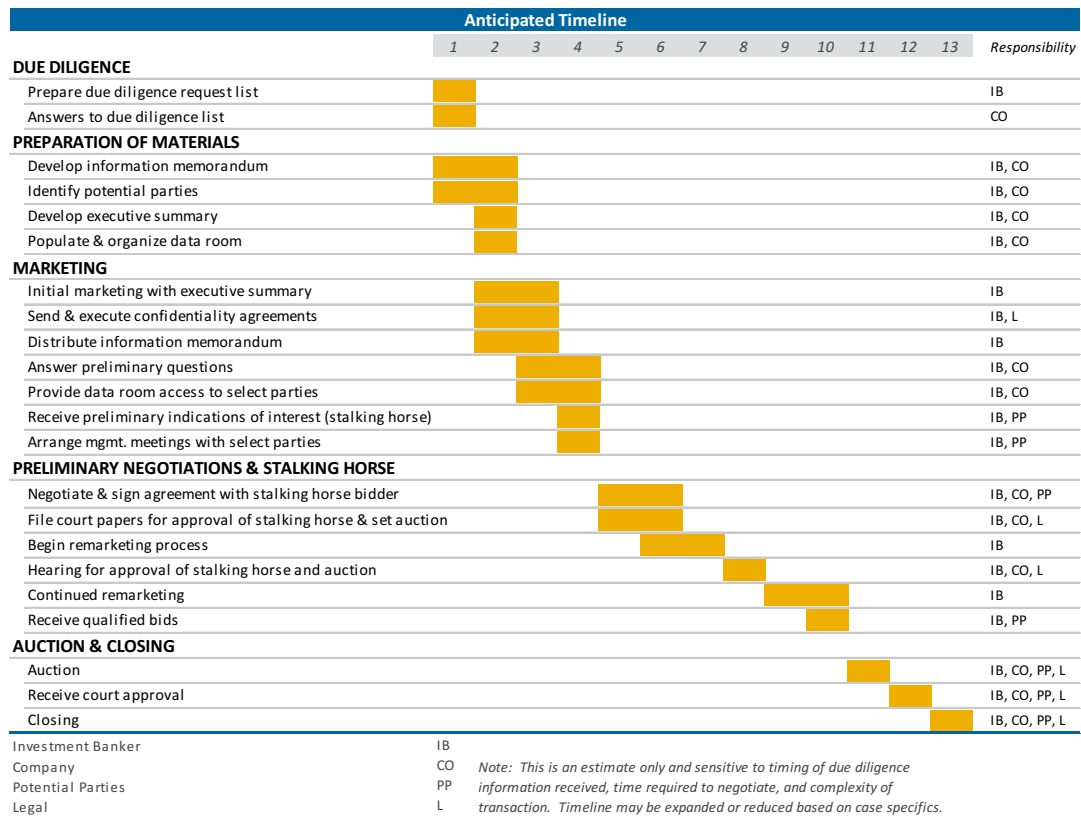
Timeline of Events



Steps in a Sale Process (i.e. 363 Sale) – Cont.

6. Set up an online data room with comprehensive material
7. Start outbound marketing effort
 - Serve as primary point of contact with lenders, advisors, and others
 - Enlist support of most influential constituents
 - Build consensus among parties
8. If an NDA is to be used, make it as streamlined and bidder friendly, as the company is comfortable to expedite the process
9. Implementation and closing
 - Document the transaction and structure of the sale
 - Develop and document procedures for the sale (public or private)
 - Coordinate the auction and obtain Bankruptcy Court approval
 - Coordinate all closing activities to ensure timely completion

Timeline of Events



Timeline of Events



Anticipated Timeline – Sales Process under Dire Conditions

- Time is not your friend
- Need an expedited process in comparison to a non-troubled deal, which would normally take in excess of 6 months
- Materials need to be prepared quickly
- May impair a buyer's ability to fully conduct diligence
- Will require a strong showing that speed of process is necessary

Timeline of Events

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Anticipated Timeline															
	Weeks:	1	2	3	4	5	6	7	8	9	10	11	12	13	Responsibility
DUE DILIGENCE															
Prepare due diligence request list															IB
Answers to due diligence list															CO/FA
PREPARATION OF MATERIALS															
Develop information memorandum															IB, CO/FA
Identify potential parties															IB, CO/FA
Develop executive summary															IB, CO/FA
Populate & organize data room															IB, CO/FA
MARKETING															
Teaser Letter / Announcement															IB
Initial marketing with executive summary															IB
Send & execute confidentiality agreements															IB, L
Distribute information memorandum															IB
Answer preliminary questions															IB, CO/FA
Provide data room access to select parties															IB, CO/FA
Receive preliminary indications of interest (stalking horse)															IB, PP
Arrange mgmt. meetings with select parties															IB, PP
PRELIMINARY NEGOTIATIONS & STALKING HORSE															
Negotiate & sign agreement with stalking horse bidder															IB, CO/FA, PP
File court papers for approval of stalking horse & set auction															IB, CO/FA, L
Begin remarketing process															IB
Hearing for approval of stalking horse and auction															IB, CO/FA, L
Continued remarketing															IB
Receive qualified bids															IB, PP
AUCTION & CLOSING															
Auction															IB, CO/FA, PP,
Receive court approval															IB, CO/FA, PP,
Closing															IB, CO/FA, PP,
Investment Banker															IB
Company & Financial Advisor															CO/FA
Potential Parties															PP
Legal															L

Note: This is an estimate only and sensitive to timing of due diligence information received, time required to negotiate, and complexity of transaction. Timeline may be expanded or reduced based on case specifics.

Timeline of Events



Target Market Development

Target Market Development

Developing a Market – Go Wide & Deep

- Work with the client to develop a list of potential bidders
- Consider competitors, financials and strategic buyers
- Consider whether this may be an roll-up / platform acquisition target
- Investment bankers can also look at potential buyers by industry segment
- Don't turn any potential buyer away. Consider all interest and follow-up credibly – be responsive and timely

Target Market Development

Bid Procedures

Bid Procedures

Credit Bidding/Timing Issues

• Credit Bidding:

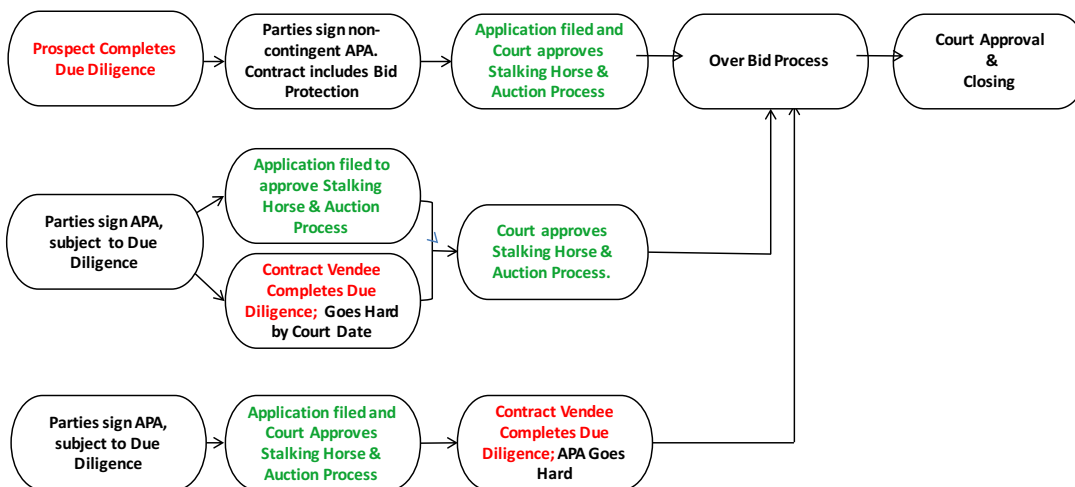
- Bankruptcy Code section 363(k) provides that the holder of an allowed claim, whose claim is secured by property subject to a sale, can purchase that property by offsetting the claim against the purchase price of the property
- In this manner, a prospective purchaser may use its secured debt as purchase price currency, rather than applying cash in a sale
- This ability is not absolute, and under 363(k) the Bankruptcy Court may restrict credit bidding “for cause”
- The ability to credit bid is also available in the context of a plan sale, as well as a 363 sale

• Timing Issues:

- Depending on when discussions with a stalking horse are initiated, a stalking horse likely will have greater runway for its diligence period
- Once bid procedures are approved, there may be limited time for prospective bidders to begin and complete the diligence process

Bid Procedures

When does a stalking horse complete due diligence



Variables

When does offeror complete Due Diligence?

- A. Before signing a hard, non-contingent APA.
- B. After signing APA but before court approval of stalking horse designation.
- C. After signing APA and after court approval of stalking horse designation.

Bid Procedures



Bid Procedures - Under-Water Real Estate

Where there's a risk of real property being under-water and secured creditor is seeking finality, the bid procedures should provide:

- For an auction on a date certain with the debtor waiving its right to delay or postpone the auction
- For an absolute auction (i.e., property to be sold regardless of price)
- Mortgagee agreement not to object to the sale but to preserve right to credit-bid
- Mortgagee agreement to pay broker a credit-bid fee if mortgagee is the successful bidder

Bid Procedures



Benefits of a Stalking Horse Bidder

- Sets a minimum price and many of the deal terms
- Brings a level of certainty to the deal and the logistics of approval
- Helps to expedite the availability of due diligence material and the sale process overall
- It creates momentum that can be advantageous to the debtor

Bid Procedures



Break-up Fee Approval

- A “break-up fee” is, generally speaking, a fee provided to a stalking horse bidder who is overbid at an auction
- Compensates the stalking horse bidder for acting as stalking horse bidder and the benefits provided to the sale (i.e., setting the bid floor, etc.)
- Usually accompanied with expense reimbursement
- Standard applied by courts for approval varies, from a more deferential business judgment type of standard to a heightened 503(b) administrative expense standard
- Fee is typically considered reasonable if around 3%, but can vary depending on the jurisdiction, the circumstances of the sale and case, etc.
- Whether a stalking horse bidder may seek a break-up fee is also a matter of circumstances in the sale and case
 - An insider may elect to forego a break-up fee to eliminate the potential for objection/denial of a sale motion

Bid Procedures



Bidder Protections – Break-up Fee Approval

- *In re New Dawn Assisted Living Operating Company, LLC No. 24*, et. al., U.S.B.C. AZ, Case No. 2:15-bk-14558-DPC
- This Court and this Judge rarely, if ever, approved breakup fees
- Debtors (A) had stalking horse contracts at a highest & best price, \$19M, (B) needed to lock in those contracts at that price, and (C) needed to get Bankruptcy Court approval for full bid protections
- Evidence that succeeded in getting bid protections approved:
 - Properties extensively marketed, price clearly exceeded next best offer, and prices were the best prices in the marketplace
 - Stalking horses needed: (1) to establish floor, (2) to demonstrate value to the market, and (3) to avoid risk of busted auction
 - Buyers expressed clear intent to walk unless bid protections approved
 - Debtors faced severe liquidity constraints and administrative insolvency unless properties sold for this price or more
 - No objection from creditors or UST
- Declarations and hearing transcript available upon request. Ask Harold Bordwin for details.

Bid Procedures



In re Reliant Energy Channelview LP, et al., 594 F.3d 200 (3d Cir. 2010)

- The debtors in the Reliant case sought to sell their largest asset, a power plant in Channelview, Texas. Debtors' consultants contacted 115 potentially interested purchasers, and ultimately obtained 12 bids.
- Kelson Channelview LLC was one of those bids, submitting a \$468 million bid that was not contingent on financing. Fortistar, LLC also submitted a bid, but subject to a financing contingency.
- Debtors signed up an APA with Kelson, which sought a \$15 million break-up fee and \$2 million expense reimbursement for Kelson. The Debtors also sought Bankruptcy Court approval of the sale without an auction.
- At a hearing on the debtors' motion, one of the debtors' consultants and an officer testified that Kelson would not have made its bid absent the bid protections, but that it was also bound via the APA even if it did not obtain the fee. At the hearing, Fortistar asserted that it would want to bid in an auction, but that the break-up fee was a hindrance.

Bid Procedures



In re Reliant Energy Channelview LP, et al. (Cont.)

- The Bankruptcy Court denied Kelson its break-up fee, holding that it was not convinced that such a fee would benefit the estate. The District Court and the Third Circuit affirmed.
- In its opinion, the Third Circuit rejected a business judgment standard for break-up fees and articulated that parties seeking break-up fees must show such fees were "actually necessary to preserve the value of the estate" under Bankruptcy Code section 503(b).
- The Third Circuit went on to note that "a break-up fee is not 'necessary to preserve the value of the estate' when the bidder would have bid even without the break-up fee."
- In the case of the Kelson fee, the Third Circuit pointed to the fact that the APA had required the debtors only to seek approval of the break-up fee, not to obtain approval of the fee.
- The Third Circuit also noted as a key factor in its affirmance the fact that Fortistar was waiting with a higher and better offer at the auction.

Bid Procedures



Compensation Structures

Success Fees

Compensation Structures



Compensation Structures – Real Estate Broker and/or Investment Banker

A real estate broker and/or investment banker's fee arrangement should be approved upon the broker's retention pursuant to Section 328(a) of the Bankruptcy Code, which states:

*"The trustee, or a committee appointed under section 1102 of this title, with the court's approval, may employ or authorize the employment of a professional person under section 327 or 1103 of this title, as the case may be, on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or **percentage fee basis, or on a contingent fee basis**. Notwithstanding such terms and conditions, the court may allow compensation different from the compensation provided under such terms and conditions after the conclusion of such employment, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions."*

Compensation Structures



Compensation Structures – Real Estate Broker and/or Investment Banker

- Section 328(a) clearly authorizes a trustee to engage a broker on a “percentage fee basis or on a contingent fee basis.” Section 328(a), in the very next sentence establishes the standard of review for such fees as being modifiable by the Court “after the conclusion of such employment, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions.”
- Under the plain meaning and explicit terms of section 328, once a professional is retained on a “percentage fee basis or on a contingent fee basis,” the fee is reviewed under section 328, and not the 330 reasonableness standard

Compensation Structures



Compensation Structures – Investment Banker

- Not all cases can afford large monthly retainers to investment bankers, so company’s need to seek alternatives
- Can find investment banking firm that will seek retainer of \$25,000 to \$50,000 per month for a set number of months, not \$75,000 or more for an extended period
- Creative success fees for smaller deals, rewarding the banker with a higher fee on incremental amounts and reasonable minimum fees.
 - Example: where there is a stalking horse bidder in place when the IB is hired, for a flat retainer to run the process and a fee on the incremental sale amount

Compensation Structures



Recent Developments in 363 Sales

Recent Developments in 363 Sales



Reopening Auctions

- Should debtors or courts entertain bids after an auction concludes – even after a court has approved auction procedures to have been followed?
- New proposals after the close of an auction can serve to increase the value to the estate, benefitting creditors
- At the same time, reopening an auction can serve to diminish the integrity and finality of the process
 - This could also have negative implications on potential bidders' behavior
- As a practical matter, practitioners generally anticipate the possibility of alternative or late bids after an auction closes
- To decrease the chances of this happening, marketing efforts must be substantial – and notice of any proposed auction should be carefully but broadly considered

Recent Developments in 363 Sales



In re Western Biomass Energy LLC, 2013
Bankr. LEXIS 3166, (Bankr. D. Wyoming Aug. 6, 2013)

- Debtor, a “demonstration/research and development ethanol plant” located in Upton, Wyoming, sought to sell substantially all of its assets by auction.
- The Bankruptcy Court approved the auction, and Great American Group, LLC marketed and auctioned the assets via an on-line auction to GeoSynFuels, LLC for \$525,000.
- Following the close of the auction, American Process, Inc. made a bid for the assets of \$1.28 million, and included a provision for a “carve-out” to pay the estate’s administrative fees and unsecured creditors.
- Before the Debtor had a chance to make a motion to approve the sale, Security National Bank of Omaha objected to the sale to GeoSyn.

Recent Developments in 363 Sales



In re Western Biomass Energy LLC (Cont.)

- In denying the sale to GeoSyn, the Bankruptcy Court held that bankruptcy courts generally have “broad discretion to reopen an auction or hold a second auction to consider an upset bid” in order to “maximize the proceeds available to creditors”
- In its holding, the Bankruptcy Court relied heavily upon testimony of the general manager of the debtor, regarding the “rocket ship technology” of the debtor’s facilities, and a qualified appraiser, who had valued the plant between \$1.07 - \$1.28 million.
- Also critical to the Court’s decision was the fact that the GeoSyn price would only partially pay a secured creditor - leaving nothing for unsecureds, whereas the American Process bid would provide the possibility of distribution to unsecured creditors.
- Ultimately the Bankruptcy Court found the GeoSyn bid “grossly inadequate” and held that the circumstances that would have resulted from the GeoSyn bid (i.e., leaving no payout for unsecureds) “indicates unfairness”.

Recent Developments in 363 Sales



Reopening Auctions & Post-Auction Auctions

- Should debtors or courts entertain late bids after an auction concludes
- Competing considerations:
 - Additional value benefits the estate and creditors; vs.
 - Respecting the integrity and finality of the process (and implications on potential bidders' behavior)
- Ability to structure flexibility in bid procedures
- Newbury Common Case Study Follows

Recent Developments in 363 Sales



In re Newbury Common Associates, LLC, et.al., U.S.B.C. DEL Case No. 15-12507 (LSS).

- Two commercial properties encumbered by mortgages with the same bank. Bank, via credit bids, is successful bidder at 363 auction. Bank's credit bid (undisclosed to the Court) entitled bank to assign its bid to third parties
 - Discussion point: bank opened the auction with its credit bids; third party bidders sat on their hands
- Following Bankruptcy Court approval of bank's bids and third party's back up bids, backup bidder and other bidders approach bank and debtors with higher offers to buy the assignment of the bank's bid
- Debtor and bank: (A) design an overbid process, leading bank to select bids from third parties other than the backup bidder; and (B) agree that the bank will provide further benefit to the estate from this post-auction, auction

Recent Developments in 363 Sales



In re Newbury Common Associates, LLC,
et.al., U.S.B.C. DEL Case No. 15-12507 (LSS). – Cont.

- New bids submitted for Ct approval. The backup bidder, even though it participated in the post-auction, auction, objected to the entire post-auction, auction, claiming that it was conducted in violation of Ct’s sale approval order, ignoring its rights as the backup bidder
- Ct finds that post-auction, auction was not court approved and rolls back to its sale approval order requiring the bank to close on its credit bids. Note:
 - Best bids not accepted, thus detriment to the estate (though Court unaware of that)
 - Ct’s ruling did not change the end result. After bank closed (and incurred state transfer taxes) it flipped properties to high bidders (who again paid a state transfer tax)
 - Disgruntled backup bidder actively participated in post-auction, auction and yet successfully objected to its results
- Transcripts of sale approval hearing, 7/21/16, and court ruling, 7/22/16, available upon request.

Recent Developments in 363 Sales



Mootness Issues in Appealing a Section 363 Sale Order

Overview

- Public policy favors having finality in bankruptcy sale transactions
- Finality maximizes the market for assets; ensures greater market efficiency

Statutory:

- Codified into Bankruptcy Code section 363(m)

Equitable:

- Judge-made doctrine – typically arises in context of plan confirmation
- Depending on the jurisdiction, it may not be deemed applicable in the 363 sale context

Recent Developments in 363 Sales



In re LCI Holding Co., 802 F.3d 547 (3d Cir. 2015)

- The debtor, an operator of long-term acute care hospitals, and its 34 subsidiaries filed for bankruptcy. Prior to the filing, the company marketed its assets but could not achieve a bid proposal that would pay higher than 80%-85% to the debtor's secured lenders.
- Debtor's secured lenders proposed a credit bid for the purchase of the company's assets – with an agreement to pay a portion of the assets towards the legal fees of the company and the UCC. Secured lenders also agreed to fund the wind-down of the debtor's estate and ultimately agreed to pay \$3.5 million in trust to pay unsecured creditors.
- Despite additional post-petition marketing efforts to 106 potential strategic and financial counterparties, no other bidder materialized. An advisor testified that bidders were concerned with "reimbursement issues and the challenging regulatory environment facing the long-term acute care industry."

Recent Developments in 363 Sales



In re LCI Holding Co. (Cont.)

- The United States Government, which asserted an estimated \$24 million administrative fee, objected to the sale, arguing that professionals, as similarly situated administrative creditors, would receive a greater payout. The Government appealed both the sale order, as well as an order approving a settlement with the UCC (which allowed for the distribution to unsecured creditors). The Government also sought a stay but was denied.
- Although the appeal reached the Third Circuit after \$2 million had already been distributed towards the payment of unsecureds, the Third Circuit did not find the appeal moot, holding instead that a "redistribution" could still be made.
- The Third Circuit also held that "equitable mootness" did not generally apply "[o]utside the plan context" and refused to apply equitable mootness in the sale context.
- Ultimately, the Third Circuit denied the Government's appeal on the grounds that the funds used to make a distribution were not funds of the estate, and therefore the distribution did not usurp the Bankruptcy Code's creditor payment scheme.

Recent Developments in 363 Sales

Biographies

Biographies

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Mr. Kapila is a Federal bankruptcy Trustee and has served as an Examiner, Chief Restructuring Officer, Chapter 11 Trustee, Liquidating Trustee, Corporate Monitor (S.E.C. appointment) and State and Federal Court Appointed Receiver of operating businesses in numerous matters in the Southern and Middle Districts of Florida. As a Trustee plaintiff, Mr. Kapila has managed complex litigation in significant cases.

Mr. Kapila has advised and represented debtors, secured creditors and creditors' committees in formulating, analyzing and negotiating plans of reorganization. As a recognized expert in fraudulent conveyance, Ponzi scheme and insolvency issues, he has provided expert testimony and extensive litigation support services to law firms involving complex insolvency issues and commercial damages. He has worked in conjunction with the S.E.C., the Federal Bureau of Investigation and the United States Attorney's Office and has served both as a consultant and expert witness for litigation matters in State and Federal Courts.

Mr. Kapila has spoken to various groups including the American Bankruptcy Institute, New York Law School, St. Thomas University Law School, National Conference of Bankruptcy Judges, National Association of Bankruptcy Trustees (NABT), Receiver's Forum, Association of Insolvency and Restructuring Advisors, Florida Institute of Certified Public Accountants, National Business Institute, and on topics related to insolvency, under-performing businesses and insolvency taxation.

Mr. Kapila is a Fellow of the American College of Bankruptcy. He has served on the Board of Directors and is a past-President and past-Chairman of the Association of Insolvency and Restructuring Advisors. Mr. Kapila serves on the Advisory Boards of the ABI SE Regional Conference (co-chair in 2015) and the ABI Caribbean Insolvency Symposium. He is chairperson of the ABI SE Regional 2016 conference. He has co-authored articles published in the ABI Journal and the Bankruptcy Bar Association and is a contributing co-author of the book *"Fraud and Forensics: Piercing Through the Deception in a Commercial Fraud Case"*, published by the American Bankruptcy Institute.

Biographies

Harold J. Bordwin



Harold J. Bordwin
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Harold focuses on developing and implementing strategic real estate and corporate finance plans for his clients. Those plans involve real estate analysis, real estate acquisitions and dispositions, lease modifications and terminations, and corporate finance and capital markets services.

Professional and Industry Experience

- With over 25 years of real estate advisory/transactional and corpfin experience, Harold has helped negotiate the sale of hundreds of properties, leaseholds and businesses nationwide; provided specialized valuation services; and provided in-depth workout services for retailers, financial institutions, and corporate clients.
- As a recognized expert on real estate restructuring issues, Harold has testified as an expert before the Judiciary Committee of the United States House of Representatives. He has also been interviewed and quoted in articles for The Wall Street Journal, The New York Times, and various trade publications.
- Before he joined Keen-Summit Capital Partners, Harold was Co-President at GA Keen Realty Advisors, a Principal with KPMG LLP, a Managing Director with KPMG Corporate Finance, CEO of Keen Consultants and an associate with the law firms of Strock & Strock & Lavan and McKenna, Conner & Cuneo.

Financial Clients:

- Angelo Gordon
- Bank of America
- Citibank
- JP Morgan Chase
- Silverpoint
- Yucaipa

Corporate Clients:

- Arthur Anderson
- Cable & Wireless
- Family Golf Centers
- Fleming
- Spiegel
- Warnaco

Retail Clients:

- Blockbuster
- Casual Male
- Dollar General
- Esprit
- Tommy Hilfiger
- U-Haul Bondholders

Biographies

James S. Cassel



James S. Cassel
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A veteran investment banker, Mr. Cassel has negotiated, structured, and executed a wide spectrum of transactions, including vast experience in 363 sales. Drawing on his unique experience as both a dealmaker and an attorney, he guides clients with a thorough understanding of the financial world.

Mr. Cassel co-founded Cassel Salpeter & Co., LLC in 2010. Cassel Salpeter has provided creative solutions in complex, multi-constituent restructuring transactions, both in and outside chapter 11 proceedings. Mr. Cassel has served as a financial advisor and investment banker to debtors and official committees in various chapter 11 cases, most recently serving as financial advisor and investment banker to the debtors in the cases of In re Nephrogenex and In re Dynavox, Inc. Cassel Salpeter also has an active investment banking practice outside the chapter 11 context.

Mr. Cassel takes an active role with clients, and his extensive transactional and corporate finance experience serves as a valuable resource. Through membership on boards of directors and his active involvement in outside business operations, Mr. Cassel has developed a keen understanding of the challenges faced by middle market and emerging growth companies. Mr. Cassel has negotiated, structured and executed various types of transactions including mergers, acquisitions and divestitures; corporate and transactional financing, including venture capital, mezzanine and conventional financing; and public offerings and private placements.

Jim earned his B.S. degree from American University and his J.D. degree from the University of Miami School of Law. He is a member of the New York and Florida Bar Associations.

Biographies

Marianne S. Mortimer



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Ms. Mortimer has over ten years of experience advising clients on a variety of bankruptcy and restructuring matters. She has represented corporate debtors, creditors, and official and ad hoc creditor committees in numerous chapter 11 cases, as well as creditors and debtors in chapter 9 bankruptcy cases. In addition, Ms. Mortimer routinely advises companies on bankruptcy preparedness considerations, out-of-court restructuring options and various bankruptcy concerns. Her experience has also included counseling clients as third party purchasers in numerous distressed transactions, including Bankruptcy Code § 363 sales, chapter 11 plan sales, out-of-court asset and stock sales, assignments for the benefit of creditors and foreclosure sales.

Notable representations have included representing the City of San Bernardino in its chapter 9 bankruptcy case, the ad hoc committee of secured lenders in the chapter 11 bankruptcy case of *Primus Telecommunications Group, Inc., et al.*, the stalking horse bidder in the chapter 11 bankruptcy case of *Suncoast Roofers Supply, Inc.*, the ad hoc committee of convertible noteholders in *The Great Atlantic & Pacific Tea Company, Inc. et al.*, the plan sponsor and purchaser in the chapter 11 bankruptcy case of *Neff Corp., et al.*, and numerous creditors in *Lehman Brothers Holdings Inc. et al.*

Prior to joining Stradling, Ms. Mortimer was a financial restructuring attorney in New York, and she is admitted to practice in both New York and California. Ms. Mortimer is a Board Trustee for the Turnaround Management Association, and has been named a "Southern California Rising Star" by Super Lawyers. She frequently lectures on various bankruptcy topics, including bankruptcy considerations and secured creditor rights and interests in bankruptcy.

She received her J.D. from Brooklyn Law School in New York and her B.S. from Boston University in Boston, Massachusetts. While in law school, Ms. Mortimer served as a law clerk to the Honorable Conrad B. Duberstein, chief judge, U.S. Bankruptcy Court, Eastern District of New York.

Biographies

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Mr. Sharp has more than 20 years' experience providing crisis management, financial advisory and third party fiduciary services. Mr. Sharp has advised, operated and sold companies in numerous industries including consumer finance, real estate development, high tech, manufacturing, food and agriculture. He has served as Chief Restructuring Officer as well as Trustee under Chapter 7, Chapter 11 and post confirmation. Mr. Sharp is also an expert witness with respect to fiduciary duties, banking, finance and securitizations.

Biographies