

Distressed M&A Strategies

Webcast

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GIBSON, DUNN & CRUTCHER LLP



MILLER BUCKFIRE

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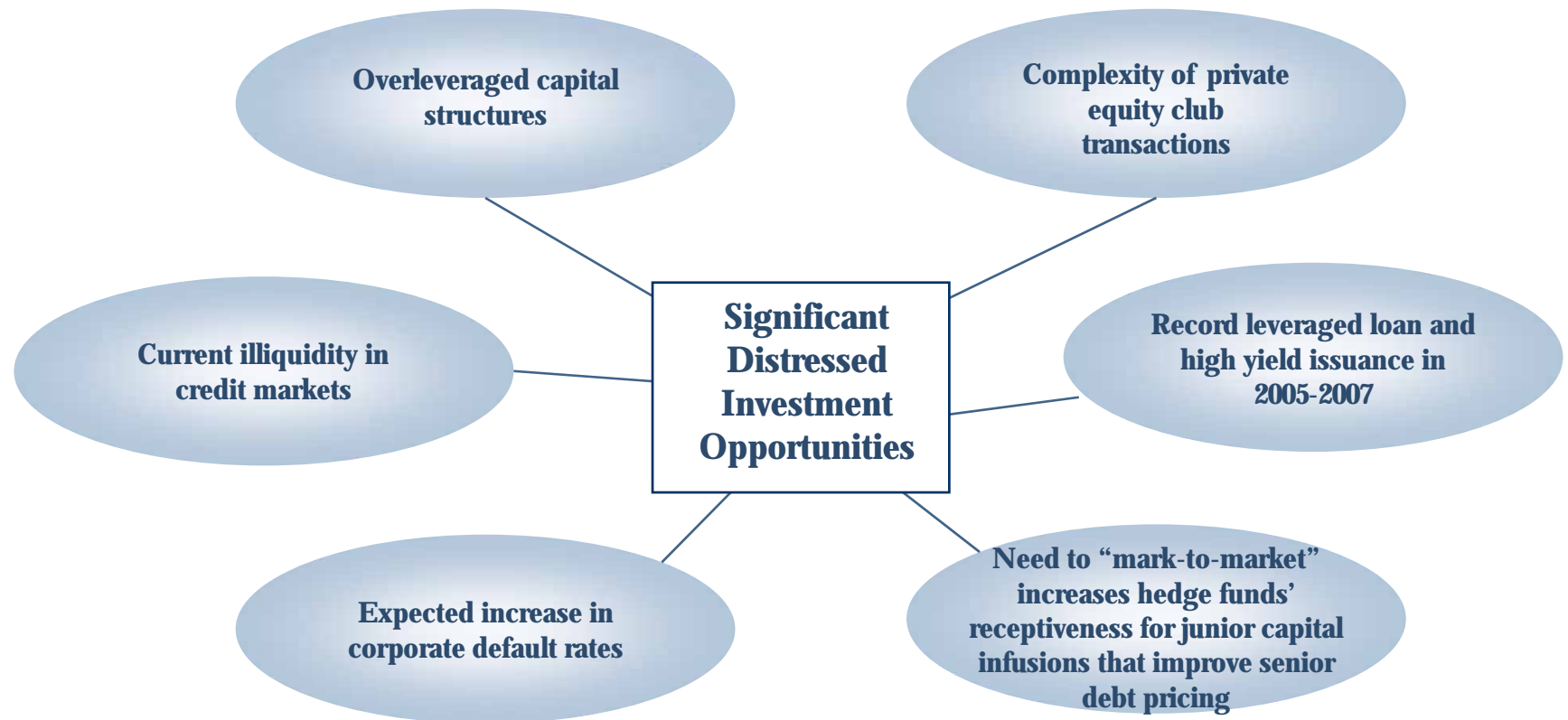
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I. Observations of the Current Marketplace



Significant Distressed Investment Opportunities

A weak economic outlook coupled with recent trends in the credit markets will create numerous distressed investment opportunities



Introduction

The dislocation of the credit markets provides private equity investors with the opportunity to generate outsized returns by investing in distressed situations

The credit markets are effectively closed, forcing a realignment of existing portfolio company business plans as well as a new approach to future acquisitions.

Steve Schwarzman, Blackstone Group

The conditions in the capital markets will likely get worse before getting better.

Leon Black, Apollo Management L.P.

Incumbent sponsors do not have the funds necessary to buy the debt of portfolio companies that is trading at distressed levels. As such, **opportunistic investors can effectively “recreate” LBOs completed at 10.0x – 12.0x for 3.0x – 5.0x by buying the company’s debt securities.**

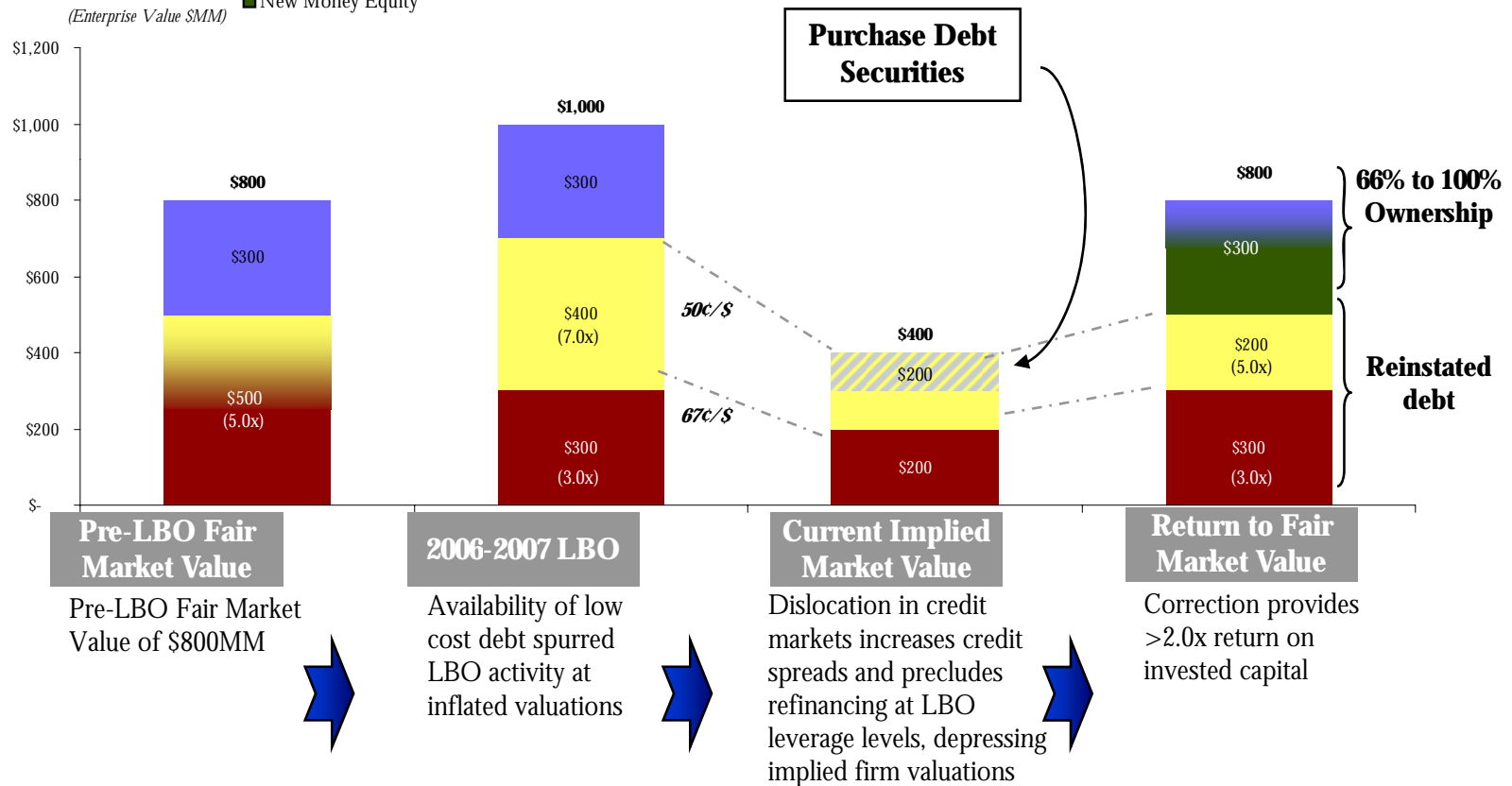
Marc Lasry, Avenue Capital Group (Distressed Manager)

(1) Source: Citi Private Equity Conference, April 2008.

Illustration of The Distressed LBO (\$MM)

Baseline Assumptions:
 Fair Market Value: \$800MM
 Annual EBITDA: \$100MM

- Secured Debt
- Subordinated Debt
- Old Equity
- New Money Equity



The Traditional LBO vs. The Distressed LBO

THE TRADITIONAL LEVERAGED BUYOUT

THE DISTRESSED LEVERAGED BUYOUT

Structure

- Sponsor purchases equity and/or assets from existing owners
- Sponsor utilizes “loan-to-own” strategy by buying existing debt securities at distressed prices in anticipation of a future restructuring/conversion event; or
- Sponsor injects new capital into existing levered capital structure and/or liquidity-starved situation

Financing

- Equity capital from sponsor(s) (traditionally 30-40%; less in 2006-2007 timeframe)
- Existing capital structure and/or stakeholders expected to stay in place, sometimes requiring significant modifications
- New debt issuance and/or assumption of existing target debt
- Investors may boost returns or positions by acquiring securities in advance of providing new financing

Negotiation Dynamics

- Typically bilateral negotiations between buyer(s) and seller(s)
- Negotiations with numerous constituencies
 - Senior lender, junior creditors, equity, unions, retirees, etc.
- The bankruptcy process can be utilized to effectuate investment, gain parties’ consents and/or obtain control and simplify capitalization

Comparison of Distressed Investment Approaches

	PURCHASE OUTSTANDING DEBT	NEW MONEY INVESTMENT
Description	<ul style="list-style-type: none"> ■ Purchase large portion of outstanding debt securities at levels below par ■ Anticipate recapitalization transaction that converts “fulcrum” debt issue into equity (at face value) 	<ul style="list-style-type: none"> ■ Investor injects new equity and/or debt capital into liquidity-starved situation
Advantages	<ul style="list-style-type: none"> ■ Allows investor to capture discount in firm trading value ■ If situation improves materially and recapitalization does not occur, investor can still realize attractive returns through sale of debt position at improved prices 	<ul style="list-style-type: none"> ■ Provides investor with greater control ■ Able to privately negotiate transaction terms
Disadvantages	<ul style="list-style-type: none"> ■ May be difficult to acquire large position ■ No inherent control over process/timing/governance ■ Situation may deteriorate and investor may no longer hold the fulcrum security 	<ul style="list-style-type: none"> ■ Risk that new capital ultimately inures directly to the benefit of existing senior lenders if situation deteriorates
Other	<ul style="list-style-type: none"> ■ Existing sponsor’s charter may not allow purchase of debt securities ■ Funding challenges and may return capital too rapidly to sponsor 	<ul style="list-style-type: none"> ■ Existing charter may not allow for debt investments

Chapter 11 Distressed Investment Methods

	§363 SALE	PLAN SALE	CLAIMS PURCHASE/CONVERSION	PLAN FUNDING
Advantages	<ul style="list-style-type: none"> ■ May be quicker than a plan sale ■ Transaction can be consummated over creditor objections ■ Assets can be acquired free and clear of claims, liens and encumbrances 	<ul style="list-style-type: none"> ■ More flexibility in terms of form and timing of consideration ■ No need to register securities issued in the transaction ■ Assets can be acquired free and clear of claims, liens and encumbrances 	<ul style="list-style-type: none"> ■ Capitalize on discount between fair market value and trading price of claims ■ Ability to block competing plans 	<ul style="list-style-type: none"> ■ May be appealing to existing equity depending on valuation ■ May be appealing to banks if cash is used to reduce leverage
Disadvantages	<ul style="list-style-type: none"> ■ Subject to higher and better offers (buyer may be used as a stalking horse) ■ Auction procedures will be imposed ■ Can not influence structure of POR 	<ul style="list-style-type: none"> ■ More costly and time-consuming ■ Buyer may become embroiled in plan formulation process ■ Ability to consummate sale depends on creditor acceptance ■ May be subject to higher and better offers 	<ul style="list-style-type: none"> ■ Claims may not be converted into equity ■ Management has right to exclusivity and can lock-up major parties-in-interest ■ Investment may be illiquid ■ Purchases may attract attention, thereby increasing total acquisition cost ■ Purchases could destroy certain tax benefits 	<ul style="list-style-type: none"> ■ Investment will likely be subject to market tests ■ Success may depend on debtor's need for an equity infusion

Timing of Distressed Investment

Out-of-Court

Chapter 11

	EARLY DISTRESS	ACCELERATED DISTRESS	PRE-FILING	IN-BANKRUPTCY	PLAN OF REORGANIZATION ("POR") FORMATION
INVESTMENT THESIS	<ul style="list-style-type: none"> Market has overreacted <ul style="list-style-type: none"> Company will not accelerate into true distress and/or require full reorganization 	<ul style="list-style-type: none"> Compelling business case for stabilization of company and debt-service capacity (no restructuring needed beyond bridge) 	<ul style="list-style-type: none"> High probability of successful reorganization Contemplating asset purchase or investment in exit financing Adequately collateralized immediately 	<ul style="list-style-type: none"> Purchase interests at discount prices relative to valuation in stand-alone plan 	<ul style="list-style-type: none"> New equity is undervalued Desire/need to influence structure of POR (e.g., new debt vs. equity)
INVESTMENT STRATEGY	<ul style="list-style-type: none"> Purchase debt or equity in open market or through privately negotiated transactions 	<ul style="list-style-type: none"> Step in as high-cost lender <ul style="list-style-type: none"> 2nd lien secured loans Bridge company through stabilization 	<ul style="list-style-type: none"> Provide Debtor-in-possession ("DIP") lending commitment 	<ul style="list-style-type: none"> Purchase large blocks of debt or other claims at deep discount hoping to influence POR outcome 	<ul style="list-style-type: none"> Provide exit financing lending commitment Become new equity sponsor

Out-Of-Court Distressed Investment Methods

	EQUITY		DEBT	
	NEW EQUITY	RIGHTS OFFERINGS	NEW DEBT	BUY OUTSTANDING DEBT
Advantages	<ul style="list-style-type: none"> Can highly tailor security (common, preferred, convertible preferred, etc.) May be accomplished quickly (if small enough not to mandate shareholder vote requirements) Bilateral negotiation 	<ul style="list-style-type: none"> Right to participate quells dissent Participation decreases required capital commitment Ability to generate additional returns with same or less capital through backstop commitment fee 	<ul style="list-style-type: none"> Loan-to-own strategy allows downside protection Opportunity to negotiate competitive terms, including current interest and/or equity “kicker” 	<ul style="list-style-type: none"> Capture inherent value in trading prices Potentially “cheap” method of acquiring equity position Relatively silent Opportunity for significant returns if situation improves and prices rebound
Disadvantages	<ul style="list-style-type: none"> Desired ownership may require shareholder vote 	<ul style="list-style-type: none"> Requirements, timing and process can create additional risks Lack of subscription may lead to higher than desired levels of exposure 	<ul style="list-style-type: none"> Limited control over situation Typically limited availability of unencumbered assets Lender liability risks 	<ul style="list-style-type: none"> Difficult to amass sufficient position to influence situation No control, stepping into existing documents Ch. 11 filing could substantially prolong exit of positing

II. Overview of Acquisition Alternatives



General Overview of Acquisition Alternatives

- **Asset Sales: Section 363 asset sales; asset sales through a chapter 11 plan**
 - Acquiring a subset of the target company's operations, or a discrete business unit
 - Upon consummation of transaction, control is absolute
 - Purchasers may be subjected to auctions
- **Debt Purchases: Acquiring control of the target company**
 - Different levels of control – unnecessary to acquire the entire company to exert control (blocking position, etc.)
 - Potential ability to force existing lenders to remain in the capital structure (cram-up, reinstatement)
 - Longer acquisition process
 - In-court vs. out-of-court considerations

The Out of Court Restructuring Option

Out of court restructurings present an alternative to traditional bankruptcy filings – the costs and benefits of both methods are discussed below:

Issue	Chapter 11	Out of court restructuring
Approval of Terms of Restructuring	Acceptance by class or cram-down	Acceptance by all classes of debt
Conversion of Debt to Equity	For each accepting class, approval by more than 1/2 of class in number and at least 2/3 in amount of those actually voting; potential cram-down of rejecting class	Consent of all affected parties required
Restructuring of Financing	Company may “prime” existing debt with new senior debt	Company must abide by restrictions contained in existing debt instruments
Collective Bargaining Agreements, and unfavorable contracts and leases	Company may reject unfavorable contracts and pay damages in less than 100 cent dollars; certain contracts are subject to a damage cap	Company must pay full damages upon breach
Cost and Timing	More complicated process; judicial oversight; enhanced administrative burdens	Less expensive; fewer procedural hurdles



III. Debt Investing Strategies

Taking Control of Companies Through Purchases of Debt

- **Chapter 11 plans typically provide for the conversion of certain classes of debt into equity**
- **Identifying the “fulcrum” debt tranche**
- **Quantity of debt purchased may create leverage in a Chapter 11 case**
 - 1/3 control – creates blocking position in a Chapter 11 class
 - 50.1% control – may provide ability to amend debt documents to allow certain out of court restructurings
 - 2/3 control – may provide control of a class of debt in a Chapter 11 restructuring
 - » Will still need to satisfy greater than 50% numerosity requirement

Taking Control of Companies Through Purchases of Debt (cont'd)

- **Out of court restructuring considerations:**
 - The impact of change of control provisions
 - Inability to force minority hold-outs to accept terms of restructuring
 - Elimination of equity interests – requires all stockholders to consent
 - » Potential alternative – significant dilution of existing equity
 - Agent as an obstacle – replacing the agent
 - Pro-rata distribution provisions – may be triggered by equity for debt exchange

Taking Control of Companies Through Purchases of Debt (cont'd)

- **Chapter 11 restructuring considerations:**
 - A Chapter 11 restructuring must be financed through use of cash collateral and/or DIP financing
 - » Priming fights/DIP lender leverage
 - 50% control of a debt tranche does not necessarily provide control over the Chapter 11 class vote (see above)
 - Debtor may seek to reinstate or “cram-up” the debt rather than convert to equity

DIP Financing/ Intercreditor Issues

- **DIP financing, which is approved at the outset of the case, may have a significant impact on the relative leverage of the various creditor constituencies**
 - Priming fights/competing DIPs
 - Ability of unsecured creditors to object
 - Roll-ups
 - Creation of deadlines for major events in the bankruptcy case and/or ability to force a quick sale



Bankruptcy Waivers in 1st/2nd Lien Intercreditor Agreements

- **Often in bankruptcy, parties must navigate intercreditor issues that are governed by intercreditor agreements**
- **Rights may be waived by 2nd lien lenders in intercreditor agreements**
 - Right to seek adequate protection and/or object to cash collateral
 - Right to contest 1st lien lenders' liens
 - Right to current payment of interest
 - Right to object to DIP financing supported by 1st lien lenders; right to propose a competing DIP loan
 - Right to vote on a Plan
 - Right to propose a competing Plan
- **Ability of 2nd lien lenders to purchase 1st lien debt at par**

Cram-Down

- **To reach confirmation, either the Plan must be accepted by each impaired class or each dissenting class must be “crammed down”**
- **Cram-Down - A court can confirm a Plan over the “no” vote of a class if the Plan (i) does not “unfairly discriminate” against the class, (ii) is “fair and equitable” with respect to the class, and (iii) at least one impaired, non-insider, class votes in favor of the Plan**



Cram-Down (cont'd)

- **Secured creditors** – generally found to be “fairly and equitably” treated if:
 - It retains its lien to the extent of its secured claim and receives present value of deferred cash payments;
 - The collateral is sold with the lien attaching to proceeds; or it receives the “indubitable equivalent” of its collateral
- **Unsecured creditors** – generally found to be “fairly and equitably” treated if:
 - Creditors in the class receive (over time) cash payments equal to present value of their unsecured claims; or
 - Junior classes receive nothing under Plan



Reinstatement of Secured Debt

- **Reinstatement** – to avoid a damaging “no” vote (or complying with cram-down requirements) with respect to secured debt (particularly debt on terms favorable to the debtor), the debtor may cure all defaults and reinstate such debt as debt of the reorganized company
 - If successful, the secured creditors will be deemed “unimpaired” and may not vote
 - Some defaults, however, cannot be cured and therefore the debt will be “impaired”
 - Argument exists that certain non-monetary defaults that cannot be cured might result in damages for pecuniary loss but not “impairment”



IV. Section 363 Sale Transactions



Sale of Assets Free and Clear of Liabilities

- **If distressed company cannot restructure or refinance, the only recourse may be a sale of the business**
- **If company has little or no equity value, trend is for sale of business or assets in bankruptcy under Section 363 of the U.S. Bankruptcy Code, which authorizes a trustee or debtor in possession to sell property of the bankruptcy estate free and clear of any liabilities, adverse claims or liens (but see *PW* decision discussed below)**



Sale of Assets Free and Clear of Liabilities

- **Assets may be sold as a going concern, or in a piecemeal break-up of the company**
- **The debtor must obtain the “highest and best” value for the assets**
- **Often, the decision to conduct sale through a bankruptcy filing will be dictated by the buyer**

Benefits of 363 Sale

Buyer

- **Allows Buyer to acquire business or assets free of liabilities and adverse claims, including unknown claims**
- **Eliminates fraudulent transfer risk**
- **Reduces successor liability risk**

Seller

- **No need for stockholder approval of sale**
- **Provides protection to directors and officers of Seller against “good faith” based claims**
- **Reduced stress in dealing with remaining liabilities and adverse claims**
- **Less vulnerable to stockholder attack**

Negatives to 363 Sale

Buyer

- **363 sale requires bankruptcy auction process in most cases (even if auction was conducted pre-bankruptcy) and gives Buyer reduced assurance of successful acquisition**
- **Break-up fees, expense reimbursement, and overbid protections and the agreed-upon sale process may be altered by the Bankruptcy Court**

Seller

- **Bankruptcy filing may adversely affect the business**
- **Employees may defect**

Ninth Circuit: Credit Bidders Cannot Strip Junior Liens

- In *In re PW, LLC*, the Ninth Circuit BAP held that a senior secured creditor who acquires assets by credit bid in a 363 sale cannot take title to assets free and clear of junior liens
 - The sale to the senior secured creditor was left undisturbed, except that it became retroactively subject to the lien of the former junior creditor
 - Section 363(m) (a bankruptcy sale to a good faith purchaser cannot be unwound on appeal absent a stay pending appeal), did not moot the appeal



PW's Impact on 363 Sales

- **May cause senior secured lenders to aggressively pursue state law remedies instead of cooperating with troubled companies in chapter 11**
- **May cause senior secured creditors to reconsider credit bidding**
- **May cause buyers to prefer the purchase of assets through the plan process rather than the 363 sale process**
- **May cause debtors who need to use the 363 process to elect to file in jurisdictions outside the Ninth Circuit**



Three Ways to Approach 363 Sale

- **Chapter 11 filing without an identified buyer**
 - Not desirable, but may be necessary due to critical liquidity problems, imminent foreclosure and similar crises
- **Chapter 11 filing after executing letter of intent with potential buyer**
 - Terms are not binding, so buyer will not be a Stalking Horse for a better deal
- **Chapter 11 filing after executing definitive asset purchase agreement**
 - Buyer will likely be Stalking Horse in a 363 auction process



Availability of the Section 363 Sale Option

- **When is a 363 Sale Allowed?**
- **Bankruptcy court-approved sales do not require shareholder approval**
 - *In re Betty Owens Sch.*, 1997 U.S. Dist. LEXIS 5877 (S.D.N.Y. 1997)
 - *In re Searles Castle Enterprises, Inc.*, 12 B.R. 127 (Bankr. D. Mass. 1981)
 - *In re Entz*, 44 B.R. 483 (Bankr. D. Ariz. 1984)

Availability of the Section 363 Sale Option (*cont'd*)

- **Absent special permission from the bankruptcy court the sale process must be initiated by the debtor**
 - In a voluntary case, Board action should be obtained to approve the sale
 - Business judgment rule applies
- **Sale must not be a *sub rosa* plan that circumvents the Chapter 11 plan process**
- **Statutory requirements – 11 U.S.C. Section 363(b)(1), the debtor, "after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate."**



Availability of the Section 363 Sale Option (*cont'd*)

- **Statutory requirements (cont'd) - A sale of estate assets is free and clear of non-estate interests if one of the conditions dictated by 11 U.S.C. Section 363(f) is met.**
 - "Applicable non-bankruptcy law permits sale of such property free and clear of such interests", which generally applies to ordinary sales
 - "Such entity consents", which provides the sale may be achieved by formal agreement of a consenting lien holder
 - "Such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property", which permits a secured party to challenge a sale if the sales proceeds will not generate the "indubitable equivalent" of its lien on collateral (11 U.S.C. § § 361, 363(3) and 1129(b)(2)(A)(iii))



Availability of the Section 363 Sale Option (*cont'd*)

- **Statutory requirements (cont'd) - A sale of estate assets is free and clear of non-estate interests if one of the conditions dictated by 11 U.S.C. Section 363(f) is met.**
 - “Such interest is in bona fide dispute”, which term is not defined; however, many courts, have stated that judges must determine whether there is an objective basis for either a factual or legal dispute as to the validity of the debt
 - “Such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest”, which, if read broadly, could lead to the conclusion that common encumbrances such as mortgages, mechanic's liens and tax liens would be released

363 Process – Stages

- **Pre-petition marketing and negotiation**
- **Indications of interest and letters of intent**
- **Agreement with Stalking Horse**
- **Chapter 11 Filing**
- **Court establishment of bid procedures**
- **Post-petition marketing or auction**
- **Sale hearing**
- **Closing**



Considerations for Stalking Horse

- **Advantages to the Stalking Horse**
 - Control of the initial terms of the transaction to “set the standard”
 - Ability to influence the pacing of the transaction
 - Generally has a head-start on due diligence and a longer period of negotiation with the Seller

Considerations for Stalking Horse (*cont'd*)

- **Advantages to the Stalking Horse (cont'd)**
 - Regulatory issues
 - » In a regulated industry, Stalking Horse has opportunity to work with regulators to develop plan to obtain approval of acquisition
 - » Ability to begin seeking approvals and start waiting periods running prior to the auction process
 - Opportunity to develop the confidence of the Seller, estate representatives and other constituents, and to develop relationships with management
 - Stalking Horse has opportunity to obtain break-up fee or expense reimbursement



Considerations for Stalking Horse (*cont'd*)

- **Risks and concerns for the Stalking Horse**
 - Investment of Stalking Horse will ultimately be used for the benefit of the debtor (including by making some material discovered or developed by the Stalking Horse available to other bidders)
 - Stalking Horse creates a clear target that other bidders know they need to beat
 - Court may refuse to approve agreement with Stalking Horse due to factors such as break-up fees, no-shops, overbid protections and lock-ups If court refuses to approve, proposed Buyer is faced with modifying agreement or losing deal



Considerations for Stalking Horse *(cont'd)*

- **Risks and concerns for the Stalking Horse**
 - Effective and approvable Stalking Horse bid must have very few outs, which limits flexibility
 - » The “illusory contract”
 - » The “tethered goat”

V. Bankruptcy Plan Strategies



General – Acquiring Assets Through Confirmed Plan vs. 363 Sale

- **363 Sales**

- Occurs during the case and often well before plan confirmation
- Not dependent on meeting requirements of plan confirmation; however, sale must not be a sub rosa plan
- Since creditor constituencies have no vote, must conduct as an open or public sale

- **Plan Acquisitions**

- Occur as part of the Plan confirmation process
- Can take the form of asset purchase (partial or full) or of taking control of reorganized debtor through plan funding or conversion of fulcrum debt position to equity



General – Acquiring Assets Through Confirmed Plan vs. 363 Sale (*cont'd*)

- Confirmation requirements must be satisfied
- Confirmation of plan approves sale
- Plan acquisitions are more complex, expensive, time consuming, uncertain and involve more constituencies
- However, plan acquisitions are more flexible and provide buyers with greater protections

Benefits of Purchasing Assets Under a Plan

- Despite stringent confirmation process, plan acquisitions provide greater flexibility
- Purchase can take form of asset purchase or taking control of assets/business through acquiring control of reorganized debtor
- 363 sale purchaser can only offer dollars or assumption of debt (or a credit bid); but cannot generally dictate which creditors obtain what portion of purchase price or impact capital structure
- Greater ability to obtain protection from successor liability – section 1141(c) provides that property dealt with by plan is free and clear of all claims and interests while section 363(f) only provides for sales free and clear of interests
- Ability to obtain greater protection from future or unknown claims
 - Section 524(g) provides absolute protection from future asbestos claims if requirements of the section are satisfied, including appointing futures representative for future claimants and creation of claimants' trust
 - Establishing analogous protections in context of non-asbestos liabilities can, although not perfect, protect against these type of future claims

Benefits of Purchasing Assets Under a Plan (cont'd)

- Plan acquisition avoids credit bidding rights of secured lenders
- Plan acquisition eliminates requirement for competitive bidding (except in certain contexts related to “new value exception”)
- Plan structure allows issuance to acquiror of majority or sole ownership in reorganized debtor free and clear of some or all claims of old creditors or equity holders
- Plan acquisition can be structured to channel resolution of claims of old creditors or equity holders to liquidating trust or, alternatively, to transfer assets and business to new operating company leaving old debtor’s estate to resolve claims
- Plan structure represents possible clean way to acquire a “public shell”



Who Can Be a Plan Buyer?

- Third party buyers - Third party buyer may pay consideration either to buy some or all of the assets or acquire majority or sole control of reorganized debtor
- Existing creditors - Creditors holding fulcrum debt position may use the negotiating leverage inherent in that position effectively to become the owner of the reorganized debtor Buyer is not limited to pure asset acquisition
- Old equity - “New Value Exception” to the Absolute Priority Rule may allow existing equity to retain its interest in reorganized company in exchange for contribution of new capital



Potential Tax Advantages of Plan Acquisition vs. 363 Sale

- Acquiring interest in business through ownership in reorganized debtor under plan, as opposed to outright purchase of assets, may allow use of debtor's NOLs (without limitation) to extent no change of control
- Acquiring ownership interest of reorganized debtor under plan may avoid recognition of gain that would have resulted from asset sale
 - » Thus, identical investment by buyer might be more attractive to debtor through plan than through asset sale because portion of sale proceeds not diverted to pay tax on gain
- Unlike Section 363 sales, asset transfers pursuant to plans are not subject to transfer taxes
 - » *Florida Dep't of Revenue v. Piccadilly Cafeterias, Inc.*, 128 S. Ct. 2326 (2008)

Restructuring Through a Plan

- 363 sale cannot be a sub rosa plan, i.e., an effort to impact the structure of the debtor or the treatment of claims without complying with the plan confirmation requirements
- On the other hand, a plan acquisition may be accomplished in conjunction with comprehensive changes in the financial and business structure of the debtor, including
 - Generally redistribute the capital structure of the company in satisfaction of claims
 - Sales of essential or non-essential assets
 - Curing or waiving defaults
 - Satisfaction or modification of liens
 - Statutory capping of certain claim amounts



Restructuring Through a Plan (*cont'd*)

- Amendment of the debtor's corporate charter
- Issuance of new debt or equity securities of the debtor in replacement of existing claims and equity interests – effectively reduces debt service
- Reduction of secured claims to value of underlying collateral and alteration of the amount, interest rate and/or maturity of such claims
- Cancellation of existing stock and elimination of old equity
- Issuance of new equity to plan funders



The Chapter 11 Plan Process

- **Only the Debtor can propose a Plan within the “exclusivity period” (first 120 days of the case)**
 - May be extended for “cause” for up to 18 months
 - As a result of exclusivity, a buyer will need to work with the debtor to purchase through a Plan
- **Prior to voting, the Plan proponent must distribute a court-approved disclosure statement to holders of claims and equity interests**
 - Must provide “adequate information” concerning the Debtor and the Plan



The Chapter 11 Plan Process (*cont'd*)

- **The Plan must classify claims appropriately**
 - Secured claims must be separately classified
 - Claims may be placed in a particular class only if the other claims in the class are “substantially similar”
 - Plan must provide same treatment for each claim or equity interest in particular class
 - Unsecured creditors may be separately classified only if financial interests of separate classes are sufficiently different to warrant separate class voting on Plan



The Chapter 11 Plan Process (*cont'd*)

- **The Debtor solicits votes from each class**
 - Only “impaired” classes are entitled to vote on the Plan
 - Acceptance by a creditor class requires “yes” vote of holders of at least 2/3 of the dollar amounts of claims in the class and more than 50% of the number of claims actually voted
 - The rejection by a class may be “crammed-down” if the cram-down elements are met
 - Regardless of yes or no vote by class, all dissenting creditors must receive at least as much as they would receive in a chapter 7 liquidation – “best interests of creditors” test



The Chapter 11 Plan Process (*cont'd*)

- **The Court will hold a hearing to determine if the requirements for confirmation are met – such requirements include:**
 - Plan has been approved by each class or “cramdown” requirements are satisfied
 - The Plan is feasible – i.e., not likely to be followed by a liquidation or the need for further reorganization
 - The Plan satisfies the “best interests of creditors” test
 - At least one impaired class has voted to accept the Plan
- **The order confirming the Plan will become “final” in 10 days after entry; however the actual Plan “effective date” may be significantly later**

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- **Advises clients in a broad range of industries, including energy, food products, building products, broadcasting and information services**
- **Manages principal investments in distressed companies and in the utility industry**
- **Representative Transactions:**
 - Restructuring of Standard Pacific Corp., Calpine Corp., Level (3) Communications; Exide Technologies, McLeodUSA, ICG Communications, PSINet Inc., Sirius Satellite Radio, BTI Telecom, CMS Energy, CerterPoint Energy, and many others
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