

The Wharton School – University of Pennsylvania
Corporate Restructuring
FNCE 291/791
LAW 908

Fall 2020
Preliminary Course Syllabus

(Please note that this syllabus is subject to change over the duration of the course; however, the general structure and content of the course will remain the same.)

Professors

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Class & Time

Monday, 3:00 p.m. to 6:00 p.m.

Course Description

This course will explore the highly active and sophisticated dealmaking environment that is the hallmark of modern distressed corporate restructuring—both under the supervision of a federal court applying chapter 11 of the United States Bankruptcy Code or through an agreement reached by a company and its creditors in out-of-court negotiations.

The course is primarily comprised of two key components:

- The course will lay the foundation for a robust understanding of distressed dealmaking principles, with key concepts explained by three of the top practitioners in the restructuring field. In particular, the lectures will focus on the fundamental rights and obligations of debtors, creditors, and other parties in interest in the various types of major chapter 11 cases, providing critical insight into understanding the motivations, strategies, and available tools for chapter 11 participants (which also serve as the foundation for out-of-court deals).
- As part of the foundational work, the course will cover valuation methods used for distressed entities.

- The second component of the course is a series of case study panels. The professors survey the market trends from the previous year to bring together key participants from recent deals, including the CEO or chairman of the company, the judge, the lead banker and lead lawyer, and the lead investors to give their insight and perspectives to the class. These panels will provide students real-world insights into the most current issues in the field.

By the end of the course, the student should:

- be familiar with the legal environment which frames distressed restructurings
- be familiar with the various parties, and their roles and interests, in a typical restructuring
- have insights into the different legal and negotiating alternatives for resolving differences in interests across parties to facilitate deal conclusion
- understand how to assess the key elements of a distressed situation as well as the various “puts and takes” across parties to the restructuring that will ultimately drive the outcome

Grades will be based upon individual performance assessed through:

- three, 1 page reflection papers on selected case panels (10 pts each);
- a mid-semester prospectus for your end-of-semester paper (20 pts), **DUE: 11/2 @3pm EST**; and
- a final paper exploring a self-selected topical issue of modern chapter 11 practice (50 pts).
- **Course participation will be considered in enhancing grades.**

Course Schedule

****Please note that the schedule is subject to change based on panelist availability.****

The readings indicated for each class session will provide background to the lecture and may help inform your paper topic. We may not cover the readings in detail in class.

Class 1 (September 14)

Course Introduction / Bankruptcy Background

We will introduce the logistics elements of the course in this opening session. With the remaining time, we will explore the benefits and burdens of chapter 11, case timelines, and key players.

Readings

- James H.M. Sprayregen, *et al.*, *Chapter 11: Not Perfect, But Better than the Alternatives*, 14 J. BANKR. L. & PRAC. 6 (Dec. 2005).
 - An overview of the pros and cons of bankruptcy.
- Kevin M. Lewis, *Bankruptcy Basics: A Primer*, Congressional Research Service (March 22, 2018).
 - An overview of chapter 11 prepared for the members of congress.
- John Yozzo and Samuel Star, *For Better or Worse, Prepackaged and Pre-negotiated Filings Now Account for Most Reorganizations*, 37 Am. Bankr. Inst. J. 18 (2018).
 - A review of prepackaged and pre-Arranged reorganizations and their timelines.

Class 2 (September 21)

Financing Considerations

We will discuss the ways a case can be financed, including issues related to adequate protection and cash collateral, DIP financing, and intercreditor issues.

Readings

- *Windstream Debtor-in-Possession Financing* [Docket No. 376] (skim for context).
 - An example of court-approved DIP financing.
- David A. Skeel, Jr., *The Past, Present, and Future of Debtor-in-Possession Financing*, 25 CARDOZO L. REV. 1905 (2004).
 - A scholarly review of DIP financing trends.
- Keith Wofford, Daniel Egan, Ben Ellison, and Steve Krause, *Recent Developments in Adequate Protection Under Section 361*, 2018 ANN. SURV. OF BANKR. LAW 15 (2018).
 - A review of key issues in adequate protection.

Class 3 (September 28)

Operations & Sales

We will explore a debtor's disclosure obligations, the automatic stay, and issues related to contracts and vendors. We will also discuss the key issues in selling assets in bankruptcy, including the requirement to sell free and clear, and credit bidding.

Readings

- Norton Bankruptcy: *Enjoining Litigation Against Third Parties*.
 - An analysis of the extension of the automatic stay to litigation by creditors against third-parties, a hot topic in current restructuring cases.
- 6th Circ. Torn Over FERC's Power Deal Authority In Ch. 11, LAW360 (Jun. 26, 2019).
 - An article regarding the nuances of contract rejection and its interplay with regulatory schemes.
- Harley E. Riedel & Edward Peterson, *Practical Issues Surrounding Section 363 Sales*, 19 U. FLA. J. L. & PUB. POLICY 75 (2008).
 - Primer re practical considerations in 363.
- *Hearing Transcript: Claire's Stores Inc.* (focus on pages 204 - 220, balance is for reference / context).
 - An example of the importance of running a thorough and fair marketing process -- the Company was running a bankruptcy process but when a lender objected, following extensive litigation and testimony, the bankruptcy judge ordered a new marketing process, starting over and extending the timeline.
- *In re Fisker Auto. Holdings, Inc.*, 510 B.R. 55 (Bankr. D. Del. 2014).
 - A case discussing credit bidding in bankruptcy.

Class 4 (October 5)

Creditor Causes of Action

We will discuss claims and causes of action that can be asserted against a distressed company, including a focus on issues in fiduciary duty law for directors in distressed situations.

Readings

- *In re HH Liquidation, LLC* (Bankr. D. Del, 2018) (**skim the facts and focus on the court's methodology and analysis of the claims**).
 - Creditors' committee brought seventy-eight claims and causes of action against creditors and the debtors' board of directors (including recharacterization, equitable

subordination, breach of fiduciary duty, corporate structuring, and substantive consolidation) all of which were denied by the court.

- PE Leaders' Many Hats Complicate D&O Policies, LAW360 (July 9, 2019).
 - An article summarizing insurance issues that often arise in relation to alleged causes of action.
- Michelle M. Harner & Jamie Marincic, *Committee Capture? An Empirical Analysis of the Role of Creditors' Committees in Business Reorganizations*, 64 VAND. L. REV. 749 (2011) (focus on pgs. 756-767)
 - An article questioning the role of creditors' committees in restructurings.

Class 5 (October 12)

Plan Design Process

We will discuss the key issues in developing a chapter 11 plan of reorganization, including claim priorities, classification and releases.

Readings

- *Reports of the Demise of 'Gifting' Chapter 11 Plans Are An Exaggeration*
 - The article explains the classification and priority scheme of the bankruptcy code, as well as certain limitations thereto
- *Bank of America Nat. Trust and Sav. Ass'n v. 203 N. LaSalle St. P'Ship*, 526 U.S. 434 (1999).
 - This is a seminal case discussing issues of class priority rules.
- Jason W. Bank, *Nuts and Bolts of Evaluating Third-Party Releases in Chapter 11 Plans*, Am. Bankr. Inst. J. (Sept. 2018)
 - An article discussing a key issue in restructurings: third party releases.
- *In re Metromedia Fiber Network, Inc.*, 416 F.3d 136, 141–43 (2d Cir. 2005).
 - An influential opinion on third party releases.

Class 6 (October 19)

Plan Solicitation and Confirmation

We will discuss the key issues in soliciting and confirming a chapter 11 plan of reorganization, including exclusivity, disclosure, voting, disclosure and solicitation, plan confirmation, and the plan effective date.

Readings

- *EXCO Resources, Inc. Plan and Disclosure Statement* (skim for context / reference).

- An example of a recent chapter 11 plan and disclosure statement, with some unique features.
- *In re Transwest Report Properties, Inc.* (9th Cir. 2018).
 - One key issue in plan confirmation is whether the plan is confirmed on a by-debtor basis or all-debtor basis. This is the first circuit level decision on the issue.
- Bruce A. Markell, *A New Perspective on Unfair Discrimination in Chapter 11*, 72 AM. BANKR. L.J. 227 (1998).
 - An article discussing confirmation via cramdown.
- Douglas E. Deutsch & Eric Daucher, *Chapter 11 Plan Confirmation Issues: Settlements, Releases, Gifting and Death Traps*, Am. Bankr. Inst. J. (Oct. 2010).
 - An article explaining certain common objections to confirmation.

Class 7 (October 26)

Valuation in the Context of a Corporate Restructuring: Lecture

In the first of a two week series on valuation, we will provide an overview of:

- key corporate finance principles, *e.g.*, net present value, EBITDA;
- valuation methodologies and mechanics, *e.g.*, comparable company analysis, precedent transactions analysis, discounted cash flow analysis;
- the role of valuation in a corporate restructuring, *e.g.*, valuation as a consideration for plan confirmation and fraudulent transfers, judicial determinations of valuation; and

the motivations and goals of key players in the restructuring arena..

Readings

TBD

Class 8 (November 2)

Valuation in the Context of a Corporate Restructuring; Panel

Our Second week of valuation will cover practical applications of valuation in corporate restructuring from a panel of industry practitioners.

* Active student participation is *highly* encouraged. Students who would like to ask questions of the panel are asked to submit questions the week prior. You will be asked to provide a reflection on two of the panels as part of your grade in the course.

Readings

None

Prospectus DUE by 3:00 p.m.

The Prospectus should be 3-5 pages on the topical issue of modern chapter 11 practice that you plan to submit for your final paper. Include a list of sources. *Submit online before class.*

Class 9 (November 9)

Panel: Liability Management.

Announcement to follow.

Readings

None

* Active student participation is *highly* encouraged. Students who would like to ask questions of the panel are asked to submit questions the week prior. You will be asked to provide a reflection on two of the panels as part of your grade in the course.

Class 10 (November 16)

Panel: Different Approaches to Retail Bankruptcy.

Announcement to follow.

Readings

None

* Active student participation is *highly* encouraged. Students who would like to ask questions of the panel are asked to submit questions the week prior. You will be asked to provide a reflection on two of the panels as part of your grade in the course.

Class 11 (November 23)

Case Study

Announcement to follow.

Readings

None

* Active student participation is *highly* encouraged. Students who would like to ask questions of

the panel are asked to submit questions the week prior. You will be asked to provide a reflection on two of the panels as part of your grade in the course.

Class 12 (November 30)

Case Study

Announcement to follow.

Readings

None

* Active student participation is *highly* encouraged. You will be asked to provide a reflection on two of the panels as part of your grade in the course.

Class 13 (December 7)

Career Panel

Announcement to follow.

Readings

None