

The Wharton School – University of Pennsylvania
Corporate Restructuring
FNCE 2910/7910
LAW 9080-401
Steinberg-Dietrich Hall 351
*****Masks Optional*****

Fall 2022
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

James H.M. Sprayregen (jamespr@law.upenn.edu)
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Class & Time

Monday, 3:30 p.m. to 6:30 p.m.

Kirkland Teaching Assistant Team

Francis Petrie (francis.petrie@kirkland.com)
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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 and through an agreement reached by a company and its creditors in out-of-court negotiations.

The course is comprised of two primary components:

- The course will lay the foundation for a robust understanding of distressed dealmaking principles with key concepts explained by two of the top practitioners in the restructuring field. 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 the motivations, strategies, and tools available to chapter 11 participants. Understanding these rights and obligations is equally important to distressed companies outside of chapter 11 where they 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 topical issues in the field.

By the end of the course, the student should:

- be familiar with the legal environment that frames distressed restructurings;
- be familiar with the various parties, and their roles and interests, in a typical restructuring;
- have insight into the different legal and negotiating alternatives for resolving differences in interests across parties to facilitate deal resolution; and
- 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 panels or guest lectures (10 pts each) **each due before class on the Monday following the applicable case panel or guest lecture;**
- a mid-semester prospectus for your end-of-semester paper (20 pts), **due October 28 at 5 pm EST;** and
- a final paper exploring a self-selected topical issue in modern chapter 11 practice (50 pts) **due December 9 at 5:00 p.m.**
- **Course participation will be considered in enhancing grades.**

Course Schedule

Part 1: Bankruptcy Fundamentals

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.

Introduction (August 29) (MBA Students Only)

Valuation in the Context of a Corporate Restructuring: Lecture

- This MBA-only session 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; and
 - the role of valuation in a corporate restructuring, *i.e.*, 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.

Labor Day (September 5)

No Class

Class 1 (September 12)

Course Introduction / Bankruptcy Background

We will introduce the logistical 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 19)

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

- 11 U.S.C. § 364(a)–(e).
- *Nordic Aviation Financing Debtor-in-Possession Financing Motion* [Docket No. 146] (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 26)

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.
- Keith Goldberg, *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.
- *Mission Product Holdings, Inc. v. Tempnology, LLC*, 139 S. Ct. 1652 (2019).
 - Recent Supreme Court case that includes a long discussion of how rejection of executory contracts and unexpired leases works under section 365.
- Harley E. Riedel & Edward Peterson, *Practical Issues Surrounding Section 363 Sales*, 19 *U. FLA. J. L. & PUB. POLICY* 75 (2008).
 - Primer regarding practical considerations in 363.

- Hearing Transcript: Claire’s Stores Inc. (focus on pages 204–20, 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, the bankruptcy judge, following extensive litigation and testimony, ordered a new marketing process that extended the timeline of the case and required the company to begin from scratch.
- *In re Fisker Auto. Holdings, Inc.*, 510 B.R. 55 (Bankr. D. Del. 2014).
 - A case discussing credit bidding in bankruptcy.

Class 4 (October 3)

Plan Design, Solicitation, and Confirmation

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

Readings

- *Seadrill Limited, Disclosure Statement and Plan* [Docket Nos. 975 & 1109] (skim for context / reference).
 - An example of a recent chapter 11 plan and disclosure statement with some unique features.
- *In re Transwest Resort Properties, Inc.*, 881 F.3d 724 (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.
- *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 thereof.

- *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 Millennium Lab Holdings II, LLC*, 945 F.3d 126 (3d Cir. 2019).
 - Recent Second Circuit case that affirmed a bankruptcy court's order confirming a chapter 11 plan that contained non-consensual, third-party releases and injunctions.

Part 2: Panels, Case Studies, and Guest Lectures

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

You will be asked to provide a 1-page reflection on three of the panels, case studies, or guest lectures as part of your grade in the course. Any of the remaining classes apart from Class 11 are eligible for reflection papers.

Class 5 (October 10)

Panel or Case Study

Announcement to follow.

Readings

None

* Active student participation is *highly* encouraged.

Class 6 (October 17)

(MBA Attendance Optional)

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*, 590 B.R. 211 (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.

- Jennifer Bergstrom, *et al.*, *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 7 (October 24)

Panel or Case Study

Announcement to follow.

Readings

None

* Active student participation is *highly* encouraged.

Prospectus DUE by 5:00 p.m. on October 28

The Prospectus should be 3–5 pages on a topical issue in modern chapter 11 practice that you plan to submit for your final paper. Include a list of anticipated sources. *Submit through Canvas by 5:00 PM on October 28.*

Class 8 (October 31)

Panel or Case Study

Announcement to follow.

Readings

None

* Active student participation is *highly* encouraged.

Class 9 (November 7)

Panel or Case Study

Announcement to follow.

Readings

None

* Active student participation is *highly* encouraged.

Class 10 (November 14)

Panel or Case Study

Announcement to follow.

Readings

None

* Active student participation is *highly* encouraged.

Class 11 (November 21)
(Law and Undergraduate Students Only)

Valuation in the Context of a Corporate Restructuring: Lecture

- This class 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, and discounted cash flow analysis; and
 - the role of valuation in a corporate restructuring, *i.e.*, 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.

Class 12 (November 28)

Panel or Case Study

Announcement to follow.

Readings

None

* Active student participation is *highly* encouraged.

Class 13 (December 5)

Hedge Fund Founder Discussion

Announcement to follow.

Readings

None

Final Paper Due December 9, 2022, at 5:00 p.m.

In lieu of a final exam, students will prepare a final paper with an upward limit of ten pages. Students will choose their own topics; the only parameter is that papers must consider an issue in

modern chapter 11 practice. Inspiration may be drawn from assigned readings, supplemental readings, or any other source related to the subject matter of the course.