



AS OF: OCT. 15, 2022

CORPORATE DISTRESS AND REORGANIZATION LAW
LGST 2460 / 6460
Spring 2023

Prof. Vince Buccola
Legal Studies & Business Ethics Department
Huntsman Hall 649
buccola@wharton.upenn.edu

Class Meetings Mondays & Wednesdays, 3:30 – 5:15p
Huntsman __
Note: Class follows the MBA calendar (see agenda below)

Office Hours Tuesdays, [TIME TBD] (or by appointment)
Huntsman 649

Canvas <https://canvas.upenn.edu/courses/1689763>

Course Description

Never does law play a more prominent role in investment and managerial decisionmaking than when a company faces financial distress. The value of claims on a distressed firm depends not only on business fundamentals, but also, crucially, on how the law can be expected to divvy up control and cash-flow rights among parties with imperfectly cooperative incentives. Working knowledge of the law is thus required for anyone who hopes to operate in distressed situations—whether as an investor, advisor, or manager. This course aims to develop that knowledge. By the end of the semester, students who take this course seriously should: (1) grasp the conceptual and historical foundations of law’s response to financial distress; (2) understand how the fundamentals of workout and bankruptcy law commonly play out (and determine investor recoveries) in the modern environment; and (3) be familiar with cutting-edge practices and unresolved dilemmas at the forefront of distress today.

Familiarity with basic corporate finance principles will be helpful but is not required. Students willing to spend time on Wikipedia can thrive without any previous exposure.

Assessment

For LGST 6460

- Professionalism (20%)
- Final Exam (80%)

For LGST 2460

- Professionalism (20%)
- Group Presentation—Case Study (20%)
- Final Exam (60%)

Policies

This course will involve a combination of lecture, discussion, and “Socratic” questioning. Cold calling will be a regular feature of class. To make the course as valuable to your friends (and you) as possible, please observe the following norms:

- *Do the Reading.* You should complete assigned readings before class. Completion means more than having skimmed. You should be ready to answer questions about the assigned texts and discuss them critically.
- *But Tell Me If You Didn't.* Schedules get busy. If you are unable to finish the readings, email me at least one hour before class, and I will not call on you (max four times in the semester).
- *Don't Pretend to Have Read What You Haven't.*
- *No Electronic Devices in Class.* If you have an extraordinary need, please talk with me.

Text

Course pack [study.net] available via Canvas.

// tentative agenda on next page

1. **JAN. 18: Introduction; The Legal Bases of Capital Structure and Conflict**
Readings none

2. **JAN. 23: Bankruptcy for Merchants**
Readings 13 Eliz. c. 5
Twyne's Case
Tabb, *History of the Bankruptcy Laws* [pp. 5–14]
Assignment recoveries problem set

3. **JAN. 25: Railroads and the Equity Receivership**
Readings Bond of the Washington Manchester Railroad Co.
Rosenberg, *A New Scheme of Reorganization* [pp. 523–29]
Railroad v. Howard

4. **JAN. 30: The New Deal Vision**
Readings Skeel, *Debt's Dominion* [pp. 101–13; 119–27]
Case v. Los Angeles Lumber Products Co.
In re Atlas Pipeline Corp.
Trust Indenture Act of 1939, § 316(b)

5. **FEB. 1: Reorganization Under the Bankruptcy Code (as Intended)**
Readings 11 U.S.C. §§ 109(d); 301, 303(b); 1107(a); 1112(b)(1), (4)
In re General Growth Properties

6. **FEB. 6: Collateral Protection and Estate Management**
Readings 11 U.S.C. §§ 362(a), (d); 363(b); 365(a), (b)(1)
United Savings Association v. Timbers of Inwood Forest
In re Kmart

7. **FEB. 8: Financing Bankruptcy**
Readings 11 U.S.C. § 364(a)–(d)
Huebner, *Debtor-in-Possession Financing*
In re Los Angeles Dodgers
Zumbro, *DIP and Exit Financing Trends* [optional]

8. **FEB. 13: Marshaling Resources**
Readings 11 U.S.C. §§ 547(b); 101(31)(B)
 11 U.S.C. §§ 548(a)(1); 101(32)(A)
 11 U.S.C. § 550(a), (b)
 Metropolitan Life v. RJR Nabisco
 In re *Tribune Co. Fraudulent Conveyance Litigation*
9. **FEB. 15: Claims: Size, Classification, and Voting**
Readings 11 U.S.C. § 502(a), (b)(2), (c)
 11 U.S.C. § 506(a)(1), (b); § 552(a), (b)(1)
 In re *Chateaugay*
 Momentive Performance Materials v. BOKF (In re MPM Silicones)
 11 U.S.C. §§ 1122–26
 Dish Network v. DBSD North America (In re DBSD)
10. **FEB. 20: Plan Confirmation: Entitlements and End-Arounds**
Readings 11 U.S.C. § 1129(a)(7), (b)
 Bank of America Nat'l Trust & Savings v. 203 N. La Salle
 Czyzewski v. Jevic Holding
 In re *ICL Holding*
11. **FEB. 22: The 1990s: Prepacks and the Advent of Creditor Control**
Readings Weiss & Wruck, *Chapter 11's Failure in the Case of Eastern Airlines*
 11 U.S.C. § 1126(b)
12. **FEB. 27: Going-Concern Sales**
Readings 11 U.S.C. §§ 1123(b)(4); 1141(c)
 11 U.S.C. § 363(b), (f)
 In re *Lionel*
 In re *Chrysler*

13. **MAR. 13: Capital Structure Complexities**
Readings In re *LTV Steel*
 In re *Franchise Service of North America*
 In re *Owens Corning*
14. **MAR. 15: Decoding Leveraged Credit Documents 1: Bond Indentures**
Readings Windstream—Note Indenture
 Miller et al., *Understanding High-Yield Bonds* (optional reference)
15. **MAR. 20: Bondholder Activism**
Readings *Wilmington Savings Fund v. Cash America Int'l*
 U.S. Bank v. Windstream
16. **MAR. 22: Bond Workout Tactics**
Readings Trust Indenture Act of 1939, § 316(b), *redux*
 Katz v. Oak Industries
 Marblegate Asset Mgmt. v. Education Mgmt. Finance
17. **MAR. 27: Decoding Leveraged Credit Documents 2: Credit Agreements**
Readings Windstream—Credit Agreement
 TBD (optional reference) [to be available on Canvas]
18. **MAR. 29: Priming Transactions: Dropdowns**
Readings *Eaton Vance v. Wilmington Savings Fund* (Complaint)
 Argos Holdings v. Citibank (Complaint)
19. **APR. 3: Priming Transactions: Uptiers**
Readings *Audax Credit Opportunities v. TMK Hawk Parent*
 Bayside Capital v. TPC Group
20. **APR. 5: Tapping Derivatives Investors**
Readings Paulos et al., *CDS Auctions: An Overview* [pp. 105–20]
 Solus Alternative v. GSO (Complaint)
 [Swap Seller Looks to Salvage Bad Bankruptcy Bet](#)

| | | |
|-------|-----------------------------|---|
| 21. | APR. 10: <i>Readings</i> | Chapter 11 Redux: Support Agreements; Rights Offerings; Releases 11 U.S.C. § 1125 <i>In re Indianapolis Downs</i> 11 U.S.C. § 1123(a)(4) <i>Ad Hoc Committee v. Peabody Energy (In re Peabody)</i> |
| 22. | APR. 12: <i>Readings</i> | Cross-Border Insolvency Mayer Brown: Scheme of Arrangement [Canvas → Files] Singapore’s New “Supercharged” Scheme of Arrangement <i>Westbrook, Chapter 15 At Last</i> <i>In re Ocean Rig UDW</i> |
| 23. | APR. 17: <i>Readings</i> | Sovereign Debt <i>NML Capital v. Republic of Argentina</i> The Real Story of How a Hedge Fund Detained a Vessel in Ghana <i>Crystallex Int’l v. Bolivarian Republic of Venezuela</i> |
| 24. | APR. 19: <i>Readings</i> | Spillover / Review none |
| <hr/> | | |
| 25. | APR. 24: <i>Readings</i> | Group Presentations – LGST 2460 (Undergraduates) Only N/A |
| 26. | APR. 26: <i>Readings</i> | Group Presentations – LGST 2460 (Undergraduates) Only N/A |
| <hr/> | | |

FINAL EXAM: Date and time TBD