

The Wharton School – University of Pennsylvania
FNCE 391/891
Corporate Restructuring

Fall 2017
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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Teaching Assistants

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Classroom & Time

FNCE 891/LAW 908 (MBA/JD) – M/W at 9:00 a.m. – 10:30 a.m. – JMHH 250
FNCE 391 (Undergraduate) – M/W at 10:30 a.m. – 12:00 p.m. – JMHH 250

Course Description

This course is designed to provide students with an understanding of the issues regarding corporate restructuring and the financial management of distressed corporations. In any situation of financial distress, there are two imperatives requiring attention if parties aspire to restructure rather than liquidate: (1) dealing with the restructuring of the various claims on the organization and resolving who will receive what new claim, in replacement of existing claims, and (2) ensuring the newly restructured entity is able to successfully manage for value creation and be a viable firm post-restructuring. The interaction of these two imperatives, in particular, how alternative restructuring proposals impact the viability of the newly restructured firm, is key to a successful distressed restructuring. By the end of the course participants 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
- be familiar with the tools and methods for anticipating the financial distress of an organization and understand why the firm is in financial distress
- be capable of assessing the impact of the legal/financial restructuring on the viability of the firm,
- be able to assess the extent to which alternative restructuring proposals will succeed or fail to enable correction of the management errors which led to the distress in the first place
- understand how to assess both the sources and magnitude of the value creation (or destruction) potential of a restructuring event as well as the various transfers of value across parties to the restructuring

On the legal dimension, 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. On the finance and business dimension, this course will consider the determinants of financial distress, the methods for anticipating financial distress, how different negotiated outcomes impact both value to be created and value to be transferred across parties, and the role of alternative restructurings for enhancing the ability of the newly restructured company to thrive *post* restructuring.

The course will proceed in three stages. The first stage of the course will be lecture classes. These will focus on establishing the legal framework, including the fundamental rights and obligations of debtors, creditors, and other parties in interest in the various types of major chapter 11 cases, and the conceptual framework for assessing a firm's financial viability and the causes of financial distress and the value impact of alternative restructurings. This foundation will provide critical insight into understanding the motivations, strategies, and available tools for chapter 11 participants. The second stage of the course will feature a series of case exercises and panel discussions. The case exercises are intended to provide participants an opportunity to work in teams and discuss, analyze, and propose their recommendations for resolving the case situation. The panel discussions will offer the personal perspectives of key players in the restructuring arena—*e.g.*, federal judges, corporate managers, investors, bankers, and/or financial advisers.¹ The third and final stage of the course will involve a mock restructuring simulation, in which students will be assigned participant roles and challenged to apply the lessons provided in the first and second stages to navigate their way through an iterative, realistic negotiating exercise.

Grades will be based upon team performance assessed based upon the case exercises and a paper exploring a self-selected topical issue of modern chapter 11 practice (50%), performance in the mock exercise (35%), and seminar participation (15%).²

1 To accommodate the schedules of our guest speakers, the three classes constituting the second stage of the course are subject to change and may deviate from their scheduled dates.

2 Students are highly encouraged to coordinate with the teaching assistants with respect to generating an acceptable paper topic and structuring their mock restructuring presentation.

Course Schedule

<u>Date</u>	<u>Topic</u>	<u>Assignment</u>
Wednesday, August 30, 2017	Course Introduction	no assignment due today
Monday, September 4, 2017	No class today	
Wednesday, September 6, 2017	Conceptual framework – Maintaining Viability	no assignment due today
Monday, September 11, 2017	Chapter 11 background & mechanics	no assignment due today
Wednesday, September 13, 2017	How did we get here – causes and costs of distress	no assignment due today
Monday, September 18, 2017	Chapter 11 background & mechanics, cont'd	no assignment due today
Wednesday, September 20, 2017	How did we get here - what is "viable?"	no assignment due today
Monday, September 25, 2017	Chapter 11 background & mechanics, cont'd	no assignment due today
Wednesday, September 27, 2017	Valuing the Business: Theory and Practice	Guest Speaker - Ronen Bojmel, Guggenheim
Monday, October 2, 2017	Chapter 11 background & mechanics, cont'd	no assignment due today
Wednesday, October 4, 2017	Anticipating distress & Why we don't agree	Merrill Lynch (and/or General Motors)
Monday, October 9, 2017	Chapter 11 background & mechanics, cont'd	no assignment due today
Wednesday, October 11, 2017	Out of court restructuring: Bank or Bonds	Pinewood Mobile Homes(or Citigroup Exchange Offer)
Monday, October 16, 2017	Chapter 11 background & mechanics, cont'd	no assignment due today
Wednesday, October 18, 2017	Out of court restructuring: International	Crisis at the Mill
Monday, October 23, 2017	Panel: Ultra Petroleum	
Wednesday, October 25, 2017	Out of court restructuring: Equity Rights	KPN Rights Offering
Monday, October 30, 2017	Panel: LINN Energy	
Wednesday, November 1, 2017	Chapter 11 restructuring: Prepack	Chrysler Fiat
Monday, November 6, 2017	Panel: TCEH Corp.	
Wednesday, November 8, 2017	Chapter 11 Financial Institutions	Oaktree and CIT Group (or Mellon Bank)
Monday, November 13, 2017	Guest Speaker: Distressed Hedge Funds	
Wednesday, November 15, 2017	Mock Restructuring Project Introduction	
Monday, November 20, 2017	No class today	
Wednesday, November 22, 2017	No class today	
Monday, November 27, 2017	Mock Restructuring Simulation	Simulation
Wednesday, November 29, 2017	Mock Restructuring Simulation	Simulation
Monday, December 4, 2017	Mock Restructuring Simulation	Simulation
Wednesday, December 6, 2017	Mock Restructuring Simulation	Simulation
Monday, December 11, 2017	Mock Restructuring Simulation	Simulation

Class 2 (September 6, 2017)

Conceptual Framework: Maintaining Viability

- We will introduce the finance elements of the course
- The “colors of value” – we will distinguish various perspectives which will aid and structure our discussions throughout the course.

Readings

- Managing for Value 2.0, by Kaiser and Young, *Journal of Applied Corporate Finance*, Winter 2014
- The Hazards of Growth, by Kaiser and Young, *Journal of Applied Corporate Finance*, Summer 2015

Class 3 (September 11, 2017)

Chapter 11 Background & Mechanics

- The roles and motivations of various parties in interest (*e.g.*, debtors, secured creditors, unsecured creditors’ committees, equityholders) and their advisers (*e.g.*, restructuring counsel, financial advisers, turnaround experts).
- The rise of secured lending and the emergence of distressed debt investing and distressed mergers and acquisitions.
- The Bankruptcy Code as a toolbox for debtor rehabilitation:
 - Topics covered will include (i) automatic stay, (ii) plan exclusivity, (iii) sale of assets outside the ordinary course of business, (iv) rejection of unexpired leases and executory contracts, *etc.*
- Overview of the key structural provisions of the Bankruptcy Code (*e.g.*, absolute priority rule, feasibility, best interests of creditors test).
- Avoidance powers provided under Chapter 5 of the Bankruptcy Code.
- Alternatives to a traditional “free fall” bankruptcy (*e.g.*, out-of-court workouts, prepackaged and prearranged plans, and various state law remedies to effectuate a corporate restructuring).
- Operational considerations (*e.g.*, how business operations may be rationalized and streamlined in order for a firm to remain competitive).
- Financial considerations (*e.g.*, how capital structures may be delivered in order for a firm to satisfy its debt service obligations).
- Overview of fiduciary duties (*e.g.*, the duty of care, the duty of loyalty, and the applicable standards of judicial review).
- Corporate governance and distressed firms (*e.g.*, the solvency of the corporate enterprise)

and the implications for corporate governance imperatives, insider/affiliate issues).

- Fiduciary duties with respect to non-Delaware entities, limited liability companies, and partnerships.
- Causes of action that may be asserted against directors, officers, and third parties predicated upon a breach of fiduciary duty.
- Fiduciary obligations of creditors and ad hoc groups.

Readings

- Douglas G. Baird & Robert K. Rasmussen, *Antibankruptcy*, 119 YALE L. J. 648 (2009-2010)
- James H.M. Sprayregen, *et al.*, *Chapter 11: Not Perfect, But Better than the Alternatives*, 14 J. BANKR. L. & PRAC. 6 (Dec. 2005)
- Statement of James H.M. Sprayregen to the ABI Commission for the Reform of the Chapter 11 of the Bankruptcy Code
- Mike Spector & Tom McGinty, *Bankruptcy Court is Latest Battleground for Traders*, WALL ST. J. (Sept. 7, 2010), *available at* <http://online.wsj.com/article/SB10001424052748703309704575413643530508422.html>

Class 4 (September 13, 2017)

Conceptual Framework: Causes and Costs of Financial Distress

The road to ruin is a popular path. We will consider the causes and costs of financial distress and consider what might prevent managers from failing to avoid collapse.

Readings

- The Costs of Financial Distress, by Kevin Kaiser, lecture note

Class 5 (September 18, 2017)

Chapter 11 Background & Mechanics

(continued)

Readings

- *In re Lyondell Chemical Company*, 402 B.R. 571 (Bankr. S.D.N.Y. 2009)
- *In re Chrysler*, 405 B.R. 84 (Bankr. S.D.N.Y. 2009)
- *Bank of America N.T. & S.A. v. 203 N. La Salle Street P'ship*, 526 U.S. 434 (1999)

- James H.M. Sprayregen, *et al.*, *The Race to the Starting line: Developing Prepackaged and Prenegotiated Reorganization Plans to Maximize Value, in Navigating Today's Environment*, The Directors' and Officers' Guide to Restructuring (2010)
- Brian K. Tester, *et al.*, *Need for Speed: Prepackaged and Prenegotiated Bankruptcy Plans* (American Bankruptcy Institute), available at <http://www.abiworld.org/committees/newsletters/busreorg/vol9num7/pack.pdf>

Class 6 (September 20, 2017)

Conceptual Framework: What is Viable, and Managing Financial Distress

We will consider the defining steps of financial collapse and the challenges of resolving the distress before it becomes acute.

Readings

- Managing Financial Distress, by Kevin Kaiser, lecture note

Class 7 (September 25, 2017)

Chapter 11 Background & Mechanics

(continued)

Readings

- Transcript from First Day Hearing. *In re Reddy Ice Holdings, Inc.*, Case No. 12-32349 (SGJ) (Bankr. N.D. Tex., Apr. 17, 2012)
- *Motion of the Debtors for Entry of An Order Authorizing Debtors to Reject Certain Energy Contracts and the Affidavit of Paul Posoli in Support of the Motion of the Debtors for Entry of An Order Authorizing Debtors to Reject Certain Energy Contracts. In re Calpine Corp.*, Case No. 05-60200 (BRL) (Bankr. S.D.N.Y. 2007)
- *Credit Lyonnais v. Pathe Communications Corp.*, Civ. A. No. 12150, 1991 WL 277613, at *36 n.55 (Del. Ch. Dec. 30, 1991)
- *N. Am. Catholic Educ. Programming Found., Inc. v. Gheewalla*, 930 A.2d 92, 101 (Del. 2007)
- *Official Comm. of Unsecured Creditors of Fedders N. Am., Inc. v. Goldman Sachs Credit Partners L.P. (In re Fedders North America, Inc.)*, 405 B.R. 527, 552 (Bankr. D. Del. 2009)
- *CML V, LLC v. Bax*, 28 A.3d 1037 (Del. 2011)

Class 8 (September 27, 2017)

Panel Presentation: Valuation in the Context of Corporate Restructuring

- 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 flows 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).
- Motivations and goals of key players in the restructuring arena.

Guest Panel

- Ronen Bojmel – Senior Managing Director, Investment Banking, Guggenheim Securities, LLC

Readings

- Hon. Christopher S. Sontchi, *Valuation Methodologies: A Judge's View*, 20 AM. BANKR. INST. L. REV. 1 (Spring 2012)

* Active student participation is *highly* encouraged.

Class 9 (October 2, 2017)

Chapter 11 Background & Mechanics

(continued)

Class 10 (October 4, 2017)

Conceptual Framework: Anticipating Financial Distress

The road to ruin is a popular path. We will consider the causes and costs of financial distress and consider what might prevent managers from failing to avoid collapse.

Readings

- Predicting a Firm's Financial Distress – Merrill Lynch, Ivey case W12114

Class 11 (October 9, 2017)

Chapter 11 Background & Mechanics

(continued)

Class 12 (October 11, 2017)

Conceptual Framework: Dealing with Financial Distress – Exchange Offers

Convincing creditors to provide breathing space is difficult for many reasons. In this session we consider the possibility of completing an out-of-court exchange offer to recapitalize the firm and avoid bankruptcy and Chapter 11.

Readings

- Pinewood Mobile Homes, HBS case 9-915-547
- Alternate case: Citigroup Exchange Offer, HBS case

Class 13 (October 16, 2017)

Chapter 11 Background & Mechanics

(continued)

Class 14 (October 18, 2017)

Conceptual Framework: International Situation

The legal environment provides the critical context in which the restructuring must be negotiated. How does a change in context alter the deal-making?

Readings

- Crisis at the Mill, INSEAD case study

Class 15 (October 23, 2017)

Panel Presentation: Ultra Petroleum

Ultra is one of the lowest-cost operators in the domestic oil and gas industry and has its principal assets in the Pinedale Field in Wyoming. In March 2017, Ultra confirmed a Chapter 11 plan of reorganization that valued the enterprise at \$6 billion (with nearly \$4 billion in equity value), and included \$2.4 billion in debt financing raised in the capital markets and \$580 million raised via an equity rights offering.

Guest Panel

- **Thane W. Carlston – Managing Director, Co-Head of Recapitalization and Restructuring at Moelis & Co.**
- **Chris Greco – Restructuring Partner at Kirkland & Ellis**
- **J.P. Hanson – Managing Director, Head of E&P Group, Houlihan Lokey**
- **Todd Snyder – Executive Vice Chairman at Rothschild Global Advisory**

- **Edward Weisfelner – Chair of the Bankruptcy and Restructuring Practice Group at Brown Rudnick LLP**

Readings

- Readings to come.

* Active student participation is *highly* encouraged.

Class 16 (October 25, 2017)

Conceptual Framework: Equity Rights Offering

For publicly traded companies, a possible solution might be to pursue a deeply discounted rights offering in an effort to force equity holders to inject more cash to recapitalize the company.

Readings

- KPN Rights Offering Prospectus

Class 17 (October 30, 2017)

Panel Presentation: LINN Energy

LINN is a leading independent oil and natural gas exploration and production company with operations in 12 states and eight discrete U.S. regions. LINN reached agreement with certain of its lenders on terms of a Restructuring Support Agreement and chapter 11 filing pursuant to which Linn reduced debt by more than \$5 billion to total debt of \$1.012 billion and pro forma net debt of \$962 million, resulting in \$730 million of liquidity.

Guest Panel

- **Mark E. Ellis – President and CEO of LINN Energy**
- **Evan Lederman – Partner, Co-Head of Restructuring at Fir Tree Partners**
- **Andrew Yearley – Managing Director at Lazard**

Readings

- Readings to come.

* Active student participation is *highly* encouraged.

Class 18 (November 1, 2017)

Conceptual Framework: Chapter 11 – Prepack option

The possibility of a prepackaged bankruptcy can reduce cost and improve efficiency for all

concerned. However, it is only a solution for special situations.

Readings

- Chrysler Fiat 2009, HBS case 9-811-030

Class 19 (November 6, 2017)

Panel Presentation: TCEH Corp.

Energy Future Holdings Corp. (“EFH”) is the largest generator, distributor, and certified retail provider of electricity in Texas, and is the product of the largest buy-out in history. With over \$49 billion in liabilities and \$36 billion in assets, EFH’s Chapter 11 case is the seventh largest Chapter 11 case filed in history. Under part of the Company’s Chapter 11 plan, which went effective in October 2016, TCEH and its subsidiaries emerged from Chapter 11, and TCEH emerged as a new standalone company, which operates the competitive retail side of the business (i.e., TXU Energy) and the competitive generation side of the business (i.e., Luminant).

Guest Panel

- **Gavin Baiera – Portfolio Manager**
- **Paul Keglevic – CEO/CRO of Energy Future Holdings**
- **Alan W. Kornberg – Partner at Paul, Weiss, Rifkind, Wharton & Garrison LLP**
- **Thomas E. Lauria – Global Chair, Financial Restructuring and Insolvency at White & Case LLP**
- **Charles Tauber – Anchorage Capital**

Readings

- Readings to come.

* Active student participation is *highly* encouraged.

Class 20 (November 8, 2017)

Conceptual Framework: Distress in a Financial Institution

Financial institutions provide a different legal and management context in which to examine the causes and costs of financial distress, and also present particular challenges when trying to resolve the distress.

Readings

- Oaktree and the Restructuring of CIT Group (A), HBS case 9-214-035
- Mellon Bank

Class 21 (November 13, 2017)

Guest Speaker: Distressed Hedge Funds

- General investing strategies and past lessons learned (*e.g.*, distressed investment theses, fund approaches, application of strategies, and war stories).
- Issues and goals with respect to distressed debt investing (*e.g.*, fulcrum securities, rights offerings, DIP lending, trading restrictions (non-disclosure agreements and walls)).
- Global and macroeconomic trends in the distressed investing arena (*e.g.*, European opportunities).
- Career development and specialization.

Guest Speaker

- **Steven A. Tananbaum, Founding Partner, Chief Investment Officer & Executive Committee Member at GoldenTree Asset Management**

Readings

- Readings to come.

* Active student participation is *highly* encouraged.

Class 22 (November 15, 2017)

Mock Board Exercise Introduction, Distribution of Presentation Materials, and Team Selection

This class will introduce the third stage of the class—the mock boardroom exercise.

A factual scenario will be distributed in which the client has retained various professionals for advice in the form of a presentation to the client's Board of Directors proposing a potential restructuring along with the evaluation of any alternatives.

Following distribution of the materials, the class will be divided into twelve separate teams playing the role of the professionals.

Each team will be asked to prepare a presentation to the Board of Directors, which will be comprised of the other teams not presenting that day. Each team will be presented with at least one fact absent from the other teams' fact patterns. Teams will be assessed based on their overall presentation and recommendations with respect to their specific fact patterns.

Class 23 (November 27, 2017)

Mock Restructuring Exercise: Presentations & Feedback

In this class, the teams will each give a 30-minute presentation to the company's Board of Directors, which roles will be played by the instructors and TAs. Following each presentation, the instructors will provide feedback.

Class 24 (November 29, 2017)

Mock Restructuring Exercise: Presentations & Feedback

In this class, the teams will each give a 30-minute presentation to the company's Board of Directors, which roles will be played by the instructors and TAs. Following each presentation, the instructors will provide feedback.

Class 25 (December 4, 2017)

Mock Restructuring Exercise: Presentations & Feedback

In this class, the teams will each give a 30-minute presentation to the company's Board of Directors, which roles will be played by the instructors and TAs. Following each presentation, the instructors will provide feedback.

Class 26 (December 6, 2017)

Mock Restructuring Exercise: Presentations & Feedback

In this class, the teams will each give a 30-minute presentation to the company's Board of Directors, which roles will be played by the instructors and TAs. Following each presentation, the instructors will provide feedback.

Class 27 (December 11, 2017)

Mock Restructuring Exercise: Presentations & Feedback

In this class, the teams will each give a 30-minute presentation to the company's Board of Directors, which roles will be played by the instructors and TAs. Following each presentation, the instructors will provide feedback.

Teaching Assistant Assignments

Please feel free to reach out to your assigned TA for questions or guidance on paper topics.

AnnElyse Gibbons (annelyse.gibbons@kirkland.com)		
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