Best Practices

Investing in Distressed or Underperforming Companies: Recent Challenges to Favored Deal Structures

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As the distressed deal market becomes more competitive, with more money and fewer deals, a recent trend has developed. Losing bidders or creditors, who are attempting to leverage a recovery (or a better recovery), are challenging acquisition structures typically used by distressed investors in Chapter 11 cases. These challenges relate to reorganization plans, claims that have been purchased for use as a credit bid in a sale process, and Section 363 sales. This discussion focuses on some of these trends. First, the discussion explores whether plans, in which management, equity holders or insiders retain some interest, may need to be subject to competitive bidding. Next, the discussion analyzes recent case law in the claims trading area and how creditors or others may challenge purchased claims and attempt to limit use of the purchased claim to credit bid for a debtor corporation's assets. Finally, the discussion explores recent challenges to Section 363 sales made by losing bidders in an effort to re-open the auction process. To ensure that they win the deal, any participants in the distressed marketplace should carefully structure any proposed acquisition and be prepared for these challenges.

Introduction

Over the years, many funds were raised specifically for the purposes of acquiring or otherwise investing in distressed or underperforming companies (the "distressed investing market"). Today's distressed investing market continues to remain competitive, with a highly liquid market and a relatively small number of deals to pursue. As a result, many investors, who are in the market to buy or invest in distressed or underperforming companies (the "distressed investor"), are continuing to use favored deal structures in an effort to secure a deal by:

1. partnering with existing management or existing equity holders to propose a plan,
2. controlling the fulcrum security (by buying claims), or
3. aggressively attacking the outcome of a Bankruptcy Code Section 363 sale process to attempt to win the deal.

In addition, existing management and existing equity holders are becoming more creative in attempting to maintain ownership of the company; at the same time, distressed investors are reaching out to creditors (or vice versa) in an effort to force a sale of the company or a different case outcome. Because of these pressures in the distressed investing market, there has been increased litigation activity around various deal structures.

This discussion provides an overview of recent decisions involving new value reorganization plans, claims trading and Section 363 sales. These decisions likely will lead to modifications of deal structures to prevent attack, either before or after the acquisition.

New Value Reorganization Plans: Opportunities and Challenges

New value reorganization plans are frequently used in single-asset real estate cases and reorganizations of privately held companies. In these cases, existing equity holders propose a plan that allows them to retain control of the reorganized debtor corporation in exchange for an infusion of cash. In effect, existing equity holders repurchase their equity interests in the reorganized company.

Generally, the Bankruptcy Code does not allow existing equity holders to retain their interests in the reorganized debtor. This statement is true unless all creditors agree under the plan (i.e., the plan is a consensual plan) or the plan provides for payment in full of all creditor claims.

If a debtor corporation proposes a plan that alters the pre-bankruptcy contractual rights of, or impairs, one or more classes of creditors and any class of impaired creditors votes against or objects to confirmation of the plan, that objection will be sustained (and confirmation of the plan denied) if the plan discriminates unfairly or is not fair and equitable with respect to each objecting impaired class.[1]

To be fair and equitable to an objecting class, a plan is required to provide that either of the following occur:

1. The objecting creditors' allowed claims will be paid in full.
2. The holder of any claim or interest that is junior to the dissenting creditor will not receive or retain any property under the plan on account of such junior claim or interest.[2]

This latter requirement is known as the "absolute priority rule" and essentially requires that senior creditors' claims be paid first. If existing equity holders want to retain control of the reorganized company, the absolute priority rule requires the plan to provide for the full payment of all creditor claims in order for the plan to be confirmed. The rule applies unless all creditor classes consent to different treatment.

The New Value Exception to the Absolute Priority Rule

For existing equity holders, the absolute priority rule is not always absolute. A new value reorganization plan is based on the new value exception to the absolute priority rule. Under the new value exception, a reorganization plan provides for existing equity holders to contribute new value in exchange for equity interests in the reorganized debtor corporation and does not require all senior creditors to be paid in full. In certain cases, a new value reorganization plan structure may be attractive to and advantageous for existing equity holders, as well as other participants in a restructuring.

For example, if the debtor corporation is in a specialized industry or market, a potential acquirer may view management or existing equity holders (in a privately held business) as being in the best position to effectively and efficiently operate the reorganized debtor after its emergence from bankruptcy. A third party may work with the existing equity holders in an attempt to propose a variation of the traditional new value reorganization plan. In the variation, the company is acquired without an auction and the existing equity holders retain some amount of ownership in the reorganized company upon emergence.

Alternatively, a new value reorganization plan structure may provide existing equity holders with leverage to prevent a distressed investor, who has bought into the capital structure, from executing its strategy to acquire the company through a debt for equity swap or sale process.

The New Value Reorganization Plan Market Test

More than a decade ago, in *Bank of America National Trust and Savings Association v. 203 N. LaSalle St. Partnership* ("*203 N. LaSalle*"),[3] the United States Supreme Court addressed the new value exception. The Supreme Court held that in order to confirm a new value reorganization plan, the adequacy of the new value had to be subjected to a market test.

The Supreme Court stated that

> [i]t would, of course, be a fatal flaw if old equity acquired or retained the property interest without paying full value. It would thus be necessary for old equity to demonstrate its payment of top dollar, but this it could not satisfactorily do when it would receive or retain the property under a plan giving it exclusive rights and in the absence of a competing plan of any sort. Under a plan granting exclusive rights, making no provision for competing bids or plans, any determination that the price was top dollar would necessarily be made by the judge in bankruptcy court, whereas the best way to determine value is exposure to a market.[4]

What the Supreme Court's decision in *203 N. LaSalle* left unanswered was whether the market test of a new value reorganization plan requires an auction—and not just (1) expert testimony as to value or (2) a showing that the attempts to market the debtor were unavailing.

After the *203 N. LaSalle* decision, in connection with new value plans, courts have sometimes required an auction of the equity interests in the reorganized debtor being distributed under the plan or termination of the debtor's exclusive right to propose a plan in order to allow for the competing plans to be proposed.

In the case of a debtor attempting to maintain control of the company, these options (auction of the equity interests in the reorganized debtor corporation or terminating exclusivity to allow for competing plans to be proposed) are risky. This is because distressed investors could use these opportunities to attempt to acquire the company.

The Expanding Reach of the New Value Reorganization Plan Concept

Recently, the U.S. Court of Appeals for the Seventh Circuit addressed new value reorganization plans and expanded the concept of new value reorganization plans to insiders who are not existing equity holders or claimants.

In *In re Castleton Plaza, LP*,[5] the Seventh Circuit held that competitive bidding is required in those instances where the plan leaves creditor claims unpaid and the new investment is offered by an insider of the pre-petition equity holders. This decision expands the competition requirement to insiders, regardless of whether the insider is a holder of a claim or interest in the debtor corporation. The *Castleton* decision could be read to be a substantial expansion of both the requirements of Section 1129(b)(2)(B) and the Supreme Court decision in *203 North LaSalle*.

In *Castleton*, the Seventh Circuit considered a debtor-proposed plan that provided for the following components:

1. Payment of $300,000 on a $10 million secured debt, with the remainder written down to $8.2 million which was to be paid out over 30 years at an interest rate of 6.25 percent
2. Distributions to unsecured creditors totaling 15 percent of their claims
3. The pre-petition equity holder's interests to be cancelled (but the plan allowed the pre-petition equity holder to continue receiving an annual salary of $500,000 for managing the reorganized debtor)

4. The pre-petition equity holder's wife was to acquire 100 percent of the equity interests in the reorganized debtor for a new value investment of $365,000; the plan originally proposed that the investment was to be $75,000
5. The property management agreement by and between the debtor corporation and the management company, which was owned by the pre-petition equity holder's wife, was to be assumed

A secured creditor objected to confirmation of the plan, arguing that the assets were undervalued. The secured creditor offered payment equal to 100 percent of unsecured claims and a $600,000 payment to the pre-petition equity holders. The debtor rejected this offer.

The bankruptcy court held that competitive bidding was not required, and confirmed the debtor's plan. On appeal to the Seventh Circuit, the bankruptcy court's confirmation of the debtor's plan was reversed. The Seventh Circuit stated:

> [a] new-value plan bestowing equity on an investor's spouse can be just as effective at evading the absolute-priority rule as a new-value plan bestowing equity on the original investor.[6]

The Seventh Circuit held that the absolute priority rule requires competitive bidding in a new value reorganization plan where equity interests are given to insiders (regardless of whether the insider holds a pre-petition claim or equity interest). Secured creditors may bid the value of their loans, protecting them "against plans that would give competing claimants too much for their new investments and thus dilute the creditors' interests."[7]

The future impact of the *Castleton* decision is difficult to determine. If the *Castleton* decision is applied to require competition in any situation where insiders receive equity interests, competition would be required in circumstances where the new value is provided by an affiliate of the existing equity holders. And, competition may be required when management receives equity interests in their capacity as the management team going forward.

Importantly, if the Seventh Circuit is making a point about the intrinsic value of competition in the plan context, many new-value reorganization plans, and maybe even other plans of reorganization, could be subjected to competition.

This decision affects existing equity holders/insiders' ability to maintain control of their company and avoid acquisition by a third party. It also potentially affects the plan structures, used by distressed investors, to acquire a company and avoid an auction, given that many distressed investors keep existing management in place and offer equity incentives.

Claims Trading and the Chapter 11 Process

Claims trading has developed into a thriving market. It has proven attractive, in part, because for a fraction of the debt, the buyer acquires a claim at its full face value and is entitled to recovery based on the full face amount of that claim.

Claims trading represents a good opportunity to acquire the fulcrum security in a bankruptcy case and ultimately use that fulcrum security to (1) acquire the company through a reorganization plan or Section 363 sale process or (2) potentially make a quick profit.

Proponents of claims trading contend that:

1. claim purchasers provide liquidity to creditors that are not interested in taking a part in the reorganization process,
2. the claims trading market provides a market-based valuation of claims, and
3. claims trading often reduces the cost for entities looking to borrow capital.

Conversely, opponents of the claims trading market argue that the practice has the potential to destabilize a debtor's Chapter 11 reorganization process by introducing new parties to the Chapter 11 case. These parties may not have the same objectives as a traditional business creditor (i.e., recovering the amount due and owing and securing an ongoing business relationship with the company).

Benefits to Buying Claims

If a distressed investor is buying claims in an attempt to acquire the company, the primary benefits of claims trading are as follows:

- If the distressed investor can accurately identify the fulcrum security and purchase those claims pre-bankruptcy, the distressed investor may have more control over the in court or out of court restructuring process or may at least be able to influence discussions regarding an appropriate restructuring process.
- If a distressed investor buys secured claims at a discount, the distressed investor can bid the face amount of the debt at any auction of the debtor's assets. This bidding may make it unlikely that another buyer would outbid the distressed investor, or, at a minimum, require any competing bidder to pay the face amount of the acquired debt. This may result in a quick profit for the claims purchaser.

Risks to Buying Claims

There are some risks to buying claims, especially for a distressed investor that intends to use those claims to attempt to acquire the company:

- The distressed investor is often viewed as a deep pocket. If the distressed investor is forcing a sale of the company and there are no other buyers, other creditors will look for any opportunity to leverage a recovery from the distressed investor, such as by attacking the claim purchase and/or the claim itself.
- Therefore, investors should perform proper due diligence when buying a claim and understand any potential challenges to the purchased claim. Generally, in performing this due diligence, the investor should review any contracts or other documents establishing the basis for the claim.

  For example, when buying a secured claim, the investor should review all loan documents, all financing statements filed against the debtor, the loan file, the payment history for the loan to determine whether there is any potential exposure for a preferential transfer and any forbearance or standstill agreements to determine any additional rights obtained by the lender that may create litigation exposure.

Both buyers and sellers should understand the risks associated with any claims trade before executing that trade. The buyer should properly structure any claims purchase to limit litigation exposure for the past actions of the seller and/or require the seller to buyback the claim if such litigation is pursued. The seller should understand that once the claim is sold, the seller cannot attempt to unwind the transaction if the seller later decides it made a bad deal.

Does the Buyer/Assignee Inherit the Past Actions of the Seller/Assignor?

When buying a claim, the buyer should be cognizant of the risk that the claim will be tainted or limited by the relationship between the original creditor/seller and the debtor corporation.

In *In re KB Toys, Inc.*,[8] the United States Bankruptcy Court for the District of Delaware considered a situation where a Chapter 11 trustee sought disallowance of purchased claims. This was because the original claimant (the seller) had received avoidable preferences. The claims purchaser argued that disallowance was improper because avoidance was personal to the original claimant and did not attach to the claim itself.

The court disagreed, stating that

> today's claim purchasers are aware of the ever-present possibility of avoidance actions based on preference liability or fraudulent conveyances. Under the circumstances now before me, the assertion that subjecting transferred claims to Section 502(d) disallowance would cause disruption in the claims trading market is a hobgoblin without a house to haunt.[9]

However, under certain circumstances, the claim seller's prior actions may not always attach to the claim or be enforceable against the buyer of the claim. In *Springfield Associates, L.L.C. v. Enron Corp.* ("*In re Enron Corp.*"),[10] the debtor sought equitable subordination and disallowance of a transferee's claim based on the misconduct of the transferor of the claim. The court distinguished between the following:

1. An assignment of a claim (in which the assignee may take no more than the assignee has to assign)
2. A purchase (in which a purchaser of a claim may take more than the rights of the seller)

The court held that equitable subordination and claim disallowance are personal disabilities "that are not fixed as of the petition date and do not inhere in the claim."[11] Therefore, through a sale, as opposed to an assignment, a claims buyer may not be subject to certain claims disallowance risk.

While one court has focused on the distinction between assignment and purchase of a claim and how that may impact the claims disallowance process, a purchaser of claims should not rely on this distinction. In practice, a claims buyer may want to structure all claim purchases as purchases, not as assignments. However, if involved in a bankruptcy case, it is likely that many bankruptcy courts would find the distinction of assignment as compared to a purchase as form over substance and would allow for claim disallowance regardless of the form of the claim acquisition agreement.

Therefore, any claims buyer should do his or her diligence before buying a claim and obtain any necessary indemnities or repurchase requirements if the claim is disallowed.

Seller's Remorse Is Not a Basis for Rescission of a Sale

The responsibility to conduct full and complete due diligence and to be fully aware of possible contingencies is not limited to the claim buyer. Sellers should also ensure that they are well-informed. A court will not rescind a sale merely because the seller changes its mind or discovers it has made a bad bargain.

This conclusion is highlighted in *In re Fairfield Sentry Ltd.*, where the holder of a Securities Investor Protection Act (SIPA) claim against Bernard L. Madoff Investment Securities sold its SIPA claim. Days later the trustee announced a settlement that greatly increased the value of the claim. The seller sought to invalidate the sale. The court upheld the validity of the sale, stating "[t]his is a pure and simple case of seller's remorse."[13]

Implications of the Claims Trading Decision

Based on the trends in the case law, it is likely that any buyer of a claim will inherit the past actions of the claimant and be subject to disallowance based on the past actions of the claimant. Any claim defect will create leverage for other creditors to derail the claim purchaser's attempt to:

1. acquire the company or
2. force the claim purchaser to deliver additional value.

In addition to diligence, when buying claims, any claim purchaser should attempt to obtain indemnification from the seller in the event of any challenge to the claim and possibly a requirement that the seller buy back the claim.

Both claim buyers and sellers take the risk that they made a good deal. A seller cannot attempt to unwind a claim assignment because claimants are receiving better recoveries in the case and in hindsight the seller made a bad deal. Likewise, a buyer cannot attempt to unwind a claim assignment because values have changed and it bought at the wrong position in the capital structure.

Section 363 Sales: The Most Common Acquisition Structure

Frequently, some of the debtor assets will be sold free and clear of liens, claims, interests and encumbrances, pursuant to Section 363, with the sale proceeds being distributed through the bankruptcy estate.

Typically, in a Section 363 sale, a buyer is approved as the stalking horse bidder. The stalking horse bid is shopped in the marketplace to attempt to solicit higher and better bids. If one or more competitive bidders exist, there will be an auction. At the conclusion of the auction, the debtor selects the winning bid and presents that bid to the court for approval.

In many Section 363 sales, the stalking horse bidder is a third party distressed investor, who has acquired a secured claim through a claim assignment at some discount, and is credit bidding that secured claim to acquire the assets of the debtor corporation. Any competing bidder typically has to bid cash in excess of the face amount of the secured debt being bid by the stalking horse bidder.

While the stalking horse bidder may not bid the full amount of its debt as the initial purchase price, any competing bidder generally knows that the stalking horse can bid up to the face amount of the debt. Or a secured creditor may be able to block the sale absent payment in full of the secured debt.

Because of the amount of liquidity in the distressed investing market and the lack of deals, many competing bidders in the Section 363 sale process look to any ability to challenge the process or the outcome of the auction in order to win the deal. In addition, many creditors look for ways to leverage a recovery from the winning bidder, either before or after the sale is closed.

Challenges by the Losing Bidder

There appears to be a trend of disgruntled losing bidders challenging the debtor's selection of the winning bid at the conclusion of an auction. Generally, competing bidders do not have standing before a bankruptcy court to object to the Section 363 sale, unless they are also a creditor or party in interest with standing to appear and object in court.

Courts generally will not favorably view an objection by a disgruntled bidder to the sale and auction process as long as the debtor followed the court-approved bidding procedures. A court typically will protect the integrity of the sale and auction process as long as (1) the sale procedures were followed and (2) it is in the best interests of the bankruptcy estate to defer to the debtor's business judgment in rejecting the losing bid and arguments of the disgruntled losing bidder.

Bidding Intangible Value

Bidders in a Section 363 auction process should be mindful of the fact that the highest cash bid for a debtor's assets may not be selected as the winning bid at the auction. Often, factors other than purchase price alone can make a bid more attractive for a debtor, the estate and the creditors. This can include intangible value. Such was the case with *Schutt Sports, Inc*.[14]

In *Schutt*, at auction, the debtor selected Kranos Intermediate Holding Corp. ("Kranos") as the successful bidder. The debtor rejected another bid that would have netted the estate $1 million more than the Kranos bid.

The Kranos bid provided the:

1. guaranteed payment of critical vendors and a portion of the trade vendors and Section 503(b)(9) claims,
2. guaranteed jobs for a certain time period,
3. guaranteed business with critical vendors for a certain period of time, and
4. an immediate closing (on the day of entry of the sale order), saving the debtor the cost of continuing to draw on its line of credit and avoiding any intervening issues that may have prevented closing.

The disgruntled losing bidder, who had a bid netting the estate additional $1 million cash, objected to the debtor's request to approve the Kranos bid. This bidder argued that (1) the auction procedures were not followed and (2) the auction should have continued to allow for more bidding.

Ultimately, the court overruled the objection and approved the Kranos bid as the highest and best bid. The court found that, during the course of the auction, (1) the losing bidder had made strategic bidding errors, (2) the debtor had followed the bidding procedures, and (3) the debtor properly exercised its business judgment in selecting the Kranos bid as the highest or otherwise best bid, even though the bid netted less cash to the estate.

For distressed investors, the *Schutt* decision is important. When competing in an auction, if the distressed investor has no additional cash to bid, the distressed investor may bid intangible value. In order to successfully bid intangible value, the bidder needs to do their due diligence before the auction to understand what intangible factors have value.

In *Schutt*, the factors were guaranteeing jobs to workers in small communities with few other employment options, guaranteeing certain payments to creditors, and the certainty of closing. In other situations, there may be other intangibles that a bidder can discover through the diligence process.

Understanding the Sales Process to Avoid Bidding Errors

The limitations on a competing bidder's ability to challenge the result of an auction were further evident in the Qualteq, Inc.[15] Section 363 sale process. In *Qualteq*, at auction, a Chapter 11 trustee selected FL Cedar 2, LLC, as the successful bidder at the conclusion of a sealed bidding process. One of the unsuccessful bidders objected to the auction, alleging that the Chapter 11 trustee failed to allow it an opportunity to submit an overbid and did not properly conduct a sealed bid process.

The losing bidder asked the court and the Chapter 11 trustee to reopen the auction. The bankruptcy court approved the auction finding that the Chapter 11 trustee had followed the court-approved bid procedures. As in *Schutt*, the court essentially refused to correct a strategic bidding error. This decision highlights the importance of understanding the bidding procedures and understanding the auction process.

Based on the foregoing, it is difficult for a losing bidder to challenge a sale or auction process after the fact. In those rare cases in which an auction is reopened, it is typically because the losing bidder offers a substantial additional sum of money and has the support of certain parties in interest, including the debtor corporation, lender, and/or committee.

Any bidder should understand the sale process and come prepared to bid at the auction. A bidder should perform its diligence before the auction and understand that the highest dollar bid is not always the best bid—or the best result for the debtor corporation's estate.

Courts may consider many intangible factors, including the following:

- A bidder's ability to close the transaction quickly
- Whether regulatory approval may be problematic
- The preservation of jobs

However, bidding procedures sometimes prohibit consideration of these intangible factors. In addition, courts will not correct strategic bidding errors. If the debtor adheres to court-approved bidding procedures, the auction process likely will be upheld. Given the competitiveness of the distressed investing market, any winning bidder should expect a challenge to the sale process if there were competing bidders and be prepared to defend that process (or possibly bid more at the court hearing).

Successor Liability Risk

Given recent case law, it is important for any buyers of assets through a Section 363 sale process to understand the risk of possible successor liability for certain types of claims. Property that is sold pursuant to Section 363 is sold "free and clear of any interest in such property."[16] But the Bankruptcy Code does not define "interest in property."

Courts have generally read "interest in property" expansively.[17] However, purchasers of assets in Section 363 sales should not take comfort in the inclusion of language in a sale order stating that the assets are sold free and clear of successor liability claims.

In a recent decision affecting the private equity world, the United States Court of Appeals for the First Circuit, in *Sun Capital Partners III, LP, et al. v. New England Teamsters & Trucking Industry Pension Fund*,[18] reversed the district court's determination. The Fifth Circuit held that a private equity firm was a trade or business in control of a company (after acquisition) and was responsible for loss withdrawal liability for pension obligations.

Sun Capital Partners ("Sun") acquired Scott Brass, Inc. ("Scott Brass"), which was a member of the Pension Fund, in 2006. Scott Brass filed for bankruptcy in 2008 and withdrew from the Pension

Fund. After failing to collect withdrawal liability from Scott Brass, the Pension Fund sued Sun, arguing that the private equity firm was a trade or business in control of the company (after acquisition) and responsible for loss withdrawal liability.

Acknowledging that this case involved issues of first impression, the court summarized the issues as follows:

> [T]his litigation considers the imposition of liability as to three groups: two private equity funds, which assert that they are mere passive investors that had indirectly controlled and tried to turn around [Scott Brass], a struggling portfolio company; the [Pension Fund], to which the bankrupt company had withdrawal pension obligations and which seeks to impose those obligations on the equity funds; and, ultimately, if the [Pension Fund] becomes insolvent, the federal Pension Benefit Guaranty Corporation (PBGC), which insures multiemployer pension plans such as the one involved here.[19]

In holding that Sun was liable for withdrawal obligations to the Pension Fund, the court noted that:

> at least one of the private equity funds which operated [Scott Brass], through layers of fund-related entities, was not merely a 'passive' investor, but sufficiently operated, managed, and was advantaged by its relationship with its portfolio company, the now bankrupt [Scott Brass]. . . . [T]he district court erred in ending the potential claims against the equity funds by entering summary judgment for them under the 'trades or businesses' aspect of the two-part 'control group' test under 29 U.S.C. § 1301(b)(1).[20]

This decision highlights the need for any distressed asset buyer to (1) diligence the liabilities of the company being acquired and (2) carefully structure any acquisition of a company. This is especially true if that company has employee-related liabilities involving pensions or other similar liabilities.

Conclusion

Given the competitiveness of the distressed investing market and the recent challenges to many of the acquisition structures implemented by distressed investors, it is important to understand those structures and the related risks.

Such understanding may minimize any exposure before or after an acquisition. That exposure may limit an investor's ability to acquire a company or create leverage for creditors. That limitation may make the acquisition a more expensive and lengthy process. Planning, at the front end, to develop the most advantageous acquisition structure will create the best chance for success.

Notes:

1. See 11 U.S.C. § 1129(b)(1).
2. See 11 U.S.C. § 1129(b)(2)(B)(ii).
3. Bank of America National Trust and Savings Association v. 203 N. LaSalle St. Partnership, 526 U.S. 434 (1999).
4. Id at 457.
5. In re Castleton Plaza, LP, 707 F.3d 821 (7th Cir. 2013).
6. Id. at 823.
7. Id. at 821.
8. In re KB Toys, Inc., 470 B.R. 331 (Bankr. D. Del. 2012), aff'd, 736 F.3d 247 (3rd Cir. 2013).
9. Id. at 342.
10. Springfield Associates, L.L.C. v. Enron Corp. (In re Enron Corp.), 379 B.R. 425 (S.D.N.Y. 2007).
11. Id. at 449.
12. In re Fairfield Sentry Ltd., 484 B.R. 615 (Bankr. S.D.N.Y. 2013).
13. Id. at 617.
14. In re Schutt Sports, Inc., Case No. 10-12795 (Bankr. D. Del. Sept. 6, 2010).
15. In re Qualteq, Inc., Case No. 12-05861 (ERW) (Bankr. N.D. Ill. March 28, 2013).
16. 11 U.S.C. § 363(f).
17. See, e.g. In re Leckie Smokeless Coal Co., 99 F.3d 573 (4th Cir. 1996).
18. Sun Capital Partners III, LP, et al. v. New England Teamsters & Trucking Industry Pension Fund, 724 F.3d 129 (1st Cir. 2013).
19. Id. at 132.
20. Id. at 133.

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