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Asset-Based Lending: Navigating Borrowing Base, Article 9 Collateral Issues, Key Provisions

THURSDAY, AUGUST 11, 2022

1pm Eastern | 12pm Central | 11am Mountain | 10am Pacific

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PAUL HASTINGS

ASSET-BASED LENDING

An overview of ABLs and related topics

August 2022

AGENDA

I. Asset-Based Lending (ABL)

   A. What is ABL?

   B. Advantages and Disadvantages of ABL

II. The Borrowing Base

III. Collateral

IV. Cash Management

V. Reporting

VI. Financial Covenants

VII. Split Collateral Intercreditor

I. WHAT IS ASSET-BASED LENDING?

WHAT IS ABL?

- Asset-based lending ("ABL") is a form of secured lending in which borrowing capacity is based on a "borrowing base."
- The borrowing base is a percentage of a defined value of specific assets in which the lenders have a perfected security interest.
- Such assets usually include inventory and accounts receivable and sometimes equipment, real estate, intellectual property, and deposit accounts.
- Contrast with "cash flow lending," where lenders look primarily to a business' cash generation and enterprise value when determining borrowing capacity.

WHAT ARE THE "KEY INGREDIENTS" TO ABL?

- Borrowing Base
- Collateral
- Reporting
- Cash Management
- Financial Covenants

COMMON USE OF PROCEEDS FOR ABL

- Operations
  - Address “gaps” in a company’s cash flows
  - Payroll
  - Vendors
  - Rent, utilities, and taxes
  - Issuance of Letters of Credit
- Growth
  - Acquisitions
  - Capital Expenditures
- Refinancing existing indebtedness

ANCILLARY PRODUCTS

Often, an asset based lending facility permits the Borrower to “leverage off” that facility to obtain additional products helpful to the operation of its business, including:

- Cash Management, including depository accounts, securities accounts, merchant store value cards, e-payables services, and electronic funds and ACH (automated clearinghouse) transfers.
- Hedge Agreements for interest rate hedges, currency hedges, or commodity hedges.
- Other financial products, such as credit cards, procurement cards (“p-cards”), debit cards, or stored value cards.
- Factoring or reverse factoring arrangements.

ADVANTAGES FOR BORROWERS

- Provides ready cash to support liquidity needs, eliminating the need to wait for the collection of receivables.
- Significant funding for businesses in cyclical or seasonal industries by providing liquidity during periods of slow sales or inventory buildup.
- Pricing (interest rate and closing fees) typically lower than cash flow facilities or other financing options.
- Financial covenants in ABLs typically allow for greater operating flexibility than those of cash flow facilities.
- Carve-out opportunities in existing structures:
  - Flexibility to carve out borrowing base assets (i.e., inventory and accounts receivable) from existing “all asset” term loan facilities to achieve more liquidity.
  - Typically ABL facilities are permitted in existing indenture facilities
- The ability to obtain ancillary products such as cash management, hedging, and other bank products.

DISADVANTAGES FOR BORROWERS

- Frequent collateral reporting and valuation requirements to establish borrowing base.
- Because availability is limited to a borrowing base, availability may decline with fluctuations in the value of assets in the borrowing base.
- ABL Lenders may have discretion regarding eligibility criteria for borrowing base assets and discretion to establish reserves.
- ABL Lenders are more focused on cash management and may require controls over the cash management system.

ADVANTAGES FOR LENDERS

- Lenders have first priority lien on borrowing base assets, subject to priming lien risks. Moreover, loans are sometimes over-secured due to borrowing base advance rates, asset category sub-limits, and reserves.
- There is an inherent diversification of risk by tying the amount of the loan to the credit quality of customers whose accounts receivable are in the borrowing base.
- Some borrowing base assets are relatively easy to convert into cash in a foreclosure scenario.
- Low historical loss rates, which makes this an attractive lending product during a recession.
- ABL is a familiar product to bankruptcy judges for purposes of obtaining bankruptcy court approval for a debtor-in-possession or exit financing.

II. THE BORROWING BASE

WHAT IS THE BORROWING BASE?

- The “key” to asset based lending is the borrowing base.
- The amount and availability of an asset based loan is usually: (a) the <u>lesser</u> of (i) a maximum commitment amount; and (ii) the borrowing base; <u>minus</u> (b) reserves.
- If the amount of outstanding loans exceeds this calculation, the borrower must repay the loans so that the total outstanding amount of the loan is less than or equal to this calculation.
- The lender and the borrower agree on a borrowing base formula that is set forth in the credit agreement.

HOW DO I PREPARE A BORROWING BASE?

An ABL Lender should determine:

- What assets should be included?
  - Typically inventory and accounts receivable. Sometimes equipment, real estate, intellectual property, and deposit accounts.
  - Differs depending on the industry of the borrower.
- Which of these assets will be "eligible"?
- What will be the advance rates for each category of assets?
- What is the maximum commitment amount for this loan?
- What reserve rights do I have?

SIMPLIFIED EXAMPLE OF BORROWING BASE FORMULA

"<u>Borrowing Base</u>" means, at any time of calculation, an amount equal to:

- [85]% of the book value of Eligible Accounts Receivables less the amount, if any of the Dilution Reserve; <u>plus</u>
- the lesser of (x) [70]% of the book value (calculated at the lower of cost or market on a basis consistent with the borrower's historical accounting practices) of Eligible Inventory; and (y) [85]% of the Appraised Liquidation Value (identified in the most recent inventory appraisal ordered and obtained by the Agent) of the book value (calculated at the lower of cost or market on a basis consistent with the borrower's historical accounting practices) of Eligible Inventory; <u>minus</u>
- the then applicable amount of all Reserves.

DILUTION RESERVE

"Dilution Reserve" means, as of any date of determination, an amount sufficient to reduce the advance rate against Eligible Accounts by one percentage point for each percentage point by which Dilution is in excess of [5]%.

BORROWING BASE: ELIGIBILITY CRITERIA

- Assets must satisfy eligibility criteria to be included in borrowing base calculation.
- Intended to exclude assets that pose higher collection risk and may not be easily sold in a foreclosure sale.
- Lenders push for more stringent eligibility criteria. Borrowers push for more lenient eligibility criteria.
- Criteria varies based on type of asset (e.g., receivables, inventory, equipment, etc.)

ELIGIBILITY: RECEIVABLES

- Common eligibility criteria for <u>receivables</u>:
  - Receivables payable by a single customer may not exceed a specified percentage of the total borrowing base (concentration limits).
  - The receivable may not be past due by more than a specified number of days (usually 30, 60 or 90).
  - Amount of the receivable is not subject to an ongoing dispute with or offset by the customer.
  - Receivable must be subject to a first priority perfected lien in favor of the lenders at all times.
- Frequent issues:
  - Concentration limits
    - Obligor
    - Industry
    - Type of Asset
  - Credit card receivables

GOVERNMENT RECEIVABLES

- Receivables payable by the federal government are subject to the Assignment of Claims Act of 1940
  - Creates procedural requirements for assignments of federal government receivables, including filing a specialized form
  - Government receivables typically carved out of borrowing base unless the borrower has taken all steps required under the ACA to effectively assign the receivable to the lenders
  - Several courts have held that failure to comply with ACA's procedural requirements does not invalidate a security interest in receivables if otherwise properly granted and perfected under Article 9 of the UCC as *between the borrower and its creditors*
    - However, if ACA requirements are not followed, secured lenders would not be entitled to collect directly from the government and would have to rely on borrower to collect amounts and pay over to the lenders
- Similar restrictions may apply to receivables payable by state or local governments under local law

HEALTHCARE RECEIVABLES

- Medicare and Medicaid receivables are subject to 1972 federal legislation, which placed limits on healthcare providers assigning their rights to receive Medicare/Medicaid payments to third parties (the so- called "Anti-Assignment Provisions")
  - Intended to prevent abuse by third-party factor financing providers
  - Provisions have been subject of numerous court decisions and policy statement by CMS
  - Among other limitations, Medicare/Medicaid payments must be made directly to the healthcare provider, and cannot be paid directly into an account over which a lender has control
- Legislation creates additional legal issues and complexity for healthcare receivable financings
- These financings often use "double lockbox" structure to satisfy legal requirements while addressing lender desire for control of collateral
  - Step 1: Receivables are paid to a borrower account over which lenders do *not* have a security interest
  - Step 2: Borrower issues standing instructions to bank to sweep amounts in account #1 to account #2 (lenders have perfected lien in account #2)

ELIGIBILITY: INVENTORY

- Common eligibility criteria for inventory:
  - Must consist of goods of a type that the borrower sells in the ordinary course of its business
  - Must be located on premises owned, leased or rented by the borrower with the lender having rights of access and waivers of claims from landlords, warehouse companies and mortgage lenders
  - May not be delivered to a third party for sale on consignment
  - Must be insured against casualty events
  - Must be subject to a first priority lien in favor of the lender at all times
- Frequent issues:
  - In-transit inventory
  - Lender access rights
  - Liquidation valuation
  - IP access for disposition

BORROWING BASE: VALUATION

- ABL lenders typically have right to request collateral examinations and appraisals to establish the value of borrowing base assets
  - Appraisals may be performed by the lender or by an agreed third-party consultant
- Typically limited to one examination in any 12-month period
  - Lenders usually have the right to request more frequent exams if the availability under the ABL falls below a certain threshold or there is an ***event of default***
- Valuation of cash and receivables is straightforward, but other asset types can raise more difficult valuation issues

BORROWING BASE: ADVANCE RATES

- "Advance rates" are the percentage of the value of eligible assets that are included in the borrowing base
  - "Net orderly liquidation value"
- ABL borrowers do not get 100% credit for the value of their eligible assets.
  - "Haircut" has potential for lender to be over-secured
- Different advance rates for different asset types
  - Receivables often have a higher advance rate than inventory, reflecting greater liquidity and ease of valuation

RISK WEIGHTING AND CONCENTRATION LIMITS

Advance rates may be tiered to reflect the greater perceived risk of non-payment of certain assets.

- Concentration Limits:
  - Advance rate for a single customer's receivables may decrease in proportion to its concentration (relative to borrower's total receivables) or be capped at a certain percentage
  - Advance rate for a single type of inventory may decrease in proportion to its concentration (relative to borrower's total assets) or be capped at a certain percentage
- Other Examples:
  - Receivables from most creditworthy of borrower's customers may have higher advance rate than other receivables
  - Advance rate may be reduced in proportion to the length of time a receivable has been outstanding

BORROWING BASE: RESERVES

- Lenders often have right to impose “reserves” against the borrowing base to reflect risks expected to affect the value of borrowing base assets
- Reserves reduce the borrowing base amount
- Typical reserves include:
  - Amount of any competing claims on borrowing base assets that are secured by a lien ranking senior in priority to the lien of the ABL lenders
  - Rent reserves with respect to inventory stored at a warehouse to which lender does not have access rights in an event of default
  - Reserves against receivables based on historical write-off rates
- Specific reserve language v. general reserve language

BORROWING BASE: PERMITTED DISCRETION

- ABL credit agreements usually provide that the agent has the right to impose reserves or modify eligibility criteria in the agent's "permitted discretion"
  - Permitted Discretion typically defined as the agent's exercise of reasonable (from the perspective of an ABL lender) business judgment in good faith in accordance with customary business practices for ABL transactions
- Broad authority to reduce the borrowing base to address perceived risks identified by the lenders
  - From borrower's perspective, can lead to unexpected cutbacks in borrowing base in downturn or distress situation
  - Highlights importance of lender-borrower relationship in ABL transactions

III. COLLATERAL CONSIDERATIONS

COLLATERAL: OVERVIEW

- Collateral packages differ by transaction
- ABL lenders often have security interest in substantially all assets of the borrower and any guarantors
  - Collateral is often <u>not</u> limited to borrowing base assets
  - Though, growing minority deals where ABL secured by ABL assets only with rights to use IP and other assets set out in intercreditor agreement
- Liens on borrowing base assets must have first priority over any competing liens in order to be included in borrowing base

COLLATERAL: CREATING AND PERFECTING SECURITY INTERESTS

- Article 9 of the UCC sets forth the framework for creating and perfecting security interests in most types of personal property
- UCC does not cover security interests in real estate
  - Liens in real estate are governed by rules under state and local law that vary significantly by state and local law
- Potential preemption by federal law
  - Uncertainty regarding perfection of security interests in copyrights due to U.S. Copyright Act
  - Aircraft, Maritime, and Rolling Stock
- Vehicle ABL issues

COLLATERAL: CREATING AND PERFECTING SECURITY INTERESTS (CONT'D)

Requirements under Article 9 for a security interest to be enforceable:

- Security interest must have attached to the borrower's assets
  - Value must be given by the lenders
  - Grantor must have rights in the collateral
  - Grantor must sign a written security agreement
- Security interest must have been perfected in the manner required under the UCC
  - For most types of personal property, a security interest is perfected by filing a UCC financing statement in the appropriate jurisdiction (usually the jurisdiction of formation of the relevant borrower or guarantor)
  - Key exceptions include bank accounts and securities accounts, motor vehicles

COLLATERAL: LIEN PRIORITY

- Under Article 9, when two or more lenders have competing liens in the same collateral, priority is generally determined by which lender first perfected its lien (the “first in time” rule)
- The “first in time” rule is the default rule, but groups of lenders may agree to a different priority scheme contractually in an intercreditor agreement
  - E.g., the “crossing lien” arrangement in transactions involving both an ABL and a secured term loan

COLLATERAL: AFTER ACQUIRED PROPERTY

- Under Article 9, a borrower in the U.S. may grant a security interest that applies not only to existing assets but also to any future assets
  - Security interest attaches automatically to newly acquired assets
- Furthermore, the UCC financing statement filed at the time the credit agreement is signed also covers any after-acquired assets
- However, beware of Section *552* of the Bankruptcy Code.
  - Section 552 establishes a general rule that a debtor's after-acquired property is not subject to a secured creditor's pre-bankruptcy lien.
  - Effectively, Section 552 invalidates a valid lien on after-acquired property contained in prepetition security agreements.
  - By severing a secured creditor's lien in after-acquired property on the petition date, the bankruptcy court seeks to create unencumbered assets that can be monetized, thus improving the debtors' chance of a successful reorganization.

COLLATERAL: DEPOSIT ACCOUNTS

- Creating and perfecting a security interest in deposit accounts requires entry into a *deposit account control agreement* (DACA) between the account holder, the lender and the depositary bank
- Because DACAs require involvement by the banks where the borrower maintains its account, they often require significant lead time to put into place
  - Borrowers often push for DACAs to be delivered post-closing in order not to delay closing of the credit facility
  - Preference risk - 30-day safe harbor
- Proceeds in deposit accounts that arise from advancing on a revolving loan
  - Proceeds of a loan is not proceeds of an account receivable
  - Check definitions of Collateral in security agreement and ABL Priority Collateral in Split Collateral deals

PRIMING LIENS

- The general rule is that liens have priority in the order that they are filed. This rule is known as the "first in time, first in right" rule.
- Exceptions for statutory liens, which become priming liens:
  - Federal statutes:
    - Tax
    - ERISA
    - PACA
  - State statutes
    - Landlords and warehousemen
    - Materialmen, processors
    - Other “possessory” priming liens
  - Common law
    - Banker’s right of set off

COLLATERAL: GOVERNMENT LIENS

- Under federal statute, a judgment obtained by the government for unpaid federal taxes is secured by a *statutory lien* on the taxpayer's assets
- Priority of a federal tax lien:
  - Has priority over any lenders that extend loans to the company more than 45 days or more after notice of lien is filed
  - Has priority over liens of <u>existing</u> secured lenders with respect to assets acquired more than 45 days after notice of lien is filed
- Federal tax liens raise particular concerns for ABL facilities
  - Borrowing base assets turn over relatively quickly as company receives cash for outstanding receivables, generates new receivables and replaces inventory
  - Result: Within short time after notice of the federal lien is filed, the ABL lenders' lien may be junior to the government's lien on the entire borrowing base collateral
- Lenders typically have the right to impose a reserve against the borrowing base to the extent their first priority lien is impaired
  - Reserve would typically equal the amount of the government claim

CROSS-BORDER ABL

- Over last decade, increasing volume of cross-border ABL financings
  - May increase as a result of recent rule change announcement by IRS regarding foreign credit support
- Financing of borrowing base assets across multiple jurisdictions
- Adding foreign jurisdictions to an ABL financing can introduce significant complexity from a legal, operational and documentation standpoint
  - Some jurisdictions more problematic than others
  - Cost-benefit analysis on country-by-country basis

CROSS-BORDER ABL: POTENTIAL ISSUES

- For assets located outside the U.S. or owned by non-U.S. borrowers or guarantors, need to look to the secured transactions law in the relevant country
- Law regarding security interests differs significantly by country
- In many countries it is impractical to create an effective security interest over certain types of assets, making ABL financings difficult or impossible to implement
- Examples of “ABL-friendly” countries: U.S., UK, Canada, some countries in Europe

IV. CASH MANAGEMENT

CASH MANAGEMENT

- ABL borrowers frequently establish a system of bank accounts of two types:
  - Collection accounts – accounts into which receivables are paid and other proceeds of collateral are deposited
  - Disbursement accounts – accounts from which the company pays suppliers and employees and other obligations

CASH MANAGEMENT: CASH DOMINION

- “Cash dominion”
  - In a traditional ABL facility, amounts held in collection accounts are transferred to the lenders on a daily basis to pay down outstanding ABL loans
  - Borrowers may request borrowings on a daily basis in order to fund disbursements
- “Springing” cash dominion
  - More borrower-friendly approach, usually seen in larger transactions and transactions for financial sponsors
  - Cash dominion only goes into effect upon a triggering event, usually tied to excess availability falling below a certain percentage of total availability or occurrence of an event of default

CASH MANAGEMENT: CASH DOMINION (CONT'D)

- In an event of default, the use of cash dominion can quickly result in a liquidity shortage, giving ABL lenders significant bargaining leverage
  - Cash is swept to ABL lenders
  - ABL lenders are not required to fund further borrowings during an event of default
- Borrowers can negotiate for carve-outs to help mitigate this risk
  - Specified minimum liquidity amount not subject to cash sweep

V. REPORTING

FINANCIAL AND COLLATERAL REPORTING

- ABL borrowers must deliver updated borrowing base certificates on a periodic basis (usually monthly), with reasonably detailed calculations of the borrowing base
  - In default scenario or if Excess Availability falls below certain level, may be required bi-monthly or weekly
- In addition, must deliver annual audited and quarterly unaudited financial statements, as well as notices of defaults and other adverse events
- Lender inspection rights
  - Typically one third-party appraisal per 12-month period, at borrower's expense
- Collateral audit
  - Typically up to one per twelve-month period
- Additional rights to inspect or perform a collateral audit during certain triggering events, including an ***event of default*** or ***excess availability falling below specified threshold***

VI. FINANCIAL COVENANTS AND NEGATIVE COVENANTS

FINANCIAL COVENANTS

- ABL facilities, like cash flow-based credit facilities, often include one or more financial maintenance covenants
- Common covenants:
  - Minimum fixed charge coverage ratio
  - Minimum net worth
  - Minimum liquidity
  - Maximum debt-to-EBITDA ratio
- Sometimes the financial maintenance covenant is “springing”
  - Covenant “springs” (is in effect) only during periods when excess availability under the facility falls below a certain threshold (often 10- 20% of total availability)
  - Especially common in sponsor transactions and larger deals
- Definitions underlying financial covenants are often highly negotiated

NEGATIVE COVENANTS

- Like other types of secured loans, ABL credit agreements typically include negative covenants
- Key restrictions often include:
  - incurrence of additional debt and liens
  - investments
  - restricted payments (dividends, share repurchases or payments of junior debt)
  - transactions with affiliates

NEGATIVE COVENANTS: "PAYMENT CONDITIONS"

- In most ABL facilities, restrictions on debt, investments and restricted payments do <u>not</u> apply if "payment conditions" are satisfied on a pro forma basis at the time of the relevant transaction:
  - Excess availability greater than a specified percentage of total availability (often tested on average basis over last 30 days)
  - No default or event of default
  - FCCR test
- Provides greater operational flexibility as long as payment conditions are met
- Significant benefit of ABL facility

VII. SPLIT COLLATERAL INTERCREDITOR – UNIQUE CONSIDERATIONS

SPLIT COLLATERAL INTERCREDITOR

- This intercreditor arrangement is used primarily where one set of creditors involves an asset based lending transaction. The intercreditor operates to contractually set forth lien priority over certain types of assets among different creditors.
- 2 sets of Documents:
  - ABL Credit Agreement and security documents
  - Term Loan Credit Agreement or Indenture and security documents

DEFINING COLLATERAL POOLS

- **ABL Priority Collateral** – Typically:
  - Receivables (with a carve-out for receivables that are identifiable proceeds of term loan priority collateral).
  - Inventory
  - Chattel paper, instruments, general intangibles, documents of title, letter of credit rights and commercial tort claims to the extent relating to, governing or evidencing receivables or inventory
  - Cash and deposit accounts (carve-out for deposit accounts containing solely term loan priority collateral)
  - All proceeds of the foregoing
- *The ABL priority collateral needs to include all borrowing base assets*

- **Term Loan Priority Collateral** -- Everything else, sometimes with certain exceptions

DEFINING COLLATERAL POOLS

- **Issues to consider --**
  - Section 552 of the Bankruptcy Code
  - Limiting receivables that are ABL priority collateral to those arising from sale of inventory or provision of services?
  - Receivables that are “proceeds” of Term Loan Priority Collateral
  - Tax refunds
  - Business interruption insurance
  - Intercompany loans
  - Deposit accounts and securities accounts

DEBT CAP

- There are 3 ways of addressing the debt cap in split collateral deals:
  - No debt cap on the ABL facility. No debt cap on the term loan/bond facility.
  - Debt cap imposed on the ABL facility. No debt cap on the term loan/bond facility.
  - Debt cap imposed on the ABL facility. Debt cap imposed on the term loan/bond facility

DEBT CAP CONSIDERATIONS

- Considerations include:
  - Principal amount of term loan made on closing date
  - Revolver commitments vs. the lesser of (i) revolver commitments; and (ii) borrowing base in most recent borrowing base certificate received by Agent (or, perhaps, gross borrowing base)
  - Inadvertent overadvances
  - A cushion (typically 10% to 20%)
  - Accordions
  - Bank product and hedge obligations
  - DIP financings
- Indemnity obligations
- Post-petition interest and fees, even if disallowed in a bankruptcy, should be expressly included

ACCESS PROVISIONS

- After the Term Loan Agent takes control of its priority lien collateral, it provides the ABL Agent:
  - access to the loan parties' facilities for a period — usually 90 – 180 days — so that the ABL Agent can complete inventory, examine books and records and conduct its own secured creditor remedies on the loan parties' premises (and sometimes the Term Loan Agent will agree to defer delivery of possession of the premises to a purchaser thereof for the same period of time unless the purchaser agrees to be bound by the access provisions)
  - a license to use intellectual property, such as trademarks, for the purpose of enforcing the ABL Agent's security interest in any of its priority collateral, such as disposing of inventory with all applicable trademarks
- Access is rent and royalty-free, except for payment of out-of-pocket costs
- Indemnification for third-party liability
- Insurance
- Sale of term loan priority collateral during access period

LIEN RELEASE AND MIXED COLLATERAL SALES

- Neither ABL nor term loan can be compelled to release its lien on its priority collateral. Customary drag along on junior collateral.
- ABL and term loan should consider whether lien release provisions should be applicable if there is a dispute regarding allocation of proceeds of mixed collateral sales.
- Some split collateral Intercreditor Agreements have provisions which address the allocation of proceeds from mixed collateral sales. This can help avoid disputes, but lenders should be very careful that their priority collateral is not being undervalued in the methodology.
- What if disposition involves equity interests of a loan party who owns ABL priority collateral? Or, what if the disposition involves both ABL priority collateral and term loan priority collateral?
- Some Intercreditor Agreements try to allocate the proceeds of mixed collateral dispositions

AMENDMENTS

- Split collateral transactions involve two sets of loan documents that operate independently with their own voting regimes
- Intercreditor Agreements often contain a short list of amendment restrictions
- Examples include:
  - increasing the interest rate
  - extending or shortening the maturity date
  - increasing the principal amount of the debt in excess of cap
  - changing payment dates or amortization amounts
  - restricting the payment of the other debt to a greater degree
  - changing advance rates, availability blocks or borrowing base that have the effect of increasing availability
- Alternatively, the Intercreditor Agreement may provide that amendment restrictions with respect to one set of loan documents are limited to those that would violate the other loan documents

ABOUT THE PRESENTERS

BIO

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Katherine Bell is a partner in the Paul Hastings Global Finance practice. Ms. Bell is based in the firm's Orange County office.

Ms. Bell focuses her practice on commercial and corporate finance transactions. She regularly represents banks, investment banks, finance companies, private debt lenders, other lenders, and borrowers in working capital facilities (cash flow and asset-based), acquisition financings, structured financings, and restructurings and recapitalizations—both cross-border and U.S. focused. She has industry experience in a variety of business sectors including technology and software, healthcare, transportation and logistics, energy, retail, food and beverage, and manufacturing and industrials.

Ms. Bell has significant experience negotiating intercreditor relationships, including 1st lien/2nd lien transactions, split collateral arrangements, and unitranche transactions. She represents clients in all parts of the capital structure—senior, junior, first lien, second lien, first out, last out, super-senior, and preferred equity.

Ms. Bell is the co-author of Asset-Based Lending: A Practical Guide to Secured Financing (Practising Law Institute, 8th ed. 2015), which is generally considered to be the definitive treatise on asset-based lending.

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Ms. Hildebrandt represents banks and other lenders in commercial finance matters (including asset based loans and cash flow loans), restructurings, workouts, and special situation lending. Ms. Hildebrandt has extensive experience in multi-tranche and multi-lien transactions.

In particular, Ms. Hildebrandt has extensive experience representing lenders in two lien deals, split collateral deals and first-out / last-out unitranche transactions. In addition, she has experience in various business sectors including healthcare, software, retail, insurance, media, franchise, restaurants, casinos, manufacturing, and vehicle and airline transportation, and in cross-border transactions.

Prior to joining Paul Hastings, Ms. Hildebrandt practiced in bankruptcy courts in the Central District of California.

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Jennifer S. Yount is the co-chair of the Paul Hastings Global Finance practice. Ms. Yount is based in the firm's New York office and leads a global team of finance and restructuring lawyers to service the firm's clients. Before settling in New York, she practiced in the firm's California offices.

While Ms. Yount has a strategic focus on private credit and specialty lenders in both cross-border and U.S.-focused transactions, Ms. Yount also represents a wide range of traditional and investment banks. Her work for both banks and nonbanks includes acquisition financings, cash-flow, asset-based lending, distressed credit, special situations, and restructurings. She represents clients in all parts of the capital structure – senior, junior, first lien, second lien, first out, last out, super-senior, and preferred equity.

Ms. Yount practiced in the bankruptcy courts before becoming a finance and restructuring lawyer. She has industry expertise in many business sectors, with a special focus on global software, technology and payment systems businesses, healthcare, retail, aircraft, automobiles, and in-transit inventory.

Ms. Yount is a thought leader in the finance industry and speaks widely on the market challenges facing both traditional and nonbank lenders.

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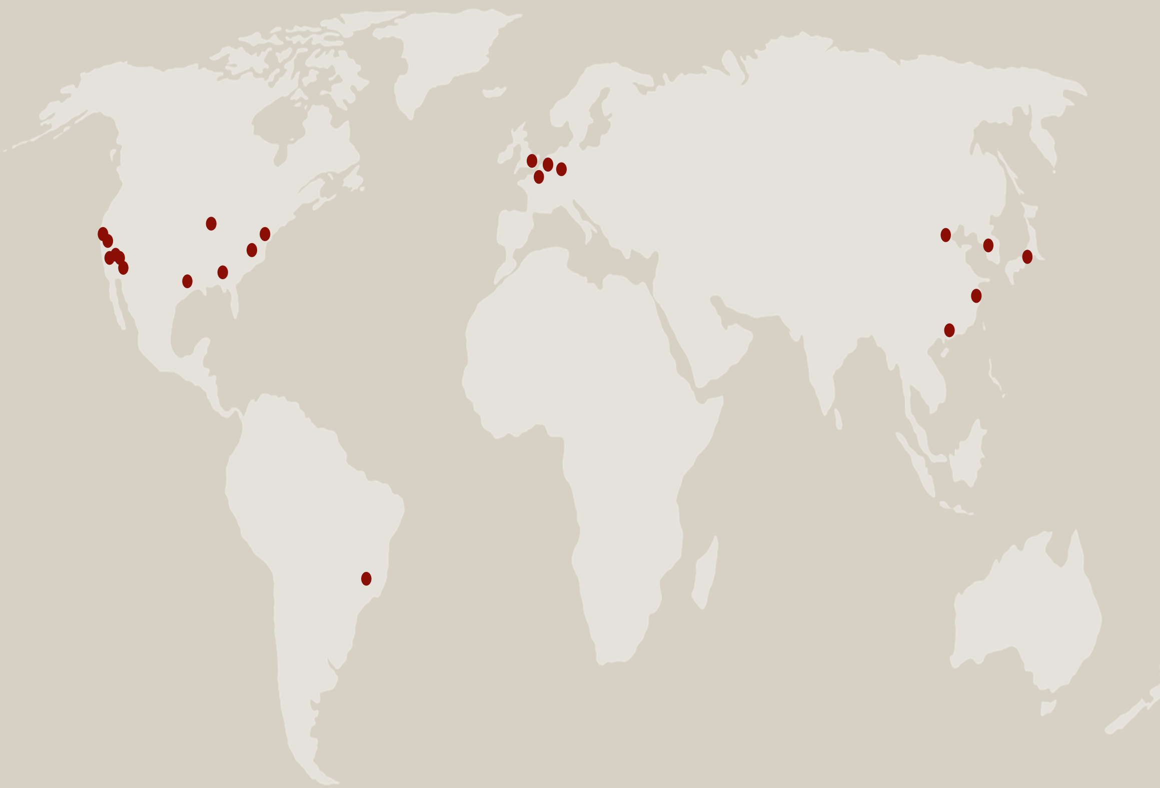

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