

# Evaluating Bankruptcy, Receivership, and Assignment For the Benefit of Creditor Alternatives to Protect Lender, Buyer and Borrower Interests

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

Today's faculty features:

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## **Bankruptcy Alternatives Hypothetical**

Coach's Barware and Cabinetry ("Coach's") is a premier manufacturer of custom barware and cabinetry. Coach's is incorporated in Delaware, but its corporate headquarters is located in Los Angeles, California. The stock is privately owned by Sam Malone.

Its showrooms were originally located in California. While it buys most of its retail products from third-party vendors, it does still manufacture much of its trademarked barware. It maintains a small manufacturing plant in California. It owns its corporate headquarters and manufacturing plant through a wholly owned California limited liability company. It also has several patents and trademarks for its barware. It has more than 200 employees throughout its retail and corporate locations.

Several years ago, Coach's in order to expand its brand opened up showrooms in the Plaza district in Kansas City, Missouri and Westside Provisions District in Atlanta, Georgia. Additionally, Coach's seeking to diversify built a superstore close to the Legends Shopping Mall in Kansas City, Kansas. While it primarily leases its other retail locations, it does own the land and building where the Superstore is located. The Superstore is owned through a wholly owned Kansas limited liability company and leased by Coach's.

The Superstore was a major departure from its traditional retail operation. The Superstore has products from other vendors. It also contains a restaurant and bar where Coach's hosts mixology classes. In addition to its retail outlets, in recent years, Coach's ecommerce business has been soaring. It also maintains an ongoing catalog and its competitors would love to get their hands on Coach's confidential mailing list.

The acquisition and construction costs of the Superstore were financed through Silver Dollar Bank ("SDB"). SDB is a nationally chartered bank with its primary corporate headquarters in Denver, Colorado, but it does have commercial lending and retail branches in much of Coach's retail footprint, except for Kansas. SDB is Coach's primary lender and where it maintains most of its accounts. Coach's runs most of its operation with a \$3 million line of credit with SDB which is secured by its inventory, accounts receivable, and a deed of trust on the California real estate.

The loan to construct the Superstore and acquire the land was \$4 million dollars. Both Coach's and the Kansas subsidiary are co-obligors on the Superstore loan. The loan is secured by a Kansas mortgage on the land and all asset security agreement in the assets of Coach's. SDB, however, neglected or was unable to get landlord waivers or agreements with respect to the various other leased retail locations. The loan documents provide that upon default, SDB is entitled to the appointment of a receiver.

SDB recently had the Superstore and California real estate appraised at \$6.5 million. Its patents/trademarks are likely worth another \$500,000. Its inventory is worth roughly \$250,000. The current debt owed to SDB is approximately \$7 million. It does have a personal guaranty of Sam Malone, but such guarantees are so-called "bad actor" guarantees that only trigger upon

certain events taking place including the filing of a voluntary bankruptcy, receivership, assignments for the benefit of creditors, and similar proceedings.

Excluding his stock in Coach's, Sam's net worth is roughly \$15 million due in large part to several land acquisitions she made over the years throughout the country. Sam, a former professional athlete, also has a lucrative endorsement and speaking business. Sam resides in California.

Coach's has come upon hard times. While the Superstore and the Kansas City/Atlanta locations opened to great fanfare, in light of the Covid-19 pandemic, it has not fared well. Specifically, the bricks and mortar stores have been hemorrhaging cash and pulling profits away from Coach's thriving ecommerce business. It has missed many of its loan payments to SDB on the Superstore loan, which required a forbearance agreement.

As part of the forbearance agreement, SDB was able to obtain a security interest in Coach's intellectual property to secure all the loans. In addition, it required that Sam make a \$1,000,000 cash infusion to the company. This infusion was facilitated in a subordinated loan and Sam took a second position lien position behind SDB on the California Real Estate and on the intellectual property. The various perfection documents, however, were not finalized until April 2021.

Coach's has missed several payments to SDB required under the forbearance and is in default on many of its retail location leases. It is also behind with most of its vendors and has not paid federal and state withholding taxes for much of 2021.

Ultimately Sam knows the bricks and mortar operation cannot be saved, but would like to regroup around an ecommerce business. Unfortunately, SDB no longer trusts Sam and several of the vendors/landlords are threatening collection action and eviction. Some have even raised the issue of seeking an involuntary bankruptcy. Additionally, SDB suspects that Sam used company funds to purchase much of the real estate that comprises her current net worth. It is clear that Coach's is currently insolvent and in trouble.