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Post-Petition Bankruptcy Financing

Evaluating and Documenting DIP Financing and Obtaining Cash Collateral and Financing Orders

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Today's faculty features:

Erich N. Durlacher, Partner, **Burr & Forman**, Atlanta

John D. Elrod, Shareholder, **Greenberg Traurig**, Atlanta

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Post-Petition Bankruptcy Financing

Erich N. Durlacher | Partner | Burr Forman LLP | edurlacher@burr.com

John D. Elrod | Shareholder | Greenberg Traurig, LLP | elrodj@gtlaw.com

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Executive Summary

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The Debtor's Need for Liquidity

- The Automatic Stay bars the commencement or continuation of any collection or enforcement actions against the Debtor, subject to limited exceptions, without prior Court approval. § 362.
- But, pre-petition lenders are not compelled to continue making advances to the Debtor.
- The Debtor will require continued access to liquidity and possibly additional financing in order to sustain its business operations and execute its bankruptcy objectives.
- In limited cases, the Debtor may be able to live off its cash (i.e., the use of cash collateral). Many times, the Debtor will need an advance of “new money” (i.e., DIP financing).

"First Day" Motions

- In the first few days of the Chapter 11 case, the Debtor will file a package of procedural and substantive "first day" motions: Motions to Employ Professionals, Motion to Establish Notice Procedures, Motion to Continue Utility Service, etc.
- In the most important of these first day motions, the Debtor seeks cash to fund its business operations: the Motion to Use Cash Collateral and/or Motion for Approval of Post-Petition Financing.
- The terms, conditions, and protections governing the use of cash collateral and/or DIP financing will be set forth in the interim and final orders granting these motions.

Cash Collateral - General

- "Cash Collateral" is defined as cash, negotiable instruments, documents of title, securities, deposit accounts or other cash equivalents in which the estate and an entity other than the estate have an interest. Cash Collateral includes the proceeds, products, offspring, rents, or profits of property subject to an existing security interest of a Secured Lender. § 363(a).
- Cash Collateral cannot be used without the secured creditor's consent, unless Court orders otherwise after notice and hearing. § 363(c)(2).

Cash Collateral - General

- Since cash is consumed by its use, the secured creditor will condition its consent on receiving “adequate protection” of its interest in the cash collateral. § 363(e).
- The Court can authorize the use of cash collateral over the secured creditor’s objection or its withholding of consent, but will require adequate protection of the secured creditor's interest in the collateral.
- The secured creditor usually has a more expansive definition of "adequate protection" than the Court. Most times, the secured creditor will do better negotiating a broader adequate protection package than relying on the Court to fashion one.

Cash Collateral – Basic Adequate Protection Package

- "Adequate Protection" is designed to compensate the secured creditor for the Debtor's use of the cash collateral. Adequate Protection may take the form of a lump sum or periodic cash payments, additional or replacement liens, or the "indubitable equivalent" of the secured creditor's interest in the cash collateral. § 361.
- A basic cash collateral adequate protection package will include:
 - › Replacement liens in post-petition collateral of the same type, nature, extent, and priority as the existing liens in the pre-petition collateral;
 - Practice Pointer: Get replacement liens! Although § 552(b) automatically preserves a pre-petition security interest in pre-petition property to the *proceeds* of such property, replacement liens will help you avoid disputes over whether what is received in a post-petition disposition of encumbered property are proceeds or unencumbered property. See *In re Cafeteria Operators, LP*, 299 B.R. 400 (Bankr. N.D. Tex. 2003); *In re Skagit Pacific Corp.*, 316 B.R. 330 (9th Cir. B.A.P. 2004).
 - › Periodic cash payments to compensate the secured creditor for the Debtor's use of the cash collateral; and
 - › A 13 week cash collateral budget of projected cash flows and expenditures that will govern how the Debtor can spend the cash collateral, subject to permitted variances (both line-item and aggregate).

Cash Collateral – Expanded Adequate Protection Package

- The secured creditor may also request additional adequate protection, which can take several forms. A more expansive package is usually reserved for the secured creditor who extends DIP financing, but there are a few additional bells and whistles you may see in a final cash collateral order.
- The secured creditor may require the "Dive" as part of its adequate protection package: the Debtor's stipulation to the validity, enforceability, priority, and amount of the secured creditor's pre-petition claims and liens.
- The secured creditor may also request the granting of a § 507(b) super-priority claim for any diminution in the value of its cash collateral during the case.

Cash Collateral – Expanded Adequate Protection Package

- The “Dive,” the § 507(b) super-priority claim, and any other expanded adequate protection is frequently subject to a challenge period in order to give parties-in-interest and any subsequently-appointed Committee time to investigate the secured creditor’s claims and liens to make sure the Debtor is “not giving away the farm” in the early days of the case.
- Challenge periods are usually the earlier of 75 days from the Petition Date or 60 days from the appointment of a Committee, subject to extension by agreement.
- The Debtor and the Committee may seek a “carve-out” from the secured creditor’s replacement liens and 507(b) super-priority claim in order to insure a payment source for their professional fees and expenses. Carve-outs are more common in DIP financing orders than cash collateral orders and will be discussed further below.
- Check your local rules and orders entered in prior cases in the District for guidance.

Cash Collateral – Mechanics

- The Debtor will need to file a motion for use of cash collateral that complies with BR 4001 and 9014.
- The motion will need to include a concise statement of the relief requested and list or summarize, with cross-references to the relevant provisions of the order, of all material provisions, including the following:
 - › The name of each entity with an interest in the cash collateral;
 - › The purposes for the use of the cash collateral;
 - › The material terms, including duration, of the use of cash collateral; and
 - › Any liens, cash payments, or other adequate protection being provided to the entity with an interest in the cash collateral (or, if no adequate protection is being provided, an explanation of why each entity's interest is adequately protected).
- **CHECK YOUR LOCAL RULES FOR ANY OTHER REQUIREMENTS.**

Cash Collateral – Mechanics

- The motion will need to be served on (1) any entity with an interest in the cash collateral, (2) the Committee, if appointed, or the list of 20 largest creditors, if no Committee has been appointed, and (3) any other entity that the Court directs. BR 4001(b)(1)(C).
- The motion will also need to be served on the United States Trustee. BR 9034(a).
- A final hearing cannot occur earlier than 14 days after service of the motion. An interim hearing is typically held in the early days of the case to authorize the use of only that amount of cash collateral necessary to avoid “immediate and irreparable harm” pending a final hearing. BR 4001(b)(2).
- Expanded adequate protection is typically granted only in a final order.

DIP Financing – When Cash is Not Enough

- In many cases, the Debtor’s cash collateral is insufficient to sustain business operations. The Debtor will need additional credit to survive long enough to achieve its bankruptcy objectives.
- The Debtor may obtain unsecured credit and incur unsecured debt in the ordinary course of business allowable as an administrative expense priority without Court approval. § 364(a).
- But, this is rarely sufficient incentive for a lender to advance “new money” to a cash-starved debtor. A lender will frequently demand broader protections in order to provide additional liquidity to a debtor.

DIP Financing – Statutory Framework

- The Debtor may seek post-petition financing ("DIP financing") on one of the following bases, subject to Court approval after notice and hearing:
 - 1) Unsecured credit obtained outside the ordinary course of business basis or if the Debtor is not permitted to operate the business and allowable as an administrative expense claim [§ 364(b)];
 - 2) Credit having a super-priority administrative expense claim priority and/or secured by a first-priority lien on unencumbered property or a junior lien on encumbered property [§ 364(c)]; or
 - 3) Credit secured by a senior or equal lien on the Debtor's encumbered property [§ 364(d)].
- As the adequate protection incentives increase (and the burden on the estate), so does the Debtor's burden of proof. The framework is designed to encourage the Debtor to seek the least burdensome form of DIP financing.

DIP Financing – Offensive and Defensive

- “Offensive” or “Free Standing” DIP Financing.
 - › A new lender to the Debtor who advances credit in the pursuit of high yields and/or the acquisition of distressed companies (loan-to-own and debt-to-equity strategies).
- “Defensive” or “Protective” DIP Financing.
 - › The pre-petition lender who is motivated by a desire to protect its pre-petition claims and liens (improve recovery chances and control over the case).
- “Defensive” DIP financing facilities are more common than “Offensive” facilities.
- Courts apply greater scrutiny to defensive DIP financing that aims to protect and enhance the secured creditor’s pre-petition claims over offensive DIP financing that is limited to protection of the new money advances to the Debtor.

DIP Financing - General

- Most DIP Financing motions seek approval for post-petition financing on a "senior or equal" lien basis (a "priming lien" basis).
- In order to incur DIP Financing on a priming lien basis, the Debtor needs to show it is unable to obtain such credit otherwise and there is adequate protection of the lienholder's interest in the property that is going to be "primed" by the proposed DIP financing.
- Due to adequate protection challenges, the Debtor will often turn to its pre-petition secured creditor to be the DIP lender (defensive DIP financing) unless the new DIP lender is offering to take out the pre-petition secured creditor in full.
- The Debtor may threaten to bring in a new lender on a priming basis (offensive DIP financing) for greater negotiation leverage with the pre-petition secured creditor, but it is rare for offensive DIP financing to come in on a non-consensual priming basis.

DIP Financing – Basic Adequate Protection Package

- Similar to Cash Collateral, the DIP Lender will typically require replacement liens, a § 507(b) super-priority claim for any diminution in the value of its collateral, and that the Debtor's use of the DIP financing proceeds to be governed by a "DIP Budget" (usually a 13 week budget of projected cash flows and expenditures, subject to permitted variances and periodic reconciliations).
- The DIP lender will require the "Dive" as part of the DIP financing adequate protection package approved in the final order; however, these stipulations will not be binding on the Committee or other parties in interest until the challenge period has passed.
- The Debtor and Committee will require a "carve-out" from the secured creditor's replacement liens and § 507(b) super-priority claim in order to insure their professional fees and expenses – both before and after any "trigger event" – will be paid.
- The "carve-out" is the quid pro quo for the "Dive" and the rest of the DIP financing adequate protection package.

DIP Financing – Expanded Adequate Protection Package

- Beyond the § 364(d) priming liens and the “basic” adequate protection package, the DIP lender will require an expanded set of protections to compensate for the risk of advancing “new money” to the Debtor.
- In most cases, these expanded protections will not be granted in an interim order, but only in a final order.
- These expanded protections may include:
 - › Roll-up provisions.
 - › Cross-collateralization provisions.
 - › § 506(c) surcharge waiver.
 - › § 552(b) equities of the case exception waiver.
 - › Marshaling waiver.
 - › Liens on Chapter 5 Avoidance Actions.
 - › Releases, Indemnities, and Waivers of Lien Challenges and Limitations on Future Borrowings.
 - › Carve-out – limited budget for investigation; nothing for prosecuting claims; burial cost.
 - › Bankruptcy milestones, termination events, and payment of DIP lender’s fees.

Roll-Ups

- Roll-Up: The pre-petition lender offers a post-petition credit facility that effectively pays off (or, “rolls up”) the pre-petition secured debt. A roll-up converts the existing lender’s pre-petition claim into a post-petition administrative expense claim.
 - › *Full Roll-Up*: A single advance is made from the DIP financing facility to pay off the entire balance of the pre-petition debt; new money is advanced over and above the roll-up amount.
 - › *Partial Roll-Up*: A single advance is made from the DIP financing facility to pay down a portion of the pre-petition debt ; new money is advanced over and above the roll-up amount.
 - › *“Creeping” Roll-Up*: Proceeds of pre-petition accounts receivable are collected and applied to pre-petition debt. At the same time, an equal amount of cash is advanced under the DIP financing facility.
- A roll-up provides the DIP lender with substantial leverage in the plan process since confirmation requires payment in full of all administrative expense claims in cash, in full, on the effective date (unless the DIP lender consents to different treatment). § 1129(a)(9)(A).

Roll-Ups

- See Czyzewski v. Jevic Holding Corp., 137 S. Ct. 973, 985 (2017)(In dicta, the Court discusses “. . . significant Code-related objectives that the priority-violating distributions serve. Courts, for example, have approved . . . ‘roll-ups’ that allow lenders who continue financing the debtor to be paid first on their prepetition claims.”).
- See also Appendix 1 for recent examples of approved “roll-ups” and the amount of new money advanced compared to the “rolled-up” pre-petition debt. Practical Law Practice Note 1-386-8691.

Cross-Collateralization

- “Backward” Cross-Collateralization: The Debtor’s use of post-petition property to secure the existing lender’s pre-petition claim as part of the DIP financing adequate protection package.
 - › “Forward” cross-collateralization, the Debtor’s use of pre-petition property to secure the DIP financing, is generally permitted.
- Defensive DIP Financing: By advancing “new money,” the existing lender may be able to improve its pre-petition collateral position (and, possibly cure any perfection defects) through backward cross-collateralization.
- Seminal supporting case: In re Texlon Corp., 596 F.2d 1092 (2d Cir. 1979).

Cross-Collateralization

- Courts that permit cross-collateralization require prior notice to the creditor body and evidentiary findings:
 - › the Debtor will not survive without the DIP financing;
 - › the Debtor is unable to obtain alternative financing;
 - › the proposed DIP lender refuses to lend on less favorable terms; and
 - › the proposed financing is in the best interest of the creditor body.

Cross-Collateralization

- Not all Courts permit cross-collateralization. Most notably, the Eleventh Circuit does not permit it. In re Saybrook Mfg. Co., 963 F.2d 1490 (11th Cir. 1992).
- In Saybrook, the Court held the Debtor’s proposed cross-collateralization of the DIP lender’s woefully undersecured pre-petition claim was beyond the bankruptcy court’s “inherent equitable power because it is directly contrary to the fundamental priority scheme of the Bankruptcy Code.” Id. at 1495.
- A question left unanswered by Saybrook is whether cross-collateralization is permitted where the DIP lender’s pre-petition claim is substantially oversecured.

506(c) Surcharge Waiver

- Section 506(c) permits a trustee or debtor-in- possession to surcharge the secured creditor’s collateral for the “reasonable, necessary costs and expenses of preserving, or disposing of, such property to the extent of any benefit to the holder of such claim.”
- Only the trustee or debtor-in-possession may seek a surcharge of the secured creditor’s collateral. Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A., 530 U.S. 1 (2000).
- A waiver of the 506(c) surcharge is typically the quid pro quo for the “Dive” and carve-out. Practically, if the DIP financing is adequate, the Debtor will be paying all administrative expense claims, including professional fees and expenses, which removes the need for the surcharge.
- The Committee will likely object to this waiver.

552(b) Waiver – “Equities of the Case” Exception

- Section 552(b) provides an important exception to the automatic preservation of a pre-petition security interest in pre-petition property to the proceeds of such property based on the “equities of the case.”
- The “equities of the case” exception arises in cases where the value of the pre-petition secured creditor’s collateral increases in value through the use of unencumbered assets. See, e.g., In re Muma Services, Inc., 322 B.R. 541 (Bankr. D. Del. 2005)(collection of cases); In re Tower Air, Inc., 397 F.3d 191 (2005)(same).
- The Court can limit the scope of the § 552(b) automatic attachment to proceeds in order to prevent a windfall to secured creditors at the expense of unsecured creditors.
- Rather than fight this issue, a DIP lender should include a § 552(b) waiver as part of its adequate protection package. The Committee will likely object to this waiver.

Waiver of Marshaling

- Marshaling is an equitable doctrine requiring a secured lender to first exercise its rights in collateral that it alone has a security interest in before resort to collateral that it shares.
- “[Marshaling] requires the senior secured creditor to first collect its debt against the collateral other than that in which the junior secured creditor holds an interest, thereby leaving that collateral for the junior secured creditor’s benefit.” *In re Advanced Marketing Servs., Inc.*, 360 B.R. 421, 427 n.8 (Bankr. D. Del. 2007).
- Marshaling “prevent[s] the arbitrary action of a senior lienor from destroying the rights of a junior lienor or a creditor having less security.” *Meyer v. United States*, 375 U.S. 233, 236 (1963).
- The Debtors have standing to assert marshaling rights pursuant to section 544(a) of the Bankruptcy Code.
- Accordingly, a waiver of this right may deprive unsecured creditors of valuable property from which they may obtain a distribution.

Liens on Chapter 5 Avoidance Actions

- Chapter 5 Avoidance Actions are post-petition causes of action that arise under the Bankruptcy Code. In many cases, these causes of action and recoveries may be the only unencumbered assets available for general unsecured creditors.
- The Committee and U.S. Trustee will push back on the granting of liens on Chapter 5 avoidance actions and seek to carve them out of any § 507(b) super-priority claim. Courts are often reluctant to grant these liens.
- A possible exception is where a DIP lender is advancing “new money” on a junior basis and there are no other unencumbered assets. The DIP lender should be prepared to compare the amount of new money to the estimated value of the Chapter 5 avoidance actions.
 - › Practice Pointer: Although a DIP lender may have to carve-out Chapter 5 avoidance actions from its adequate protection package, a DIP lender should seek to retain § 549 actions/recoveries to the extent they concern property that was subject to the DIP lender’s lien.

Releases, Indemnities, Waivers of Challenges to Liens and Limitations on Future Borrowings

- As stated previously, the DIP lender will require the “Dive” as part of its adequate protection package.
- The DIP lender will require releases of any estate causes of action based upon the DIP lender’s pre-petition conduct.
- The DIP lender will want its § 363(k) credit bid rights approved in the full amount of the outstanding debt.
- The DIP lender will request Debtor’s waiver of right to seek use of cash collateral or obtain other borrowings without lender’s consent (or make it an event of default).
 - › Practice Pointer: The DIP lender may soften this restriction by permitting future borrowings only if such borrowings will repay the DIP financing in full.
- These are standard provisions to be included in the adequate protection package, but will be reserved for the final order and subject to the challenge period.

The “Carve-Out”

- One of the most heavily negotiated and hotly contested provisions in the DIP financing order will be the “carve-out” for the Debtor’s and Committee’s professional fees and expenses.
- Although not required under the Code, most bankruptcy courts expect there to be a “carve-out” for the estate’s professionals to make sure the Debtor and Committee are adequately represented in the case. Additionally the “carve-out” is usually given for the § 506(c) waiver.
- Typically, the DIP lender will agree to “carve-out” from its post-petition liens and § 507(b) super-priority claim for the DIP budget line-item amounts for the estate’s professionals plus a fixed amount for professional fees and expenses incurred after the “trigger date” plus a fixed amount for “burial expenses” to close out the case.

The “Carve-Out”

- The “carve-out” will also extend to U.S. Trustee fees and clerk of court fees.
 - › Practice Pointer No. 1: The “carve-out” should limit the amount the Committee can use to investigate the DIP lender’s pre-petition claims and liens and should prohibit the use of any DIP financing proceeds for the prosecution of any estate claims against the DIP lender.
 - › Practice Pointer No. 2: The DIP lender should establish a borrowing base reserve in the amount of the “carve-out.”

Bankruptcy Milestones

- Bankruptcy Milestones: The setting of hard deadlines for the different stages of the case.
 - › If approved, these will set the tenor and timeline of the case.
 - › If the deadlines are not met, an event of default is triggered.
 - › The deadlines may include, among others, a deadline for the entry of interim and final DIP financing orders, the entry of a bidding procedures order, the date of an auction, the closing of a sale, and the confirmation of a chapter 11 plan.
 - › The Committee may object to these deadlines on the grounds that they cede too much control over the case to the DIP lender, and may ask that they be adjusted to insure a process beneficial to unsecured creditors. For example, if a stalking horse bid is sufficient to pay the DIP lender in full, but the prepetition sale process has not been fulsome, the Committee may ask for more time for an extended marketing process for the Debtor's assets.

Termination Events and DIP Lender's Fees

- Termination Events: In addition to credit agreement defaults, DIP financing termination events will include the failure to meet any milestones approved in connection with the financing, the sale of substantially all of the Debtor's assets, and/or the confirmation of a plan of reorganization.
- DIP Lender's Fees: The payment of the DIP lender's fees and expenses during the case, including its professionals' fees and expenses, which are further secured by the DIP financing priming liens.

DIP Financing– Mechanics

- The Debtor will need to file a motion for approval of DIP financing that complies with BR 4001 and 9014.
- The motion will need to include a concise statement of the relief requested and list or summarize, with cross-references to the relevant provisions of the credit agreement and order, including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions.
- In addition, BR 4001(c)(1)(B) requires the motion to list or summarize, with cross-references to the relevant provisions of the credit agreement and order, the following material provisions, and identify any such provisions that is proposed to remain in effect if interim relief is granted, but final relief is denied:
 - › The priority of adequate protection liens;
 - › The providing of adequate protection for pre-petition claims;
 - › The determination of the validity, enforceability, priority, or amount of a pre-petition claim (the “Dive”) or any post-petition liens securing such pre-petition claims (“roll-ups” and “cross-collateralization”);

DIP Financing– Mechanics (con't)

- › The waiver or modification of the automatic stay;
 - › The waiver or modification of any entity's authority to file a plan, seek an extension of the plan exclusivity period, or seek use of cash collateral or post-petition financing;
 - › The establishment of plan and disclosure statement filing, approval, and confirmation deadlines;
 - › The waiver or modification of nonbankruptcy law regarding lien perfection or enforcement/foreclosure;
 - › The release, waiver, or limitation of estate causes of action;
 - › The indemnification of any entity;
 - › The 506(c) surcharge waiver; or
 - › The granting of liens on avoidance actions.
- CHECK YOUR LOCAL RULES FOR ANY OTHER REQUIREMENTS.

DIP Financing – Mechanics

- The motion will need to be served on (1) any entity with an interest in the cash collateral, (2) the Committee, if appointed, or the list of 20 largest creditors, if no Committee has been appointed, and (3) any other entity that the Court directs. BR 4001(c)(1)(C).
- The motion will also need to be served on the United States Trustee. BR 9034(a).
- A final hearing cannot occur earlier than 14 days after service of the motion. An interim hearing is typically held in the early days of the case to authorize the use of only that amount of cash collateral necessary to avoid “immediate and irreparable harm” pending a final hearing. BR 4001(c)(2).
- Expanded adequate protection is typically granted only in a final order.

Unsecured Creditors' Committee Role

- Courts may be reluctant to grant DIP financing relief on a final basis at the first day hearings given that an unsecured creditors' committee has not been organized.
- The Committee acts as a fiduciary for all unsecured creditors, and therefore the Court may wait until it has retained counsel to insure unsecured creditors' interests are protected.
- The Committee will need to quickly get up to speed on the terms of the proposed financing, and spot issues which will be unfavorable to unsecured creditors.
- The Committee's objections will often be asserted at, or prior to, the final hearing on proposed financing.
- The Committee, the Debtor, and the proposed DIP Lender will often negotiate a resolution of these issues prior to, or at, the final hearing. If the matters cannot be resolved, the Court will be asked to rule on the contested issues.

Unsecured Creditors' Committee Role

- Because of the “Dive” and the Debtor’s need for financing, the Committee provides a valuable check on the DIP lender.
 - › While the Debtor owes fiduciary duties to creditors, the Committee offsets the Debtor’s vulnerability to the DIP lender, and can object.
- The Committee will object to the provisions of DIP financing that are harmful to unsecured creditors’ interests.
- The Committee should conduct a thorough investigation of the prepetition liens of the DIP lender, looking for the following issues:
 - › Unencumbered collateral
 - › Preferential liens or payments
 - › Misconduct by the lender

Unsecured Creditors' Committee Role

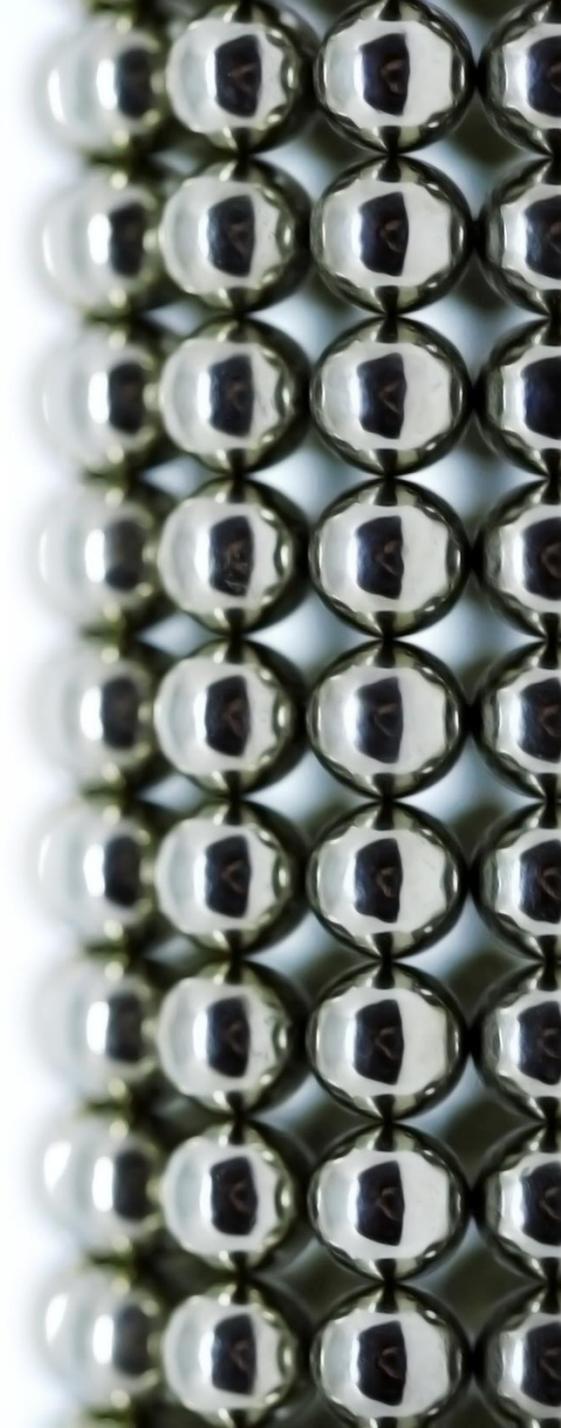
- The Committee serves as a watchdog for issues that may be presented on the DIP financing throughout the case, for example:
 - › extensions of additional credit;
 - › the application of sale proceeds to DIP financing debt; and
 - › the allocation of sale proceeds between property that is and is not subject to the DIP lenders' liens.
- The culmination of the Committee's lien investigation may result in a settlement between the Committee and the DIP lender, with the unsecured creditors receiving a portion of the sale proceeds in a sale case or a distribution in a reorganization.
- These resolutions may be the subject of Rule 9019 motions, but can also be built into a chapter 11 plan.

Best Practices

- READ AND RE-READ THE RELEVANT STATUTES, RULES, LOCAL RULES, AND GENERAL ORDERS.
- Avoid a free fall entry into bankruptcy – negotiate early with Debtor, UST, and other creditor constituencies.
- Make sure the DIP is the right size to provide sufficient liquidity during the case.
- Be prepared to put on direct testimony showing the Debtor’s efforts to obtain financing and that there are no other means available.
- Be prepared to put on direct testimony showing the post-petition financing was extended in good faith so the secured creditor does not lose its adequate protection in any subsequent reversal or modification on appeal. § 363(m) and § 364(e).
- Be prepared to put on direct testimony regarding value of avoidance actions if seeking a lien (or, better yet, do not seek one).

DIP Lender Best Practices

- Propose a reasonable roll-up structure.
- Avoid seeking roll-up as interim relief.
- Prepare to show the business need for the roll-up (e.g., substantially oversecured, commingling of pre-petition and post-petition collateral and, difficulty of segregation, etc.).
- Have a tight “carve-out” section.



Appendix 1 - Rolled-Up Debt v. New Advances

Case	Total Roll-Up DIP	Total Prepetition Debt Outstanding	Roll-Up Amount	New Advances	Rolled-Up Debt as % of Total Roll-Up DIP
Z Gallerie, LLC (Del. No. 19-10488)	\$28 million Approved April 9, 2019.	\$111.8 million <ul style="list-style-type: none"> \$19.25 million under revolver. \$92.57 million under term loan. 	\$19.25 million	\$8.75 million	68.8%
CTI Foods, LLC (Del. No. 19-10497)	\$155 million Approved April 5, 2019.	\$580 million <ul style="list-style-type: none"> \$93.5 million under ABL credit facility \$347 million under first lien term loan. \$140 million under second lien term loan. 	\$93.5 million	\$61.5 million	60.3%
Aceto Corp. (D. N.J. No. 19-13448)	\$60 million Approved March 15, 2019.	\$205 million <ul style="list-style-type: none"> \$85 million under revolver. \$120 million in term loans. \$14.4 million under 2020 notes. 	\$23 million	\$37 million	38.3%
Charlotte Russe Holding, Inc. (Del. No. 19-10210)	\$50 million Approved March 7, 2019.	\$122.9 million <ul style="list-style-type: none"> \$22.8 million under first lien revolver; \$10.8 million in letters of credit. \$89.3 million under second lien term loan. 	\$33.6 million	\$16.4 million	67.2%

Appendix 1 - Rolled-Up Debt v. New Advances

Case	Total Roll-Up DIP	Total Prepetition Debt Outstanding	Roll-Up Amount	New Advances	Rolled-Up Debt as % of Total Roll-Up DIP
The Walking Company Holdings, Inc. (Del. No. 18-10474)	\$57.25 million Approved April 4, 2018.	\$40.3 million <ul style="list-style-type: none"> \$33.1 million under revolver. \$7.2 million in term loans. 	\$40.3 million	\$16.95 million	70.4%
The Bon-Ton Stores, Inc. (Del. No. 18-10248)	\$725 million Approved March 12, 2018.	\$843 million <ul style="list-style-type: none"> \$493 million under ABL credit agreement. \$350 million under 2021 Notes. 	\$493 million	\$232 million	68%
Cenveo, Inc. (S.D.N.Y. No. 18-22178)	\$290 million Approved March 8, 2018.	\$1.061 billion <ul style="list-style-type: none"> \$1.256 billion under ABL facility. \$50 million under FILO notes. \$540 million under first lien notes. \$241 million under second lien notes. \$104.484 million in unsecured notes. 	\$190 million	\$100 million	65.5%

Appendix 1 - Rolled-Up Debt v. New Advances

Case	Total Roll-Up DIP	Total Prepetition Debt Outstanding	Roll-Up Amount	New Advances	Rolled-Up Debt as % of Total Roll-Up DIP
Patriot National, Inc. (Del. No. 18-10189)	\$15.5 million Approved March 6, 2018.	\$228 million <ul style="list-style-type: none"> \$223 million under term loan facility. \$5 million in cash advances. 	\$5 million	\$10.5 million	32%
California Proton Treatment Center, LLC (Del. No. 17-10477)	\$32 million Approved April 5, 2017.	\$180.7 million	\$16 million	\$16 million	50%
United Road Towing, Inc. (Del. No. 17-10249)	\$32.25 million Approved March 8, 2017.	\$24.8 million <ul style="list-style-type: none"> \$13.8 million under ABL credit agreement. \$6.1 million in letters of credit. \$4.9 million specified letter of credit. 	\$19.9 million (\$13.8 million ABL + \$6.1 million letters of credit)	\$12.35 million	61.7%
Verso Corp. (Del. No. 16-10163)	\$350 million Approved March 2, 2016.	\$750 million	\$175 million	\$175 million	50%

Appendix 1 - Rolled-Up Debt v. New Advances

Case	Total Roll-Up DIP	Total Prepetition Debt Outstanding	Roll-Up Amount	New Advances	Rolled-Up Debt as % of Total Roll-Up DIP
Wire Co. Holdings, Inc. (Del. No. 15-12097)	\$3.7 million Approved October 8, 2015.	\$12.2 million	\$2.3 million	\$1.4 million	62%
RadioShack Corp. (Del. No. 15-10197)	\$285 million Approved March 12, 2015.	\$465 million <ul style="list-style-type: none"> • \$215 million under ABL credit agreement. • \$250 million under term loan agreement. • \$330 million under 2019 Notes. 	up to \$250.3 million	<ul style="list-style-type: none"> • \$20 million • \$15 million (letters of credit) 	87.8% (100% of the ABL rolled up in a dollar-for-dollar roll-up).
Constar International Holdings LLC (Del. No. 13-13281)	\$17.4 million Approved January 16, 2014.	\$103.2 million <ul style="list-style-type: none"> • \$15.2 million in notes and term loans under roll-over facility agreement. • \$88 million in notes and term loans under shareholder facility agreement. 	\$2.9 million	\$14.5 million	16.7%
Personal Communications Devices LLC (E.D.N.Y. No. 13-74303)	\$46 million Approved September 13, 2013.	\$35.85 million	\$33 million	\$12 million	71.7%

Questions?

BURR 
FORMAN LLP

GT GreenbergTraurig

Erich N. Durlacher

Partner | Burr Forman LLP

edurlacher@burr.com

John D. Elrod

Shareholder | Greenberg Traurig, LLP

elrodj@gtlaw.com