Texas Bankruptcy Bench Bar Conference
Best Practices of Restructuring Support Agreements

June 1, 2017

The Honorable Barbara Houser

Emanuel Grillo

JP Hanson

Chad J. Husnick

Panel Bios: The Honorable Barbara Houser

- Honorable Barbara J. Houser is the Chief United States Bankruptcy Judge in the Northern District of Texas.

- Judge Houser has served as a past chairwoman of the Dallas Bar Association's Committee on Bankruptcy and Corporate Reorganization, a contributing author to Collier on Bankruptcy, and has taught Creditors' Rights as a Visiting Professor at the SMU Dedman School of Law, where she currently serves as a member of the Executive Board.

- Judge Houser was the 2014 recipient of the American Bankruptcy Institute's Judge William L. Norton, Jr. Judicial Excellence Award. In 1988, the National Law Journal named her one of the 50 most influential women lawyers in America.

- Prior to joining the Bench, Judge Houser worked in private practice for twenty years, first at Locke, Purnell, Boren, Laney & Neely in Dallas, and then Sheineld, Maley & Kay, P.C. At these firms, she held the title of shareholder, and shareholder-in-charge, respectively.

Panel Bios: Emanuel Grillo

- Emanuel ("Manny") Grillo is the Section Chair of Baker Botts' Financial Restructuring Group and is based in the firm's New York office.

- Prior to joining Baker Botts, Mr. Grillo was a partner at Goodwin Procter. Mr. Grillo began his career as an Honors Program Attorney in the Office of the United States Trustee for the Southern District of New York of the U.S. Department of Justice.

- Mr. Grillo represents secured and unsecured creditors, chapter 11 debtors and borrowers, as well as sellers and purchasers in distressed mergers and acquisitions. His representative matters include: Lehman Brothers Holdings Inc., Nextwave Telecom, Northwest Airlines, Delphi Corporation, and Silicon Graphics, Inc.

- In addition to his client representations, Mr. Grillo has authored numerous articles on bankruptcy practice, and has been a featured speaker at institutional engagements regarding the energy sector. Mr. Grillo is a member of the Law360 Bankruptcy editorial advisory board.

- Mr. Grillo holds a J.D. degree from Fordham University School of Law and a B.S. from Georgetown University.

Panel Bios: JP Hanson

- JP Hanson is Head of Houlihan Lokey's Oil & Gas Exploration and Production (E&P) Group and Co-Head of the Energy Group. He is dual-officed in New York and Houston.

- During his career, Mr. Hanson has worked on numerous financing, M&A, valuation, and financial recapitalization / restructuring engagements. In addition to domestic transactions, he has been involved in transactions for several Latin American-, European-, and South African-based companies, advising companies and stakeholders regarding the structuring, negotiation, and implementation of a wide variety of corporate financing transactions in the upstream, midstream, and downstream sectors of the oil & gas industry. In the context of financial restructuring engagements, he has advised companies, secured and unsecured creditors, and other stakeholders in various global jurisdictions with respect to both out-of-court and in-court restructurings, including "pre-packaged," "pre-arranged," and "free-fall" chapter 11 bankruptcy cases. His notable engagements include: SandRidge Energy Corp.; Berry Petroleum Corp.; Magnum Hunter Energy; Swift Energy Corp.; Midstates Petroleum Corp.; ATP Oil & Gas Corp.; Chesapeake Energy Corp.; Quicksilver Resources, Inc.; and Samson Resources, among others.

- Mr. Hanson has authored, co-authored, and spoken on various topics, including trends in E&P finance and valuation, financing markets in a distressed environment, and E&P valuation dynamics, among others.

- Mr. Hanson earned a dual B.A. degree, cum laude, in Italian and International Finance from Brigham Young University and an MBA with a concentration in Finance from the University of Maryland's Robert H. Smith School of Business.

Panel Bios: Chad J. Husnick

- Chad J. Husnick is a partner in Kirkland & Ellis' Restructuring Practice Group. He represents debtors, creditors, equity holders, and other stakeholders in all aspects of corporate restructuring, bankruptcy, and insolvency proceedings.

- He has represented clients in a variety of industries, including energy, infrastructure, manufacturing, transportation, hospitality and gaming, real estate, retail, automotive, and printing.

- Some of his recent representative matters include *Energy Future Holdings, C&J Energy Services, Southcross Holdings, GGPLP L.L.C., MS Resorts, ITR Concession Company*, and *Calpine Corporation*.

- Mr. Husnick has written and spoken on various topics, including restructuring support agreements, debtor-in-possession financing, and restructuring in the oil and gas industry. He is a contributing author for *Collier on Bankruptcy*.

- Mr. Husnick holds a J.D. from the University of Chicago Law School (with honors) and a B.S. from the University of Wisconsin at Madison (with distinction).

Overview of Restructuring Support Agreements

- A restructuring support agreement (or "RSA") is an agreement by which a debtor, its creditors, and other necessary parties negotiate and "lock-up" support for a restructuring strategy, including a plan of reorganization.
- Debtors use RSAs to avoid a "traditional" or "freefall" filing that typically results in a longer chapter 11 process.
- An RSA can facilitate several different types of restructurings:

Type of Case	Description
Out-of-Court Exchange Offer or Debt Exchange / Refinancing	The Company reaches agreement with debt holders regarding an out-of-court deleveraging that avoids a chapter 11 filing. The amount of debt required to participate usually depends on the nature of the restructuring (e.g., maturity extension, debt-for-equity exchange), and the willingness of parties to tolerate holdouts.
Pre-Pack	The Company solicits and receives votes on the Plan before commencing a chapter 11 case. This strategy typically leads to a comparatively shorter chapter 11 case because the solicitation process is started and completed before the filing.
Straddle Pre-Pack	Same as the Pre-Pack, in that votes are solicited before a filing, but different from a Pre-Pack because the Company finishes soliciting votes only after it files for chapter 11. Like a Pre-Pack, a Straddle Pre-Pack can lead to a comparatively shorter chapter 11 case because the solicitation process is started before commencement of the case.
Prearranged	The Company does not solicit votes on the Plan before a filing, but instead files for chapter 11 with a restructuring support agreement in place with a significant portion of its key creditors. This type of chapter 11 case is longer than a Pre-Pack because the Company seeks approval of a disclosure statement and solicits votes on the Plan after the filing.

Overview of Restructuring Support Agreements (cont'd)

Option	Uncertainty of Result	Length of Case	Level of Support Needed Before Filing	Ability to Bind Dissenting Holders	Cost
Out-of-Court	○	○	●	○	○
Pre-Pack	◔	◔	◔	●	◔
Straddle Pre-Pack	◔	◔	◔	●	◔
Prearranged	◑	◑	◑	●	◑
Traditional Filing	●	●	○	●	●

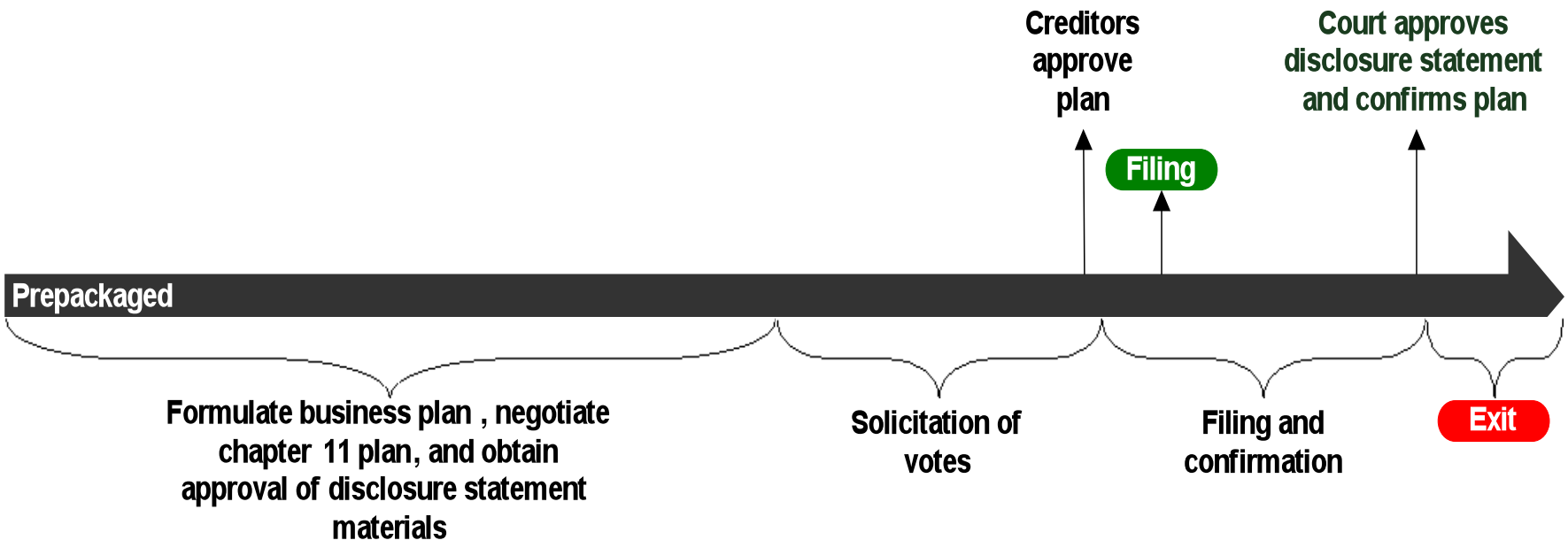
● High / Long

○ Lowest / Short

Phases of a Prepackaged Plan

In a prepackaged chapter 11 case, a debtor:

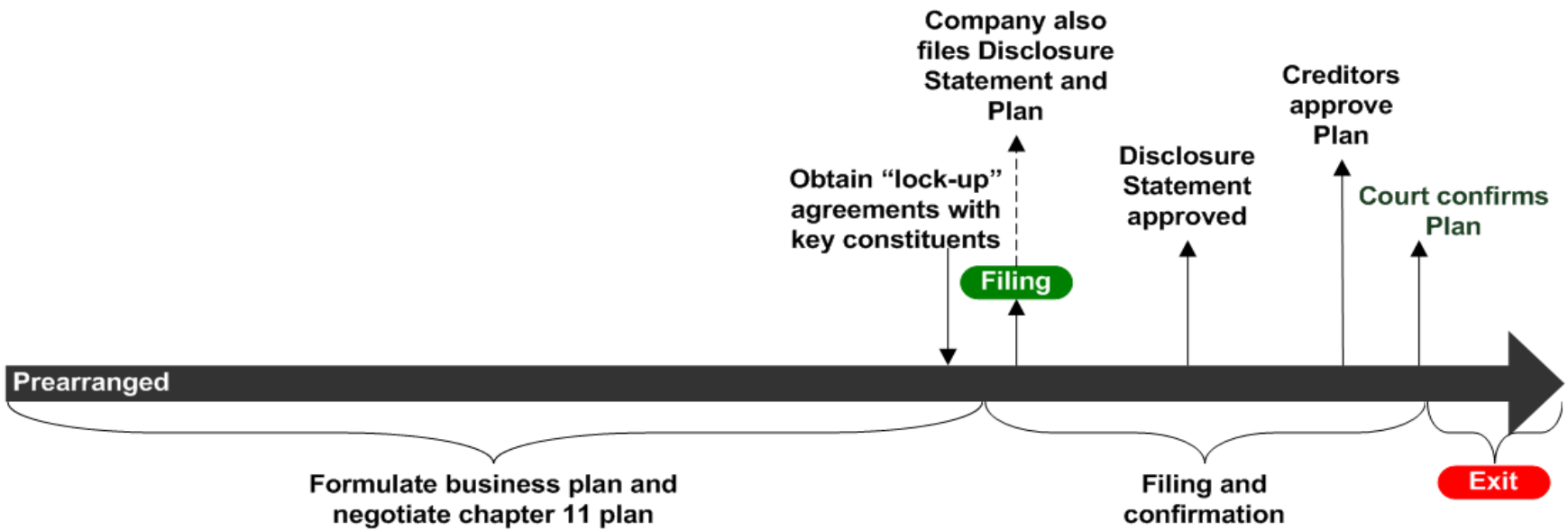
- fully negotiates the plan of reorganization, solicits, and obtains the necessary votes before filing; and
- may only spend 30 to 60 days in bankruptcy, in large part because of the extensive pre-filing efforts to obtain commitments and solicit votes.



Phases of a Prearranged Plan

In a prearranged chapter 11 case, a debtor:

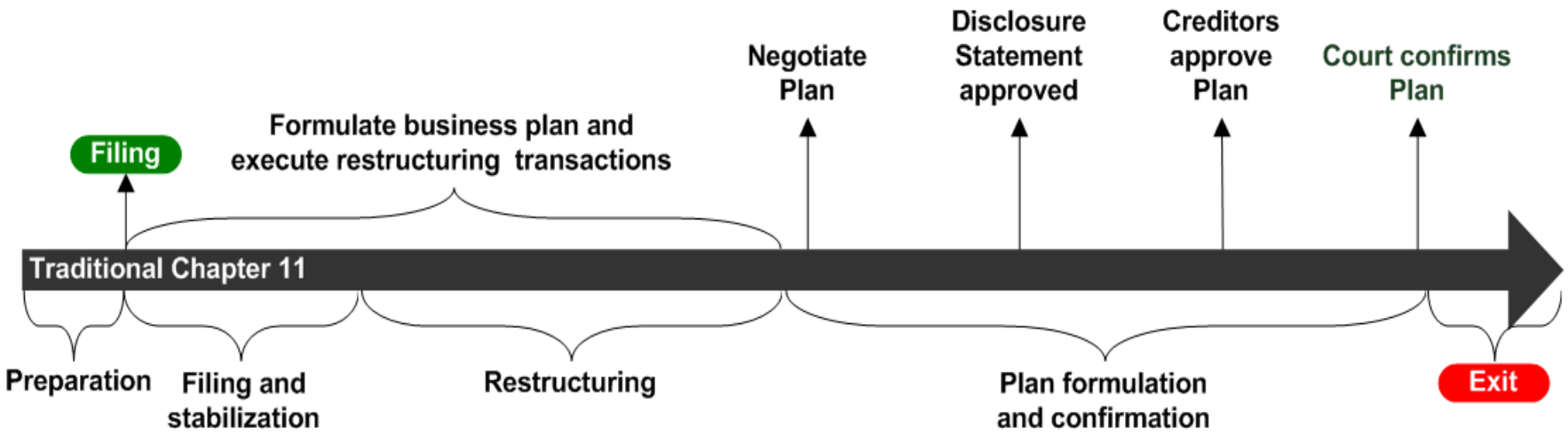
- negotiates its plan of reorganization prior to filing for bankruptcy;
- may have a restructuring support agreement, contractually obligating major constituents to support the plan;
- solicits votes after the chapter 11 filing; and
- spends four to six months in bankruptcy on average.



Phases of a Traditional Plan

In a traditional chapter 11 case, a debtor:

- files for bankruptcy without a prenegotiated plan of reorganization;
- typically spends more money, is in bankruptcy for longer, and has less certainty than it would in a prepackaged or prearranged case; and
- may use chapter 11 "tools" to restructure certain obligations.



Key Benefits of RSAs: Positive Messaging

- In short, RSAs fill the gap between a fully prepackaged plan of reorganization, on the one hand, and filing for chapter 11 with no documented level of support regarding a plan.
- In addition to reducing the time and expense of the chapter 11 process, filing for chapter 11 with an RSA can provide positive messaging about the chapter 11 process (e.g., we have a deal and are filing for chapter 11 solely to implement that deal).
- An RSA can provide some level of comfort to customers, vendors, regulators, and employees (and send a message to the market) that the debtor will swiftly emerge from chapter 11 with a strong, revitalized business.
  - Trade and general unsecured claims are often left unimpaired in prepackaged or prearranged cases.
- To this end, debtors often accompany entry into an RSA with a press release regarding the intended result of the restructuring.

Key Benefits of RSAs: Case Roadmap

- One of the most heavily negotiated aspects of RSA are key case milestones. These typically include the petition date, the filing of a plan and disclosure statement, approval of the disclosure statement, confirmation of the plan, and consummation of the plan (i.e., the effective date).
- Publicizing key case milestones also sends a positive message to the market regarding the debtor's clear path to chapter 11 exit.
- In addition to other negotiated termination events, failure to meet such milestones often give a majority of the supporting creditors the right to terminate their support of the RSA.

Key Benefits of RSAs: "Locking Up" Votes

- A central purpose of entering into an RSA with key creditor constituencies is to ensure that the votes of such creditor constituencies are "locked up" with respect to a plan of reorganization or restructuring transaction.
- In other words, the creditors party to the RSA are obligated to vote in favor of a plan of reorganization that contains agreed-upon material terms (which terms are typically contained in a term sheet or draft plan attached to the RSA).
  - Debtors generally seek a flexible definition of what a "qualified plan" constitutes to ensure that supporting creditors will continue to be "locked up" if the agreed-upon plan terms change to address bankruptcy court rulings or settlements with stakeholders not party to the RSA.

Key Benefits of RSAs: "Locking Up" Votes (cont'd)

- If there is an impaired class of claims under the plan, the Bankruptcy Code requires as a condition to confirmation that at least one impaired class of claims (without regard to the votes of insiders) to vote to accept a plan (i.e., a class of creditors that is not being paid in full or reinstated under the plan).
- To that end, debtors typically work with their financial advisors to determine which creditors hold the "fulcrum" security (i.e., the most senior class that will not receive payment in full).
- **This is the class of creditors that the debtors will generally "lock-up" pursuant to an RSA if they are unable to get full consensus**.
- **Remedies for Violation of RSA**. To avoid protracted, distracting, and costly litigation in the event a party violates the terms of an RSA (e.g., a party does not vote in favor of the plan pursuant to the terms of the RSA), RSAs will typically have a remedies provision providing that "specific performance" of the RSA is the only remedy in the event of breach.

Key Benefits of RSAs: Transfer of Claims

- Debtors need to balance the need to ensure that the "locked up" votes stay locked up until after the plan voting deadline with the common desire of bondholders to retain some market flexibility.
- A common resolution is a "transfer of claims" provision that:
  - requires any supporting creditors to provide notice of any transfer of their claims to the debtors;
  - binds transferees to the RSA; and
  - does not limit the ability of supporting creditors to transfer claims to other supporting creditors or buy additional claims (which will automatically be subject to the RSA).
- Any transfers made in violation of the "transfer of claims" provision is automatically deemed *void ab initio*.

Key Benefits of RSAs: New Money Commitments

- RSAs can be used to solidify support for new money debt and equity commitments, often in the form of a "backstop commitment agreement."
- In a direct rights offering, an issuer sells without any commitment or standby purchaser. In an "insured" or "backstop" offering, third parties or existing creditors agree to purchase any shares or rights that are not executed in the offering.
- Debtors may combine key, agreed-upon terms regarding new money commitments in a traditional RSA, particularly when the commitments are being funded by creditors who have agreed to "lock up" their support for the plan.
- Under these circumstances, the RSA not only provides a roadmap for creditor support of a plan of reorganization, but also provides critical details regarding the financing to consummate such a plan. *See, e.g., In Re New Gulf Resources, LLC*; *Momentive Performance Materials Holdings Inc.*; *In re Roust Corp.*

Key Benefits of RSAs: Professional Fees

- As part of a comprehensive deal on the terms of a plan, debtors often agree to pay the professional fees of the supporting creditors.
- A portion of such fees are often payable upon execution of the RSA, with the remaining portion payable upon the consummation of the plan contemplated by the RSA.
- In the absence of such provisions, secured creditors would not receive payment of their fees for the duration of the case (except as permitted by a DIP or cash collateral order) and unsecured creditor professional fees generally cannot be paid at all.

Key Benefits of RSAs: Fiduciary Out

- Another important aspect of the RSA is the "fiduciary out."
- This provision allows the Debtors to (a) avoid one or more of their commitments under the RSA if fulfilling such commitments would be a violation of their fiduciary duties and/or (b) terminate the RSA if, in an exercise of their fiduciary duties, they believe termination is in the best interests of the estates.
  - Maintaining a fiduciary out is key to allowing the debtors to pursue any higher or otherwise better offers that better maximize the value of the debtors' estates.
  - As discussed in greater detail herein, courts generally will not approve the debtors' entry into an RSA without a fiduciary out.
- Unsecured creditors may negotiate for a fiduciary out solely to the extent such creditors serve on an official committee (to avoid being disqualified from serving on such committee).

Recent Legal Issues with RSAs: Improper Solicitation

- To the extent an RSA is executed post-petition, non-supporting creditors may argue that the "lock up" of votes constitutes an improper solicitation of plan votes. *In re NII Holdings, Inc.*, No. 02-11505 (MFW) (Bankr. D. Del. Oct. 22, 2002); *In re Stations Holdings Co., Inc.*, No. 02-10882 (MFW) (Bankr. D. Del. Sept. 25, 2002). If successful, the proper remedy would be designating the locked-up votes as votes against the plan (a remedy that is typically viewed as drastic).
  - In evaluating such claims, courts will primarily look at whether the alleged solicitation was made of creditors and equity holders that are poorly situated to act capably in their own interests (i.e., unsophisticated holders). In the Third Circuit in particular, courts cited to *In re Century Glove* for the proposition that the Bankruptcy Code provisions on proper solicitation should be read narrowly so as to not inhibit free creditor negotiations. 860 F. 2d 94 (3d Cir. 1988); *Bank of New York Mellon Trust Co. v. Energy Future Holdings Corp.,* et al., No. 15-885-RGA (D. Del. June 24, 2007). This proposition has also been supported by the Fifth Circuit. *See, e.g.*, *In re Snyder*, 51 B.R. 432 (Bankr. D. Utah 1985).
  - For the avoidance of doubt, debtors may also include a provision in the RSA stating that a creditor's agreement to the RSA does not constitute solicitation of a plan under section 1125 of the Bankruptcy Code.

Recent Legal Issues: Prepetition v. Postpetition RSAs

- Debtors will ideally work to enter into a prepetition RSA to ensure a smooth landing into chapter 11 and send a positive message to key stakeholders regarding the projected restructuring outcome.
- Prepetition RSAs will be considered executory contracts under the Bankruptcy Code: like any other prepetition executory contract, the debtor has the right to assume or reject the contract. To ensure that the debtor performs its obligations under an RSA on a postpetition basis, supporting creditors may seek to force the debtor to assume the RSA early in the chapter 11 cases.
  - That being said, however, debtors always negotiate a "fiduciary out" and, as a result, assumption generally does not make sense and only serves to accelerate litigation regarding the merits of the underlying restructuring transaction.

Recent Legal Issues: Prepetition v. Postpetition RSAs (cont'd)

- A debtor may also enter into an RSA postpetition. A chapter 11 filing often drives creditor constituencies to the negotiating table (where they were unwilling to negotiate prepetition). As a result, a debtor may be able to drive consensus on a postpetition basis and "lock up" key creditor votes after filing but before the plan voting deadline.
- Postpetition RSAs will be evaluated like any other postpetition transaction outside of the ordinary course. This standard is typically the business judgment standard, unless there is a basis for imposing a higher standard for review (e.g., conflicts of interest).
  - As discussed in greater detail below, dissenting creditors sometimes argue that postpetition RSAs constitute an improper solicitation of votes (i.e., an improper substitute for a disclosure statement).

Recent Legal Issues with RSAs: Assumption

- Creditors will often seek to include a provision requiring the debtors to seek approval from the Bankruptcy Court to (a) assume a prepetition RSA (under section 365 of the Bankruptcy Code) or (b) enter into and perform under a postpetition RSA (under section 363 of the Bankruptcy Code). The standard under both provisions is essentially business judgement, unless there is a basis for imposing entire fairness (e.g., resolution of significant intercompany claims). *See In re Residential Capital*, *LLC*, No. 12-12020, 2013 WL 3286198, at *18-19 (Bankr. S.D.N.Y. June 27, 2013).
  - Depending on the level of contention in the chapter 11 cases, debtors may not want to agree to seek approval of the RSA.
  - In addition to raising improper solicitation objections, non-consenting creditors may use the RSA approval hearing as a "mini-confirmation" hearing to challenge the material terms of the plan agreed upon by the debtors and the supporting creditors. It will likely be a waste of time and resources, and cause delay and distraction, to hold a mini-confirmation trial in the early stages of the chapter 11 cases.
  - For the same reason, courts may disfavor an early hearing to consider approval of the RSA, since early approval locks in the results of the case before the Court has had a chance to evaluate the merits of the transaction. *In re Innkeepers USA Trust*, 442 B.R. 227 (Bankr. S.D.N.Y. 2010).
  - At the same time, because entry into a postpetition RSA is likely to be considered outside the ordinary course of business, failure to obtain Bankruptcy Court approval may expose supporting creditors to the risk that the RSA will not be enforceable against the debtors. Similarly, prepetition RSAs are prepetition executory contracts, that the debtors could arguably reject. *See, e.g.*, *In re Genco Shipping & Trading Ltd.*, 509 B.R. 455, 462 (Bankr. S.D.N.Y. 2014) (deciding a motion to assume an RSA under section 365).

Recent Legal Issues with RSAs: Unauthorized Payment of Fees

- Section 506 of the Bankruptcy Code allows for the payment of postpetition professional fees and expenses for oversecured creditors. *See, e.g.*, *In re United Merchants and Manufacturers*, 674 F.3d 134 (2d Cir. 1982).
- Unsecured creditors have three routes to seek payment of professional fees and expenses:
  - an exercise by the unsecured trustee of its charging lien (effectively reducing the recoveries going directly to unsecured creditors), which is generally done as part of consummation of the plan when distributions are made to creditors;
  - making a showing under section 503 of the Bankruptcy Code (which provides for payment of professional fees upon a showing that the professionals provided a "substantial contribution" to the debtors' estates); or
  - convincing the court that payment of fees for unsecured creditors is permissible under section 363 of the Bankruptcy Code.
- To this end, the U.S. Trustee and/or non-supporting creditors may object to RSA provisions that provide for the payment of fees to unsecured creditors as a provision of the RSA, arguing that such fees may only be paid upon a showing that the creditors made a substantial contribution. *Cf. In re Energy Future Holdings Corp.*, No. 14-10979 (CSS) (Bankr. D. Del. 2017); *In re Caesars Entertainment Operating Company, Inc.* No. 15-01145 (ABG) (Bankr. N.D. Ill. 2016); *In re Lehman Bros. Holdings Inc.*, 2014 WL 1327980 (SDNY 2014).
- Debtors will seek to argue that the agreement to be "locked up" and good faith negotiations and documentation of a comprehensive restructuring meet the section 363 and/or 503 standard, to the extent applicable.

Recent Legal Issues with RSAs: Indenture Trustees

- Another oft-raised issue is whether indenture trustees should be party to the RSA or whether supporting creditors should be required under the RSA to direct the respective indenture trustees.
  - Indenture trustees will often be unwilling to be party to an RSA on an institutional basis or on the basis that as trustees they do not hold legal or equitable title to the underlying claims that are locked up by the RSA.
  - The indentures will dictate what percentage of supporting creditors are required to direct the indenture trustee – provided that this same percentage is locked up the RSA, the supporting RSA creditors can direct the indenture trustee to take action or refrain from taking action.
  - Even with a direction letter by the minimum percentage of creditors, indenture trustees may not follow the direction out of concern for action by non-supporting creditors in the absence of an indemnity accompanying the direction letter.

RSA Litigation: In re Innkeepers

- In *Innkeepers*, the debtors entered into a prepetition RSA with Lehman ALI Inc. ("Lehman"), its largest secured creditor, pursuant to which:
  - Lehman would receive 100% of the reorganized equity in satisfaction of its $238 million secured claim;
  - the remaining secured lenders would receive new secured notes; and
  - unsecured creditors would receive their pro rata distribution of a cash pool.
- Lehman, who was also in chapter 11 at the time, demanded the flexibility to sell significantly all of the reorganized equity on a post-emergence basis. To that end, Lehman entered into a side letter with Apollo Investment Corporation ("AIC"), the non-debtor parent of all the debtor entities. Apollo was not a party to the RSA. Pursuant to the side letter, Lehman and AIC agreed that AIC would purchase 50% of the reorganized equity from Lehman.
- The debtors sought to assume the prepetition RSA early in their chapter 11 cases. Certain mezzanine creditors objected to the debtors' motion, accelerating various confirmation-related objections regarding whether the transactions contemplated by the RSA maximized the value of the debtors' estates and violated the absolute priority rule.

RSA Litigation: In re Innkeepers (cont'd)

- Specifically, the objecting parties argued that the RSA should be subject to a heightened standard (and not business judgment) because:
  - AIC was heavily involved in the negotiation of the PSA (although not a signatory); and
  - the debtors had not marketed their assets prior to entering into the RSA (or disclosed the proposed transactions to the other secured creditors), and the Lehman-AIC side letter effectively returned the value of the debtors' estates to their parent, AIC, in violation of the absolute priority rule.
- The court denied the assumption motion, finding that:
  - a heightened standard of review was warranted, given AIC's involvement in negotiations;
  - the transaction failed even the business judgment standard because the assets were not marketed and the debtors did not maintain a proper fiduciary out to explore a higher or otherwise better offer;
  - the debtors did not do a valuation of the new equity; and
  - the debtors were not in a "melting ice cube" situation, warranting PSA approval this early in the chapter 11 cases.

RSA Litigation: In re Energy Future Holdings Corp.

- **Prepetition RSA**. In *EFH*, the debtors entered into a prepetition RSA with key constituencies at each debt silo. Among other key transactions, the RSA contemplated a second-lien DIP that would mandatorily convert into over 67% of the reorganized equity in the parent.
- The debtors sought to assume the prepetition RSA within the first several weeks of the chapter 11 cases.
- The prepetition RSA did not have the support of active creditor constituencies at each of the debt silos. In addition, the value of the debtors' ring-fenced, non-debtor subsidiary had increased since the execution of the RSA and was projected to increase in the near-term.
- As a result, creditor constituencies argued that the second-lien DIP had not been properly marketed to other creditors who may have wanted an opportunity to own the reorganized equity in the parent.
- After the Bankruptcy Court indicated that it would not approve the second-lien DIP, the debtors determined to terminate the RSA.

RSA Litigation: In re Energy Future Holdings Corp.

- **Prepetition RSA (cont'd)**. Certain creditors party to the PSA filed suit against certain other creditors party to the PSA, seeking to enforce a "call right" to purchase certain notes at a percentage of par price. The plaintiffs argued that they exercised the call right prior to termination of the RSA, and that they were entitled to specific performance of such exercise.
- The RSA contained the following language: "At any time before the Effective Date [of a plan of reorganization], any one or more Commitment Parties shall have the right to purchase from Fidelity all of its EFH Non-Guaranteed Notes for a purchase price equal to 37.15% of par plus accrued and unpaid interest through the Petition Date."
- The Bankruptcy Court dismissed the lawsuit, finding that the call right provision did not survive termination of the RSA.

RSA Litigation: In re Energy Future Holdings Corp. (cont'd)

- **Postpetition RSA**. Following the termination of the prepetition RSA, the debtors went back to the drawing board and, over the course of the next year, developed a postpetition RSA with key creditor constituencies.
  - Certain holders of unsecured notes objected to the debtors' motion to enter into the postpetition RSA on the basis that it constituted an improper solicitation of votes on a plan of reorganization (given that the disclosure statement on the plan had not yet been approved).
  - The Bankruptcy Court overruled the objection, on the basis that the RSA was not a solicitation under the "plain meaning" of solicitation under the Bankruptcy Code.
  - Specifically, the Bankruptcy Court noted that solicitation means the formal sending out of ballots to parties in support of a plan, and asking them to vote on those ballots. Here, the PSA required the parties to vote in favor of the Plan pursuant to ballots to be provided in accordance with a court-approved disclosure statement.

RSA Litigation: In re Residential Capital

- In *Residential Capital*, the debtors filed for chapter 11 with an RSA. The RSA contemplated a prenegotiated bankruptcy that would culminate in a prearranged sale of its mortgage lending and origination business platform. The RSA contemplated an aggressive timeline to exit—less than six months post-filing.
- The centerpiece of the proposed plan was a settlement of all estate actions and third-party claims against the debtors' parent, Ally Financial, in exchange for a cash payment of $750 million and certain noncash contributions.
- The settlement was the product of an investigation and negotiation conducted by two independent directors who had been appointed months before the filing.
- The settlement was only supported by two creditor constituencies: approximately 40% of junior secured noteholders and certain institutional investors.
- The settlement was widely criticized across the capital structure, including the newly formed creditors' committee.

RSA Litigation: In re Residential Capital (cont'd)

- The creditors' committee filed a motion seeking authority to investigate a broad range of prepetition transactions between the debtors and Ally. Immediately thereafter, a large creditor filed a motion requesting the appointment of an examiner for the same purpose.
- The bankruptcy court appointed an examiner, tasked with investigating the wide array of claims that could be asserted by the debtors or third parties against Ally Financial. The examiner's ultimate goal was to evaluate whether Ally's cash contribution of $750 million was sufficient to justify the releases contemplated by the RSA.
- The official committee conducted a concurrent investigation. The investigations took nearly ten months to complete.
- On the eve of the release of the report, the debtors, Ally, and certain other key stakeholders reached a comprehensive settlement. Pursuant to the settlement (which resulted from mediation conducted by a different bankruptcy court judge), Ally agreed to increase the cash portion of its settlement by $1.35 billion in exchange for debtor and third-party releases.
- Ultimately, the debtors' plan was confirmed approximately 19 months after filing (as opposed to the six months contemplated by the RSA).