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Mid-Atlantic Bankruptcy Workshop 2021

Emerging SPAC Trends and Other Creative Financing Structures

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CONCURRENT SESSION

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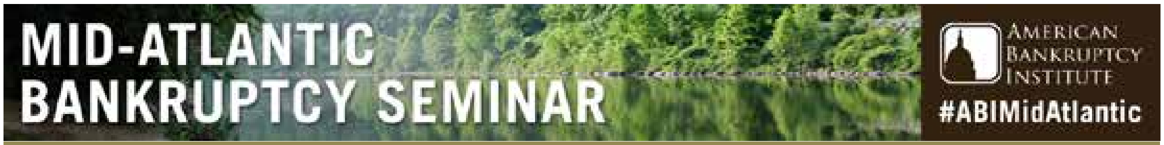

Emerging SPAC Trends and Other Creative Financing Structures

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Today's Panel

- Cameron Fee, Skadden
- Ferve Khan, BakerHostetler
- Jeff Manning, CohnReznick Capital
- Moderator: Anne Eberhardt, Gavin/Solmonese

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SPACs

Special Purpose Acquisition Corporations

SPACs and Bankruptcy

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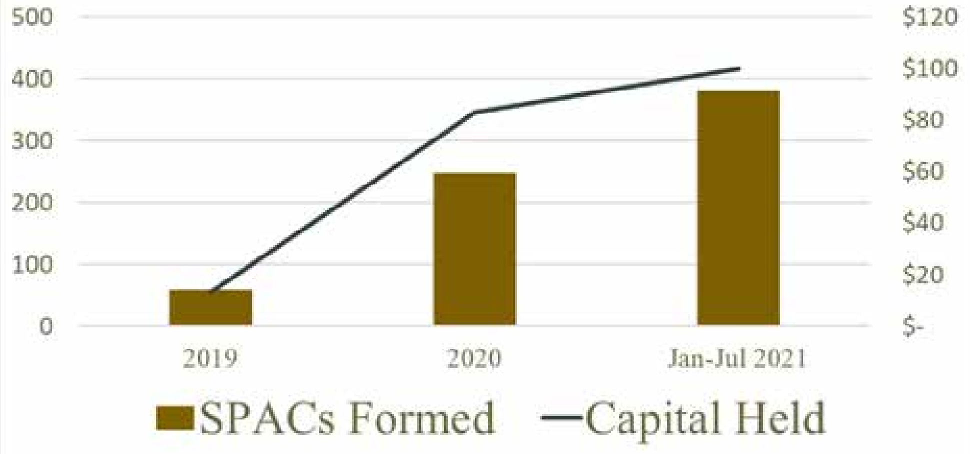
Recent SPAC History



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SPACs

- **What are SPACs?**
  - Mechanics
  - Risks

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SPACs

- **SPACs and Chapter 11**
  - Failed Transactions
  - Distressed Investments

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Other Creative Financing Structures

Litigation Financing → Special Purpose Equity → Accommodation Agreements

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Other Creative Financing Structures

- **Litigation Financing**
  - Fundamentals
  - Intersection of Litigation Finance and Bankruptcy

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Other Creative Financing Structures

- **Special Purpose Equity**

RUBIE'S
RUBIE'S COSTUME COMPANY INC
World's largest designer & manufacturer of costumes

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Other Creative Financing Structures

- Accommodation Agreements

TAKATA

DURA Automotive Systems

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Audience Q&A

ABI-MidAtlantic Panel – August 5-6, 2021:

Emerging SPAC Trends & Other Creative Financing Structures

EMERGING SPAC TRENDS

WHAT ARE SPACs?

A Special Purpose Acquisition Company ("SPAC") is an investment vehicle that raises funds in public markets to acquire an as yet unidentified company, typically within two years of the SPAC's initial public offering ("IPO"). SPACs are also called "blank check companies" because they have no pre-identified target. Thus, while in a traditional IPO, a company will disclose extensive details about its business operations, the required disclosures for SPACs are easier because they have no business operations.

SPACs first emerged in the early 1990s, although the use of SPACs has ebbed and flowed, in part because of regulatory issues reflecting limited investor safeguards. The SEC has gradually tightened disclosure requirements for SPACs, but SPACs remain subject to lighter disclosure and process regulations relative to a conventional IPO.

Since 2019, there has been a meteoric rise in SPAC transactions due to booming stock markets and the relative speed, control and certainty of the process in an otherwise volatile time period. Currently SPACs constitute 65% of all U.S. IPOs and 53% of total U.S. IPO proceeds.[1] To date this year, according to SPAC Research, there have been 381 SPACs formed, holding some \$100 billion in capital waiting to be deployed.[2] This dramatic increase compares to 248 SPACs formed last year (raising \$83 billion) and 59 formed in 2019 (raising \$13 billion).

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[1] *See* https://www.spacanalytics.com/ (last accessed July 27, 2021).

[2] *See* https://www.spacresearch.com/ (last accessed July 27, 2021).

Mechanics of SPAC Transactions

Three stakeholders play a role in a SPAC transaction. First, the Sponsor Group underwrites the SPAC. The SPAC is priced around $10 per share, and through the public offering with warrants the Sponsors can retain 20% of the stock of the company for a $25,000 "promote" investment. Thus, Sponsors stand to benefit massively from a successful transaction.

The money raised between the initial underwriting and the public offering is deposited into an interest-bearing trust account.

Next, Sponsors seek a Private Company—the "target" of the SPAC—looking for capital and public market access. Recent targets have been early-stage or pre-revenue with unique technology or supply arrangements that otherwise lack the resources to access public markets on their own financial wherewithal.

Distressed companies, and particularly those that have undergone a recent reorganization, may also find the reverse merger with a SPAC attractive.

The third set of stakeholders are the investors in the SPAC. Many hedge funds look to "park" funds in a safe temporary investment and often exit quickly following the public offering.

SPACs have a short life cycle. Often formed just months before a public offering, SPACs have strict deadlines to identify and acquire the target. Most SPACs are required by governing documents to complete a transaction in 18-24 months, or else they must return funds to investors.

Risks of SPAC Transactions

Targets of SPACs get fast-track access to public markets, completing a transaction in months rather than years. However, dealing with a SPAC can be a risky endeavor for a target company because investors in the IPO have the opportunity to redeem their investment pre-transaction. Redemptions can significantly reduce the "trust fund" pot, limiting the cash infusion to the target company and leaving a target "running on empty" from the outset.

Targets can control this risk through a pre-commitment of money or limits on redemption, such as a non-redemption agreement with certain shareholders. "PIPE" investments (Private Investment in Public Equity) also provide a backstop of cash to mitigate trust fund dilution.

SPACs & CHAPTER 11

Chapter 11 Filings in Post or Failed SPAC Transactions

While SPACs provide opportunities for the target company, companies that have completed SPAC mergers may nevertheless wind up in chapter 11. Strict and effective cash flow management is critical. The risk of dilution of the trust fund pot can leave a post-SPAC company in need of cash from the outset. In this case, former directors who participated in the SPAC may be subject to litigation in connection with the SPAC merger.[3]

In addition, a failed merger can facilitate a decline and leave chapter 11 as a last resort. In 2019, a proposed merger between a SPAC and CEC Entertainment (the owner of Chuck E. Cheese) was terminated. The company ultimately filed for chapter 11 to shed a $705 million debt obligation, and emerged earlier this year.

Distressed Investments

Conversely, SPACs can also operate opportunistically in the distressed space. Companies that have recently emerged from reorganization, including chapter 11, can be attractive targets for SPACs for several reasons. If it was an effective process, reorganized companies have had the opportunity to shed burdensome contracts and other obligations, deleverage, and regain a financial and operating foothold. They may also have compelling valuations reflecting the stigma of a recent chapter 11. Similarly, post-reorganization private companies may welcome going public through

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3 *See AP Services, LLC v. Lobell*, 2015 WL 3858818, 2015 N.Y. Slip Op. 31115 (N.Y. Sup. Ct. 2015) (upholding breach of duty and breach of care claims by Chapter 11 trustee in connection with SPAC merger).

a SPAC process, through which they can liquify their shares, gain momentum in the market through newly-issued public stock, and potentially obtain debt at lower rates.

For example, Skillsoft Corp., an educational technology company focusing on training software for businesses, filed for bankruptcy in June 2020 after the COVID-19 pandemic dampened demand for its services. It successfully emerged in August, and in October announced a $1.3 billion definitive agreement to be acquired by a SPAC, Churchill Capital Corp II. The merger was completed in June 2021, and Skillsoft is now listed on the New York Stock Exchange.

Like Skillsoft, Equinox Group had been exploring a SPAC investment to go public after facing pandemic-related losses, but it appears talks fell apart in early July due to a disagreement over the combined company's valuation.

Nevertheless, SPACs looking to invest in distressed assets can encounter certain limitations. A SPAC's operating guidelines typically require it to acquire an operating company, and to acquire at least a controlling interest in the target business. SPACs cannot achieve these requirements through purchasing distressed debt, which is the vehicle through which many distressed investors get a "seat at the table" in the reorganization process.

SPACs can also play a role in chapter 11 by bidding to purchase assets through a Section 363 sale. However, the requirement of shareholder approval and the timing involved to obtain SEC approval may put the SPAC at a competitive disadvantage compared to other bidders unburdened by such restrictions.

Despite these limitations, the involvement of SPACs with distressed companies in and out of chapter 11 can reap rewards for all stakeholders involved. Restructuring professionals and distressed investors alike should monitor the rapidly developing legal and deal landscapes for opportunities and pitfalls.

OTHER CREATIVE FINANCING STRUCTURES

Usually the first place debtor professionals will look for creative financing solutions is to search for any unencumbered assets. In the early days of a case, debtor's counsel analyzes the UCC filings to confirm that the senior lender indeed has a valid, perfected security interest in the collateral.

Sometimes there may be assets outside of the strict definition of collateral, like trade secrets, Purchase Orders (POs) or unique supply contracts.

There may also be assets or equity overseas that domestic lenders may not have a claim on, and these may find interest with other creative lenders. Often there is equity in owned real estate beyond the mortgage values that may yield liquidity.

We will examine three recently applied alternatives to assist a debtor's journey through the chapter 11 process: (1) Litigation Financing; (2) Special Purpose Equity/Warehouse Structures; and (3) Accommodation Agreements.

Litigation Financing

Litigation financing is the third-party funding of, and investment in, legal claims and future causes of action. Litigation financing can provide a means for a creditor or a trustee to pursue litigation, despite lacking the necessary liquidity or resources to do so. The litigation funder advances capital to pay legal fees and expenses, in exchange for the return of its investment and a pre-determined percentage of the recovery.

While the terms of the financing vary, litigation funders often look for claims where the expected recovery is at least ten times the required budget or amount to be funded. The riskier the case, the more a litigation financer might charge for the use of its capital, and litigation finance investors typically seek out binomial outcomes—it is either a really big win or a zero. In most cases, these funds are provided on a non-recourse basis, meaning that if the litigant is unsuccessful, the litigation funder is owed nothing. Litigation funders hedge against the risk of zero recovery by investing and assembling portfolios of litigation.

The Intersection of Litigation Finance and Bankruptcy

Litigation financing can be used in many different ways in the chapter 11 process, and by many different constituents, including a debtor, a post-confirmation litigation trust, and creditors' committees. While litigation financing continues to develop within the bankruptcy context, litigation financing continues to emerge as a natural solution to the liquidity constraints that often foreclose debtors and other constituents from pursuing meritorious litigation.

For example, in those bankruptcies where the estate's most valuable assets are likely litigation claims, the debtor may consider seeking DIP or exit financing from a litigation funder. Bankruptcy estates can "monetize" these litigation claims during the bankruptcy to maximize cash recoveries for the estate by effectively selling their claims to a litigation funder or another third party. Post-confirmation litigation trusts can also use litigation financing to provide creditors with an avenue to pursue claims where the debtor did not have sufficient funds to adequately capitalize the trust.

The most common form of litigation finance in chapter 11 is the funding of post-confirmation litigation trusts. A litigation trust is a trust designed to prosecute, and distribute proceeds of, estate causes of actions that have been transferred to the trust as part of a chapter 11 plan. A litigation trustee typically determines which claims and causes of action to pursue, and then can pursue them via litigation or settlement, on behalf of the trust's beneficiaries, which are usually creditors of the bankrupt estate. This dynamic allows a debtor's plan to be confirmed, and for the debtor to emerge from bankruptcy, prior to the resolution of what could be several years of litigation.

The litigation trust is funded by the bankruptcy estate. However, such funding may be inadequate, and because such funds, to the extent they are not used, can be distributed out to the trust's beneficiaries, litigation financing allows (1) the trust proceeds to be distributed out to beneficiaries immediately, and (2) meritorious litigation to be pursued, the recoveries from which could provide additional payout to trust beneficiaries if and when available. Obtaining litigation funding at the outset would also prevent any delay that would result if the trust were to deplete its seed money and need to seek additional financing.

In re Tropicana Entertainment LLC is an illustrative example of how a post-confirmation trust can benefit from litigation financing. In that case, the post-confirmation litigation trustee used litigation financing to pursue claims in an adversary proceeding against the debtor's former CEO. There, the litigation trust was provided with $300,000 in "seed" money from the estate to fund the insider litigation, which the litigation trustee exhausted in commencing the insider litigation and responding to a motion to dismiss. The litigation trustee then obtained court approval to enter into a Litigation Funding Agreement with Carl Icahn, the litigation trust's largest beneficiary. Under the terms of the agreement, Icahn would provide up to $2 million to finance ongoing litigation. If the litigation was successful, Icahn would get an amount equal to the greater of (i) $4 million or (ii) 25% of the Net Recovery Proceeds Amount (the latter to be capped at $10 million). The litigation trustee used this cash to survive a motion for summary judgment on its claims in mid-2019, which it otherwise would not have had the resources to defend.

Outside of the post-confirmation litigation trust context, litigation finance has been used successfully to guarantee creditor recovery. For example, in *In re MagCorp Liquidation*, after the cases were converted to chapter 7, the chapter 7 trustee initiated an adversary proceeding against MagCorp's parent company, Renco, for fraudulent transfer, breach of fiduciary duty, and unjust enrichment. The trustee obtained a $213 million judgment, at which point it was left with only $670,000. To obtain the necessary funds to defend an appeal of the judgment by Renco, the trustee commenced a 363 sale of the right to a percentage of the litigation proceeds if the judgment was affirmed on appeal. A litigation funder won the auction and provided $26.2 million to the estate on a non-recourse basis. The bankruptcy court approved the transaction over the objection of certain noteholders. With the additional $26.2 million in cash, MagCorp successfully defended the judgment on appeal.

A unique use of litigation financing was also employed in *In re Fastship Inc.*, where the litigation funding was used first as a DIP loan to fund the bankruptcy case, and then to fund a post-confirmation litigation trust. Fastship was formed to exploit patented technology for container freight vessels. Fastship was unable to raise the necessary financing to launch the shipbuilding phase, and was prepared to wind down and dissolve, when it learned about a potential infringement on certain of its patents. Fastship engaged a law firm that was willing to work on a mostly contingent-fee basis, but refused to advance funds for expenses. Fastship searched for litigation financing; however, because Fastship had more than 200 previous investors with notes secured by its IP, including any litigation proceeds from defending its patents, Fastship could not grant a litigation funder a first lien on proceeds from the litigation without unanimous consent of all 200 noteholders. Fastship was unable to do so, so its creative solution was to file for chapter 11, using part of the litigation funding as a super-priority DIP loan to fund the bankruptcy process, before filing a liquidating reorganization plan to prime the prepetition secured creditors. The DIP loan was then rolled into post-confirmation litigation financing. This approach allowed the litigation funder to receive a post-confirmation first-lien position on any litigation proceeds. Fastship was ultimately successful in its patent infringement litigation, securing a judgment in its favor that was affirmed on appeal. Without litigation financing, this would not have been possible for a company that, prior to learning about the potential causes of action, was on the precipice of dissolution.

Challenges to the Use of Litigation Financing in Bankruptcy Proceedings

One aspect of bankruptcy that may present a unique challenge for litigation financing is the emphasis on transparency. Funding agreements may include proprietary information and may give insight into litigation strategy. While the bankruptcy process does have a process by which such information may be sealed, litigation finance also raises certain other legal and ethical concerns.

Some criticisms of litigation financing include that it disincentivizes lawyers who would otherwise be compensated on a contingency basis and may encourage frivolous lawsuits. Similar to litigation funders, plaintiffs' attorneys are typically paid only if they obtain a recovery for the client, meaning that they fund the costs and expenses of the litigation upfront. When litigation funders are involved, the attorneys get paid regardless of outcome, leaving them with less "skin in the game."

Critics of litigation financing also argue that it interferes with a plaintiff's control over its lawsuit and the attorney-client relationship, and may raise ethical issues for attorneys. For example, the rules of professional conduct require lawyers to preserve their independent professional judgment, maintain and protect a client's confidential information, and address conflicts of interest—critics argue that accepting payment from a third party erodes what should be undivided loyalty to the client.

Those critiques have not stopped litigation funding from growing in popularity in recent years and with little regulation. Last year, the Uniform Law Commission announced that it would not float uniform litigation finance legislation after finding "no clear path toward uniformity." New York and California bar associations also endorsed the practice in 2020, and Minnesota showed support for litigation financing by abolishing the common law doctrine of champerty, which prevented third parties from investing in legal claims in exchange for a share of the returns. Other states have either done away with laws against champerty,[4] or, like Delaware, have recognized that litigation funding arrangements do not run afoul of the doctrine.

Relationship of Claims Trading and Litigation Finance

Sometimes, creditors of a bankrupt debtor are unwilling or unable to face the time and uncertainty associated with collecting a debt from a bankrupt entity. Claims trading provides one solution. Claims trading is the process of buying and selling claims held by creditors against bankrupt entities. The seller gets an immediate discounted cash payment, and the claim is legally transferred to the buyer at its face or par claim amount.

Trading of claims in an insolvency is hardly new—you can find rules addressing the trading of claims in Babylonia dating from 1750 BCE.[5]

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[4] Champerty is an ancient doctrine that bars strangers to a lawsuit from assisting in its prosecution or defense in exchange for some proceeds of the action. Over the last several decades, certain states have abolished the doctrine, including South Carolina, Massachusetts, Kentucky and Minnesota. *See, e.g., Osprey, Inc. v. Cabana L.P.,* 340 S.C. 367, 532 S.E.2d 269, 277 (2000) (South Carolina); *Saladini v. Righellis,* 426 Mass. 231, 687 N.E.2d 1224, 1226–27 (1997) (Massachusetts); *McCullar v. Credit Bureau Sys.,* 832 S.W.2d 886, 887 (Ky.1992) (Kentucky). Currently, only a handful of states continue to recognize the champerty doctrine.

[5] The Code of Hammurabi was one of the earliest and most complete written legal codes. It was proclaimed by the Babylonian King Hammurabi, who reigned from 1792 to 1750 BCE. The Code was a collection of 282 rules, which established standards for commercial interactions and set fines and punishments. Hammurabi's Code was carved onto a massive, finger-shaped black stone pillar that was looted by invaders and finally rediscovered in 1901.

Sometimes, a claims buyer is simply making a financial investment, hoping to recoup a greater amount in the bankruptcy in exchange for the claim than the amount paid to the buyer, adjusted for time value and interest. More often, however, particularly in large chapter 11 cases, the buyer purchases enough claims in order to obtain a position in the bankruptcy that affords them significant voting rights and the ability to influence the restructuring by filing pleadings, interfacing with other constituents in the bankruptcy case, and so on.

Claims trading is widely-accepted in the bankruptcy setting. Claims trading, like litigation financing, involves a third-party funder who is willing to withstand the time and risks associated with litigating those claims, and provide immediate liquidity in return. And often, claims buyers are sophisticated institutions that perform the same type of due diligence and analysis performed by a litigation funder determining whether to provide litigation financing.

While both litigation finance and claims trading provide similar benefits, they both create similar risks: the potential misalignment of incentives between the claims buyer (or litigation funder) and the risk of an increased number of "hold outs" or nuisance lawsuits. At the same time, both litigation finance and claims trading provide greater access to liquidity. With respect to the former, litigation financing allows parties to pursue claims they otherwise would not have had the resources to pursue. As to the latter, creditors receive some compensation for their claims that they might not have otherwise been able to advocate for in their capacity as a holder of a single claim, or otherwise see to fruition.

Searching for Liquidity -- Special Purpose Equity/Warehouse Structure

Sometimes professionals need to be even more creative, thus the Special Purpose Equity (SPE)/Warehouse Structure concept.

Case Study: Rubie's Costume Company

If you have ever marveled at the sophistication of the Storm Trooper costume you see at a fancy adult Halloween party, credit Rubie's Costume Company, et.al., ("Rubies"), which filed for chapter 11 protection on April 30th, 2020, in the Eastern District of New York (Case No. 8-20-71970-AST).

For over 70 years, Rubies designed, manufactured and distributed costumes with a range of non-exclusive licenses including Marvel, Warner Brothers, and Lucasfilm, amongst other content producers. Rubies operated globally with a presence in 15 countries and sales across 52 countries, including nearly 2,000 worldwide retail accounts alongside brick-and-mortar stores and e-commerce relationships with Walmart, Party City, and other big box stores. The debtors also maintained relationships with Asian contract manufacturers, which was a critical part of its supply chain.

Senior debt in the case represented a Club Group of seven lenders, and frankly none had positions large enough so that they were inclined to cooperate on either cash collateral or a DIP financing. While the debtors argued the lenders were in fact overcollateralized, especially once additional inventory shipped from Asia, the senior lenders took the position that straight liquidation would probably get them out close to whole, despite the concomitant damage to administrative claims, other creditors, and the enterprise.

In the late spring of 2020, the situation remained highly fluid because of the reliance on Halloween sales, which were difficult to predict given COVID-19, as even prior to the pandemic slow-down, Rubies operated at a loss, finishing 2019 with over $250 million in net sales and several million in negative EBITDA.

The debtors mounted a priming fight to bring in $50 million from new DIP lenders to pay for the new seasonal inventory. Meanwhile, the existing senior debt took a dim view and argued Halloween for 2020 was going to be cancelled. Despite the fact that high caliber retailers had already put in orders for product, and the risk of not being able to collect on inventory converting to receivables converting to cash was de minimis, the judge denied the debtors' priming motion.

So it was up to the professionals to search for Plan B, as they contacted creative lenders to examine and explore alternatives. During those discussions the concept of creating a Special Purpose Entity, owned by the new lender, emerged that would buy the $50 million in "new" seasonal inventory, most of it "made-to-order" for Rubies' largest customers. The SPE would then sell inventory back to the debtors on post-petition credit terms that better fit the expectations of collections in October, November, and December.

Key to the success of the plan was that Asian vendors desperately needed to get paid, because they lacked sufficient working capital to finish the made-to-order goods.

As professionals on all sides of the case began to evaluate and negotiate the terms and conditions of the SPE, as is often the case with chapter 11, in the end the senior lenders came to an accommodation to extend additional liquidity that acquired the new inventory. Rubies was sold under §363 and is waiting for the Darth Vader order for your next party.

However, the SPE approach will have applications in future cases.

<u>What is an Accommodation Agreement?</u>

An "Accommodation Agreement" is a forbearance or negotiated modification between a supplier, the original equipment manufacturer ("<u>OEM</u>") it services, and usually the supplier's secured lenders, that is put into place when the supplier lacks sufficient liquidity to purchase materials to continue manufacturing. Under an Accommodation Agreement, the OEMs generally commit to provide the necessary liquidity to the supplier in exchange for adequate assurance that the products will continue to be manufactured.

Typical key terms that are negotiated in Accommodation Agreements include (1) that the customer will not obtain goods from another supplier for a defined period of time, provided certain conditions are met, (2) that the customer will not exercise its right to setoff or recoupment against accounts payable for supplier's failure to perform, (3) to accelerate payment terms on shipments made during a defined period, (4) to provide specific amounts of financing, and/or (5) to reimburse the supplier, on a daily basis, for its pro rata share of operating costs.

Case Study: Takata Corporation

On June 25, 2017, Japanese auto parts manufacturer Takata Corporation ("Takata") filed for chapter 11 in the U.S. Bankruptcy Court for the District of Delaware (Case No. 17-11375), citing financial distress related to faulty airbag inflators and the largest automotive recall campaign in U.S. history. Takata entered chapter 11 with an agreement in principle with plan sponsor Key Safety Systems ("KSS") for the sale of substantially all of Takata's assets. The acquisition was completed in April 2018 for approximately $1.58 billion.

Takata entered bankruptcy facing billions of dollars of contractual indemnification, reimbursement, and contributions claims for costs and expenses incurred by OEMs carrying out recalls, which would otherwise have been used to offset the OEMs' payables to Takata. To address this liquidity crunch, Takata entered into Accommodation Agreements with multiple automakers.

Takata's bankruptcy was unique given, among other things, the size of the OEMs' indemnity claims arising out of the recalls. At the time of the filing, the OEMs' payables in the U.S. alone were approximately $285 million, but the indemnity claims had the potential to wipe out any payables owed to Takata. As these OEMs constituted a significant portion of Takata's revenue, to bridge the liquidity gap between the petition date and the sale to KSS, Takata entered into Accommodation Agreements with certain consenting OEMs. Under these Accommodation Agreements, the OEMs agreed to forbear enforcing their setoff rights, and to pay timely, and in certain instances, advance their payables. The OEMs also agreed to many of the standard terms and conditions found in Accommodation Agreements, including maintaining pricing and not taking Takata's business to competitors.

In exchange, Takata would continue to manufacture and supply parts during the bankruptcy. The OEMs' setoff and recoupment claims would be treated in the bankruptcy as secured claims, with many of the same protections given to DIP lenders under section 364 of the Bankruptcy Code, including:

- a first-priority replacement lien on all its accounts owing by the OEMs to the debtors after the petition date;
- a junior security interest and lien upon all of Takata's property that was subject to perfected liens in existence immediately prior to the petition date;
- a senior *pari passu* lien on and security interest in all of Takata's other assets; and
- a super-priority administrative expense claim payable from all property of Takata's assets other than avoidance actions or proceeds therefrom.

The Accommodation Agreement was terminable upon certain events, including withdrawal or amendment of the chapter 11 plan in a way that materially adversely affected the OEMs.

Case Study: Dura Automotive Systems LLC

Dura Automotive Systems LLC ("Dura") is an automotive supplier that designs and manufactures automotive mobility products. In 2019, Dura filed for chapter 11 in the District of Delaware (Case No. 19-12378) for the second time—its first chapter 11 filing was in 2006—citing ongoing constituent disputes that made it difficult for Dura to access ordinary course financing. Dura was ultimately sold to senior lender Bardin Hill Investment Partners for $65 million in May 2020.

Unlike Takata, Dura first obtained $84 million in traditional DIP financing from its senior lender early in the chapter 11 case. Later in the case, Dura also obtained $16 million in funding via an Accommodation Agreement with certain customers. Under this Accommodation Agreement, the OEMs agreed to accelerate payment terms by 28 days and not to exercise their rights of setoff or recoupment. In exchange, Dura agreed to continue to manufacture component parts for each customer and to diligently pursue a sale process. Dura emphasized the importance of the Accommodation Agreements in not only providing additional liquidity, but in calming market speculation about Dura's future by conveying a message of customer support and stability to the market.

About two months later, Dura sought court authorization to enter into additional Accommodation Agreements, one with its North American customers and one with its European customers, citing the need for additional liquidity to restart production lines as customers returned to normal operations following a COVID-19 related pause in operations. The Accommodation Agreements provided for accelerated payments and increased prices on its products. In exchange, Dura would continue to manufacture component parts.

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Ferve E. Khan is a full-service bankruptcy and restructuring attorney in the New York office of BakerHostetler LLP, where her practice includes both plaintiff and defense-side litigation and transactional work. She has particular experience in the financial services, energy and health care industries. She also has represented creditors, committees and fiduciaries in cases of mass torts, the recovery of the proceeds of fraud, and chapter 11. In 2020, Ms. Kahn was named one of ABI's "40 Under 40." In addition, she co-chairs ABI's Legislative Committee. Ms. Khan received her B.A. in political science magna cum laude in 2005 from Brown University, and her J.D. in 2008 from Cornell University Law School, where she served as articles editor for the *Cornell International Law Journal* and managing editor of the *Legal Information Institute Bulletin*.

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