Help, My Business is In Trouble!

Restructuring, Insolvency & Troubled Companies

Richard Corbi
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Jordan Leu
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Meet the Faculty

Panelists

Jonathan Friedland – Much Shelist

Richard Corbi – The Law Offices of Richard J. Corbi PLLC

Steven Nerger - Nerger Advisory Services

Moderator

Jordan Leu - King & Spalding LLP

About This Webinar

Help, My Business is In Trouble!

This webinar provides an overview of various restructuring and liquidation methods, a framework for deciding among them, and practical tips for navigating the difficult environment of financial distress.

When a business becomes financially troubled, owners often experience denial, paralysis, overreaction, or all of the above. Lenders commonly lose confidence and trust in the business, as communications can break down, deadlines are missed, obligations go unfulfilled and promises are broken. Litigation may ensue.

Business failure can also lead to personal financial stress for owners, because of personal guarantees, other obligations for which there may be personal liability, and simply because a majority of an owner's net worth is often tied to the business.

The good news is that a business and its owners usually have some options and even some leverage. This webinar explains what a business owner should—and should not—consider and do when dealing with financial stress and distress. Specific topics include the possibility of bankruptcy (Chapters 7 and 11), assignments for the benefit of creditors, and friendly foreclosures.

About This Series
Restructuring, Insolvency & Troubled Companies

This webinar is part of a series titled "Restructuring, Insolvency & Troubled Companies 2025."

Companies fail all the time for all sorts of reasons. Some become distressed or even insolvent because of mismanagement, others because of fraud, some due to commodity prices, and others for myriad other reasons—some intrinsic to the company and some extrinsic.

Regardless of the cause, stressed or distressed companies create a unique set of issues, risks, and even opportunities for all involved. This area of law and finance has become so specialized that no fewer than five (American Bankruptcy Institute; Association of Insolvency & Restructuring Advisors; Commercial Law League of America; Commercial Receivers Association, National Association of Federal Equity Receivers; Turnaround Management Association) national organizations exist to help those who specialize in the field stay up to date on the latest developments, strategies, and tactics in the area.

This webinar series looks at a financially distressed company through three distinct lenses: that of the troubled company, that of the troubled company's creditor, and that of a third party who sees the company's financial situation as a potential acquisition opportunity. Other Financial Poise webinars focus on related specific substantive areas. For example, Financial Poise has separate webinar series on Chapter 11 bankruptcy, federal receiverships, and state court commercial receiverships. This webinar series looks at the bigger picture.

Episodes In This Series

1. Help, My Business is In Trouble!

   Premiere date: 9/18/25

2. Opportunity Amidst Crisis- Buying Distressed Assets, Claims, and Securities for Fun & Profit

   Premiere date: 10/23/25

3. Bad Debtor Owes Me Money!

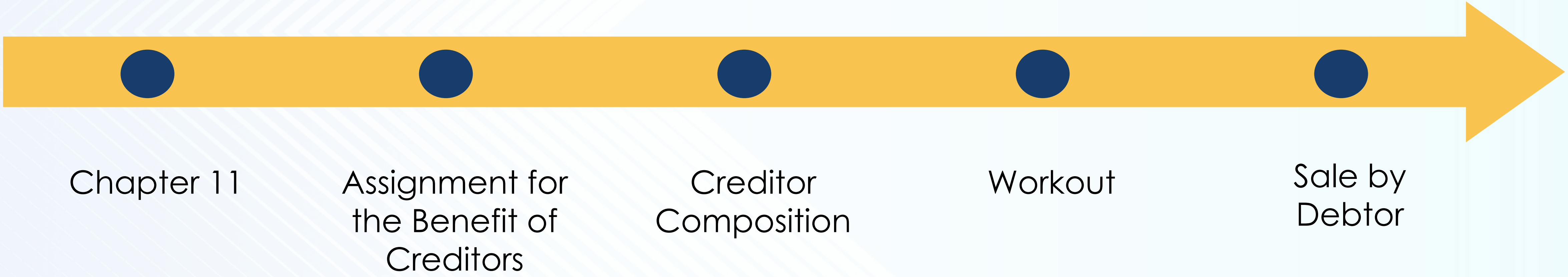
   Premiere date: 11/20/25

Episode #1

Help, My Business is In Trouble!

Each Financial Poise Webinar is delivered in Plain English, understandable to investors, business owners, & executives without much background in these areas, yet is of primary value to attorneys, accountants, & other seasoned professionals. Each episode brings you into engaging, sometimes humorous, conversations designed to entertain as it teaches. Each episode in the series is designed to be viewed independently of the other episodes so that participants will enhance their knowledge of this area whether they attend one, some, or all episodes.

Strategic Alternatives for Distressed Businesses



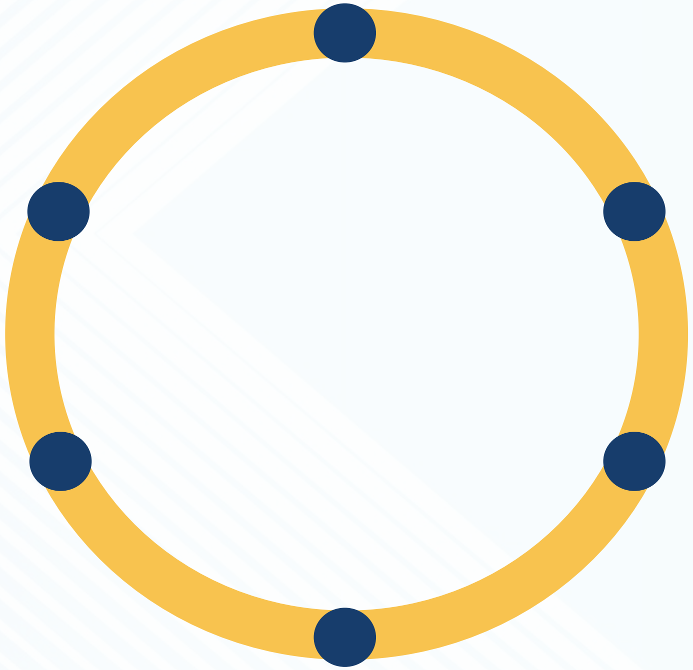
Strategic Alternatives *Against* Distressed Businesses

Foreclosure

Receivership

Article 9 Sale

Factors Affecting a Decision



Key Considerations Driving Strategy

- Senior secured creditors' desired path
- Potential buyer's desired path
- Presence of personal or parent company guaranties
- Whether company's financial problems put customer relationships at risk
- Status of company's relationship to key vendors
- Whether any vendors are irreplaceable as supply sources
- Competition level of company's industry
- Broader industry trends, particularly in commodity-based industries
- Whether entities affiliated/related to company are not troubled
- Qualification for "Subchapter 5" status

Additional Key Considerations Driving Strategy

- Types of funded debt and related security packages
- Real property leases
- Contracts
- Union liabilities
- Environmental liabilities
- Pending litigation
- Prior transactions and related limitations periods
- Government bailouts and restrictions

Constituencies to Consider

- Equity Sponsor/Shareholders
- Lender(s)
- Vendors
- Customers
- Landlords
- Asset Purchaser/Competitors
- Government
- Unions/Employees

Fiduciary Duties

- Well-settled that directors of solvent companies generally owe fiduciary duties to the company and its equity holders.
- Also well-settled that directors of *insolvent* companies owe fiduciary duties to exercise business judgment in the best interest of the insolvent company.
- Grey Area: Directors of companies that are solvent but operating within the "Zone of Insolvency."

Fiduciary Duties: *Gheewalla*

Before *Gheewalla*, most courts followed the general guidelines set by the *Credit Lyonnais* case, which stood for proposition that once company enters the "Zone of Insolvency" directors and officers owe fiduciary duties to creditors of a company.

Gheewalla and its progeny have clarified there is no change in a director's duties when a solvent company begins operating in the "Zone of Insolvency" making the issue of solvency/insolvency even more critical.

But creditors may have derivative standing as residual beneficiaries if a company becomes insolvent.

A Buyer's Perspective

- Buyers like to buy cheap & want to avoid risk. But when dealing with troubled companies:
  - ➢ Some options are cheaper but carry higher risk
  - ➢ Some carry lower risk but are more expensive
- Buyers generally do not like the prospect of an open auction, which sometimes can be mandated by the bankruptcy process
- Third-party buyers are wary of credit bidding by secured lenders, so support from secured lender is usually critical to a successful process

A Buyer's Perspective *(cont'd)*

What Risks?

Successor Liability

Allegations of Fraudulent Transfers

Chapter 11 Bankruptcy Filings

- US Bankruptcy Code: Title 11 of the United States Code
- Basics of Chapter 11:
  - ➢ Petition filed with bankruptcy court (voluntarily or involuntarily)
  - ➢ The debtor, as "debtor-in-possession," acts as trustee of the business (a "debtor")
  - ➢ Fixed priority order for creditor distributions
  - ➢ Automatic stay of creditor actions to collect debts
  - ➢ Ability to seek debtor-in-possession ("DIP") financing
  - ➢ Ability to reject certain executory contracts & leases
  - ➢ Recognized sale process allowing buyers to buy "free and clear" of liens, claims and encumbrances
- "Subchapter 5" small business provisions of Chapter 11 make it easier and cheaper for small businesses to complete a reorganization in bankruptcy

Chapter 11 Advantages

- Binds All Creditors
- Automatic Stay (requires all creditors to cease collection efforts)
- Sales Made Free and Clear of Liens, Claims, Encumbrances, etc.
- Rejection of Burdensome Contracts
- Certain Tax Advantages

Chapter 11 Disadvantages

- Higher Cost Than Other Options
- Longer Process
- Reporting & Disclosure Requirements
- Stigma Associated with Bankruptcy

Assignments for Benefit of Creditors ("ABCs")

Commonly Like a Chapter 7 Liquidation ("operating assignments" are possible though)

Debtor Assigns All Assets to Independent Fiduciary for Creditors

Fiduciary Sells Assets and Distributes Proceeds to Creditors

Distribution Are Roughly Consistent with Bankruptcy Code Priority Scheme

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Assignments for Benefit of Creditors ("ABCs") *(cont'd)*

- ABC is a state law remedy, so form of ABC will vary depending on laws of relevant jurisdiction
- Statutory vs. Common Law ABCs
  - ➢ States may adopt statutes to govern ABCs (e.g., California, Delaware, New York)
    - ✓ State law sets specific requirements Assignee must follow (e.g., claims bar dates for creditors, form of notice of ABC to creditors, etc.)
  - ➢ Others may have no statutory framework, but case law exists to govern ABCs ("Common Law" ABC) (e.g., Illinois)
    - ✓ Under common law ABC, Assignment is simply a contract between debtor to transfer title, custody, and control of property to Assignee for sale/liquidation

ABC Advantages

Generally quick and relatively inexpensive means of liquidating company, especially compared to Chapter 7 bankruptcy.

Independent fiduciary running liquidation process

Priority of claims is known (with some Assignee latitude.)

Unsecured hold-out creditors encouraged to participate since all of debtor's right, title, and interest in assets transferred to Assignee.

Less risk of "Chapter 5"-like clawback/avoidance lawsuits against creditors.

ABC Disadvantages

- Secured creditors can still foreclose.
- Non-uniform law (varies state-by-state.)
- Involuntary bankruptcy still possible.

Creditor Composition/Composition Agreements

- Sometimes referred to as "Compositions," "Creditor Compositions," or out-of-court chapter 11s
- Composition Agreement is a contract between a debtor and its creditors
- Participating creditors agree to accept payments specified under agreement in full satisfaction of their claims against debtor
- Appropriate where business is only capable of reorganizing by a reduction in overall debt, and creditor body is unified or small enough to make negotiating feasible

Creditor Composition Advantages

- May maximize going concern value of the company.
- Less expensive that Chapter 11.
- No court or trustee oversight.
- No Chapter 11 stigma.

Creditor Composition Disadvantages

- Holdouts by creditors unwilling to agree or accept terms.
- Debtor may have to impose restrictions on itself to obtain acceptance.
- Long negotiating process.

Workouts

- May be difficult to obtain consent of nearly all creditors as required for a composition, so company may opt to seek concessions solely from financial creditors (bank, equipment lessors, bondholders, etc.)

- **Workout Agreement restructures debt of a particular creditor (e.g., secured loan), a tranche of creditors (e.g., notes or bonds) or multiple tranches of creditors**

Generally, Creditor will agree to deferred payments, extended time of repayment, and/or reduced total amount of indebtedness.

In exchange, Debtor may be required to sell assets, grant additional collateral, meet certain operational benchmarks and/or be subject to heightened financial reporting.

Workouts Advantages

- Because consent of all creditors is not required, generally easier to implement.
- Easier to negotiate because negotiations can involve as few as one creditor; may not require disclosure of financial condition to other creditors and stakeholders.

Workouts Disadvantages

- Secured creditors may have little incentive to renegotiate terms.
- Potential for "holdouts."
- Creditors may insist on workout or turnaround consultant, or independent director, being involved in operation of the business or impose other restrictions on cash management or activities of business.

“Naked” Sale by Debtor

Debtor sells assets, generally to secured lender or third party (potentially its own shareholders) with consent of secured lender.

Advantages:

- Quick and relatively inexpensive method of liquidating a business
- May also serve as a quick method for the sale of a company as a going concern

Disadvantages:

- Requires consent of all lienholders
- Treatment of, and impact on, unsecured creditors
- Possibility of being deemed a fraudulent/voidable transfer
- Breach of fiduciary duty concerns for board of directors of debtor

Article 9 Sales

- Fast & inexpensive way to sell secured creditor's collateral
- Uniform Commercial Code ("UCC") permits secured party to take possession of its collateral &, without removing collateral from the debtor's premises, dispose of it
- Sale must be "commercially reasonable"
- Secured party may purchase the collateral at public sale but not at private sale unless the collateral has a public market where price can be readily ascertained

Article 9 Sales

(cont'd)

- Secured party must notify debtor, any other guarantors or obligors, & other junior secured parties.
- When rules are followed, all of debtor's rights in collateral are transferred to buyer and subordinate security interests are discharged.
- Good faith purchaser for value takes title free and clear, even when secured party fails to strictly comply with statutes.

Article 9 Sales

(cont'd)

Process Basics:

- Notice of Default and Acceleration of Debt provided by secured party to debtor and guarantors
- Voluntary Repossession Agreement, Replevin Lawsuit or "Self Help" Repossession (no trespass or breach of peace such as use of physical force or threats; replevin bonds)
- 10-day UCC Notice of Private or Public Foreclosure Sale and Affidavit of Mailing provided by secured party to each debtor, guarantors, & lienholders identified from current UCC and tax lien search & potential interested purchasers
- Special procedures for tax liens (e.g. federal tax liens require 25-day notice)

Article 9 Sales

(cont'd)

Additional Documentation Needed:

- Proof of Advertising of UCC foreclosure sale in local newspaper or other relevant publication (including online)
- Power of Attorney from secured party for bidding at UCC public sale
- Script of UCC Public Foreclosure Sale or audio/video recording of sale
- Bill of Sale from secured party to purchaser

Questions or Comments?

If you have any questions about this webinar that you did not get to ask during the live premiere, or if you are watching this webinar On Demand, please do not hesitate to email us at info@financialpoise.com with any questions or comments you may have. Please include the name of the webinar in your email & we will do our best to provide a timely response.

IMPORTANT NOTE: The material in this presentation is for general educational purposes only. It has been prepared primarily for attorneys & accountants for use in the pursuit of their continuing legal education & continuing professional education.

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Meet The Faculty

Richard Corbi - rcorbi@corbilaw.com

Richard J. Corbi has been practicing in the areas of distressed investing, corporate transactions, restructuring, litigation, and bankruptcy advice for over twelve years. His work at top tier firms such as Proskauer Rose LLP and Lowenstein Sandler LLP and clerkships in the District Court for the Southern District of New York and the Bankruptcy Court for the Eastern District of New York, has given him the depth and breadth of experience to tailor his work to the business goals of each client at a flexible fee structure that makes sense.

Richard is committed to maximizing both client service and efficiency. He works closely with clients in all aspects of corporate restructuring, bankruptcy and insolvency proceedings in both domestic and cross-border insolvencies, helping them navigate the complexities of debt restructurings in a strategic and cost-effective way. Read More

Jonathan Friedland – jfriedland@muchlaw.com

Summary

- Corporate structuring and restructuring attorney with nearly 30 years of experience advising companies, boards of directors, owners, and other stakeholders in various contexts, including distressed, bankrupt, and special situations.
- Represented and advised clients in 150+ transactions and litigation across various industries.
- Serial entrepreneur who understands business from the business person's perspective.
- Consistently ranks as a top business law attorney in various surveys, holding the highest possible ratings from Martindale-Hubbell (AV® Preeminent™), AVVO (10/10), and Justia (10/10). Has repeatedly been recognized as a "Super Lawyer" in multiple practice areas, including Business/Corporate Law and Bankruptcy/Creditor/Debtor Rights, named a "Leading Lawyer" by Leading Lawyers Magazine several times, and selected for inclusion in The Best Lawyers in America® for exceptional work in Corporate Law.
- Admitted to the bars (each by exam) in New York, Illinois, Arizona, and New Jersey.

Thought Leadership Examples

- Principal Author and Editor-In-Chief, Commercial Bankruptcy Litigation & Strategic Alternatives for and Against Distressed Businesses (each published annually by Thomson Reuters)
- Author of 100+ articles and speaker at 100+ events. Examples here.

Academics

- Clayton Center for Entrepreneurial Law Visiting Professor at the University of Tennessee College of Law.
- Adjunct Professor of Strategic Management, University of Chicago Graduate School of Business (co-taught with Jamie Sprayregen).
- JD from the University of Pennsylvania, followed by a one-year federal court clerkship; B.S. in Business Administration (magna cum laude in three years) from Albany State University. Read More

Jordan Leu - JLeu@kslaw.com

Jordan has more than fifteen years' experience handling complex commercial and bankruptcy disputes. He advises debtors, creditors, and sponsors in navigating financial distress, maximizing value and recoveries in challenging circumstances, and addressing difficult questions regarding fiduciary duties.

Jordan's experience spans state and federal court, along with arbitration, and he has significant experience attacking and defending complex valuations and damage models.

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Steven Nerger - snerger@nergeradvisory.com

Over the past 36 years, I have consulted on the turnaround of numerous clients, ranging in size from $2 million to over $1.5 billion, in diverse industries such as: manufacturing and processing, distribution, service, general contracting, graphics arts/commercial printing, food and agriculture, retail, building products and home improvement, and construction among many others.

I have assisted clients by developing consensual corporate strategy plans with management, guiding analyses such as customer profitability and business viability, assisting with short and long-term cash management, preparing cash flow and financial projections, negotiating with senior lenders and vendors, and implementing detailed turnaround initiatives including pricing enhancements, expense reductions, and plant consolidations to create staying power for the business.

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Distressed Asset Central

DailyDAC offers a variety of free & paid tools for those involved in corporate distress & insolvency:

- Chapter 11 Alerts - Email notification of all chapter 11 filings in the US (no charge).
- Public Notices - The internet's most visited website to see auction notices of companies & assets for sale through bankruptcy, ABCs, receiverships, Article 9, & in other urgent situations (no charge).
- Webinars & Articles - High quality educational, entertaining, Plain English webinars & articles by objective, expert faculty (articles at no charge).
- Assignee Directory - A comprehensive directory of experienced assignees for the benefit of creditors (no charge).
- Auctioneer Directory - A directory of auctioneers in the "distressed & surplus" asset space (no charge).
- Distressed Deal Data - A weekly newsletter & online database of distressed investment opportunities.

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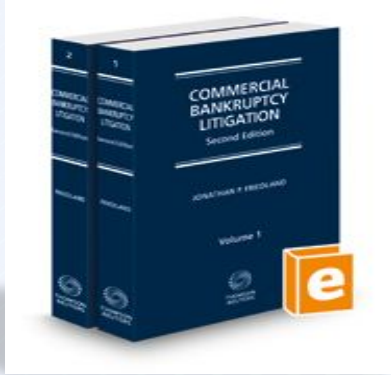

Commercial Bankruptcy Litigation, 2d, 2025 ed. is a must-have resource for any non-bankruptcy attorney who is involved in a chapter 11 bankruptcy case. It is also a handy "take on the road" treatise for the experienced chapter 11 professional. This 2,000-plus page treatise, updated yearly, & with contributions from some of the country's most respected practitioners from top firms across the U.S., covers topics from general bankruptcy & procedure to appeals.

Strategic Alternatives For And Against Distressed Businesses, 2025 ed. is one of a kind. It is the only resource that provides comprehensive state-by-state comparisons of assignments for the benefit of creditors & receiverships. This alone makes the book a must-have for every insolvency professional.

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