



Purchasing Assets in Bankruptcy

Advanced Bankruptcy Transactions

Matt Christensen
Moshe Jacob
Cliff Katz
Marc Skapof



Practical & Entertaining Education for:

- Attorneys • Accountants
- Business Owners
- Executives • Investors

Thank you to our co-producer

THE NATIONAL LAW REVIEW

The National Law Review (NLR) is a premier legal news website offering in-depth analysis on a wide range of legal and business topics. Established in 1888, NLR has evolved into a **trusted resource** for legal professionals, business leaders, and the general public, providing timely and relevant information on legislative changes, court decisions, and regulatory developments

Visit *The National Law Review* to learn more
- <https://natlawreview.com/>

Comprehensive Coverage: NLR covers nearly every legal topic, including litigation, AI & the Law, employment law, IP Law, real estate, energy, health care, bankruptcy and much more.

Expert Analysis: Articles are authored by experienced attorneys and legal professionals, ensuring accurate and insightful commentary.

Daily Updates: NLR provides hourly legal news updates, keeping readers informed about the latest developments in the legal world.

Thank You To Our Sponsor...



Restructuring & Insolvency Professionals • Bankruptcy Trustees
• Chapter 11 Debtors • Assignees • Receivers • Article 9 Sellers

A Better Way to Conduct Single Asset Sales Online!

DailyDAC™ is excited to announce its partnership with [maxXasset™](#), a simpler, easier & better way to conduct asset sales.

Take charge of your sales process! Choose the auction date, set the terms, & establish the closing timeline to suit your needs. Create & upload relevant sale documents behind confidentiality agreements, review every bidder's credentials, decide whether to approve or deny them, & monitor the bidding in real time.

No need to schedule a zoom or have the sale in an office. Now, interested parties can bid anytime, from anywhere! [maxXasset™](#) is also perfect to use in conjunction with real-time auctions, with use cases that include using it as a tool to select a stalking horse or as a tool for a first & or second round in a two-round process.

Disclaimer

- The material in this webinar is for informational purposes only. It should not be considered legal, financial, or other professional advice.
 - You should consult with an attorney & another appropriate professional to determine what may be best for the needs of your specific situation.
 - While the webinar producers & speakers take reasonable steps to ensure that the information presented is accurate, they make no guarantee in this (or any) regard.

*** These slides were produced in connection with a video webinar that premiered on 5/21/26. Take note, we make the PDF available for free download because the real benefit of a Financial Poise webinar is the conversation that the faculty has around the slide deck. You can access the webinar on-demand at Cerfi's LegalEdge (f/k/a [West Legal Ed Center](#)) (for attorneys or accountants seeking CLE or CPE) or [Financial Poise](#) (for everyone else).

Meet the Faculty

Panelists

[Matt Christensen](#) - Amplēo

[Moshe Jacob](#) - Skadden, Arps, Slate, Meagher & Flom LLP

[Marc Skapof](#) - Royer Cooper Cohen Braunfeld LLC

Moderator

[Cliff Katz](#) - Goetz Platzer LLP

Purchasing Assets in Bankruptcy

Buying assets out of a bankruptcy proceeding presents unique benefits and challenges for the buyer. Companies considering acquiring assets out of bankruptcy must understand more than the simple concept of acquiring the target assets “free and clear,” under the Bankruptcy Code. As such, professionals advising these companies must understand and be able to counsel their clients regarding various matters, such as the benefits and drawbacks of serving as a “stalking horse,” asset purchaser; drafting and negotiating the terms of an asset purchase agreement, and sale order with the bankrupt debtor and other parties involved in the bankruptcy proceedings; strategies for acquiring assets at auction or by alternative means; and seeking bankruptcy court approval of a proposed transaction. This webinar focuses on understanding these concepts and addressing best practices for advanced reorganization practitioners and advisors.

Learning Objectives:

- Understanding the basics of bankruptcy asset purchases
- Evaluating the role of a “Stalking Horse” asset purchaser
- Drafting and negotiating key legal documents
- Mastering auction and alternative acquisition strategies
- Navigating the bankruptcy court approval processes
- Applying best practices in advanced reorganization scenarios
- Implementing effective tactics for advising clients on bankruptcy asset purchases, focusing on strategic, legal, and practical challenges in advanced reorganization cases

About This Series

Advanced Bankruptcy Transactions

This webinar is part of a series titled “Advanced Bankruptcy Transactions 2026.”

Corporate transactions are fraught with complicated legal, business, and financial issues. And transactions in the context of a bankruptcy proceeding often add a further layer of complexity. Whether representing an asset purchaser seeking to acquire assets “free and clear” of liens and encumbrances, trading claims against a bankrupt company, or negotiating and drafting orders governing the use of a bankruptcy company’s cash, businesses and their advisors must have a robust understanding of the issues they face. This series provides tools for business owners and their advisors to navigate through the landscape of bankruptcy transactions, demystify esoteric concepts, and discuss best practices for advanced professionals working on these matters on submissions and awards.

Episodes In This Series

1. Purchasing Assets in Bankruptcy
Premiere date: 5/21/26
2. Bankruptcy Claims Trading
Premiere date: 6/25/26
3. Negotiating & Drafting Cash Collateral/DIP Financing Orders
Premiere date: 7/23/26

Episode # 1

Purchasing Assets in Bankruptcy

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.

Introduction to / Refresher on § 363

- 11 USC § 363(b) permits the sale of estate property outside a debtor's "ordinary course of business," after notice & a hearing.
- Phrase "ordinary course of business," not defined by the Bankruptcy Code
- If a sale is contested, courts often apply dual test to determine whether proposed sale is within the ordinary course of business:
 - "Horizontal dimension test" - Whether transaction is one that would normally be entered into by similar businesses
 - "Vertical dimension test" - Whether the transaction is on terms creditors would reasonably expect of the debtor
- See 3 Collier on Bankruptcy 363.03[1] (16th ed.)

Introduction to / Refresher on § 363 (cont'd)

- “363 Sale” most commonly referred to when used to conduct sales of all (or substantially all) of a debtor’s assets
 - May seek to sell debtor’s business as a going concern
 - May simply sell assets to highest bidder
 - Could also be any non-ordinary sale of assets
- FRBP 6004
 - Requires that notice be given according to Rule 2002(a)(2): 21 days’ notice
 - This may be shortened by the Court for cause under Rule 9006(c)

Buyer Benefits to Buying Assets Out of Bankruptcy

Buyer takes assets free & clear of:

- Liens
- Encumbrances
- Adverse claims & interests

Avoid corporate law requirements to obtain shareholder approval

Properly conducted sale likely to yield best result for all stakeholders

Finding made that sale was conducted in good faith under § 363(m)

Challenges & Limitations of § 363 Sales

- Terms of deal are public; may draw negative publicity
- Affected parties may be included in negotiations to ensure deal is approved by Court
- Bids are subject to competition – meaning buyers may be outbid at auction
- Risk that Bankruptcy Court may not approve the sale



Key Players

- Debtor
- Lenders
 - Secured lenders serve key role as party likely to benefit most from sale process
 - May seek to participate at auction as credit bidders
- Committee
 - Creditors' Committee serves in watchdog role to serve interests of unsecured creditors
 - May object to a sale in an attempt to leverage their position within the case



Key Players (cont'd)

- § 363 sales often conducted by auction, and debtor will look to attract multiple bidders for assets
- Stalking Horse/Bidders/Buyer
 - A “stalking horse” bidder sets the floor for bids to be submitted
 - Helps avoid low bids from being submitted
 - Sale without stalking horse – a “naked auction”
- Professionals — attorneys, investment bankers, & financial advisors

Key Documents

- Asset Purchase Agreement/Stock Purchase Agreement
 - Stalking Horse Bid
 - Related Documents/attachments
- Bid Procedures Motion & Order
- Sales Order



Stalking Horse APA & APAs Generally

- “Stalking Horse” Bid sets purchase price floor & baseline terms of deal
- All terms negotiable & usually include:
 - Recitations
 - Reps & warranties
 - Description of assets to be sold
 - Purchase price & other consideration
 - Excluded assets
 - Employee matters
 - Proposed form of order approving sale



Stalking Horse APA – Key Negotiation Points

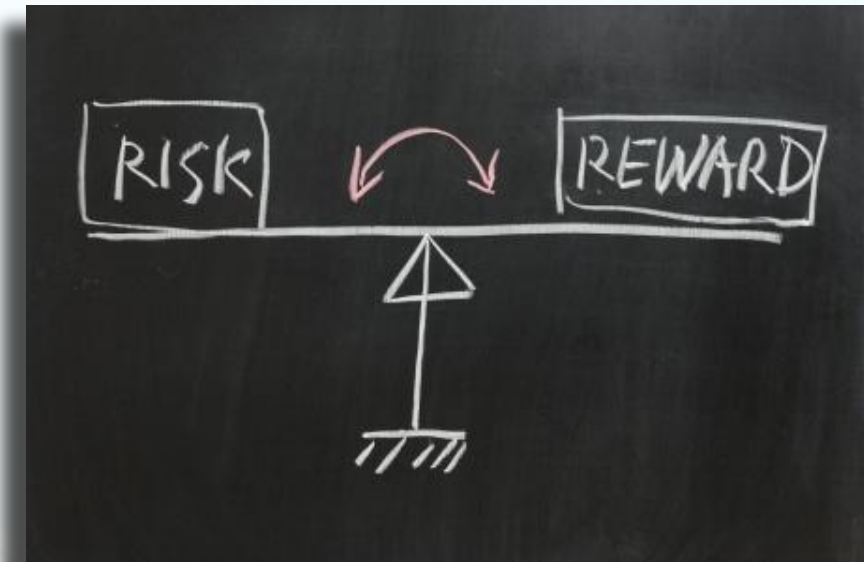
- Breakup Fees
 - Designed to induce stalking horse bidder to pursue bankruptcy transaction & compensate it for setting the sale up to maximize value to the estate
 - ✓ See e.g. *In re Financial News Network, Inc.*, Bankr. No. 91B-10891, 1991 WL 127524, at *1 (Bankr. S.D.N.Y. May 10, 1991), *aff'd*, 134 B.R. 737 (S.D.N.Y. 1991).
 - Allowable breakup fee amounts cannot be disproportionate to the overall transaction
 - ✓ See, e.g., *In re 995 Fifth Ave. Assocs., L.P.*, 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1989)
 - Break-up fees are generally permissible when reasonable in relation to bidder's efforts & size of transaction

Stalking Horse APA – Key Negotiation Points (cont'd)

- While there are exceptions, typical range approved in bankruptcy cases is 1% to 4% of transaction size.
 - *In re Sea Island Company, et al*, 2010 WL 4393269 (Bankr. S.D. Ga. Sept 15, 2010)
 - ✓ Approving 3% break up fee
 - *In re Tama Beer Packing Inc.*, 312 B.R. 192, 194 and n. 1 (Bankr. N.D. Iowa 2004)
 - ✓ Citing 1% to 4% range & surveying cases
 - See also *In re Tiara Motorcoach Corp.*, 212 B.R. 133, 138 n. 6 (Bankr. N.D. Ind. 1997)
 - ✓ Citing 1% to 2% range
- Termination & similar fees:
 - Payable to a proposed buyer under certain circumstances if sale does not close
 - May be pursued as an administrative expense claim
 - *In re Energy Futures Holdings Corp.*, 990 F.3d 728 (3rd Cir. 2021): foiled purchaser was not prevented from seeking recovery of costs as a potential administrative expense claim

Stalking Horse APA – Key Negotiation Points *(cont'd)*

- Other “Bid Protections”
 - Stalking Horse may seek additional provisions protecting it from being outbid, and ensuring additional bids maximize value to estates. May include:
 - ✓ Minimum overbid amount for any bidder seeking to participate at auction over & above Stalking Horse’s bid
 - ✓ Minimum deposit amounts for parties seeking to participate in sales as “Qualified Bidders”



Stalking Horse APAs: Attachments, Exhibits, Annexes, Etc.

- Attachments to the APA will contain important information. May include:
 - Lists of assets to be sold and attributable purchase price
 - Legal descriptions of real estate
 - Forms of documents (Bill of Sale)
 - Lists of existing executory contracts to be assumed or not assumed
 - Both buyer and seller will be responsible for delivering various schedules for finalized APA

Bidding Procedures

- Debtors often bring motion to approve procedures for conducting debtor's marketing, auction, & sale process
- Procedures set the “rules of the road” for the sale process
 - Establish timeline, including
 - ✓ Bid Deadline
 - ✓ Auction Date
 - ✓ Sale Hearing Date
- Proposed order may set forth procedures for assuming or rejecting executory contracts & leases
- May also set forth means of providing adequate assurance of payment to contract counterparties
- May also seek approval of the form of the Stalking Horse APA

Bidding Procedures – Credit Bidding

- Secured lender may “credit bid” (no cash) up to the value of its collateral being sold
- Secured lender may bid less than value of collateral
 - Does not impact secured claim
 - ✓ *In re Aerogroup International, Inc.*, 620 B.R. 517 (Bankr. D. Del. 2020): secured creditor’s secured claim is not capped at the amount it credit bid at auction
- Court may limit secured creditors' credit bid rights “for cause” [11 U.S.C. sec 363(k)]
 - *In re Figueroa Mountain Brewing LLC*, 2021 WL 2787880 (Bankr. CD California): challenge to credit bid prevails
 - *In re Murray Metallurgical Coal Holdings LLC*, 614 BR 819 (Bankr. SD Ohio 2020): challenge to credit bid fails

Due Diligence: Primer on Non-Disclosure Agreements

Before conducting due diligence, prospective buyers likely to be asked to execute nondisclosure or confidentiality agreement

NDA will require that buyer not disclose non-public information of the Debtor's company

NDA terms are standardized for buyers, but may be negotiated

Conducting Due Diligence

- Typically a short timeframe!
 - Bankruptcy sale process typically moves quickly.
- Data room will have key docs; but look for what may be missing:
 - Financial information
 - Tax returns
 - Contracts
 - Real estate surveys
 - Key court documents



Submitting Bid for Participation at Auction

- Bids typically must be submitted according to specific parameters laid out in Bidding Procedures, Bidding Procedures Order, or both.
- Comply with these requirements to be considered a “Qualified Bidder”!
- Typical bid requirements:
 - Deadline for submitting bid
 - Adopt form of Purchase Agreement marked up by bidder for submission
 - Minimum bid to participate at auction
 - Earnest Money Deposit submitted ahead of bid deadline

The Auction

- Auction often conducted according to specific parameters laid out in Bidding Procedures, Bidding Procedures Order, or both
- Study these documents ahead of appearing at the Auction
- Auction rules often describe:
 - Time & Place
 - Authorized representatives appear to bid
 - Minimum bid increments
 - Determining which bid will “open” the auction



Approving the Sale: The Sale Hearing

- Court will approve sale if Debtor can show presence of sound business judgment
 - *In re ASARCO L.L.C.*, 650 F.3d 593, 601 (5th Cir. 2011)
 - *In Matter of Motors Liquidation Co.*, 829 F.3d 135 (2d Cir. 2016)
 - *In re Efoora, Inc.*, 472 B.R. 481, 488 (Bankr. N.D. Ill. 2012)
- 4 elements to show sound business judgment:
 - “Sound business purpose” justifies the sale of assets outside the ordinary course of business
 - That adequate & reasonable notice has been provided to interested persons
 - Debtor has obtained fair & reasonable price
 - Sale was negotiated in good faith:
 - ✓ *In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.2d 143 (3d Cir. 1986)
 - ✓ *In re MCSGlobal, Inc.*, 562 B.R. 648, 654 (Bankr. E.D. Va. 2017)

Approving the Sale: The Sale Hearing *(cont'd)*

- Section §363(f) requirement that sale can be made free & clear of liens, claims, or interests in such property if:
 - Sale is permitted under applicable nonbankruptcy law
 - The party asserting such a lien, claim, or interest consents to such sale
 - The interest is a lien & the purchase price for the property is greater than the aggregate amount of all liens on the property
 - The interest is the subject of a *bona fide* dispute
 - The party asserting the lien, claim, or interest could be compelled (in a legal or equitable proceeding) to accept a money satisfaction for such interest

Approving the Sale: The Sale Hearing *(cont'd)*

- Testimony at sale hearing
 - Parties must be prepared to put on witnesses in support of approving or challenging the sale
 - Prepared witnesses are key:
 - ✓ Debtor will want prepared investment banker or financial advisor to testify to the marketing process & conduct of the auction
 - ✓ Challenging parties will want experts available to testify as to any key issues they intend to raise

Buyer's Role at Sale Hearing

- Representative should be available to testify, if necessary, as to wherewithal & ability to close
- Typically, however, Buyer is a spectator at the sale hearing
- Burden is on debtor/seller to demonstrate that auction was fair & sale should be consummated



The Sale Order

- Frequently attached to a proposed APA or Stalking Horse APA
- Typically drafted by Buyer
- Key Terms:
 - Sale “free & clear”
 - Good faith findings
- Stay of order’s effectiveness under FRBP 6004(h)
 - Orders stayed for 14 days
 - Court’s often grant relief from this rule & will make order immediately effective

The Sale Order (cont'd)

- Finality of sale order – challenges & statutory mootness
 - Standing (any party in interest, including a jilted bidder) has standing to challenge to the extent that the offending party's actions arguably destroyed the “intrinsic fairness” of the sale transaction. In other words, the sale lacked good faith
 - ✓ *In re RTI Holding Corp.*, 2021 WL 4994414 at * 7 n 40 (Bankr. D. Del. Oct 27, 2021)
 - ✓ *Kabro Assocs. LLC v. Colony Hill Assocs. (In re Colony Hill Assocs.)*, 111 F.3d 269, 273-274 (2nd Cir. 1997)
 - ✓ *In re Fiori*, 2013 WL 5429264 (E.D. Pa. Sept 30, 2013)
 - ✓ *Dick's Clothing v. Phar-Mor Inc.*, 212 B.R. 283 (N.D. Ohio 1997)
 - Process – party challenging sale must obtain stay order & generally post bond
 - ✓ *In re Sears Holding Corp.*, 2021 WL 5986997 (2nd Cir. Dec. 17, 2021): objecting party's failure to obtain stay order fatal to attack on sale
 - See also *In re Stanford*, 17 F.4th 116 (11th Cir. 2021) (same); *In re 388 Route 22 Readington Holdings LLC*, 2021 WL 4811409 (3rd Cir. Oct. 15, 2021) (same). *The Sears Holding decision is on appeal to the Supreme Court*

Closing

- Closing often sought immediately following conclusion of sale hearing
- Parties should be prepared to close as soon as possible
 - Have all necessary documentation ready for execution or execution pages held in escrow
- Closing likely required under APAs to occur within short timeline or buyer will have right to walk away from deal



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.

*** These slides were produced in connection with a video webinar that premiered on 5/21/26. Take note, we make the PDF available for free download because the real benefit of a Financial Poise webinar is the conversation that the faculty has around the slide deck. You can access the webinar on-demand at Cerfi's LegalEdge (f/k/a [West Legal Ed Center](#)) (for attorneys or accountants seeking CLE or CPE) or [Financial Poise](#) (for everyone else).

Meet The Faculty

Matthew T. Christensen – mchristensen@ampleo.com



Matthew T. Christensen is the President of Amplēo Turnaround and Restructuring, LLC. Matt has 18 years of experience solving complex financial and operational matters while representing Debtors and Trustees in receiver and bankruptcy proceedings. Matt brings his experience in solving complex problems and creatively negotiating workout and turnaround solutions for clients to Amplēo. Matt is credentialed as a Certified Insolvency and Restructuring Advisor (CIRA) by the Association of Insolvency and Restructuring Advisors. Matt has served on the Local Rules Committee for the United States Bankruptcy Court for the District of Idaho (including as chair of the committee) and is active in several turnaround organizations. Matt earned a Bachelors degree from Brigham Young University, and a JD and LLM in International Law from the Duke University School of Law. [Read More](#)

Cliff Katz – ckatz@platzerlaw.com



Cliff is the Head of the Bankruptcy and Corporate Restructuring Department, and has over 30 years of extensive experience concentrating on all aspects of corporate debt restructuring, chapter 11 reorganizations, chapter 7 cases & insolvency proceedings.

An experienced litigator in state, federal and bankruptcy courts throughout the country, Cliff has fought hard in representing his clients' interests. He is highly adept at coming up with unique strategies for dealing with financially-troubled entities, of all sizes, and relies on his broad knowledge to assist clients in running their small, medium and large businesses.

Cliff uses his bankruptcy skills, legal acumen and experience along with the proficiency of his firm in related areas such as commercial real estate, corporate finance and commercial litigation, throughout the United States. Cliff is known to be tenacious and creative in representation of each and every client, no matter the size. He is respectful of his clients' needs and goals, responsive with thoughtful strategies and cutting-edge guidance, personally dedicated to consistently deliver a high-quality work product. [Read More.](#)

Moshe Jacob - moshe.jacob@skadden.com



Moshe Jacob is a corporate restructuring associate at Skadden, Arps, Slate, Meagher & Flom LLP in New York. His notable company-side representations include True Value, Endo, McClatchy, New Cota and TridentUSA Health Services.

Marc Skapof -mskapof@rccbblaw.com



Marc Skapof is a NY Super Lawyers top-rated bankruptcy attorney. He focuses his practice on in- and out-of-court debt restructurings, creditors' rights, debtor and estate fiduciary representations, healthy and distressed debt financing, lending, DIP and exit financing, bankruptcy litigation, distressed M&A, corporate governance, and bankruptcy-remote transactions. Marc is an active leader in the restructuring and bankruptcy community, serving as a Global Trustee of the Turnaround Management Association (TMA) and a member of its Chapter Resource and Response Committee. He has held numerous leadership roles within the TMA New York City Chapter, including Chairman, President, and Executive Committee Member.

Thank You To Our Sponsor...



Restructuring & Insolvency Professionals • Bankruptcy Trustees
• Chapter 11 Debtors • Assignees • Receivers • Article 9 Sellers

A Better Way to Conduct Single Asset Sales Online!

DailyDAC™ is excited to announce its partnership with [maxXasset™](#), a simpler, easier & better way to conduct asset sales.

Take charge of your sales process! Choose the auction date, set the terms, & establish the closing timeline to suit your needs. Create & upload relevant sale documents behind confidentiality agreements, review every bidder's credentials, decide whether to approve or deny them, & monitor the bidding in real time.

No need to schedule a zoom or have the sale in an office. Now, interested parties can bid anytime, from anywhere! [maxXasset™](#) is also perfect to use in conjunction with real-time auctions, with use cases that include using it as a tool to select a stalking horse or as a tool for a first & or second round in a two-round process.

Thank you to our co-producer

THE NATIONAL LAW REVIEW

The National Law Review (NLR) is a premier legal news website offering in-depth analysis on a wide range of legal and business topics. Established in 1888, NLR has evolved into a **trusted resource** for legal professionals, business leaders, and the general public, providing timely and relevant information on legislative changes, court decisions, and regulatory developments

Visit *The National Law Review* to learn more
- <https://natlawreview.com/>

Comprehensive Coverage: NLR covers nearly every legal topic, including litigation, AI & the Law, employment law, IP Law, real estate, energy, health care, bankruptcy and much more.

Expert Analysis: Articles are authored by experienced attorneys and legal professionals, ensuring accurate and insightful commentary.

Daily Updates: NLR provides hourly legal news updates, keeping readers informed about the latest developments in the legal world.

About Financial Poise



The primary mission of Financial Poise™ is to provide reliable plain English business, financial, & legal education to individual investors, entrepreneurs, business owners, & executives, & to help trusted advisors do the same.

* Newsletter subscribers are occasionally offered free webinars. Subscribers never receive more than one email per week & their information is never shared.

Sign up for our free weekly e-newsletter [here](#)*.

Learn how to write or speak for Financial Poise [here](#).
The antithesis of “pay-to-play.”

Check out our other webinars [here](#).

Send any other inquiry to info@financialpoise.com