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Takata: The Unfortunate Recall

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Takata Corporation began in 1933 in Japan primarily producing lifelines for parachutes and other textiles. Takata expanded into seat belts, child restraints, and airbags, and expanded into North America, South America and Europe as a tier one supplier to the global auto industry. Recently, Takata has recalled globally 122 million airbags, reportedly responsible for over 16 deaths and 180 accidents around the world.

The Takata airbag recall has also had enormous economic consequences to Takata's various stakeholders, mainly automakers, including a projected recall cost of \$12 billion and a cash loss of over \$500 million since the inception of the recall in 2013.

In February, 2016, Takata's Board of Directors appointed a steering committee to explore options. According to the Wall Street Journal on May 25, 2016, Takata engaged Lazard Ltd. to seek a cash infusion and negotiate with automakers over the "ballooning" costs, and to help craft a restructuring plan to deal with "billions of dollars" of liabilities. News reports in the fall of 2016 indicated that Takata solicited bids from various strategic and financial buyers or investors with respect to certain of its assets.

The bidding process culminated in an agreement for sale to Joyson KSS Auto Safety S.A. ("Key Safety Systems" or "KSS") reached in June, 2017. Reportedly, all of the bidders' proposals included a U.S. Chapter 11 filing of certain of Takata's U.S.-based subsidiaries. Bidders generally prefer a Chapter 11 filing to obtain the benefits and protection of Section 363 of the Bankruptcy Code, which generally allows a debtor to sell assets free and clear of liens and encumbrances to a third party buyer, with liens attaching instead to the proceeds of the sale.



In fact, on June 25, 2017, Takata Corporation filed for bankruptcy protection in the Delaware (Chapter 11) and Japan. Several Takata affiliates, including U.S.-based T.K. Holdings, Inc., also filed for Chapter 11 protection in Delaware. Certain Takata foreign affiliates filed Chapter 15 proceedings in Delaware, as ancillary proceedings to their foreign insolvency proceedings in Japan.

The main event of the Chapter 11 proceeding is a Section 363 sale of certain assets to KSS for \$1.6 billion. Normally in a Section 363 sale, a debtor procures a "stalking horse" bid that is subject to higher and better bids, and ultimately court approval. It appears that the "auction" occurred pre-petition and that a single-bidder Section 363 sale has been presented to the Bankruptcy Court. Takata asserts that the Section 363 sale procedures were in fact followed pre-petition, and asserts that the bidding was indeed subject to rigorous marketing, negotiation and auction, albeit pre-petition, and that the highest and best bid of KSS is in the best interests of Takata's estate and stakeholders.

Following the example the Lehman Brothers Chapter 11 filing in 2008, Takata demonstrates the flexibility of Chapter 11 to accommodate an extraordinary case. The Lehman Brothers Section 363 sale to Barclays in 2008 clearly demonstrated a U.S. Bankruptcy Court's willingness to flex the customary procedures to accommodate business goals. Lehman Brothers was sold to Barclays, as the sole bidder, within five days after Lehman's Chapter 11 filing, to avoid an apparent meltdown of the global financial markets.

Indeed, Takata filed a Motion for order authorizing Takata to enter into and perform a "Restructuring Support Agreement", which provides for sale of certain assets to KSS and for the restructuring of retained assets. Takata also filed a joint plan of reorganization, along with key "support parties" including "Consenting OEMs". A key element is a Section 363 sale to KSS (with no additional bidding or auction) that has an "outside" milestone date for consummation of February 27, 2018. The impact of the sale to KSS and the plan of reorganization on Takata's various stakeholders will clarify in coming months.

Shumaker has advised numerous suppliers to certain of Takata's U.S. affiliates.