

# Building Consensus in Distress: How to Avoid Bankruptcy or Minimize its Impacts Through Negotiation

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# Energy Bankruptcies in 2020

- **70+** Energy Bankruptcies (E&P + Services) in 2020
- Many others in potential distress, some currently in default

# Chapter 11 Pros & Cons

- **ADVANTAGES of Chapter 11**

- Automatic stay
- Single forum for disputes
- Voting thresholds permitting reorganization with less than unanimous consent
- 363 sale protections (for buyers and sellers)
- Power to assume and reject executory contracts
- Discharge

- **DISADVANTAGES of Chapter 11**

- Negative publicity
- Court oversight and standing of all parties in interest to be heard
- Employee retention issues
- High professional fees
- Distraction of management from fundamental business operations

# Advisor Fees Paid By the Debtor

## ***Debtor:***

- Lawyer
- Financial Advisor
- Investment Bank

## ***Creditors' Committee:***

- Lawyer
- Financial Advisor
- Investment Bank (sometimes)

## ***Secured Lenders:***

- Lawyer
- Financial Advisor

## Bankruptcy Is Expensive

- *Alta Mesa:*
  - Debtors' Professional Fees: **\$49,401,837.34**
    - 17 Separate Advisors
  - Creditors' Committee Fees: **\$7,006,764.18**
    - 4 Separate Advisors

# Out of Court Restructuring Possibilities

# What is causing the distress?

- **Impending maturities**
  - Amend and extend transaction
  - Purchase outstanding bonds at a discount
- **Covenant default**
  - Seek covenant waiver
- **Payment default**
  - **Seek waiver prior to default to avoid cross-defaults**
  - **Sale of going concern only impairing consenting lenders**
  - **Debt for equity swap with creditor consent/new money investment**
- **Liquidity constraints**
  - Sale of non-essential assets
  - New money loan from party already in capital structure (provide additional security if available)

# Get the lay of the land

- Thorough review of credit facilities:
  - RBL covenants
  - Indentures
  - Intercreditor agreements
  - Preferred equity consent rights
- Any ability to sandwich in a new second lien or other secured debt either as part of amend and extend or new money facility?
- Any contracts with cross-default provisions?
- Can hedges be terminated upon the default?



# Best Practices

- Get restructuring advisors involved as soon as possible
  - Runway is king!
- Assess the best time to approach creditors
  - Typically secured creditors first
  - May need to encourage groups to organize
- More complex the capital structure the higher likelihood of dissenters

# Accelerated Bankruptcy Options

# Restructuring Support Agreement

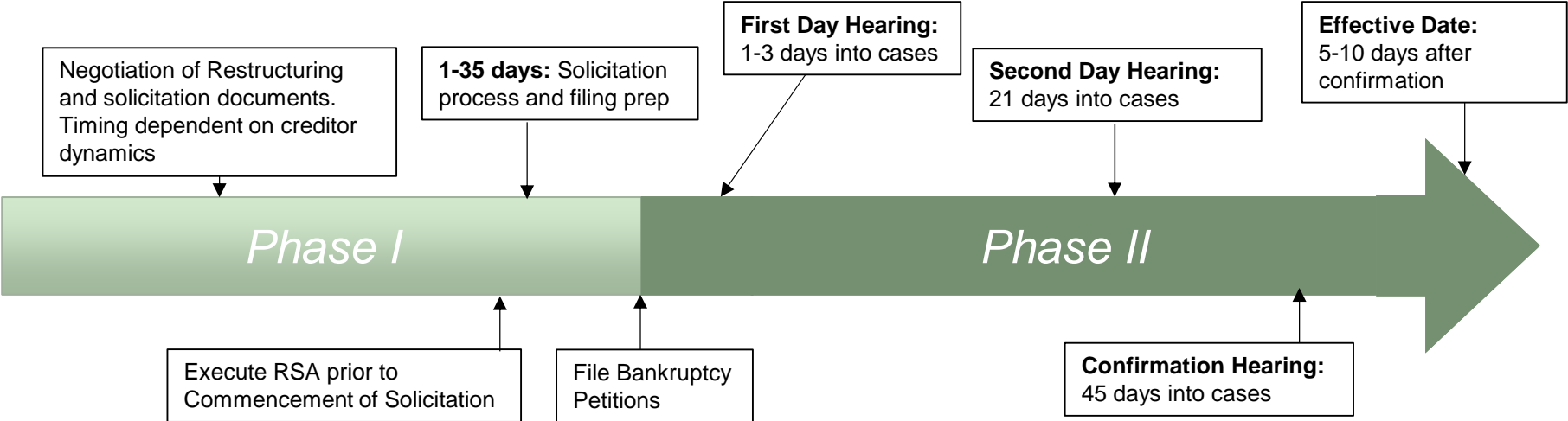
- Binds the parties to:
  - Support the negotiated transaction
  - Vote in favor of the transaction
- Key features:
  - Milestones for court approval/exit
  - Consent rights over documents and changes to the plan
  - Ability of debtor to assess alternative proposal (“window shop”)
  - Fiduciary out

# Prepackaged Bankruptcy

- **Situation:** You have a transaction that a large number of creditors support, but dissenters remain.
- Chapter 11 Plan formulated prepetition
- Solicitation of votes commences prepetition
- Court approves disclosure statement and plan at same hearing
- Typically unsecured creditors paid in full
- Often avoids Unsecured Creditors Committee
- Only necessary court oversight is to provide limited “first day” relief and to confirm the plan
- Can be “stapled” to an exchange offer

# Prepackaged Plan Process

- **Two phases of a prepackaged plan:**
  - Phase I: Pre-Bankruptcy Negotiation and Prepack Solicitation
  - Phase II: Bankruptcy and Plan Confirmation Process



# Prepackaged Case Profile: Arena Energy, LP

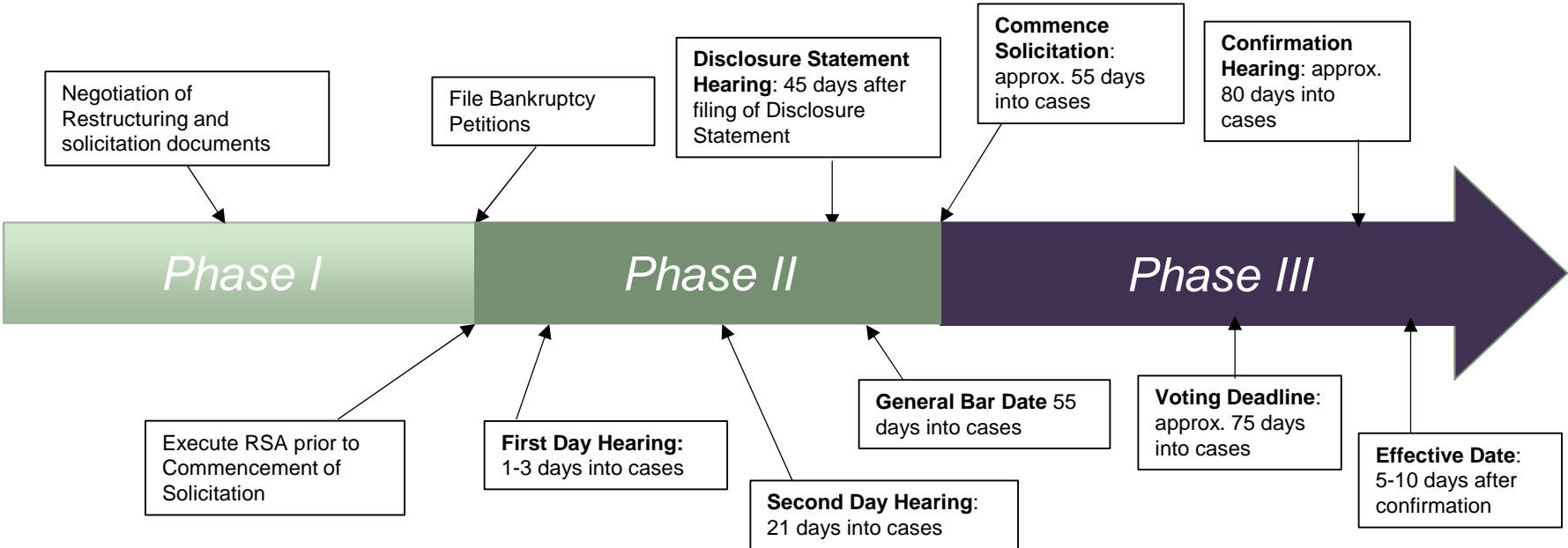
- 76% of RBL and 94% of Second Lien consented to transaction before filing
- Filed: August 20, 2020
- Confirmation Hearing: September 25, 2020
- Expected Closing: September 30, 2020
- **41 Days Total in Bankruptcy**
- **Plan discharges approx. \$630M in RBL and \$440M in Second Lien**

# Prenegotiated Bankruptcy

- **Situation:** You have a transaction that a large number of a class of creditors support, but there will be dissenting classes. Unsecured creditors not paid in full
- Chapter 11 Plan formulated prepetition
- Consenting creditors enter into restructuring support agreement
- Court approval of disclosure statement and solicitation procedures required before voting commences
- Unsecured Creditors Committee typically appointed
- **Plan confirmation typically in a subsequent hearing 60+ days after filing**

# Prenegotiated Plan Process

- Three Phases of a Prenegotiated Plan
  - Phase I: Pre-Bankruptcy Negotiation
  - Phase II: First Days, Disclosure Statement Hearing
  - Phase III: Solicitation, Confirmation and Effective Date





# Prenegotiated Case Profile: Neiman Marcus

- 99% of First Lien, 100% Second Lien, 70% Third Lien, 78% Debentures supported plan prepetition
- Filed: May 7, 2020
- Disclosure Statement Hearing: July 30, 2020
- Confirmation Hearing: September 4, 2020
- **120 Days from filing to court approval**

## Hybrid Case Profile: California Resources

- 84% of 2017 Term Loans, 50% of 2016 Term Loans, 8% of second liens consenting to transaction before filing.
- 67% Unsecured Debt claims subsequently consented.
- Filed: July 15, 2020
- Combined Hearing: October 5, 2020
- **82 Days from filing to court approval**
- **Plan discharges approx. \$5 Billion of debt and mezz equity.**

# Questions