The content of this course largely will be based on my own professional experiences and background. I approach restructuring problems, as inevitably I must, from a legal perspective. I am naturally more at ease with statutes, case authorities and policy concerns than with spreadsheets and financial modeling. That is to be expected given my day job as a United States Bankruptcy Judge in Manhattan. Because of these predilections, this business administration course may blur some of the distinctions between the business school and law school curriculum. We will stress the issues, controversies and uncertainties that tend to dominate the restructuring process, rather than the metrics. Nonetheless, we will be paying close attention to those key dynamics and business considerations – notably the fight for control, strategic decision making and differing perceptions as to valuation – that often are in play during restructuring negotiations.

One of the unifying themes for the course is conflict and its resolution – finding leverage and using it adroitly. In any effective restructuring, adverse parties with competing goals must either reconcile their differences or face the prospect that they will be compelled to do so. A natural tension exists between the entity seeking to reorganize its business and other parties seeking to maximize recoveries in the least amount of time. Reorganization is harder to accomplish when the objectives of the debtor and its creditors are discordant and not aligned.

Whether achieved through agreement or judicial intervention, resolution of such conflicts can produce outcomes that will override contracts, adjust repayment terms, reduce indebtedness and enable an enterprise to continue operating, in one form or another, as a going concern. Bankruptcy can eliminate historical obligations and replace them with different, more manageable ones – and also routinely wipes out existing shareholders while giving an equity stake in the reorganized business to creditors or new investors. In short, liquidation and reorganization under chapter 11 can completely alter expectations and transform legal rights with the stroke of a judge’s pen. We will seek to understand this truly amazing process by examining real world examples.

During the course, students will hear about some of my experiences and perceptions as the presiding judge in several landmark corporate bankruptcy cases including Charter Communications and Lehman Brothers. We will also refer to proceedings in other recent cases such as Chrysler, American Airlines and Hostess that illustrate both the utility and the limits of chapter 11 as a tool for resolving the problems of distressed businesses. Guest lectures will be presented by Timothy R. Coleman, Senior Managing Director and Head of the Restructuring Group at Blackstone, James Millstein, former Chief Restructuring Officer of the U.S. Treasury and founder of Millstein & Co. and Professor Arthur Gonzalez, distinguished former bankruptcy judge and now a Senior Fellow at NYU Law School who, in addition to his responsibilities at
The Law School, recently has served as the court appointed Examiner in the Residential Capital chapter 11 case.

We will explore current reorganization topics with an emphasis on complex enterprises and capital structures. Topics include out of court workouts, pre-negotiated or “prepackaged” plans, debtor-in-possession financing, corporate governance and chapter 11, sales in bankruptcy of operating businesses, the transfer of claims for liquidity and as a means to gain control, qualified financial contracts and the safe harbors and the plan process itself. We will investigate how the process of achieving consensus to a restructuring works in practice and identify the characteristics of those actors who can influence bankruptcy outcomes due to their legal and voting rights, priorities and structural position. In short, we will seek to uncover in our time together how bankruptcy can be used creatively to save troubled businesses for the benefit of all stakeholders.

Class Meeting: Class will meet on Wednesdays from 6:00 pm to 9:00 pm

Required Texts:


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<tr>
<th>Class Date</th>
<th>Discussion Topics</th>
<th>Required Reading</th>
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| 2/13       | ● Overview of the Bankruptcy Process  
              o Transactional Risks Associated with Bankruptcy (i.e. Automatic Stay, Ipso Facto Clauses, Avoidance Powers, Executory Contracts, and Equitable Subordination)  
              ● Out-of-Court Restructuring as an Alternative to Bankruptcy | ROE Chapters 1, 12, and p. 18-19, 253-257, 273-279, 347-350  
              ALTMAN Chapter 1 and p. 26-39, 44-55 |
| 2/20       | ● Valuation in Bankruptcy Proceedings  
              ● Guest Speaker: Timothy R. Coleman | ROE Chapters 2 and 3  
              ALTMAN Chapter 5  
              Iridium IP LLC v. Motorola, Inc. (In re Iridium Operating LLC), 373 B.R. 283 (Bankr. S.D.N.Y. 2007). (available online)  
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<tr>
<th>Date</th>
<th>Session</th>
<th>Notes</th>
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| 2/27 | Key Participants in the Chapter 11 Process and Corporate Governance  
- Negotiating with Labor  
- Debtor-in-Possession Financing  
- Guest Speaker: James Millstein | ROE Chapters 14 and 15  
ALTMAN Chapter 10  
Holman W. Jenkins, Jr., *The Media Choke on a Twinkie*, WSJ Nov. 27, 2012 (available online)  
| 3/6 | Sale of Operating Business without a Reorganization Plan – the “363 Sale”  
- Guest Speaker – Hon. Arthur J. Gonzalez (Ret.) | ROE Chapter 5 |
| 3/13 | Strategic Purchase/Sale of Claims  
- Qualified Financial Contracts and the Bankruptcy Safe Harbors  
- Guest Speaker: Bryan Marsal | ROE Chapter 11A (available online)  
ALTMAN Chapter 8 |
| 3/27 | Chapter 11 Plan of Reorganization  
Recommended: Lehman Brothers Inc.’s Disclosure Statement (available online) |

**Office Hours**

My chambers are located downtown at One Bowling Green, New York, New York 10004. I am available to meet with students there by appointment and will also make myself available before or after class at the business school on request. If you need to reach me, the best method is to send me an email at Judge_Peck@nysb.uscourts.gov; otherwise, call my chambers at (212) 668-5632. Please start the subject line of any email with “Stern Business School -- ”. General questions can also be sent to my assistant Mike Paek at Mike_Paek@nysb.uscourts.gov.

**Grading**

1. **Class Participation (10%)**: The class will be divided into sections. Each week, a different section will be responsible for leading the discussion and actively participating in their assigned class. Students will not be penalized for giving incorrect responses to
questions or for asking basic questions. Missing class on the day your section is assigned will affect your participation grade, although you can make up for lost credit by attending an actual bankruptcy hearing and doing a short writeup. All students are encouraged to attend at least one bankruptcy hearing during the course and to write a one page report on observations. Such submissions will enhance your class participation grade, but more importantly will give you added perspective on the bankruptcy process.

2. **Reorganization Simulation (15%)**: Students will be divided into groups of 3-4 and assigned to play the role of a financial advisor to an interested party to a restructuring (i.e. a debtor, a secured lender, committee of unsecured creditors, stockholders, labor union, strategic investor, etc.). The simulation will be based on a real on-going restructuring and students will use publicly available information to analyze potential issues and come up with a strategy serving the best interests of their respective clients. Students will also engage in active negotiation among one another and present the results of such negotiations during an informal session to be held subsequent to the final class in my chambers or at the business school.

3. **Take-Home/Open Book Exam or Paper (75%)**: Students may choose to either complete a take home/open book exam at the end of the semester or submit a ten-page paper on an approved reorganization topic. Students choosing to write a paper may do so in a group with other students in their Reorganization Simulation group. All work on the take-home exam must be your own.

4. **Miscellaneous**
   - Laptops cannot be used during class for any purpose (except where specifically permitted in advance by the professor)
   - Please turn cell phones off
   - No recording devices of any kind are allowed