

New York University

Leonard N. Stern School of Business

Corporate Bankruptcy & Reorganization

Professor James M. Peck

FINC- GB.3198.30

The content of this course will be based substantially 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 history as a restructuring lawyer and a now-retired United States Bankruptcy Judge. Because of these predilections to think about the legal aspects of the bankruptcy process, 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 and the importance of a rational capital structure to a successful restructuring.

One of the unifying themes for the course is conflict and its resolution - finding leverage and using it adroitly, sometimes with a heavy hand and at other times with diplomacy and finesse. 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 without delay. Reorganization is harder to accomplish when the objectives of the debtor and its creditors are discordant and misaligned.

Whether achieved through agreement or judicial intervention, resolution of such conflicts can produce outcomes that will override contractual provisions, 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 learn about some of my experiences and perceptions as the presiding judge in several landmark corporate bankruptcy cases including Iridium, Charter Communications and Lehman Brothers. We will also refer to proceedings in other recent cases such as Chrysler, American Airlines, Residential Capital, Excel Maritime, Lightsquared, Momentive Performance Materials and Energy Future Holdings that illustrate both the utility and the limits of chapter 11 as a tool for resolving the problems of distressed businesses.

The course will be enriched by a number of guest lectures presented by leading figures in the restructuring community. These presentations will add the perspective of market participants and will further illuminate the restructuring process.

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 all stakeholders.

Class Meeting: Class will meet in KMC 3-130 from 6:00 pm to 9:00 pm on the following dates: February 12, 19, 26, March 5, 12, and 26, 2015.

Required readings:

1. Edward I. Altman, Edith Hotchkiss, **Corporate Financial Distress and Bankruptcy** (John Wiley & Sons, Inc. 3rd ed. 2006) (“**ALTMAN**”).
2. The United States Bankruptcy Code (available online)
3. ABI Daily Headlines Delivered (American Bankruptcy Institute newsletter, delivered electronically).

Class Date	Discussion Topics	Required Reading
2/12	<ul style="list-style-type: none"> • Evolution of Restructuring in the United States • Overview of the Bankruptcy Process <ul style="list-style-type: none"> ◦ 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 chapter 11 • Introduction to the cast of characters - point of view and bias 	ALTMAN Chapter 1 and p. 26-39, 44-55
2/19	<ul style="list-style-type: none"> • Debtor in possession financing • Key participants in the process and corporate governance - who is in charge? • Strategies for resolving competing interests • Guest Speaker: Tim Coleman 	ALTMAN Chapter 10

2/26	<ul style="list-style-type: none"> Valuation in Bankruptcy The “363 Sale” - Sale of operating business without a reorganization plan <p>Guest Speaker: Mark Brodsky</p>	<p>ALTMAN Chapter 5</p> <p>Michael W. Schwartz and David C. Bryan, <u>Campbell, Iridium and the Future of Valuation Litigation</u>, vol. 67 The Business Lawyer, Aug 2012</p>
3/5	<ul style="list-style-type: none"> Strategic Purchase/Sale of Claims The rise and role of the “ad hoc” committee Material non-public information Qualified financial contracts and the “safe harbors” <p>Guest Speaker:</p>	<p>ALTMAN Chapter 8</p>
3/12	<ul style="list-style-type: none"> Chapter 11 Plan of Reorganization <ul style="list-style-type: none"> Prepackaged Bankruptcies Plan negotiations Plan mediation <p>Guest Speaker: Jack Butler</p>	<p><u>JPMorgan Chase Bank, N.A. v. Charter Communs. Operating, LLC (In re Charter Communs.)</u>, 419 B.R. 221 (Bankr. S.D.N.Y. 2009). (available online)</p> <p>Recommended: Lehman Brothers Inc.’s Disclosure Statement (available online)</p>
3/26	<ul style="list-style-type: none"> Confirmation, capital structure and feasibility Bankruptcy reform <p>Guest Speaker: Dan Kaminsky</p>	

Keeping in touch

I am available to meet with students before or after class at Shimkin on request. If you need to reach me, the best method is to send me an email at either jpeck@mofo.com or jmpeckbj@gmail.com. You may also call my cell phone: 917-863-2250. Please start the subject line of any email with “Stern MBA – ”.

Grading

1. ***Class Participation (10%)***: While not required, all students are encouraged to visit the bankruptcy court to attend one bankruptcy hearing and prepare a brief report on observations. Such observations will give you added perspective on the bankruptcy process. Students are also encouraged to pay close attention to developments in the distressed marketplace. This will allow students to participate in an informed discussion of current events in the field of corporate restructuring. The ABI Daily Headlines provide one source of information. Other sources are available on the internet and include Bloomberg, Reuters, The Wall Street Journal and The Financial Times. Restructuring professionals pride themselves on being well informed. Current cases in the news include Lightsquared, Energy Future Holdings and Caesars Entertainment.

2. ***Paper (90%)***: Students will demonstrate their understanding of the course material by composing an original ten-page paper on an approved reorganization topic. The paper may be written individually or in a working group of up to four students. We will discuss potential topics and organize groups on 2/7.

3. ***Miscellaneous***

- Please turn off all cell phones and electronic devices during class — **please, no texting or other similar electronic distractions in class.**
- Laptops may be used for taking notes.
- No recording devices of any kind are permitted.

POSSIBLE BANKRUPTCY PAPER TOPICS

Sample Themes

Abuses of the Bankruptcy Code
Accountants' roles in bankruptcies
Airline deregulation & bankruptcies
Airline industry prediction model
Argentina bank crisis
Asset management companies (AMCs)
Auto Supply & Automotive Industry
Banking industry model
Bankruptcy in the telecommunication industry
Bankruptcy as a business strategy
Bankruptcy and pension plans (PBGC)
Bankruptcy expert systems
Bankruptcy in Central and Eastern Europe
Busted convertibles
Chapter 22s, 33s, 44s
China's bankruptcy Laws & NPLs
Claims purchases as a takeover technique
Climate change and the Insurance Industry
Computer and Electronic Industry
Corporate abuses and bankruptcy
Crisis in Japanese banking
Critical events analysis and bond price reaction
Debtor-in-possession (DIP) financing
Distressed Firm Control Strategy
Distressed Ratio
Emerging market corporate debt models
Emerging Equity Investing
Equity Performance in Reorganization
Equity performance after bankruptcy emergence
European Distressed Debt Market
Fallen angels (e.g., GM & Ford)
Financial reporting consolidation (captives) & Z-Scores
Fraudulent conveyance
Government Intervention & Creditor Rights
Greece and the Euro-Peripherals
Hedge Funds as Corporate Lenders
Highly leverage transactions (HLT)
Indirect and Direct Bankruptcy Costs
Investing in bankrupt equities
Japanese Rating Agencies
LBO Bankruptcies
Macro-default models
Macro-influences on defaults
Municipal defaults
New Bankruptcy Act of 2005
Option pricing default models
Power companies and public utilities
Pre-packaged bankruptcies
Rating Agencies
Rating downgrade triggers
Roll-Up Strategy from Bankruptcies
Sovereign Risk Models
Subprime Mortgage Crises
Systemic Risk Analysis
Telecommunications industry prediction model
The Corporate Bankruptcy restructuring industry
The new BIS regulation on credit assets (Basel 11)
Z-Scores and investing

Sample Companies

Adelphia
Allied & Federated Department Stores
American Airlines (AMR)
Bethlehem Steel/International Steel Group
Borders
Braniff International (Chapter 33)
Charter Communications (Chapter 22)
Chrysler
CIT Financial
Collins & Aikman
Continental Airlines (Chapter 22)
Dana Corporation
Delphi Corporation
Delta Airlines/Northwest
Dow Corning
Dura Corp.
Dynergy Corp.
Eagle Picher Industries
Eastman Kodak
Enron Corporation
Euro Tunnel (1 and 2)
Exide Corp.
Federated Dept. Stores
General Growth Properties
General Motors/Ford
Global Crossing
Globalstar
Grand Union (Chapter 33)
Great A&P Tea Company
Greyhound
Hawker Beechcraft
Hostess (Chapter 22)
ICO Global Communications
Kmart/Sears
Lear Corp.
Lehman Brothers
Loewen
LTV (Chapters 11 and 22)
Lyndell Chemical
MIF Global
MGM Holdings
Mirant Energy
Montgomery Ward
Nortel Networks
Parmalat
Polaroid/Eastman Kodak
Quebecor World
R. H. Macy & Company
Residential Capital
Smurfit-Stone Container
Swissair
Tower Automotive
Tribune Co.
Trump Hotels & Casinos (Chapter 44!)
United Airlines/Continental
US Airways (Chapter 33?)
Visetron
Winn-Dixie Stores
WorldCom