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Southeast Bankruptcy Workshop 2021

Curbside Restructurings: Distress in Restaurants and Retail

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CURBSIDE RESTRUCTURINGS

DISTRESS IN RESTAURANTS & RETAIL



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Roadmap



Recent Industry Trends



*Operational Issues Leading to Distress for Restaurant
& Retail Businesses*



*Restructuring, the Need for Speed, & Select
Bankruptcy Issues*



Recent Case Studies



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2



Recent Restaurant Industry Trends



Winners and Losers Picked Early in Pandemic

- Lenders and Sponsors stepped up to provide liquidity to large chains, some via Chapter 11
- Smaller chains and "Mom-n-Pops" helped by PPP loans, Restaurant Revitalization Fund, and other channels of government support
- Still, 10% - 20% of all restaurants nationwide are permanently closed
- Full-service segment has been the most impacted

Favorable Macro Environment for Those Still Standing

- Fewer competitors
- Significant pent-up demand
- Strong consumer discretionary income given low interest rates, as well as stimulus money still in the system
- Extensive lease negotiations during the pandemic have led to lower rents across the industry
- Residual stickiness of take-out and delivery adoption

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State of the Industry: Restaurants



Comparable Trading Metrics (Average)			
Dining Segment	EV / EBITDA	19 P/E	20 P/E
Coffee & Snacks	12.3x	16.6x	16.3x
Fast Casual	7.2x	46.8x	47.8x
Quick Service	11.9x	18.2x	16.7x
Casual Dining	3.4x	6.2x	6.2x
Family Dining	5.9x	7.2x	6.5x
Upscale Dining	3.0x	5.0x	5.2x
Other	16.6x	NA	NA



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Recent Restaurant Bankruptcies



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Public Restaurant Company Capital Raise Summary













Company	Offering Type	Announce Date	Amount Raised	Proceeds / Mkt. Value	% Change from Pre-COVID Share Price (1)	Commentary
	Senior Notes	03/16/21	\$1,100	3.4%	3.3%	Proceeds to be used to reduce outstanding notes at subsidiary level
	Term Loans & Revolver	03/19/21	\$3,500	10.8%	2.8%	Refinancing amendment made up of \$1.5B term loan B, \$750M term loan A and a 1.25B revolver
	Convertible Senior Notes	03/01/21	\$225	4.9%	60.4%	Proceeds to be used for investment in restaurant base and development
	ATM	01/21/21	\$25	2.4%	9.8%	Proceeds to be used for capital expenditures and new restaurant expansion, as well as to strengthen the balance sheet
	Follow-On	08/12/20	\$6	28.7%	(33.4%)	Proceeds to be used for non-traditional location growth initiatives on military bases, universities and ghost kitchens.
	Follow-On	06/30/20	\$73	13.0%	(49.9%)	Proceeds to be used for general corporate purposes
	ATM	06/16/20	\$30	19.3%	(65.8%)	Announced ATM program of \$40M
	Follow-On	05/20/20	\$44	17.3%	(58.0%)	Announced proposed offering of \$43.5M on 05/20/20
	Shelf	05/05/20	\$75	29.3%	NA	Announced registration for up to \$75M in offerings on 05/05/20
	Follow-On	05/06/20	\$125	17.8%	(63.6%)	Announced proposed offering of \$125M Capital raise enabled credit agreement amendment
	Shelf	05/05/20	--	--	NA	Registration for up to \$100M in offerings
	Convertible Senior Notes	05/05/20	\$200	24.4%	(65.8%)	Announced proposed private offering of \$200M Capital raise enabled credit agreement amendment

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Public Restaurant Company Capital Raise Summary



Company	Offering Type	Announce Date	Amount Raised	Proceeds / Mkt. Value	% Change from Pre-COVID Share Price (1)	Commentary
	Follow-On	05/04/20	\$111	32.1%	(76.1%)	Strengthen the balance sheet principally as necessitated by the effects of the COVID-19 outbreak on the Company's business
	ATM	04/14/20	\$75	20.0%	(74.0%)	Capital raise enabled credit agreement amendment
	PIPE	05/01/20	\$70	18.7%	(62.7%)	Enhance liquidity and strengthen ability to re-open dine-in service when appropriate Capital raise enabled credit agreement amendment
	Follow-On	04/23/20	\$527	6.1%	(45.1%)	Maximize financial flexibility and further bolster liquidity as a precautionary measure given the economic uncertainty arising from COVID-19.
	Term Loan	04/09/20	\$270	4.3%	NA	
	Follow-On	04/21/20	\$140	7.9%	(35.7%)	Proceeds for general corporate purposes & enhance Company's ability to resume its long-term strategic growth plan
	ATM	04/21/20	\$10	0.5%	(35.7%)	Announced ATM program of \$75M
	PIPE	04/20/20	\$200	23.2%	(53.0%)	Enhance liquidity position to navigate the near-term COVID-19 landscape
	Revolver	04/10/20	--	--	NA	Kura Sushi Japan (controlling stockholder) agreed to make available a \$20M revolver
	Senior Notes	04/02/20	\$500	4.8%	NA	General corporate purposes Capital raise enabled credit agreement amendment
	Senior Notes	04/01/20	\$600	2.9%	NA	General corporate purposes
	Senior Notes	03/27/20	\$3,500	2.9%	NA	Reinforce cash position and provide financial flexibility
	Revolver	03/29/20	\$1,000	0.8%	NA	
	Term Loan	03/20/20	\$500	0.7%	NA	General corporate purposes

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Same Store Sales (SSS)



- Black Box Intelligence: Through the end of June, the restaurant industry continued its streak of positive same-store sales growth in part boosted by Father's Day. BBI reported that the average check showed double-digit year-over-year growth at the industry level. While sales and traffic have been on the mend, guest sentiment data suggests that "speed of service" is still suffering due to staffing shortages.
- According to industry contacts...
 - In the quick-service segment, same-store sales remained +MSD% in the first half of March. From speaking with franchisees, we understand this is no longer the case with indications of (10%)-(50%) comps in some regions at varying concepts.
 - Full-service reservation figures (i.e., down (40%) - (60%)) are not necessarily comp/traffic metrics but should be considered the direction of consumers' intent to dine out. We expect a widening of the gap (between concepts) in terms of full-service same-store sales performance.
 - Delivery sales are up in QSR. Drive-thru mixed results in QSR. A visible lack of traffic at entertainment destinations.
 - High-end concept traffic is in the down (70%) - (80%) range.
 - The breakfast daypart is least resilient, and the coffee market may be one of the most durable at this point.
- According to OpenTable...
 - Restaurant traffic was down (47%) during coronavirus crisis.



1) Per Kripp Track Casual Dining index, which is comprised of 58 companies (both public and private) representing 10,000 restaurant locations and \$35bn in sales

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Potential Issues Leading to Distress



1. *Sales are still overall below pre-pandemic levels leading to operational inefficiencies*
2. *Food costs*
 1. *Commodities significantly higher: high feed costs, increased demand, and changes in the supply chain have driven up prices for livestock wholesale meats and poultry*
 2. *Difficulty sourcing: manufacturers and distributors are struggling with staffing and cutting off accounts*
 3. *Inflationary pressures: how much is "transitional"*
3. *Labor costs*
 1. *Labor shortages at stores: negative impact on service, stores reducing hours of operation, lost opportunities for private events*
 2. *Labor shortages throughout the supply chain impact pricing and availability*



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Potential Issues Leading to Distress



4. *Temporary lease reductions and abatements from 2020 will begin to expire*
5. *New regulatory and employment challenges on the horizon*
 4. *PCI Compliance*
 5. *Chip-and-PIN/Cybersecurity costs/data breach risks and costs (ever evolving)*
 6. *Federal and local minimum wage increases*
 7. *State and Local regulations re: scheduling, time off, personal leave (ever evolving)*
 8. *PRO Act: "If enacted, this bill will cripple restaurants" – National Restaurant Association*
6. *Increased debt loads from pandemic related borrowing*



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Distressed Restaurant Profile



Assets Bled to Death

- ✂ Tired décor, aging and mismatched small wares, patched up kitchen equipment
- ✂ Ongoing cash triage between stores, spend limited to health and safety issues

Managing for Optionality

- ✂ Need to preserve all forms of potential value (e.g., keeping underperforming stores open because it may have real estate value)
- ✂ Inefficient SG&A, difficulty making strategic changes

Broken Planning and Implementation Cycles

- ✂ Inability to commit to next years' purchases, product introductions, promotional calendars, and even menu cycles

Low Morale and Accountability

- ✂ High turnover, quitting on the job
- ✂ Difficult to find quality replacements - do without, or turn to consultants and temps
Difficult to push improvements through - resistance, limited training, indifference

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Current Transaction Environment



Current Restructuring Environment: Dead

- Dearth of liquidity or covenant issues in the near-term
- Reduced competition = consolidated sales

Decent Level of Activity in Healthy M&A

- Multiples near historical highs
- Strong demand for "Tier 1" brands

Buyer's Perspective

- Continued consolidation
- Some buyers priced out of the market
- PPP loans preventing purchase or investment from private equity funds

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Ch. 11 Restaurant Transaction Particulars



What makes restaurant Ch. 11's different?

- Limited “debt holiday” from stay - employees, food vendors, landlords all usually get paid pursuant to:
 - First Days
 - PACA
 - 503(b)(9)
 - Critical Vendor (sometimes – beware the doctrine of necessity!)
- All things 11 U.S.C. § 365 – lease rejection timelines, franchisee/franchisor issues
 - Time limits drive pre- and post-filing sale timelines
- WARN Act considerations
- Cash Collateral: lien on food and beverage – proceeds may not attributable to sale of goods

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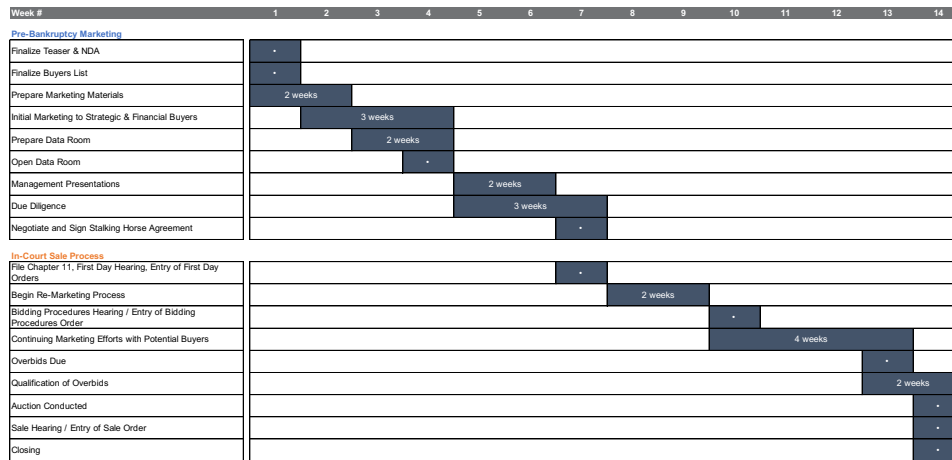
Ch. 11 Restaurant Transaction Particulars



- Debtor-in-Possession (“DIP”) Financing
 - Almost never free and clear assets which requires existing lenders to provide DIP financing
 - Occasionally, owned real estate which provides for additional collateral to secure a DIP
- Vendor Issues
 - Vendors will generally work with Debtors if there is DIP financing in place
 - Worst case, COD deliveries
- Retention of Key Employees
 - KEIP / KERF is standard and typically tied to a successful closing of a transaction
 - Debtor must have CRO firm ready to step into open positions in the absence of retention
- Sale Process Timeline
 - Can be very short in bankruptcy as long as investment banker ran pre-bankruptcy process
 - Most buyers are comfortable with bankruptcy and can move fairly quickly

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In-Court Process: Illustrative Section 363 Sale⁽¹⁾⁽²⁾



1) Prepetition timeline highly dependent on liquidity, ongoing marketing efforts, data availability and other business considerations
 2) Postpetition timeline (including transacting out of court, via chapter 11 or via state court action) highly dependent on selected buyer and specific requirements of the venue, including court availability and statutory requirements

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Retail Restructuring MO



Sales & Liquidity

- SSS / Comps slide
- Fixed costs with non-rationalized footprint plus shifting demographics and e-com trip covenant in ABL facility

Lender Action

- ABL lender receives unfavorable appraisal
- Borrowing base driven liquidity and discretion under the borrowing base ("permitted discretion") tightens screws on liquidity
- Vendor confidence slides as liquidity does and there is a "run on the company"
- Company is placed on a short leash

Bankruptcy

- Acceleration leads to a chapter 11 with limited investment bank marketing stapled to a going out of business process

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Retail Restructuring MO



Tired Restaurants

- Tired décor, aging and mismatches small wares, patched up kitchen equipment
- Ongoing cash triage between stores, spend limited to health and safety issues
- Inefficient SG&A and inability to make strategic choices
- Restaurant operations changes have a long runway and often unintended consequences when brands attempt brand turnarounds
- Crushing debt

Lender Action

- Liquidity issues lead to a need for quick action by IB to effect a going concern sale
- The reason is that liquidation values for restaurant businesses are very low (inventory, machinery, liquor licenses, trade fixtures)

Bankruptcy

- Often required to deal with footprint rationalization/lease renegotiation, FLSA claims and class actions, data/privacy breaches, and general free and clear scrubbing of assets

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Early Analysis of Chapter 11 Cases



- Debtors
 - Retail chains
 - Restaurants
 - Independents / boutiques
- To File or Not to File
 - One-time catastrophic loss
 - Unprofitable locations / product lines
 - Too rapid expansion
 - Competition
 - Too much secured debt
 - Mismanagement / poor financial controls

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Cash Flow Pro Forma



	April 2021	May 2021	June 2021	July 2021
Income	\$550,000	\$625,000	\$675,000	\$675,000
Disbursements				
Inventory	\$195,000	\$215,000	\$260,000	\$249,100
Labor	\$210,000	\$237,500	\$262,000	\$265,000
Supplies	\$13,500	\$19,250	\$21,000	\$21,000
Advertising	\$14,726	\$24,650	\$22,285	\$10,445
Depreciation	\$16,666	\$16,666	\$16,666	\$16,666
Licensing Fee	\$18,375	\$20,985	\$24,381	\$23,607
Accounting	\$3,600	\$3,600	\$3,600	\$3,600
Legal	\$10,000	\$10,000	\$10,000	\$10,000
Insurance	\$8,950	\$7,000	\$8,950	\$7,000
Repairs & Maintenance	\$10,506	\$22,395	\$18,225	\$13,990
Real Estate Taxes	\$8,535	\$8,535	\$8,535	\$8,535
Utilities	\$28,022	\$40,177	\$35,900	\$39,625
BankTrust Interest	\$10,000	\$10,000	\$10,000	\$10,000
First Federal Mortgage	\$20,000	\$20,000	\$20,000	\$20,000
Personal Property Leases	\$20,000	\$20,000	\$20,000	\$20,000
Total Disbursements	\$587,880	\$675,758	\$741,542	\$718,568
Cash Surplus/Deficit	(\$37,880)	(\$50,758)	(\$66,542)	(\$43,568)
Cash at Beginning of Period	\$0	(\$37,880)	(\$88,638)	(\$155,180)
Cash at End of Period	(\$37,880)	(\$88,638)	(\$155,180)	(\$198,748)

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Revised Cash Flow Pro Forma



	April 2021	May 2021	June 2021	July 2021
Income	\$550,000	\$625,000	\$675,000	\$675,000
Disbursements				
Inventory	\$195,000	\$215,000	\$260,000	\$249,100
Labor	\$210,000	\$237,500	\$262,000	\$265,000
Supplies	\$13,500	\$19,250	\$21,000	\$21,000
Advertising	\$14,726	\$24,650	\$22,285	\$10,445
Depreciation	\$0	\$0	\$0	\$0
Licensing Fee	\$18,375	\$20,985	\$24,381	\$23,607
Accounting	\$0	\$0	\$0	\$0
Legal	\$0	\$0	\$0	\$0
Insurance	\$8,950	\$7,000	\$8,950	\$7,000
Repairs & Maintenance	\$10,506	\$22,395	\$18,225	\$13,990
Real Estate Taxes	\$0	\$0	\$0	\$0
Utilities	\$28,022	\$40,177	\$35,900	\$39,625
BankTrust Interest	\$0	\$0	\$7,500	\$7,500
First Federal Mortgage	\$0	\$0	\$0	\$0
Personal Property Leases	\$0	\$0	\$15,000	\$15,000
Total Disbursements	\$499,079	\$586,957	\$675,241	\$652,267
Cash Surplus/Deficit	\$50,921	\$38,043	(\$241)	\$22,732
Cash at Beginning of Period	\$0	\$50,921	\$88,964	\$88,723
Cash at End of Period	\$50,921	\$88,964	\$88,723	\$111,455

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Select Bankruptcy Issues



Legal

- 20-day goods claims under 503(b)(9);
- 503(b)(9), PACA, PASA;
- 365(d)(3) (Pier 1, Paper Source, CECK);
- 365(d)(4) – 120/210 Clock;
- 1121 & Exclusivity



Operational

- Cash is still king
- Bedding down the case with critical vendors
- Management & employee retention
- Maintaining operating performance

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Lease Negotiation Playbook



- Most retail and restaurant debtors will hire advisors to run a full-blown, coordinated lease restructuring strategy, whereby the advisors:
 - Diligence leases and understand pre-bankruptcy communications with landlords;
 - Determine rent reduction asks of the business;
 - Create standard lease modification agreement forms to ensure seamless document processes;
 - Engaged in landlord outreach and negotiations and track deal progress;
 - Work with all parties to have modifications fully executed.
- What is negotiable?
- The backdrop of section 365 of the Bankruptcy Code is the leverage for such a process.



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Landlord – Tenant Specific Issues



- *GOB Sales*
 - *Sale Procedures*
 - *Side Letters*
- *Section 365(d)(3) – debtor's duty to perform.*
- *Real Estate Advisors*
 - *Continued negotiation post-petition*
 - *Standard forms are common*
 - *What is negotiable?*
- *Assumption Issues*
 - *Cure Schedule*
 - *Reconciliations*
 - *Non-monetary items – indemnification, shopping center provisions*
 - *Section 365(l) – additional collateral*
- *Landlord Bankruptcy – recent filings by mall operators*
 - *Tenant specific issues tend to be more operational*
 - *"Free and clear" – use provisions, exclusives*



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Brief Mention of Subchapter V



- *Can be a good option for a single location or smaller chain*
- *Deadlines come quickly*
- *Debt threshold issues (In re Parking Management Inc. – lease rejection damages do not count towards cap)*
- *Streamlined confirmation process*
- *Role of Subchapter V Trustee*
- *Payment of administrative claims over time*

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RESTAURANT LOAN-TO-OWN STRATEGIES¹

With a continuing string of restaurant bankruptcy filings over the last several years, and a wave of them through the COVID-19 pandemic, the restaurant industry has again proved that it is not for the faint of heart. Ever-changing consumer tastes, rising labor costs, capex demands, unsustainable debt loads, pandemic-induced shutdowns, and labor shortages are just a few of the challenges faced by restaurant owners today. But for some, this market disruption has presented and will continue to present an opportunity to unlock value in distressed restaurant assets. Many distressed opportunity and private equity funds purchased secured debt and used that position to effect a detailed plan for quick emergence—convert existing secured debt to equity or leverage it for a credit bid in a section 363 sale. This strategy, sometimes unlovingly referred to as “loan-to-own” or more lovingly referred to as “change in control,” is an alternative to a direct equity or asset purchase of a target. Let’s look at the basics of the loan-to-own strategy and some potential pitfalls for the unseasoned.

Loan-to-own is a strategy that involves making a senior secured loan, or purchasing an existing senior secured loan, with the goal of converting that debt into controlling equity of the target borrower on a consensual or hostile basis via a plan or through a section 363 sale. The strategy, which can be executed in or out of bankruptcy court and through different mechanisms discussed below, is founded on the fundamental bankruptcy principle that secured debt is repaid before unsecured debt, which is repaid before equity and, therefore, the secured debtholder is positioned to control or heavily influence the reorganization or sale process. In the case of Taco Bueno—a restaurant chain that filed in 2019—the loan-to-own approach was the result of a collaborative process to divest the troubled restaurant. Taco Supremo, an affiliate of the restaurant franchisee giant Sun Holdings, acquired the secured debt of Taco Bueno at an auction and negotiated a restructuring support agreement with Taco Bueno, which charts Taco Bueno’s course through the bankruptcy process and transitions ownership to Taco Supremo by equitizing its newly-acquired secured debt. This loan-to-own plan required the cooperation of Taco Bueno, its initial lenders and Taco Supremo as the debt purchaser. The plan was successful and confirmed in January 2019.

A loan-to-own strategy can be effectuated through a variety of means, but typically starts with an interested purchaser acquiring the existing debt of a distressed target company. An incumbent lender willing to engage in discussions with potential purchasers, and likely accept a steep discount on its anticipated loan repayment, is a prerequisite. But lenders, especially in the restaurant industry, are often more than willing to engage when battling the “deal fatigue” of a distressed credit that has diverted the lender’s time and resources. The lender in this scenario may be also weighing the potential of a protracted bankruptcy case (see *RMH Franchise Holdings, Inc.*, an Applebee’s franchisee that filed in 2018) and a significantly reduced recovery given that restaurant loans are underwritten based on the “enterprise value” of the company—the inherent value of a company operating as a going concern—and not the value of the company’s assets, such as accounts receivable and inventory.

Whereas “asset-based” lenders in other industries are often willing to hold out knowing that the asset values of a company will support relatively high recoveries in either a liquidation or reorganization scenario, the limited liquid asset value of a restaurant in a tailspin is often cringeworthy in the eyes of a

¹ Jordan Myers and Jonathan Edwards are partners at Alston & Bird LLP. This article represents the opinion of the authors only and not of Alston & Bird LLP and is not intended and should not be construed as legal advice.

secured lender. Finally, most senior secured lenders have no interest in operating a restaurant and, therefore, ultimate ownership of the asset is undesirable.

Once the prospective purchaser has acquired the distressed target's secured debt, it can proceed along a number of different avenues, including (1) a consensual out-of-court restructuring that exchanges the existing secured debt for the equity of the company, (2) an out-of-court foreclosure of the assets of the company led by the debtholder, (3) a bankruptcy filing followed by a sale of the company to the debtholder or (4) a bankruptcy filing followed by a plan of reorganization that converts the existing secured debt into equity of the company. While a fulsome discussion of all of the nuances of each approach is outside the scope of this article, in general, a distressed company and purchaser can benefit from an out-of-court process, which is typically quicker than a bankruptcy filing, results in less disruption (and less bankruptcy court and third-party scrutiny) to the operating business and is cheaper than a bankruptcy filing. An out-of-court process, however, foregoes several Bankruptcy Code benefits, including a "breathing spell" from other creditor actions, the ability to force certain creditors to accept less than what they are owed, the ability to shed burdensome leases or other contracts, and the ability to sell assets free and clean of liens and claims or get a court's blessing at confirmation.

In a bankruptcy scenario, the secured creditor holds substantial leverage. While a secured creditor already exerts considerable influence, if such creditor provides additional "debtor-in-possession" financing to the restaurant after filing the bankruptcy petition to fund the bankruptcy case, the debtholder can enhance its control position by conditioning such financing upon satisfaction of certain milestones in the case, including the filing of various sale and plan of reorganization filings, while also maintaining a veto right on unfavorable plans of reorganization. Regardless of the provision of debtor-in possession financing, if the restaurant assets are sold in bankruptcy, the debtholder can use its secured debt as a form of non-cash currency to purchase the assets.

For example, if a restaurant's outstanding \$100 million secured loan is purchased for \$25 million and the assets are subsequently sold in bankruptcy, the debtholder could "credit bid" up to \$100 million in an auction scenario without a cash outlay. Instead, the debt in the amount of the credit bid up to \$100 million would simply be cancelled. The debtholder is, of course, free to supplement its credit bid with a cash bid in the event of a competitive auction in excess of \$100 million. The ability to credit bid puts the loan-to-own debtholder in a significantly better position than other interested buyers who must compete with all-cash bids and sets the stage for significant investment returns if the restaurant can succeed post-bankruptcy.

Alternatively, the debtholder could pursue ownership of the company in bankruptcy via negotiation of a plan of reorganization that converts its debt into equity. These plans are often implemented before filing with a restructuring support agreement. And such debtholder can influence the plan through what is typically a blocking position on any competing plan of reorganization.

While the loan-to-own strategy provides the potential for a significant investment return upon achieving a successful turnaround, it is not without risk. An asset purchase or equity purchase comes with assurance that, upon closing, the purchaser will own the company. But a prospective purchaser in a loan-to-own scenario must make a potentially significant investment to acquire the secured debt of the restaurant without certainty that it will be successful in exerting leverage to ultimately own the target. Even when the restaurant owner consents to the loan-to-own strategy, hurdles can remain and include the following:

- unsecured creditors or other interested parties can challenge various aspects of the underlying secured claim in an effort to derail the credit bid or minimize the influence of the secured claim in a plan of reorganization;
- although a secured creditor typically holds a blocking position in any plan of reorganization, it is possible to overrule such objection through a “cram down” plan, which could force the loan-to-own investor to remain a lender on undesirable terms;
- although typically reserved for egregious conduct, interested parties may seek to limit credit bidding “for cause”, which could cap any credit bid at the purchase price of the debt rather than the face amount of the debt (e.g., \$25 million in the hypothetical above rather than \$100 million);
- also reserved for similar conduct, a secured claim can be “equitably subordinated” or recharacterized as equity, which has the effect of putting the secured claim behind unsecured creditors in the priority scheme and likely subjecting the claim to unfavorable treatment with minimal influence on the outcome of the case; or
- if the target is a franchisee, franchisor consent must be obtained.

The loan-to-own strategy can unlock significant value in a distressed restaurant acquisition. But the process is not without risks and significant diligence should be conducted by any prospective debt purchaser to limit any potential vulnerabilities in effectuating the conversion from debt to equity. If the transaction is consummated through a bankruptcy filing, the purchaser should avoid imposing aggressive timelines that deprive third-parties of an opportunity to participate in the case and should also be careful to avoid conduct perceived as inappropriate control of the company by a lender.

Sale Guidelines¹

1. The Sales shall be conducted so that the Stores in which sales are to occur will remain open no longer than during the normal hours of operation provided for in the respective leases for the Stores.
2. The Sales shall be conducted in accordance with applicable state and local “Blue Laws,” where applicable, so that no Sales shall be conducted on Sunday unless the Merchant had been operating such Store on a Sunday.
3. On “shopping center” property, Merchant and Consultant shall not distribute handbills, leaflets, or other written materials to customers outside of any Stores’ premises, unless permitted by the lease or, if distribution is customary in the “shopping center” in which such Store is located; *provided* that Merchant and Consultant may solicit customers in the Stores themselves. On “shopping center” property, Merchant and Consultant shall not use any flashing lights or amplified sound to advertise the Sales or solicit customers, except as permitted under the applicable lease or agreed to by the landlord.
4. At the conclusion of the Sales, Merchant and Consultant shall vacate the Stores in broom clean condition; *provided* that Merchant and Consultant may abandon any Store Closure Assets not sold in the Sales at the conclusion of the Sales, without cost or liability of any kind to Merchant and Consultant, *provided* that, nothing herein shall be deemed a waiver of any damage claims against the Merchant. Any abandoned Store Closure Assets left in a Store after a lease is rejected shall be deemed abandoned to the landlord having a right to dispose of the same as the landlord chooses without any liability whatsoever on the part of the landlord to any party and without waiver of any damage claims against the Merchant.
5. Merchant and Consultant may advertise the Sales as a “store closing,” “sale on everything,” “everything must go,” “everything on sale,” or a similar-themed sale.
6. Merchant and Consultant shall be permitted to utilize display, hanging signs, real estate signs, and interior banners in connection with the Sales; *provided* that such display, hanging signs, real estate signs, and interior banners shall be professionally produced and hung in a professional manner. The Merchant and Consultant shall not use neon or day-glo on its display, hanging signs, or banners. Furthermore, with respect to enclosed mall locations, no exterior banners or signs in common areas of a mall shall be used unless otherwise expressly permitted in these Sale Guidelines. In addition, the Merchant and Consultant shall be permitted to utilize exterior banners at (i) non-enclosed mall Stores and (ii) enclosed mall Stores to the extent the entrance to the applicable Store does not require entry into the enclosed mall common area; *provided* that such banners shall be located or hung so as to make clear that the Sales are being conducted only at the affected Store, shall not be wider than the storefront of the Store, and shall not be larger than 4 feet x 40 feet. In addition, the Merchant and Consultant shall be permitted to utilize sign walkers in a safe and professional manner and in accordance with the terms of the Approval Order. Nothing

¹ Capitalized terms used but not defined in these Sale Guidelines have the meanings given to them in the Motion.

contained in these Sale Guidelines shall be construed to create or impose upon Consultant or Merchant any additional restrictions not contained in the applicable lease agreement.

7. Conspicuous signs shall be posted in the cash register areas of each of the affected Stores to effect that "all sales are final."
8. Except with respect to the hanging of exterior banners, Merchant and Consultant shall not make any alterations to the storefront or exterior walls of any Stores.
9. Merchant and Consultant shall not make any alterations to interior or exterior Store lighting. No property of the landlord of a Store shall be removed or sold during the Sales. The hanging of exterior banners or in-Store signage and banners shall not constitute an alteration to a Store.
10. Merchant and Consultant shall keep Store premises and surrounding areas clear and orderly consistent with present practices.
11. Merchant and Consultant, subject to the provisions of the Consulting Agreement, shall have the right to sell all FF&E, approved by the Merchant. Merchant and Consultant may advertise the sale of the FF&E in a manner consistent with these guidelines. The purchasers of any FF&E sold during the sale shall be permitted to remove the FF&E either through the back shipping areas at any time, or through other areas after applicable business hours. For the avoidance of doubt, as of the Sale Termination Date, Merchant and Consultant may abandon, in place, any FF&E.
12. At the conclusion of the Sales at each Store, pending assumption or rejection of applicable leases, the landlords of the Stores shall have reasonable access to the Stores' premises as set forth in the applicable leases. The Merchant, Consultant, and their agents and representatives shall continue to have access to the Stores as provided for in the Agreement.
13. Absent relief by the Court, post-petition rents shall be paid by the Merchant, as required by the Bankruptcy Code, until the rejection or assumption and assignment of each lease. Consultant shall have no responsibility to the landlords therefor.
14. The rights of landlords against Merchant for any damages to a Store shall be reserved in accordance with the provisions of the applicable lease.
15. If and to the extent that the landlord of any Store affected hereby contends that Consultant or Merchant is in breach of or default under these Sale Guidelines, such landlord shall email or deliver written notice by overnight delivery on the Merchant and Consultant as follows:

If to Consultant:

SB360 Capital Partners, LLC
1010 Northern Blvd., Suite 340
Great Neck, NY 11021

SOUTHEAST BANKRUPTCY WORKSHOP 2021

Case 20-33113-KRH Doc 70 Filed 07/24/20 Entered 07/24/20 16:17:17 Desc Main Document Page 56 of 56

Attn: Aaron Miller
Facsimile: (516) 945-3434
Email: Amiller@sb360.com

with copies (which shall not constitute notice) to:

Greenberg Traurig LLP
One International Place, Suite 2000
Boston, MA 02110
Attention: Jeffrey M. Wolf, Esq.
Email address: wolfje@gtlaw.com

If to Merchant:

Ascena Retail Group, Inc.
933 MacArthur Boulevard
Mahwah, New Jersey 07430
Attention: Legal Department

with copies (which shall not constitute notice) to:

Kirkland & Ellis LLP
601 Lexington Avenue
New York, New York 10022
Attention: Steven N. Serajeddini, P.C.
Email address: steven.serajeddini@kirkland.com

- and -

Kirkland & Ellis LLP
300 North LaSalle
Chicago, Illinois 60654
Attention: John R. Luze and Jeff Michalik
E-mail address: john.luze@kirkland.com
jeff.michalik@kirkland.com

Faculty

Jonathan T. Edwards is a partner with Alston & Bird LLP in Atlanta in its Financial Restructuring & Reorganization Group. He represents various clients in corporate, finance and litigation matters, including complex bankruptcy cases, workouts, receiverships and assignments for the benefit of creditors, debt restructurings, distressed acquisitions and dispositions, financings and recapitalizations, and commercial litigation. Mr. Edwards focuses his practice on assignments combining financial and operational restructuring advice with transactional and major litigation work. He represents distressed purchasers, debtors and other parties in bankruptcy sales; private and alternative credit lenders and financial institutions; unsecured creditors; CDO, CLO, CMBS, RMBS and indenture trustees; CMBS master and special servicers and collateral managers; and defendants in avoidance actions, including fraudulent-transfer litigation nationwide. Mr. Edwards counsels directors, officers and others in complex bankruptcy and commercial litigation. He also helps lead the firm's opinion committee, advising on bankruptcy structuring issues in leveraged finance, securitization and structured finance transactions. Mr. Edwards is listed in the 2019-2021 editions of *The Best Lawyers in America* for Bankruptcy and Creditor Debtor Rights/Insolvency and Reorganization Law, and was a 2018 honoree of ABI's "40 Under 40" program. Since 2015, he has been selected to the *Georgia Super Lawyers* "Rising Star" list, and in 2019-2021 he was named in *Chambers USA* for Bankruptcy/Restructuring – Georgia. In 2017, he received M&A Advisor's Emerging Leaders Award for his contributions to the turnaround industry. Mr. Edwards is admitted to practice in New York and Georgia and is an ABI member. He received his B.B.A. in 2005 from Georgia State University and his J.D. in 2008 from Mercer University.

J. David Folds is a corporate restructuring and bankruptcy shareholder with Baker, Donelson, Bearman, Caldwell & Berkowitz, PC in Washington, D.C., and devotes a considerable portion of his bankruptcy practice to representing commercial and retail landlords in chapter 11 reorganization proceedings. In 2020 and 2021, he represented numerous landlords in national retail cases filed in Delaware, the Eastern District of Virginia, the Southern District of Texas and elsewhere. He also represents franchisors and franchisees in reorganization proceedings. Mr. Folds was recognized in *Washington, D.C. Super Lawyers* for Business Bankruptcy in 2020. He serves as the *pro bono* shareholder in Baker Donelson's Washington, D.C., office and as a board member of the Washington Lawyers Committee for Civil Rights and Urban Affairs. Mr. Folds clerked for Judge William L. Stocks, Chief Judge for the U.S. Bankruptcy Court for the Middle District of North Carolina. He holds degrees from the University of the South and the London School of Economics and Political Science, and he received his J.D. from the University of North Carolina School of Law.

Teri L. Stratton, CIRA is a managing director with Piper Sandler Companies restructuring group, TRS Advisors in El Segundo, Calif. Prior to joining Piper Sandler in 2010, she spent 10 years at Macquarie Capital Advisors (and predecessor firms) in the restructuring group. Prior to her investment banking career, Ms. Stratton had eight years of experience in corporate banking, serving in both credit administration and special assets. She is a Certified Insolvency and Restructuring Advisor, a board member of the Turnaround Management Association, and a member of the Association of Insolvency and Restructuring Association and ABI. Ms. Stratton received her bachelor's degree in

economics from the University of California at Los Angeles and her M.B.A. in finance with honors from the Anderson School at UCLA.

Jonathan M. Tibus, CIRA, CDBV is a managing director with Alvarez & Marsal in Atlanta, where he specializes in developing and implementing performance-improvement and restructuring plans for underperforming companies. He has more than 24 years of experience in interim management and financial advisory roles, primarily in the restaurant and retail industries, and has managed numerous in-court and out-of-court restructuring efforts. Mr. Tibus has served in a number of recent interim-management roles wherein he had overall strategic, financial and operational responsibility for stabilizing the companies and managing their restructuring processes. He also has experience advising lenders, creditors and other stakeholders, and has served as restructuring advisor to the lenders of Garden Fresh and e-brands restaurants, advisor to franchisees of Wendy's and various YUM! Brands (KFC, Taco Bell, Pizza Hut, A&W, LJS), and advisor to the unsecured creditors' committee of a chain of furniture retail stores. In these roles, he has provided operational analysis and restructuring advisory, including detailed operating analyses, overhead analyses and bankruptcy-related analyses to help frame and manage negotiations. Over his career, Mr. Tibus has worked with clients across a broad range of industries, including retailing, restaurants, health care, construction, and general manufacturing of textiles, carpet, steel, tobacco and heavy equipment. Prior to joining A&M, he was a manager in the restructuring practice of a Big Five consultancy. Mr. Tibus is a member of ABI, the Association of Insolvency and Restructuring Advisors (AIRA) and the Turnaround Management Association (TMA). He received his bachelor's degree from Florida State University and his M.B.A. from the University of Florida.

Hon. Michael G. Williamson is a U.S. Bankruptcy Judge for the Middle District of Florida in Tampa, initially appointed as bankruptcy judge in March 2000 and as chief judge from 2015-19. He currently serves as co-author of *West's Bankruptcy Law Manual* and as an adjunct professor at Stetson University College of Law, where he teaches bankruptcy law. Judge Williamson began his bankruptcy practice serving as a chapter 7 panel trustee from 1977-79. For the next 20 years, he represented numerous chapter 11 corporate debtors, creditors' committees and trustees in bankruptcy cases pending throughout the state of Florida until his appointment to the bankruptcy bench in 2000. Judge Williamson is past chair of the Committee on Creditors' Rights, Section of Litigation of the American Bar Association, past chair of the Business Law Section of The Florida Bar and that section's Bankruptcy/UCC Committee, and a Fellow of the American College of Bankruptcy. He received his undergraduate degree from Duke University in 1973 and his J.D. from Georgetown University Law Center in 1976.