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VALCON 2021

Lender-on-Lender Violence and Its Impact on Valuation Controversies

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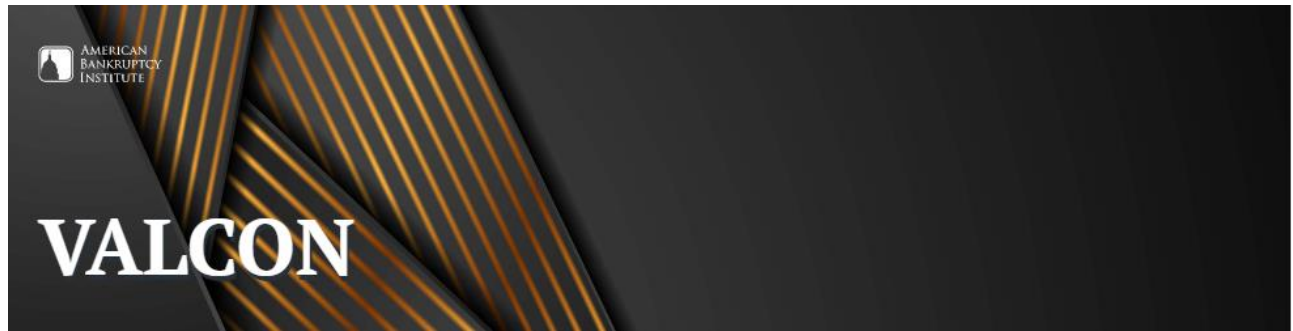
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Lender-on-Lender Violence

- Collateral Stripping Transactions (J. Crew)
- Uptiering Transactions (Serta)

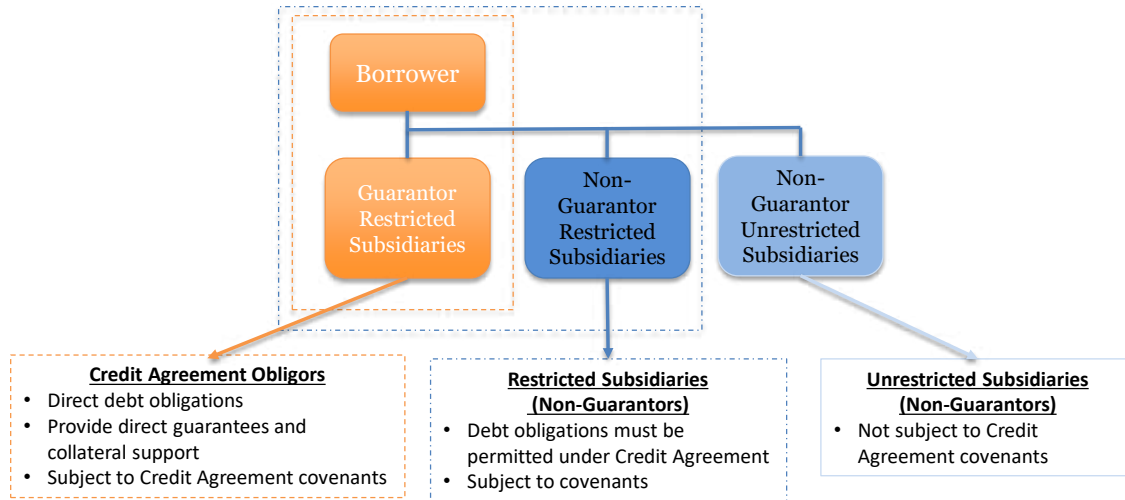


Asset Stripping Transactions

- Borrowers use baskets in credit facility to reallocate property from guarantors to unrestricted subsidiaries, e.g.:
 - General investments basket in unrestricted subs
 - Investments in non-loan party restricted subs + Investments by non-loan party restricted subs (including in unrestricted subs)
- Newly transferred collateral to non-guarantor unrestricted subs can be used to secure new financing
- Popularized by J. Crew; provisions that permit asset transfer often called “trap door”

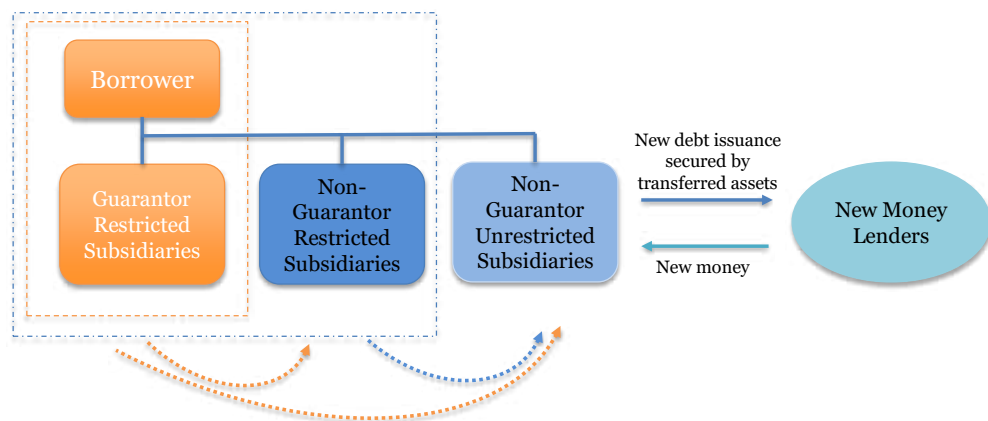
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Illustrative Asset-Stripping Transaction



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Illustrative Asset-Stripping Transaction (Continued)



Use baskets to transfer assets to Unrestricted Sub
(may be one or multi-step process, i.e., use of one or multiple baskets)

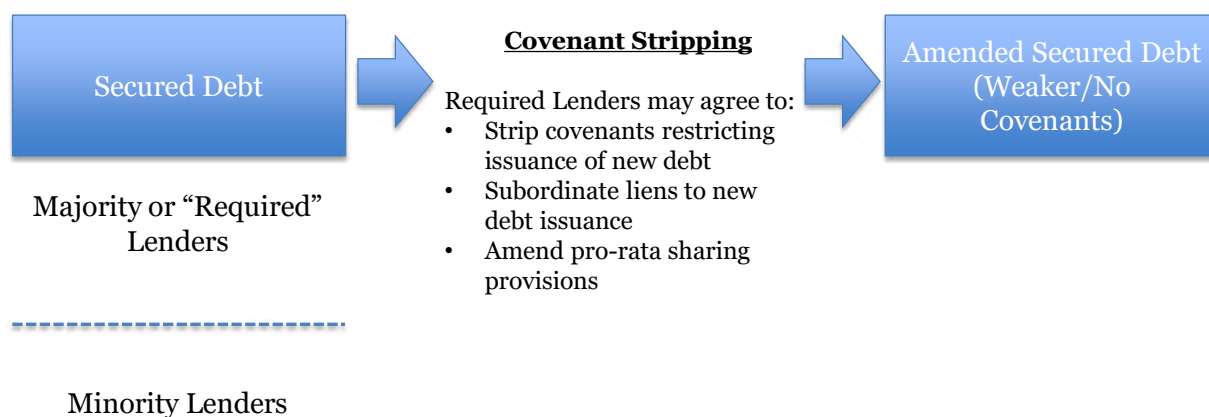
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Uptiering Transactions

- Majority (or more, as required under debt documents) of senior lenders agree to amend debt documents to permit new “superpriority” secured financing secured by same assets
- Usually involves new money plus a roll-up of the majority lenders’ debt

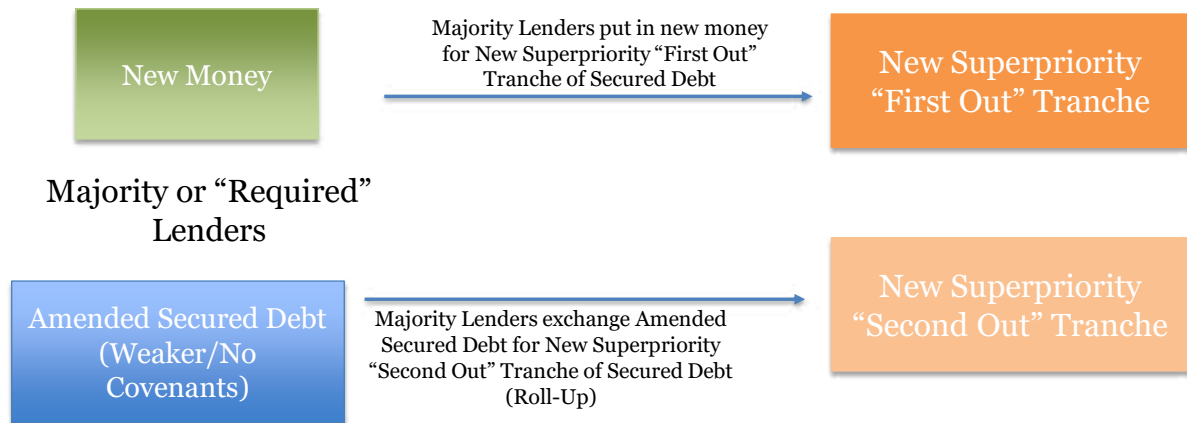
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Illustrative Uptiering Transaction



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Illustrative Uptiering Transaction (Continued)



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Illustrative Uptiering Transaction (Continued) New Pro Forma Secured Debt



Faculty

Van C. Durrer, II is a partner with Skadden, Arps, Slate, Meagher & Flom LLP in Los Angeles, where he leads Skadden's corporate restructuring practice in the western U.S. and advises clients in restructuring matters around the Pacific Rim. He regularly represents public and private companies, major secured creditors, official and unofficial committees of unsecured creditors, investors and asset-purchasers in troubled company M&As, financings, and restructuring transactions, including out-of-court workouts and formal insolvency proceedings. Selected industries in which Mr. Durrer has provided restructuring advice include financial services, gaming, entertainment, health care, hospitality, information technology, logistics, manufacturing, real estate, retail and telecommunications. Matters he has handled have been recognized in publications such as the *Financial Times*' U.S. Innovative Lawyers report, and he received the Chapter 11 Reorganization of the Year (Upper Middle Market) by M&A Advisor's 6th Annual Turnaround Awards. Mr. Durrer consistently has been named as a leading lawyer by *Chambers USA: America's Leading Lawyers for Business*. He is included in *Legal Media Group's Guide to the World's Leading Insolvency and Restructuring Lawyers*, *IFLR1000*, *The Best Lawyers in America*, *Law Business Research's Who's Who Legal: Insolvency & Restructuring 2014*, and *PLC's Restructuring and Insolvency* multijurisdictional guide, and he appeared twice on *Turnarounds & Workouts*' list of Outstanding Young Bankruptcy Lawyers. He also has moderated panels and participated as a guest speaker for the Association of Insolvency & Restructuring Advisors, Turnaround Management Association, ABI, Los Angeles Bankruptcy Forum, Practising Law Institute and other organizations globally. Mr. Durrer is Board Certified as a Business Bankruptcy Specialist by the American Board of Certification and is a mediator for the U.S. Bankruptcy Court for the Central District of California. He received his B.A. from Johns Hopkins University in 1990 and his J.D. from the University of Maryland School of Law in 1993.

Scott J. Greenberg is a partner in Gibson, Dunn & Crutcher's New York office and co-chairs the firm's Business Restructuring and Reorganization Practice Group. He focuses his practice on representing debtors and creditors in in-court and out-of-court restructurings. Mr. Greenberg has been consistently recognized as leading restructuring lawyer by *Chambers USA: America's Leading Lawyers for Business*, *The Best Lawyers in America* and *New York Metro Super Lawyers*. He has also been named a "Leading Lawyer" and "Next Generation Lawyer" by *The Legal 500 US*, a "Leading Global Bankruptcy & Restructuring Lawyer" by *Lawdragon*, an "Outstanding Young Restructuring Lawyer" and twice named an "Outstanding Restructuring Lawyer" by *Turnarounds & Workouts*, a "Rising Star" by *IFLR1000*, and a Bankruptcy "MVP" and "Rising Star" by *Law360*. Mr. Greenberg's recent representations include serving as lead counsel on Outcome Health, Rex Energy, M&G Chemicals and American Apparel's chapter 11 cases and as lead counsel for Transtar (DACCO Transmission Parts [NY] Inc.) and Nextel (NII Holdings Inc.) in their chapter 11 cases in the SDNY. On the creditor side, he has a market-leading practice and recently represented the term lenders in 4L/Clover, Akorn, AMC, Catalina Marketing, Constellis, Crossmark, David's Bridal, Garrett Motion, Global Eagle Entertainment, Iqor, Mallinckrodt, Monitronics, NPC, Savers, Serta, Skillsoft, Sunguard, Tailored Brands, TNT Crane, Town Sports and WorldStrides. Prior to joining Gibson Dunn, Mr. Greenberg was a partner at Jones Day from 2013-19, where he also served as co-head of Jones Day's Business Restructuring & Reorganization practice. He began his career as an associate at Weil, Gotshal & Manges LLP in its restructuring practice. Mr. Greenberg received his B.S. *cum laude* in 1999 from

Boston University and his J.D. with honors from Emory University in 2002, where he was a member of the Order of the Coif.

Nicole L. Greenblatt is a restructuring partner with Kirkland & Ellis LLP in New York and represents debtors, creditors, equity-holders and investors in all aspects of complex corporate restructurings, including chapter 11 cases, out-of-court restructurings and special-situation investments or acquisitions. She has a broad range of experience across a number of industries and has represented clients in multijurisdictional and cross-border matters. Ms. Greenblatt's practice includes advising clients with respect to business operations in chapter 11, advising senior managers and boards of directors of financially troubled companies with respect to restructuring strategies, providing advice relating to mass tort and environmental liabilities of financially troubled companies, providing advice, negotiating and structuring financings and other commercial transactions, and advising clients seeking to purchase businesses and related assets out of chapter 11 proceedings. She has been recognized by *Chambers USA* and *Legal 500 US*. Recently, she was named a 2017 "MVP of the Year" by *Law360* and was featured in *Crain's New York Business's* inaugural list of the "Leading Women Lawyers in New York City" in 2018. In 2011, she was selected as one of the top 30 nominees nationwide to participate in the inaugural Next Generation Program at the National Conference of Bankruptcy Judges. Ms. Greenblatt is a member of ABI, the Turnaround Management Association and the New York City Bar Association's Bankruptcy Committee. She received her B.B.A. in economics in 1999 with distinction from the University of Michigan and her J.D. *cum laude* in 2002 from Fordham University School of Law, where she was a member of the Order of the Coif.

Kristopher M. Hansen is a partner with Stroock & Stroock & Lavan LLP in New York and is the practice group leader of its Financial Restructuring Group, which encompasses four distinct business units: restructuring, debt finance, distressed corporate and impact litigation. His practice includes corporate, litigation and core bankruptcy matters in the restructuring arena. In addition to his representation of debtors, official and unofficial creditors' committees and secured lenders in workout and debtor-in-possession lending situations, Mr. Hansen typically represents individual investors in the structuring and execution of distressed merger and acquisition investments. He is also listed in the 2009 and 2010 *K&A Restructuring Register* as one of the top restructuring attorneys in the U.S. Mr. Hansen was recognized by *Chambers USA: Leading Lawyers for Business* in 2008 and 2009 as one of the nation's top restructuring attorneys, and was named in December 2007 by *Turnarounds & Workouts* as one of the top 12 restructuring lawyers in the U.S., as well as one of the top 12 young restructuring lawyers in the country for 2008. Mr. Hansen is admitted to practice before the courts of the State of New York, the Southern and Eastern Districts of New York, the U.S. Court of Appeals for the Second and Third Circuits, and the U.S. Supreme Court. He frequently lectures and has published articles on the distressed marketplace. Mr. Hansen received both his B.S. in finance in 1992 and his J.D. in 1995 from Fordham University.

Roopesh Shah is a senior managing director of Evercore's Restructuring and Debt Advisory Group in New York, which he joined in 2017. He has worked on numerous restructuring assignments, advising companies, creditors and other parties on refinancings, exchange offers, consent solicitations, amendments, out-of-court restructurings, chapter 11 bankruptcy reorganizations, distressed mergers and acquisitions, § 363 asset sales and cross-border restructuring issues. He also has been involved in numerous DIP and exit financings for companies in chapter 11 and several "rescue" financings

for distressed clients. Mr. Shah's client engagements include work for Alcatel-Lucent, Arcapita, Associated Materials, ATU, California Resources, Catalina Marketing, Chesapeake Energy, Chicago Bridge & Iron, Claire's Stores, Cobalt International Energy, Converse Technologies, Edcon, Frontier Communications, hibu, Imtech, Isola, Keystone Automotive, MACH Gen, McDermott, Movie Gallery, Norske Skog, Pfeiderer, Sea Island, Select Staffing, Selecta, Sequana, Serta, Spectrum Brands, Syncreon, Targus, Toys "R" Us, Tronox, Vanguard Resources, Wastequip, Windstream, Zekelman Industries and The Yellowstone Club. Prior to joining Evercore, he was the global head of Goldman Sachs' Restructuring Finance and Advisory Group, a director in the Restructuring Group of Miller Buckfire & Co. and a vice president in the Mergers & Acquisitions Group of Wasserstein Perella & Co. Mr. Shah received his B.S. in economics from the Wharton School of the University of Pennsylvania, with concentrations in finance, marketing and information technology.