



AMERICAN
BANKRUPTCY
INSTITUTE

Annual Spring Meeting

How Do We Get to Valuation?

Jordi Gusó

Berger Singerman LLP; Miami

Franklind D. Lea

The Brattle Group; Washington, D.C.

Camisha L. Simmons

Simmons Legal PLLC; Dallas

Wayne P. Weitz

B. Riley Advisory Services; New York

WHAT'S IT WORTH?

HOW DO WE GET TO VALUATION?

JORDI GUSO, ESQ. | BERGER SINGERMANN LLP

FRANKLIND LEA, CIRA | THE BRATTLE GROUP

CAMISHA SIMMONS, ESQ. | SIMMONS LEGAL PLLC

WAYNE P. WEITZ, CTP | B. RILEY ADVISORY SERVICES

APRIL 20, 2024



brattle.com | 0

This presentation is intended for educational and informational purposes only.

The views and opinions expressed in this presentation do not necessarily reflect the views of the presenters, or any official policy or position of any other agency, organization, employer or company.

brattle.com | 1

The importance of valuation in bankruptcy cases



Franklind Lea, CIRA

PRINCIPAL
THE BRATTLE GROUP

Franklind.Lea@Brattle.com

770-573-9366

Franklind is routinely called upon to form expert opinions and testify in complex financial matters involving financial disputes, bankruptcy and solvency issues, feasibility, interest rates, and real estate.

He has nearly 30 years of professional experience in banking, investment management, financial analysis, commercial lending, debt structuring, real estate, and financial restructuring. He has worked as an appraiser, commercial lender, credit officer, financial consultant, and workout officer.

He holds an undergraduate degree in business, a master's degree in business administration, and a master's degree in real estate valuation.

He is a current member of the American Bankruptcy Institute's Board of Directors, and its Executive Committee, its Education Committee, and Investment Committee and has held many other ABI leadership roles.

brattle.com | 2

The importance of valuation in bankruptcy cases



Jordi Gusó, Esq.

MANAGING PARTNER
BERGER SINGERMAN LLP

jguso@bergersingerman.com

305-755-9500

Jordi Gusó is a seasoned business lawyer with a long track record of successfully helping clients resolve complex legal and business problems.

He concentrates his practice in commercial bankruptcy, workouts, financial restructuring, distressed M&A and commercial litigation. He frequently advises financially distressed businesses in court-supervised and out-of-court restructurings, aiding official committees, secured creditors, and asset purchasers.

Jordi's leadership roles include Co-Chair of ABI's Investment Banking and Financial Advisor Committee (2018-2019) and service as an Advisory Board Member for the ABI Alexander L. Paskay Memorial Bankruptcy Seminar. He also served as Board President of Legal Services of Greater Miami, Inc. (2017 – 2019) and continues to serve as a director.

brattle.com | 3

The importance of valuation in bankruptcy cases



Camisha L. Simmons, Esq.

**MANAGING MEMBER
SIMMONS LEGAL PLLC**

camisha@simmonslegal.solutions

214-643-6192

Camisha L. Simmons specializes in legal representation for various parties involved corporate restructuring, creditors' rights, real estate transactions, business transactions, and litigation.

After graduating from law school, Camisha was a judicial law clerk to the Honorable Mary F. Walrath, Judge of the United States Bankruptcy Court, District of Delaware (Chief Judge from 2003-2008).

She holds a J.D., magna cum laude and an M.B.A. from Texas Tech University, an M.Ed. from the University of Maryland, College Park and a B.B.A. from Campbell University. Prior to her legal career, she served on active duty in the United States Army.

She is a frequent speaker and writer, with notable contributions including articles in the American Bankruptcy Institute Journal and Law360.

She is currently Coordinating Editor of the ABI Journal and serves as the Co-Education Director of the Commercial and Regulatory Law Committee. She also has held other key leadership roles on both the Commercial and Regulatory Law Committee and Legislation Committee.

brattle.com | 4

The importance of valuation in bankruptcy cases



Wayne P. Weitz, CTP

**SENIOR MANAGING DIRECTOR
B. RILEY ADVISORY SERVICES**

wwertz@brileyfin.com

610-613-9458

Wayne is a Certified Turnaround Professional who brings over 30 years of expertise in turnaround management, financial restructuring, bankruptcy, mergers and acquisitions, and bondholder litigation.

Throughout his career, Weitz has advised distressed companies and stakeholders globally, within and outside of bankruptcy. Before focusing on restructuring, he held various corporate roles, including capital allocation, strategic planning, and deal execution.

He earned a BA from Brandeis University, an MBA from the University of Chicago Booth School of Business, and the CTP designation. He also holds an Intermediate Sommelier Certification from the National Wine School.

Wayne's leadership extends to co-chairing the American Bankruptcy Institute's Complex Financial Restructuring Program and previously co-chairing the ABI's Financial Advisors and Investment Banking Committee.

brattle.com | 5

Introduction

BRIEF OVERVIEW OF THE PRESENTATION

DEFINITION OF VALUATION

IMPORTANCE OF VALUATION IN FINANCIAL DECISION-MAKING

ROLE OF VALUATION IN BANKRUPTCY CASES

brattle.com |
6

YOU DON'T KNOW
“ABI”
JACK

VALUATION IS A KEY COMPONENT OF EVERY BANKRUPTCY

Valuation -

Ascribing value to the debtor's property and the claims against it are at the core of the bankruptcy process.

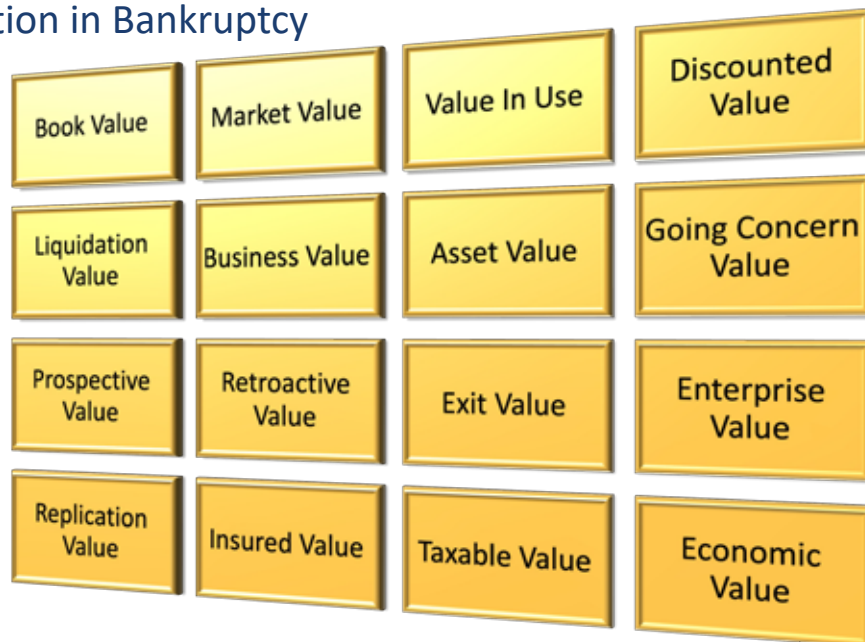
- Yet, the Bankruptcy Code does not define "value".
- And, notwithstanding the importance of valuation in the bankruptcy process, the principal instruction on valuation in the Bankruptcy Code is found only in Section 506(a).



brattle.com | 8

The Role of Valuation in Bankruptcy

Which is the true value? It depends....



brattle.com | 9

HOW COURTS VIEW VALUATION

Is Valuation an Art, Science, or Something In Between?

“Valuation is an art and not a science.”

“Indeed valuation, although employing broad principles of economics, is as much an art as it is a science.”

“[W]hen it comes to valuation ... reasonable minds can and often do disagree.”

“As such, the Court is not bound to accept either parties’ opinion respecting the Property’s value and may form its own opinion as to the value of the subject property.”

Citations contained in the written materials.

brattle.com | 10

Is Valuation an art or science?

Indeed valuation, although employing broad principles of economics, **is as much an art as it is a science**. Each approach may yield a different result and which approach offers the best or better framework is a determination made in light of the facts of a case. *In re Winstar Commun., Inc.*, 348 B.R. 234, 274 (Bankr. D. Del. 2005), *aff’d*, No. 01 01063 KJC, 2007 WL 1232185 (D. Del. Apr. 26, 2007), *aff’d in part, modified in part*, 554 F.3d 382 (3d Cir. 2009).

“The Court starts from the basic proposition that preparing financial projections for a large operating business **is equal parts science and art**.” *In re PTL Holdings LLC*, No. 11-12676 BLS, 2011 WL 5509031, at *5 (Bankr. D. Del. Nov. 10, 2011).

“**Valuation is as much an art as science** and there is room for a difference of opinion on the decisions KPMG made in performing the September 30 Valuation.” *In re Nanovation Techs., Inc.*, 364 B.R. 308, 346 (Bankr. N.D. Ill. 2007).

“[W]hen it comes to valuation ... **reasonable minds can and often do disagree**.” *See Peltz v. Hatten*, 279 B.R. 710, 737 (D. Del. 2002).

“**Valuation is an art and not a science**. As such, **the Court is not bound to accept either parties’ opinion** respecting the **Property’s value and may form its own opinion as to the value** of the subject property.” *In re Rodriguez*, No. 22-41816 JMM, 2023 WL 3047780, at *5 (Bankr. E.D.N.Y. Apr. 21, 2023) (citations omitted).

Citations contained in the written materials.

brattle.com | 11

HOW COURTS VIEW VALUATION

Is Valuation an art or science?

Closely Held Corporation:

Determining the value of a closely held corporation for purposes of allocating marital property in a dissolution “*is an art, not a science*, and the court must rely on expert witnesses ... who may differ significantly in both methodology and valuation.” *In re Schertz*, No. 21-70207, 2022 WL 17070099, at *15 (Bankr. C.D. Ill. Nov. 17, 2022) (citation omitted).

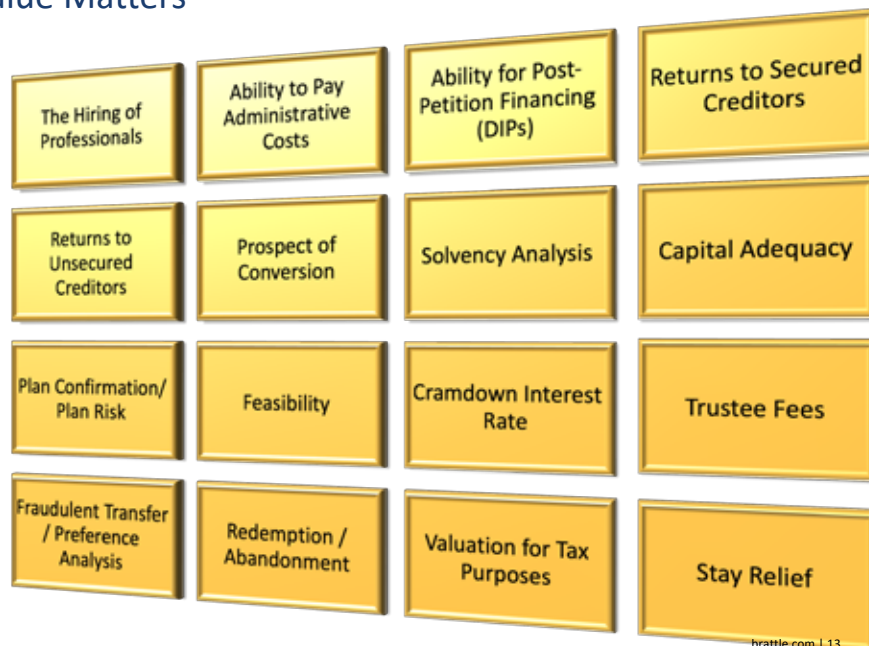
Real Estate:

Real estate valuations are matters of art more than science; thus, a representation as to value must be given wide latitude before it may be characterized as “false.” See, e.g., *In re Hildreth*, No. 1:09-BK-09029-MDF, 2011 WL 1332036, at *5 (Bankr. M.D. Pa. Apr. 7, 2011) (citations omitted). See also *In re Myers*, 631 B.R. 392, 395 (Bankr. D.S.C. 2021).

“[T]he Court is mindful of the fact ‘that real estate valuation is as much art as science, and that measurements of intrinsic value more often involve a range of reasonable values rather than a single point estimate.’” *In re Murphy*, No. 18-71012, 2020 WL 6066002, at *14 (Bankr. C.D. Ill. Sept. 2, 2020) (quoting *Robinson v. Worley*, 849 F.3d 577, 585 (4th Cir. 2017)).

brattle.com | 12

Scenarios Where Value Matters

Common
Uses of
Valuation in
Bankruptcy

brattle.com | 13

VALUATION DETERMINES THE ALLOWED AMOUNT OF A SECURED CREDITOR'S CLAIM

The Role of Valuation in Bankruptcy

- 11 U.S. Code
- §506 (a)(1)

An allowed claim of a creditor secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to setoff is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

brattle.com | 14

WHAT VALUATION STANDARD APPLIES? IT DEPENDS

Standards

- In adjudicating value, the bankruptcy court is required to determine the purpose of the valuation and what the debtor intends to do with the property. *Associates Commercial Corp. v. Rash*, 520 U.S. 953, 117 S.Ct. 1879, 138 L.Ed.2d 148 (1997).
- The issue of “paramount importance to the valuation question” is “the proposed disposition or use of such property.” *Id.* at 961–62, 117 S.Ct. 1879.
- If the debtor proposes surrender the property, the “foreclosure value” applies. 520 US at 962, 117 S.Ct. 1879.
- If the debtor retains rather than surrenders the collateral, however, then “§ 506(a) directs application of the replacement-value standard.” *Id.* at 962, 117 S.Ct. 1879.
- Replacement-value standard defined as: (1) “what the debtor would have to pay for comparable property,” *id.* at 955, 117 S.Ct. 1879; (2) the “price a willing buyer in the debtor’s trade, business, or situation would pay to obtain like property from a willing seller,” *id.* at 960, 117 S.Ct. 1879; (3) “the cost the debtor would incur to obtain a like asset for the same ‘proposed ... use,’ ” *id.* at 965, 117 S.Ct. 1879; and (4) “the price a willing buyer in the debtor’s trade, business, or situation would pay a willing seller to obtain property of like age and condition,” *id.* at 959, 117 S.Ct. 1879 n.2.

brattle.com | 15

SECURED CREDITORS' CLAIMS AND PROTECTION

Value - Adequate Protection Under Section 361

When adequate protection is required under [section 362](#), [363](#), or [364](#) of this title of an interest of an entity in property, such adequate protection may be provided by--

- (1) requiring the trustee to make a cash payment or periodic cash payments to such entity, to the extent that the stay under [section 362](#) of this title, use, sale, or lease under [section 363](#) of this title, or any grant of a lien under [section 364](#) of this title results in a decrease in the value of such entity's interest in such property;
- (2) providing to such entity an additional or replacement lien to the extent that such stay, use, sale, lease, or grant results in a decrease in the value of such entity's interest in such property; or
- (3) granting such other relief, other than entitling such entity to compensation allowable under [section 503\(b\)\(1\)](#) of this title as an administrative expense, as will result in the realization by such entity of the indubitable equivalent of such entity's interest in such property.

brattle.com | 16

SECURED CREDITORS' CLAIMS AND PROTECTION

Value of Collateral as Adequate Protection

- An equity “cushion” in and of itself may constitute adequate protection.
- An equity cushion is “the value of the property, above the amount owed to the creditor with a secured claim, that will shield that interest from loss due to any decrease in the value of the property during the time the automatic stay remains in effect.” *In re New Era Co.*, 125 B.R. 725, 728-29 (S.D.N.Y. 1991) (internal quotation marks omitted)
- Courts may find that there is adequate protection for a secured creditor where there is equity in the property, but the equity cushion must be significant. See *In re Rorie*, 98 B.R. 215, 221 (Bankr. E.D. Pa. 1989) (stating that in determining whether the equity cushion provides adequate protection, the court considers factors such as the size of the cushion; the rate at which the cushion will be eroded; and whether periodic payments are to be made to prevent or mitigate the erosion of the cushion)
- Case law has almost uniformly held that an equity cushion of 20% or more constitutes adequate protection ... [and] has almost as uniformly held that an equity cushion under 11% is insufficient to constitute adequate protection.... Case law is divided on whether a cushion of 12% to 20% constitutes adequate protection....” *Suntrust Bank v. Den-Mark Const., Inc.*, 406 B.R. 683, 700 n.24 (E.D.N.C. 2009) (quoting *In re James River Assocs.*, 148 B.R. at 796).

brattle.com | 17

STAY RELIEF

Value - Relief for the Automatic Stay – Section 362(d)

The Bankruptcy Court may terminate, annul or grant relief from the automatic stay –

- 1) for cause, including the lack of adequate protection of an interest in property of such party in interest;
- (2) with respect to a stay of an act against property under subsection (a) of this section, if--
 - (A) the debtor does not have an equity in such property; and
 - (B) such property is not necessary to an effective reorganization.

brattle.com | 18

STAY RELIEF

Burden of Proof on Value

In seeking relief from the automatic stay, the creditor has the burden of proof on the issue of the debtor's equity in the collateral (i.e., value of the collateral), the debtor has the burden of proof on all other issues, including adequate protection. 11 USC § 362(g).

The party requesting relief from the automatic stay “has the burden of proof on the issue of the debtor's equity in property.” 11 U.S.C. § 362(g)(1). In cases where the moving party requests relief for reasons other than insufficient equity to adequately protect their interests, courts have held the moving party must establish a legally sufficient basis, or cause, for such relief. *Mooney v. Gill*, 310 B.R. 543, 547 (N.D.Tex.2002) (stating other courts have found “one who seeks relief from the automatic stay, must in the first instance, establish a legally sufficient basis ... for such relief.”). Once the moving party has met the initial burden, the party opposing relief bears the burden of proof on all other issues. 11 U.S.C. § 362(g)(2); *In re Universal Motor Express, Inc.*, 72 B.R. 208, 211 (Bankr.W.D.N.C.1987).

brattle.com | 19

VALUATION ISSUES RELATED TO PLAN CONFIRMATION

Plan Confirmation – 11 USC §1129 Examples

Value is implicated throughout the confirmation process.

- §1129(a)(7) – best interest of creditors: holders of claims that impaired under the plan will receive at least as much as it would receive in a chapter 7; requires the debtor or plan proponent to perform a liquidation analysis of the debtor's assets;
- §1129(a)(11) – feasibility: confirmation is not likely to be followed by the need for further financial rehabilitation; requires the debtor or plan proponent to value the reorganized business and its likelihood of success in the present market;
- §1129(b) – cramdown: demonstrate that the plan is fair equitable and does not discriminate unfairly -
 - creditor retains its lien and receives deferred cash payments with a value, as of the effective date, equal to such holder's interest in such property;
 - the sale of the property with the liens to attach to proceeds; or
 - the realization of indubitable equivalent of such claim.
- The purpose of the unfair discrimination test is to "to ensure that a dissenting class *will receive relative value equal to the value given to all other similarly situated classes.*" See, e.g., *In re LightSquared Inc.*, 513 B.R. 56, 99 (Bankr. S.D.N.Y. 2014).

brattle.com | 20

VALUE-IN-USE: WHAT IS IT? WHEN IS IT USED?

Value-in-Use Defined

"KPMG valued New GM's assets 'as part of a going concern business,' a valuation premise known as **"value in use. This valuation approach 'presumes the continued utilization of the assets as a component of the business in connection with all other assets.'**" (DX-141 at 4.) Furey testified that 'the value in use yielded the highest [and] best use in [KPMG's] opinion.'" (Trial Tr. (Furey) at 1342:8–1343:8; accord DX-172 at 10.) *In re Motors Liquidation Co.*, 576 B.R. 325, 426 (Bankr. S.D.N.Y. 2017).

"Subject to other statutory guidance, true tax value means **"market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property."** *In re Majestic Star Casino, LLC*, 457 B.R. 327, 362 (Bankr. D. Del. 2011), order *aff'd*, appeal dismissed, No. BR 09-14136-KG, 2013 WL 6504624 (D. Del. Dec. 10, 2013) (explaining market value-in-use for property tax purposes under Indiana law) (citation omitted).

brattle.com | 21

VALUE-IN-USE: WHAT IS IT? WHEN IS IT USED?

Value-in-Use Case - GM: Fair Market Value vs. Value-In-Use

[T]he parties seem to agree on the definition of the “fair market value” standard. But the TPC Lenders argue that the correct valuation method should be the “value in use” (or “use value”) standard as defined by *The Dictionary of Real Estate Appraisal*:

The value a specific property has to a specific person or a specific firm as opposed to the value to persons or the market in general. Special purpose properties such as churches, schools and public buildings, which are seldom bought and sold in the open market, can be valued on the basis of value in use. The value to a specific person may include a sentimental value component. The value in use to a specific firm may be the value of a plant as a part of an integrated multiplant operation.

The “value in use” standard differs from the “fair market value” standard in that the “value in use” standard refers to a “specific person or a specific firm.”

The Court can easily see uses for the “value in use” mechanism under other scenarios—most obviously where the property has not been subjected to a sale process (especially one subject to higher and better, and remains in the hands of its original owner or a successor by means other than a sale. But the Court does not see the “value in use” method as appropriate here, where the TPC properties were the subject of a sale.

For the foregoing reasons, the “fair market” standard is the correct valuation methodology. *In re Motors Liquidation Co.*, 482 B.R. 485, 494–95 (Bankr. S.D.N.Y. 2012).

brattle.com | 22

VALUE-IN-USE: WHAT IS IT? WHEN IS IT USED?

Value-in-Use Case: Value-In-Use Adopted

Enloe performed a value-in-use appraisal of the Property in August 2020, after the instant valuation dispute arose. Enloe's appraisal report, citing **The Dictionary of Real Estate Appraisal published by the Appraisal Institute, defines value-in-use as “The value of a property assuming a specific use, which may or may not be equal to market value but is different conceptually.”** Enloe explained at the Hearing that his value-in-use appraisal is premised on continued use of the Property as a museum, which he understood is the Debtor's intention. Enloe concluded, based on that methodological assumption, that the value of the Property is \$66,000,000.00. That value was the product of Enloe applying both the sales comparison approach and the cost approach to value the Property.

Enloe's value-in-use appraisal is consistent with the dictates of *Rash* and *Heritage Highgate* that the proposed disposition or use of the collateral is of paramount importance in § 506(a) valuations of collateral.

In re Museum of Am. Jewish History, No. BR 20-11285-MDC, 2020 WL 7786925, at *12, *19 (Bankr. E.D. Pa. Dec. 4, 2020), aff'd, No. CV 20-6341, 2021 WL 1264160 (E.D. Pa. Apr. 6, 2021).

brattle.com | 23

VALUE IN USE

Crop Your Losses?

What Is Value In Use?

Value in use, distinct from market value or price, is determined by an individual's or organization's perception of the benefits gained from consumption or utilization, and it represents the net present value (NPV) of a cash flow or other benefits that an asset generates for a specific owner under a specific use.

Example

An old farmhouse and another 50 acres of crop land sit on a parcel of land that is zoned for commercial development such as apartments. *The farmer's land is valued at what he's using it for currently, which is farming.*

Value in Use does not conform to the concept of highest and best use.

Use in Bankruptcy: Value in Use is especially relevant when a business is not being sold or if the business has unique attributes that may not be fully reflected in a simple market value or liquidation value.

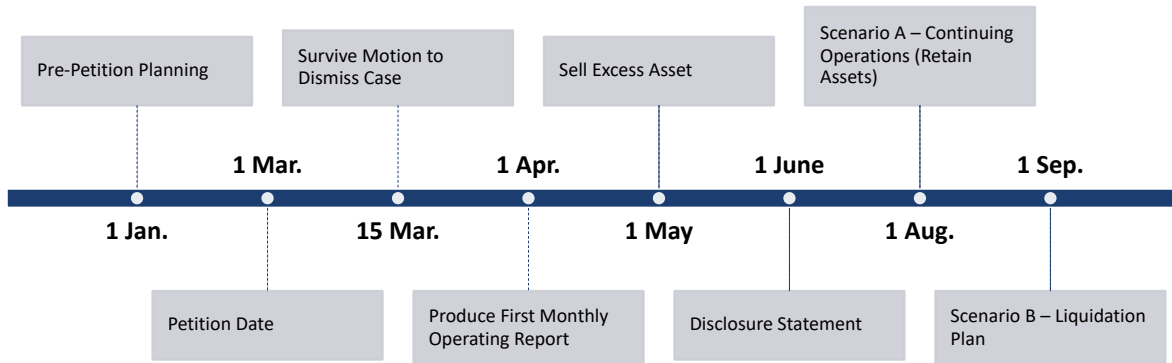
brattle.com | 24

Terms Adapted From USPAP	Non-Distress	Types of Distress Sales		
	Market Value	Disposition Value	Liquidation Value	Forced Sale Price
Consummation of Sale / Exposure Time	A reasonable time is allowed for exposure in the open market	Within a specified time, which is shorter than the typical exposure time for such a property in that market	within a short time period	
Market Conditions	prevailing as of the date of valuation	Same	Same	The price paid in a forced sale or purchase, i.e., a sale in which a reasonable time was not allowed to find a purchaser or the purchaser was forced to buy.
Mindset of Buyer and Seller	acting prudently and knowledgeably	Same	Same	
Seller Motivation / Compulsion to sell	No compulsion to sell	under compulsion to sell	under extreme compulsion	
Buyer Motivation	Typically motivated	Same	Same	
Parties acting in best interest	Parties are acting in their best interests	Same	Same	
Marketing Effort	after reasonable exposure in a competitive market under all conditions	An adequate marketing effort will be made during the exposure time	not possible due to the brief exposure time.	
Price	Cash; Normal Special Considerations	Same	Same	

brattle.com | 25



What Values Matter When?



brattle.com | 26

VALUE IN EXCHANGE

Up Your Losses?

What is Market Value?

The Market Value, refers to the price an asset would fetch in a competitive auction environment.

“No compulsion to sell”

**While often used interchangeably with terms like open market value, fair value, or fair market value, it's important to note that these terms carry distinct definitions across various standards and may diverge under specific circumstances.*

Example

Up In The Air Airlines has an extra aircraft in its fleet, the market value represents the price it would command in a competitive market or auction. Factors influencing its value include the aircraft's age, condition, flight hours, maintenance record, equipment, modifications, and market demand.

Use in Bankruptcy: Fair Market Value is often used in bankruptcy cases to determine the value of the debtor's assets, which can be used to satisfy the claims of creditors.

brattle.com | 27

VALUE IN EXCHANGE

What is Disposition Value?

Consummation of a sale within a specified period of time with the seller is under compulsion to sell which is shorter than the typical exposure time for such a property in that market, but an adequate marketing effort will be made during the exposure time.

“Under compulsion to sell”

Example

A Real Estate Investment Trust urgently wants to sell an office building to pay its tax bill. Despite its higher market value, the urgent sale prompts limited marketing and negotiation time. Buyers exploit the REIT's situation, leading to a discounted transaction amount, reflecting the swift sale's conditions compared to standard market value.

Use in Bankruptcy: Fair Market Value is often used in bankruptcy cases to determine the value of the debtor's assets, which can be used to satisfy the claims of creditors.

brattle.com | 28

VALUE IN EXCHANGE

Eat Your Losses?

What is Liquidation Value?

Consummation of a sale within a short time period with the seller is under extreme compulsion to sell, and normal marketing effort is not possible due to the brief exposure time.

“Under extreme compulsion to sell”

Example

Jolene, a farmer, owns a truckload of fresh produce with a market value of \$15,000. Facing sudden oversupply or spoilage issues, she needs to sell quickly. After contacting salvage buyers, she accepts an offer of \$8,000. This \$8,000 represents the liquidation value of her produce in distressed conditions.

Use in Bankruptcy: Liquidation value is important in bankruptcy cases as it provides a 'floor' value for the asset or business, representing the minimum amount that could be obtained in a forced sale situation.

brattle.com | 29

Real Estate Value vs. Business Value

Real estate value and business value are distinct concepts, each referring to different aspects of assets and investments.		Real Estate Value	Business Value
	NATURE OF ASSETS: <i>The worth of:</i>	a piece of property, including its land and any improvements	a business entity, after accounting for its equity, earnings, and expected future income
	VALUE COMPONENTS: <i>Considers Factors like:</i>	location, market demand, physical condition, and comparable sales	Tangible and intangible assets and potential for future earnings
	INCOME GENERATION: <i>Valued by its ability to generate income through:</i>	rental and lease payments and appreciation	profitability of ongoing operations and ability to sustain future income

brattle.com | 30

VALUE IN EXCHANGE

What is Going Concern Value?

A going concern refers to a business that is expected to continue its operations indefinitely, without the intention to liquidate.

Example

Round and Round, a beloved record store, undergoes a 363 sale, welcoming new ownership while preserving its operations, including its distinctive charm and extensive music collection thereby maximizing value for all stakeholders.

Use in Bankruptcy: Going Concern Value is used when a company files for bankruptcy but plans to reorganize and continue its operations rather than liquidating its assets.

brattle.com | 31

Audience Roundtable Question

A Debtor proposes a Plan to retain property having a market value of \$10,000,000 on the Effective Date. The property is specialized manufacturing equipment (not real estate) and can be uninstalled (or installed) only by removing a portion of the exterior wall of the building at a cost of \$1,000,000. Therefore, the Debtor values the property which is the Secured Creditor's collateral at \$9,000,000.

The Debtor intends to keep and use the equipment in its plan. What method should be used to value the collateral?

brattle.com | 32

Audience Roundtable Question

A chapter 11 trustee has received an appraisal on a plastic injection molding machine. The trustee has plenty of cash to operate the estate. The appraisal estimates a market value of \$2,500,000, a disposition value of \$2,000,000, and a liquidation value of \$1,500,000.

In a sale of the collateral, what is the most the secured creditor can credit bid (market value, liquidation, or disposition value)?

brattle.com | 33

Audience Roundtable Question

Your client, a hotel investment company, purchased the defaulted debt on an operating a hotel. The debtor intends to sell substantially all of its assets in a 363 sale, including its FF&E, executory contracts and its license to flag the hotel. The investment company, whose debt is secured only by a mortgage on the real estate, wants to credit bid to take ownership of the hotel.

How would you counsel your client and what value premises would you use?

brattle.com | 34

Audience Roundtable Question

Your client is an “Insider” of a chapter 11 debtor. The Insider is also actively running the business. The Insider wants to acquire some of the key assets of the debtor.

How would you counsel your client on how to value those assets and protect itself from accusations of self-dealing? What value premises come into play?

brattle.com | 35

Thank you for attending.

Faculty

Jordi Gusó is a managing partner with Berger Singerman, LLP in Miami in its Business Reorganization practice, where he concentrates his practice in commercial bankruptcy, workouts, financial restructuring and commercial litigation. He represents financially distressed businesses in court-supervised and out-of-court restructurings in a variety of industries, including aviation, hospitality, retail, casual dining and real estate. He also advises official committees, secured creditors and purchasers in the areas of bankruptcy, insolvency and § 363 asset sales. Mr. Gusó has been listed in *The Best Lawyers in America* (2006-19), *Chambers & Partners USA: America's Leading Business Lawyers* (2004-18), *Florida Trend* magazine's "Legal Elite" (2004-18) and "Legal Elite Hall of Fame" (2015-18), as one of the top 1.6 percent of attorneys in Florida, *The South Florida Legal Guide's* "Top Lawyer" (2005-18), *Florida's Super Lawyers* (2006-18), *Who's Who Legal*, Florida (2008-17) and *Who's Who Legal* (2008-17), and he is AV Preeminent-rated by Martindale-Hubbell. He is a Fellow of the American College of Bankruptcy and an ABI member, and he has served on the board of the Bankruptcy Bar Association for the Southern District of Florida and on the advisory board of ABI's Alexander L. Paskay Memorial Bankruptcy Seminar. Mr. Gusó is admitted to practice in Florida, the Eleventh Circuit U.S. Court of Appeals, and the U.S. District and Bankruptcy Courts for the Southern, Middle and Northern Districts of Florida. He clerked for Hon. Sidney M. Weaver, former Chief U.S. Bankruptcy Judge of the U.S. Bankruptcy Court for the Southern District of Florida, from 1990-92. Mr. Gusó received his B.S. in political science from Spring Hill College and his J.D. from the University of Miami School of Law.

Franklind D. Lea, CIRA is a principal with The Brattle Group's Bankruptcy & Restructuring practice in Washington, D.C., and has more than three decades of experience working on complex business, financial and real estate matters. His experience includes 17 years as a commercial lender, credit officer and commercial real estate appraiser, and an additional 17 years as the founder and president of Tactical Financial Consulting, where he specialized in litigation and restructuring support for third parties. Mr. Lea has been a senior lender, credit officer and special-assets manager at a commercial financial services company and commercial bank, and he has experience as a commercial real estate appraiser, credit manager and lending officer. He has worked in nearly 40 states on a broad array of assignments spanning many industries and business types, most of it on deals valued between \$2 million and \$20 million. Mr. Lea is a nationally recognized expert in the areas of bankruptcy, credit and lending, financial restructuring, insolvency, interest rates and workouts, and he is one of only approximately 1,000 individuals in the U.S. designated as a Certified Insolvency and Restructuring Advisor. He is routinely called upon to serve as an expert witness and speak at industry conferences on insolvency, interest rates, real estate, risk-assessment and valuation issues, and professional journals have published his articles on these topics. Mr. Lea sits on ABI's Board of Directors and is an At-Large member of its Executive Committee. He also is a former co-chair of ABI's Asset Sales Committee and serves on the advisory board of ABI's Judge Alexander L. Paskay Memorial Bankruptcy Seminar. In addition, he is a member of the Turnaround Management Association and the Association for Insolvency and Restructuring Advisors. Mr. Lea received his B.S. in management and his M.B.A. from Florida State University, and a Master's degree in real estate and urban analysis from the University of Florida.

Camisha L. Simmons is the founder and managing member and principal of Simmons Legal PLLC in Dallas, which she founded after practicing in New York and Dallas for nearly eight years as an attorney with several large global law firms. She has experience representing for-profit companies, nonprofit companies and political subdivisions in, among other legal matters, bankruptcy, corporate restructuring, creditors' rights, business transactions and litigation. Ms. Simmons is listed in the 30th edition of *The Best Lawyers in America* for Bankruptcy and Creditor/Debtor Rights/Insolvency and Reorganization Law. She also was selected by *The National Black Lawyers*, a professional and educational organization comprised of an elite group of highly successful and influential African American lawyers in the U.S., for inclusion in its list of the top 100 African American attorneys in Texas, *The National Black Lawyers* Top 100 (2019-22). In 2018, Ms. Simmons was recognized as one of the Top 50 Women Lawyers in Dallas by the Texas Diversity Council, and in 2013, *Texas Lawyer* named her to its inaugural list of Legal Leaders on the Rise, which honors Texas's 25 most promising lawyers under the age of 40 whose accomplishments distinguish them from their peers. In addition, she has been named a Texas Super Lawyer, Texas Rising Star, New York Metro Super Lawyer and New York Metro Rising Star by *Super Lawyers*, and as a Top 40 Under 40 attorney by *National Black Lawyers*. After graduating from law school, Ms. Simmons clerked for Hon. Mary F. Walrath in the U.S. Bankruptcy Court for the District of Delaware. Prior to her legal career, she served on active duty in the U.S. Army from 1999-2003. Ms. Simmons received her B.B.A. from Campbell University, her M.Ed. from the University of Maryland, College Park and her M.B.A. and J.D. *magna cum laude* from Texas Tech University.

Wayne P. Weitz, CTP is a senior managing director with B. Riley Advisory Services in New York and has more than 30 years of experience in turnaround management, financial and operational restructuring, bankruptcy, mergers and acquisitions, and complex bondholder litigation. His practice includes debtor and borrower advisory services, secured and unsecured creditor advisory services, offshore and cross-border insolvency, valuation, litigation support, and statutory and ad hoc committees. Mr. Weitz returned to B. Riley Advisory Services (formerly GlassRatner) after spending several years with other restructuring advisory and distressed investment banking firms. He originally joined the firm in 2008 and was one of the senior professionals who opened the firm's initial New York office in 2009. During his turnaround and restructuring career, Mr. Weitz has focused on advising troubled companies and stakeholders in and out of bankruptcy in domestic and cross-border situations. Prior to becoming a restructuring professional, he held positions in the corporate sector, where his responsibilities included capital allocation, strategic planning, international acquisitions, valuation of potential acquisitions, and investments and deal execution. He began his career as an investment banker and has completed nearly 100 acquisitions, dispositions and capital formation transactions. Mr. Weitz is co-chair of ABI's Complex Financial Restructuring Program and is a former co-chair of ABI's Financial Advisors and Investment Banking Committee. He is a board member of the New York chapter of the Turnaround Management Association, where he also serves as Membership Committee co-chair. Mr. Weitz received his B.A. in economics and politics from Brandeis University and his M.B.A. in finance and accounting from the University of Chicago Booth School of Business. He has also earned his Intermediate Sommelier Certification from the National Wine School.