

***ACQUISITIONS FROM FINANCIALLY DISTRESSED COMPANIES—
An Overview*** ©

Thomas J. Salerno, Esq.
Bankruptcy & Restructuring Group
Squire, Sanders & Dempsey, L.L.P.

These materials are designed to provide general information prepared by professionals in regard to subject matter covered. It is provided with the understanding that the authors are not engaged in rendering legal, accounting or other professional services. Although prepared by professionals, these materials should not be utilized as a substitute for professional service in specific situations. If legal advice or other expert assistance is required, the service of a professional should be sought.

I. INTRODUCTION.

The investor or acquiror interested in the acquisition of either the assets or equity of a financially troubled enterprise (the “**Target**”) must be aware of the dynamics of the financially distressed company, the competing creditor constituencies and the new rules of the game when dealing with such a company. These materials are intended to provide a brief synopsis of the six general alternatives available to the potential acquiror (“**Potential Acquiror**”) of the stock or assets of the financially distressed company, both in, and outside of, a formal Chapter 11 bankruptcy proceeding (a “**Proceeding**”).

As with any complex transaction, there will be numerous issues and sub-issues which are unique to the deal. These materials are intended as an overview only—before embarking on any acquisition endeavor, the Potential Acquiror should obtain legal and financial counseling on the nuances and intricacies of its particular transaction.

II. SIX OPTIONS FOR ACQUIRING THE TARGET.

There are basically six options for acquiring a Target, depending upon whether the Potential Acquiror is interested in obtaining all or a portion of the capital stock of the Target (the “**Stock**”) (discussed in Sections 2.1 through 2.3, below) or some of the assets (the “**Assets**”) of the Target (discussed in Sections 2.4 through 2.6 and III, below):

Stock Acquisitions

© Copyright 2008. All rights reserved. No portion of these materials may be reproduced without the express written consent of the author.

2.1 Purchase the Stock in the Target prior to a formal Proceeding.

(a) Pros:

- Can get an “exclusive” deal; and
- Usually can be done quickly.

(b) Cons:

- As a stockholder, you acquire the Target subject to all debts and liabilities, including contingent and nonliquidated liabilities and “strict liability” claims (such as environmental contamination remediation claims, successor liability or product liability claims, etc.).

2.2 Acquire the Stock in the Target through an acquisition of debt prior to a Proceeding. Debt (both public and private) can be acquired, usually at a discount if the Target is in financial distress, and the debt can, through the consent of the Target, be leveraged into a majority stock position in the Target through an exchange offer (for public reporting companies).

(a) Pros:

- Get the debt at a discount; and
- Complies with all applicable securities laws.

(b) Cons:

- Can take some time to complete; and
- If the Target doesn’t have sufficient authorized but unissued shares, can get tricky.

2.3 Purchase the Stock as part of a Proceeding. If having the Stock in the Target is necessary or desirable for whatever reason, the Stock acquisition can be accomplished in a Proceeding through a plan of reorganization (“**POR**”) which is confirmed (approved) by the Bankruptcy Court presiding over the Proceeding (the “**Court**”). If the Target has sizeable unsecured debt, and the controlling equity position in the Target is desired, then acquisition of the unsecured debt either before or after the Proceeding can serve as a vehicle for acquisition of the Stock in the Reorganized Company through the POR process (through a stock for debt exchange done as part of the POR process to deleverage the company).

(a) Pros:

- Provides finality and a Court blessing regarding the fairness of the transaction;
- The acquisition money doesn't go hard until the Court confirms the POR and no appeals are outstanding;
- The currency for the acquisition can be cash, assumption of debt, or some combination thereof;¹
- The balance sheet of the Target as it emerges from the Proceeding (the "**Reorganized Company**") will only have those claims that are left on as part of the bankruptcy process—*i.e.* the Reorganized Company will be "clean" as it emerges; and
- There is a specific exemption in bankruptcy law for normal compliance with securities laws for certain transactions done in Proceedings.²

(b) Cons:

- Usually takes longer—can be anywhere from 2 months (for a "prepackaged" proceeding) to 4 years, depending on how contentious the creditors are, etc.; and
- The deal tends to change as part of the negotiation process to avoid litigation with disgruntled creditors.

Asset Acquisitions

2.4 Purchase the Assets prior to a Proceeding.

(a) Pros:

- Same as 2.1, above.

(b) Cons:

- If the Target has secured debt, the only way to obtain the Assets is to get consensual lien releases from all lienholders—both senior

¹ It is also possible to acquire a controlling interest and leave some portion of the Stock for the Target's creditors, and even old stockholders (such as a *pro rata* distribution to old stockholders, or warrants, etc.). This may be desirable to preserve NOLs, maintain the Target as a public reporting company, or simply as part of the negotiations with creditors or others to garner support for the transaction.

² See Bankruptcy Code § 1145.

and junior (if the purchase price is insufficient to pay the secured debt in full);

- If the Assets are used in the manufacture or distribution of a product, there is the possibility of successor liability for product liability claims; and
- If the Target files a Proceeding within between 2-6 years (depending on the state), the purchase may be attacked as a fraudulent conveyance if the purchase price is deemed to be too low for the Assets.

2.5 Acquire the Target's secured debt as an Asset acquisition vehicle in a Proceeding. If the Target has sizeable secured debt, and the Target's Assets are desired, then acquisition of the secured debt can be a vehicle (although not a sure fire winner—see 2.5(b), below) to ultimately acquire the Assets serving as collateral for the debt through either the POR process or obtaining stay relief to foreclose on the lien on the collateral.

(a) Pros:

- Gives the Potential Acquirer substantial leverage in dealing with the Target;
- If the debt is publicly held, can usually be acquired at a steep discount depending on the severity of the financial distress of the Target; and
- Debtholders can form “ad hoc committees” before or in the Proceeding and have the professionals (lawyers, financial advisors, etc.) paid for by the Target.
- If the Target subsequently wants to sell its Assets to some party other than the Potential Acquirer through a POR, the holder of the secured debt has rights to object to such a POR, and can also (under certain circumstances) propose its own POR to acquire the Assets. The Potential Acquirer can also “credit bid” (at full face value) the secured debt it holds if collateral is sought to be sold to some other party.³

(b) Cons:

- Not a sure fire winner—the Target might find an all cash acquirer offering a higher price for the Assets; and

³ See Bankruptcy Code § 363(k). See also discussion in Section 3.3, below.

- Can take some time—once a Proceeding is commenced, there are other constituencies that become active. This can delay the ultimate deal resolution, and involve retrading of deals (sometimes numerous times).

2.6 Acquire the Target’s Assets through a Proceeding. If the Assets are the real target, then using a Proceeding as a purchase and sale vehicle is possible (and usually desirable such as in circumstances where the secured debts of the Target exceed the value of the collateral such that a purchase outside of a Proceeding isn’t really a viable option). The mechanism in a Proceeding is known as a “**363 Sale**” because it is accomplished through Section 363 of the Bankruptcy Code. This provision allows the Court to approve a sale of assets free and clear of liens, encumbrances, and adverse claims and interests, sometimes even over the objection of a secured creditor. 363 Sales are discussed in more detail in Section III, below.

(a) Pros:

- If you are the first Potential Acquirer in the door, and are willing to negotiate a term sheet (even prior to a Proceeding but to be implemented in a Proceeding), you can in some ways control the rules of the game—*i.e.* timing of certain things, obtaining a break up fee, how other bidders (if any) must qualify, etc. (*see* discussion in Section III, below)—this isn’t absolute, but there is substantial leverage as the first bidder (also known as the “*stalking horse*” bidder);⁴
- The 363 Sale process doesn’t take as long as obtaining confirmation of a POR;
- The only claims the Potential Acquirer ever has to worry about are those claims that it specifically assumes—all others are transferred to the sales proceeds for the Target to pay; and
- You can also obtain, with some limitations, contracts to which the Target is a party.⁵

(b) Cons:

- In 363 Sales, it is very rare that anyone has an “exclusive” deal—the 363 Sale process, absent really extraordinary reasons, contemplates an auction process;

⁴ The term “stalking horse” is used to identify the first bidder against whom other bids will be judged. It comes from a hunting practice in medieval England whereby a sickly horse was staked to a spot to act as bait for wolves or bears. The use of the phrase may be a misnomer, as it connotes a “sham,” and the initial bid is not a “sham” at all.

⁵ Bankruptcy Code § 365.

- Secured creditors have rights to “credit bid” debt against collateral in certain circumstances—as such, a Potential Acquiror still must deal with secured creditors in the negotiations (unless, of course, the Potential Acquiror obtained the secured debt as an acquisition vehicle);
- Some Courts are hesitant to allow break up fees, lock ups, onerous competing bidder qualification requirements, and other stalking horse bidder protections; and
- Some Courts are also hesitant to approve 363 Sales early in Proceedings absent a very real and tangible business justification since the sale process can, in many ways, undercut the protections afforded creditors in the POR process.

Assuming an acquisition of Assets is the goal, purchases through 363 Sales can be an interesting (and for the uninitiated, daunting) process. 363 Sales are explained in Section III, below.

III. SALE AND PURCHASE OF ASSETS THROUGH BANKRUPTCY PROCEEDINGS.

This portion contains a brief overview of the 363 Sales process for the sale of Assets through a Proceeding. For purposes of this section, two (2) different sets of facts are assumed:

- ***Scenario No. 1:*** The Target has identified a Potential Acquiror, and either the Target or the Potential Acquiror wants the sale to be approved through a Proceeding.⁶
- ***Scenario No. 2:*** The Target has not identified a specific buyer, and wants to implement a marketing and sale program for the assets through a Proceeding.

This section addresses both of these scenarios.

3.1 The Bankruptcy Priority Scheme

As a preliminary matter, it is important to understand how any sales proceeds would be distributed pursuant to any sale or liquidation of the Assets of a Target in a Proceeding. Under the Bankruptcy Code, when an Asset or Assets are sold, the sales proceeds are generally distributed as follows:

- ***Costs Of Sale.*** To reasonable and necessary costs of sale (such as commissions, brokerage fees, etc.).⁷

⁶ This is not uncommon. If the sales proceeds will not be sufficient to pay all creditors’ claims, buyers will generally insist it be done through a Proceeding. This was required in the TWA case, for example.

- **Secured Creditors.** To the extent that a creditor has a valid and perfected secured lien on the Asset, that creditor would be entitled to the next distribution of proceeds up to the amount of their lien.⁸
- **Administrative/Priority Claims.** After creditors with liens against specific assets are paid, if there are proceeds left over administrative and priority claims are paid. These are set forth in the Bankruptcy Code, and would include such claims as certain specified unpaid employee claims, certain tax claims, and claims for the administration of the bankruptcy estate (such as attorneys' fees, any ordinary course trade debt which may have been incurred prior to the sale, etc).⁹
- **General Unsecured Creditors.** After all of those claims have been paid, the amounts left over (if any) would be distributed to general unsecured creditors. If there are insufficient amounts to pay all unsecured creditors in full, creditors will be given a *pro rata* portion of the proceeds.
- **Equity Holders.** To the extent that all of the foregoing claims are paid, in full (including interest), any amounts left over would then be distributed to the equity holders of the Target in proportion of their equity holdings. As you might surmise, having money trickle down to this level is unusual.

3.2 The 363 Sale “Process”—The “Fourteen Steps.”

In a 363 Sale through a Proceeding, there is generally a fourteen (14) step process which is employed. The process would generally be as follows:

- **Negotiation Of Initial Term Sheet Or Letter Of Intent (“LOI”).** If the Potential Acquiror is the “stalking horse” bidder, prior to the Proceeding, an LOI is negotiated and executed. The LOI provides for ultimate consummation through a 363 Sale, and puts the Target on deadlines for filing the Motion, Court approval of Sales Procedures and Bidder Protection Devices, and the timing of the Sale Hearing—all as discussed more fully below.
- **“Executory Contracts.”** Usually an integral part of any asset acquisition will be determining what existing, ongoing contracts the purchaser wishes to have assigned to it. These are known in bankruptcy parlance as “executory contracts,”

⁷ This is always done as a practical matter because creditors with secured liens against assets (*see* the second bullet point) usually want the assets sold and as such agree that the reasonable and necessary fees and commissions would be paid immediately. The terms of those fees/commissions would be approved by the Court in advance of the sale.

⁸ For example, if an asset was sold for \$100.00 and the secured creditors was owed \$200.00 secured by a valid and perfected lien on that piece of equipment, the secured creditor would get all sales amounts over and above the fees or commissions which the Court had approved to be paid. Likewise, if an asset were sold for \$100.00 and a creditor had a lien for \$50.00, there would be some money left over to pay either junior secured creditors (*i.e.* those creditors which had a lien position beneath the first lien holder) or for further distribution pursuant to the priority chain discussed above.

⁹ *See* Bankruptcy Code §§ 503(b) and 507.

and may involve unexpired leases, supply agreements, etc. Identification of these contracts usually occurs as part of the due diligence phase. Such contracts must first be “assumed” by the debtor, and then assigned to the purchaser.¹⁰ As part of the assumption, any monetary defaults must be “cured,” or usually paid in cash (unless otherwise negotiated). The purchaser will usually insist that such “cure” amounts be specifically adjudicated by the Court as part of the process.

- **Motion.** The Target (as seller) would file a motion with the Bankruptcy Court asking for approval of the Bidder Protection Devices (discussed below), and either a sale (to the extent a Potential Acquiror has been specifically identified) or a marketing and sales procedure (to the extent that a Potential Acquiror has not yet been identified).¹¹
- **Bidder Protection Devices.** If a Potential Acquiror existed prior to a Proceeding being filed, the Target might be required to obtain Court approval of certain “**Bidder Protection Devices**.” That is usually required to be done as part of the Motion described above, but in all events must be approved in a separate Court hearing held prior to the actual Sale Hearing.¹² The bidder protection devices commonly used in 363 Sales are as follows:
- **“Bust Up Fees.”** The Potential Acquiror may request advance Court approval of a “**bust up fee**” or termination fee. What this means is that to the extent that the Potential Acquiror is outbid, they will be entitled to be paid (as an administrative expense) a certain fee. This fee is usually tied to the size of the deal (1-3 percent of deal sizes), although many Courts won’t approve such fees unless they bear a relationship to the Potential Acquiror’s due diligence costs. Bust up fees can and do run the gamut, and some Courts are more willing to approve them than others.
- **“Overbid Protections.”** Some Potential Acquirors require that the Court approve minimum overbids so that they are not engaged in a small incremental bidding war. These are called “**overbid protections**.” For example, the Potential Acquiror may make the initial bid, and request that the Court approve an auction protocol whereby the first higher bid must be a large one (for example, it must be \$50,000 over the initial bid), and thereafter higher bids must exceed the previous bid by no less than \$10,000. Depending upon the type of Asset and the judge, Courts have been willing to approve such protections.

¹⁰ Bankruptcy Code §365.

¹¹ These procedures would not be those used if this were a straight liquidation through a Chapter 7 under the Bankruptcy Code.

¹² While it may go without saying, these deadlines and all bidder protection devices should be clearly set out in the LOI, and failure to obtain Court approval of them be made a basis to terminate the LOI. This puts pressure on the Target to get Court approval, and allows the Potential Acquiror the ability to renegotiate its offer should these protections not be approved. If these are not clearly set forth as express conditions to the LOI, the Potential Acquiror really has no leverage to demand them later.

- **“Window Shop Provisions.”** Since it is a Target’s duty to get as much as it can for the assets (especially if it is insolvent), it must entertain any and all offers for Assets once the determination has been made to sell the Assets.¹³ The Potential Acquiror that makes the original offer is not excited about having the Target go out and shop its offer to any and all parties. As such, it is not unusual for Potential Acquirors to request (and obtain) Court approval that the Target will keep the general terms of the original offer confidential (perhaps other than the ultimate price)—at least until a sale approval Motion is filed. There have also been situations (although rare) where Courts will approve a restriction on the Target precluding the Target from actively soliciting alternative bids, but the Target will be able to entertain bids that are brought to it as a result of activities other than its own solicitation of the bids. These are called “*window shop*” provisions. These types of provisions will only be approved in cases where there is a good reason to do so since it really does place a restriction on the Target’s obligations to fulfill its primary fiduciary duty to maximize the value of assets by marketing them as much as possible. As a practical matter, however, even if these restrictions are put on a Target, these restrictions would not block creditors and other parties in interest from actively soliciting offers for Assets. Accordingly, while the Target’s hands may be tied, the other parties in the proceeding will not have the same restrictions.
- ***Bid Qualifications.*** Another bidder protection device is to have the Court specifically outline the required qualifications of a competing bid. For example, it is not unusual to have a competing bidder need to be “qualified” by such things as posting a forfeitable earnest money deposit, providing satisfactory evidence of its ability to close the transactions, and sometimes (although not always) requiring the competing bid to be in the same form (or using the same “currency”—*i.e.* cash, debt assumption, etc.) as the initial bid. This allows the Target, and the Court, to do an “apple to apple” comparison of competing bids.¹⁴ Finally, to the extent a definitive asset purchase agreement is already negotiated, the competing bidders might be required to agree to its form should they be the successful bidder.
- ***Approval Of Sales Procedures.*** The Court, after a hearing that would be noticed to the creditors in the case, would then approve the sale procedures. Typical sales procedures approved would generally include:
 - Specific approval of any Bidder Protection Devices;

¹³ This is known as the “duty to shop” the Assets or company, and is imposed as a fiduciary duty of any board (or owners) once the decision is made to sell. *See, e.g. Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.*, 506 A.2d 173 (Del. 1986). As a result of this case, the duty is commonly referred to as the “*Revlon* duty to shop.”

¹⁴ All of this having been said, most Courts will reserve unto themselves the discretion to consider a non-qualifying competing bid—*i.e.* if Bill Gates walks into the courtroom with a suitcase full of cash, bid qualifications be damned! Mr. Gates will be allowed to bid.

- A specific noticing protocol to the Potential Acquiror (*i.e.* the stalking horse) to the extent an offer is received;
 - Specific approval and notice to other potential bidders regarding Bid Qualifications;
 - Deadlines for completion of due diligence;
 - Notice and procedures to determine cure amounts under any executory contracts to be assumed assigned as part of the sale; and
 - A specific hearing date would be set whereby a sale offer or offers would be approved by the Court.
- ***Due Diligence.*** If the Potential Acquiror is the stalking horse bidder, presumably it has a head start on due diligence (although the due diligence process would undoubtedly continue prior to, and even after, the Sale Hearing). In all events, the Target (or its financial advisors) will usually prepare “teaser” books with overview information about the company (or its Assets), and establish an information room or depository to facilitate due diligence. It is customary that any Potential Acquiror will be required to sign a confidentiality agreement to avoid improper uses of information obtained under the guise of due diligence. In some respects, due diligence for a 363 Sale is a little more streamlined because the Potential Acquiror does not need to worry about creditor claims or good title to Assets being acquired—these will be dealt with in the Sale Order entered by the Court as part of the Sale Hearing.
 - ***Sale Hearing.*** At the Court hearing to approve a sale, generally speaking (and there are some exceptions), bankruptcy sales tend to be auction sales in the sense that the Court would ask for higher and better offers.¹⁵ This is true because the Target (as seller) has a fiduciary duty to obtain the highest price for assets once a decision is made to sell assets.¹⁶ Moreover, the Court will adjudicate “cure” amounts as part of the Sale Hearing. Ultimately, the court will approve the 363 Sale (and cure amounts for any executory contracts) by a specific form of order (the “*Sale Order*”).¹⁷
 - ***Appeal Period.*** After the Court approves the sale, there would generally be a ten (10) calendar day period whereby any party that objected to the sale (usually a

¹⁵ There are certain circumstances where a Court might approve a “private sale” whereby the Bankruptcy Court approves the ability of a debtor to seek offers and close on those offers without a formal Bankruptcy Court hearing. Those circumstances, while they have been done in certain instances, are fairly rare and only done in extraordinary situations.

¹⁶ See note 13, above.

¹⁷ In deciding whether to approve an offer, the Court would have to determine that a sale was necessary (usually because of the cash flows of the particular company, doing a standard reorganizational restructuring would not work, and that the sales price being paid is a reasonable sales price). The Court would generally make the determination of an adequate sales price not necessarily based on appraisals, but based upon the adequacy of the marketing for the Assets. If an Asset is appropriately marketed and noticed for a sale, presumably whatever price a nonaffiliated buyer would pay for that Asset is a market price.

creditor) would have to file an appeal of the Sale Order. If an appeal of a Sale Order is filed, the appealing party would have an obligation to get an affirmative stay of the Sale Order. If they do not, the buyer can close on the sale and it will moot out the appeal.¹⁸

- ***Closing Of Sale/Backup Bidders.*** The sale would then be consummated. There are circumstances where there may be “backup” bidders in which the Court determines that if bidder no. 1 does not close, bidder no. 2 would then have a period of time to close the sale. This depends, obviously, on the willingness of parties to be a backup bidder, although it does happen in certain cases.
- ***Distribution Of Sales Proceeds.*** After the sale closes, the bankruptcy estate then has cash (and whatever other Assets were not sold). Creditors with liens on assets can be paid directly (generally through a Court-approved stipulation). As far as payments to unsecured creditors and administrative priority claimants, that must be done through a POR (in a Chapter 11 case) or simply have the case converted to a Chapter 7 proceeding and have the trustee distribute the money at that point. Usually “cure” payments on assumed and assigned executory contracts are dealt with separately to avoid issues later related to these contacts.

3.3 “Credit Bid” Rights

Another matter that must be addressed is the ability of a secured creditor (*i.e.* a creditor with a lien against assets) to be a bidder for those assets pursuant to the use of a “***credit bid***”.¹⁹ A “credit bid” is where a secured creditor submits a bid, and the consideration it will pay for the Asset will be a credit against the debt that is secured by that Asset. As such, a creditor who is owed \$200.00 secured by a particular piece of machinery could come in and be an opening bidder with a credit bid of \$100.00. If there is going to be bidding in open Court, the secured creditor can continue to credit bid until it reaches the amount of its secured debt. Thereafter, if it continued to bid it would have to pay the amount of its bid not covered by the secured debt.

The right to credit bid is not absolute, however. If there is a dispute about the validity of the secured lien against the asset (such as, for example, a perfection problem under applicable law or other dispute), the Court may not allow the secured creditor to credit bid unless some protection is given to the bankruptcy estate should the lien be determined not to be valid. For example, sometimes creditors with disputed liens on assets are made to post a letter of credit or other security.

3.4 Sales Free And Clear Of Liens

Finally, the primary reason buyers insist on sales being implemented through a Proceeding is because the Court has the ability, in certain circumstances, to authorize sales free

¹⁸ See Bankruptcy Code § 363(m).

¹⁹ See Bankruptcy Code § 363(k).

of liens, adverse interests and encumbrances.²⁰ This is usually used when the Assets to be sold will not produce sufficient sales proceeds to pay, in full, all secured claims and/or unsecured claims. The Court's Sale Order will act as a type of "insurance" that the buyer has good title to the Assets purchased without concerns that creditors might subsequently assert claims against the buyer (for example, for successor liability, product liability, unpaid debts, etc.).

IV. SQUIRE, SANDERS & DEMPSEY L.L.P.'S EXPERIENCE IN PURCHASES AND SALES THROUGH PROCEEDINGS.

The Restructuring and Reorganization Group at Squire, Sanders & Dempsey (the "**Group**") has substantial experience in both the purchase and sales of assets through Proceedings, including Proceedings involving cross-border insolvencies. Representative of the Group's experience includes the following:

- Representation of the purchaser of an internet service provider business from a Chapter 11 proceeding of a company with operations in ten states. *In re Cleardata Communications, Inc.*
- Representation of the purchaser of all operational assets of national steel mill. *In re Bethlehem Steel Corp.*
- Representation of a bidder for substantially all of the assets involved in an internet service provider operating throughout the United States and Canada, and a retail products manufacturer operating in the U.S. and Canada. *In re Metricom, Inc., dba "Ricochet."*; *In Re Global Crossing, Inc.*; *In re Mayan Networks, Inc.*; *In re Belae International, Ltd.*
- Representation of the seller of an operating hospital and health plan through a Proceeding. *In re Phoenix Memorial Hospital and Phoenix Health Plan.*
- Representation of a committee of unsecured creditors in the sale of all of the domestic, Mexican and European operations for a manufacturer and distributor of power gardening equipment and related merchandise. *In re McCulloch Corporation.*
- Representation of the seller (a newly constituted board) of numerous assets in a case which was the largest affinity fraud case in the history of the United States. *In re Baptist Foundation of Arizona.*
- Representation of the seller of all the assets of a franchisor and operator of large drug stores throughout the United States. *In re Drug Emporium, Inc.*
- Representation of the purchaser of all of the stock of a publicly traded computer hardware manufacturer. *In re Gateway Data Sciences, Inc.*
- Representation of the sellers of a computer hardware distributor throughout the United States and Europe. *In re iLogistix, Inc.*
- Representation of parties in the restructuring and asset sales of a speech recognition software and related business lines with proceedings in the United States, Canada and Europe. *In re Lernout & Houspie.*

²⁰ See Bankruptcy Code § 363(f).

- Representation of the buyer of an alumina refinery located in Louisiana, as well as the acquiror of a debtor's joint venture equity interest in a bauxite mine located in Jamaica. *In re Kaiser Aluminum & Chemical Corporation.*
- Representation of the buyer of a pulp paper mill in Maine. *In re Lincoln Paper & Pulp, Inc.*
- Representation of the buyer of a nursing home using acquisition of the senior secured debt. *In re Palm Valley Nursing Home, Inc.; In re Annapolis Nursing Homes, Inc.*

In addition, partners in the Group regularly teach, speak and write on this topic area. For example, certain members of the Group co-authored a book entitled *The Executive Guide To Corporate Bankruptcy* (Beard Publications 2001), a portion of which is dedicated to asset purchase and sales through Proceedings. In addition, members of the Group teach comparative international insolvency at the University of Salzburg dealing with, among other things, cross-border insolvency protocols on sale of assets.