

→ Distressed Acquisitions Under Bankruptcy Code

The purchase of assets in bankruptcy from financially troubled companies presents special rules and unique circumstances that can be a minefield for buyers. To navigate that minefield successfully, Sheppard Mullin provides high caliber multi-discipline expertise, deep knowledge, and vast experience in bankruptcy, as well as other applicable practice areas, necessary to effectively and efficiently represent buyers in distressed asset acquisitions.

Our nimble SWAT team, which includes professionals in Bankruptcy & Restructuring, and as needed, Corporate, Tax, Intellectual Property, Real Estate, Labor & Employment, and Environmental law, can jump into distressed sales at a moment's notice not only in bankruptcy court, but also other distressed asset sale situations, including assignments for the benefit of creditors, receiverships and UCC foreclosure sales.

High Caliber Expertise and Knowledge

We are knowledgeable in both the law and the industries in which our clients and their targets operate. Our bankruptcy lawyers are skilled tacticians and strategists, emanating from a deep and pragmatic understanding of insolvency law. The other lawyers on our SWAT team have extensive knowledge and experience in their respective areas not only with respect to mergers and acquisitions generally, but also bankruptcy sales specifically, which inevitably present issues involving employees, owned or leased real estate, the transfer of trademarks, patents and other intellectual property, and tax structuring. We take care to review all aspects of the proposed purchase, including:

- Conducting what is often very limited due diligence quickly and efficiently
- Negotiating and obtaining court approval of loan-to-own debtor-in-possession credit facilities as part of a distressed acquisition
- Drafting the asset purchase agreement and ancillary documents
- Ensuring that the asset purchase agreement, sale order and other documents provide maximum protection to our clients under the Bankruptcy Code
- Navigating all aspects of the bankruptcy auction and sale hearing to get to a prompt closing
- When necessary, litigating issues that may arise in connection with the sale process

In addition, we go beyond the legal aspects of the deal, drawing on our familiarity with a range of industries to understand and protect the specific business concerns of our clients and their clients.

Experience

The following is a representative list of some of the successful § 363 distressed asset sales in which our attorneys have represented strategic or financial buyers of assets out of a chapter 11 bankruptcy estate:

- Represented Breakwater Management in acquiring assets of debtor Apex Linen Service, LLC for \$24 million credit bid plus \$650,000 cash (Delaware)

- Represented American Iron & Steel in \$27 million purchase of four paper mills from debtor AbitibiBowater, Inc. (Delaware)
- Represented Universal Protection Service, LLC (now Allied Universal) in acquiring security service contracts with malls and other commercial businesses from debtor IPC International Corp. for \$25.4 million (Delaware)
- Represented Modell's Sporting Goods Online, Inc. (SPV of Retail Ecommerce Ventures) in purchase of intellectual property from debtor Modell's Sporting Goods for \$3,460,000 (New Jersey)
- Represented Brands Holdings in acquisition of intellectual property from debtor No Fear Retail Stores, Inc. for \$9.8 million (SD California)
- Represented TL Capital in \$20 million purchase of intellectual property of Pier One Imports (ED Virginia)
- Represented Stein Mart Online Inc. (SPV of Retail Ecommerce Ventures) in purchase of debtor Stein Mart's intellectual property for \$6 million (MD Florida)
- Represented SLT Lending SPV, Inc. in purchase of \$90 million of inventory, leases, FF&E, and receivables of debtor Sur La Table (New Jersey)
- Represented Revere Plastics Systems, LLC in \$2.1+ million purchase of machinery, equipment and related items from debtor Techniplas, LLC and affiliates (Delaware)
- Represented Capital Sports Properties in acquisition of Ottawa Senators NHL team and Corel Centre Stadium Complex from debtor Covanta Energy for \$127.5 million (SD New York; Canada)
- Represented Ashley Furniture Inc. in purchase of numerous store leases from debtor PLVTZ Inc. (Levitz II) for \$5 million (SD New York)
- Represented Canal+ in acquisition of assets of debtor Carolco Pictures for \$58 million (Delaware)
- Represented Jomed Inc. in \$100 million acquisition of Memorex from Netherlands insolvency (NL)
- Represented Marathon Oil in \$270 million acquisition from debtor Enron Corp. of LNG gasification facility and two LNG tankers (SD New York)
- Represented Consolidated Precision Products Corp. in \$1.8 million purchase of complex aluminum and magnesium alloy castings for aerospace industry from Aerocast International Inc. (Arizona)
- Represented TG Valentine, LLC in \$8 million purchase of infant bedding and related accessories and intellectual property of Kid Brands, Inc. and related companies (New Jersey)
- Represented Windstar Hong Kong Limited in \$58 million acquisition of assets of debtor PSINet Inc.'s Hong Kong assets (Delaware)
- Represented Mexican family office in acquisition of assets of debtor Loewen (US)
- Represented Bluways USA Inc. in acquisition of assets of debtor ISE Corporation for \$2,660,000 combined cash and other consideration (SD California)