



Session Date: Friday, May 19, 2023

Session Time: 4:30pm – 5:30pm

Session Name: Dealer’s Choice: The Benefits of RSAs and PSAs

Total Minutes: 60

Total Credit Hours: 1



**Dealer's Choice:
The Benefits of Restructuring Support
Agreements**

California Bankruptcy Forum's 35th Annual Insolvency
Conference



Speakers

- Panelists:
 - **Honorable Martin R. Barash**, United States Bankruptcy Judge, Central District of California
 - **Robbin L. Itkin**, Partner, Sklar Kirsh LLP
 - **David S. Kupetz**, Partner, Locke Lord LLP
 - **Joshua Morse**, Partner, Pillsbury Winthrop Shaw Pittman LLP.
- Panel Producers:
 - **Rika Kido**, Partner, Shulman Bastian Friedman & Bui LLP
 - **Christopher KS Wong**, Associate, ArentFox Schiff LLP

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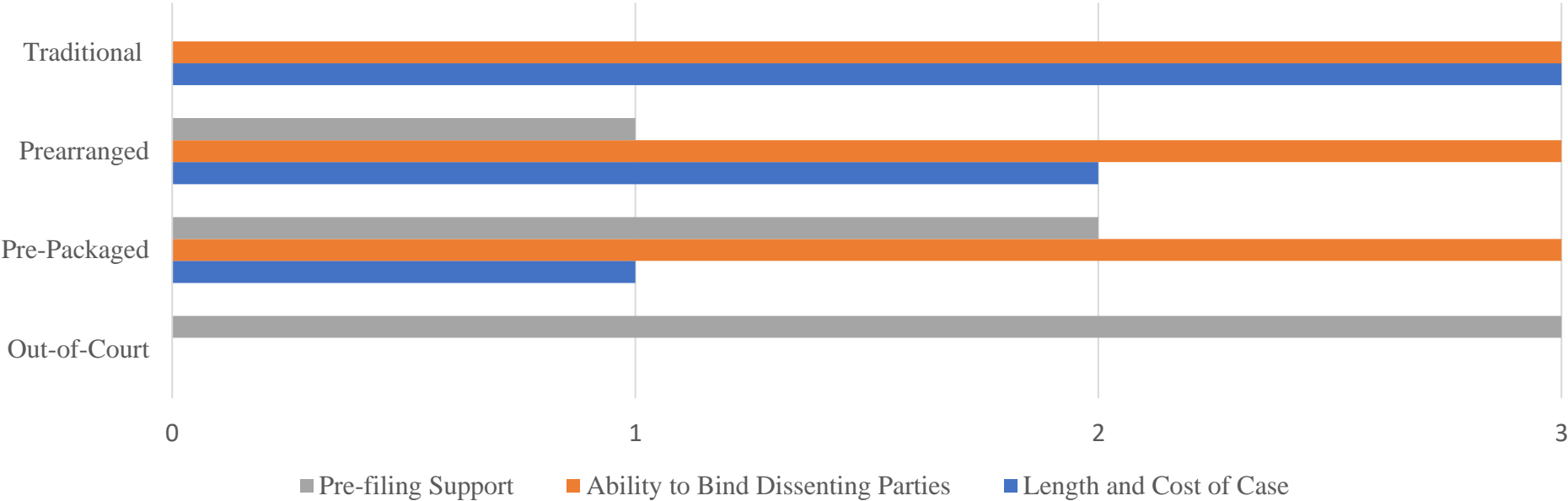
- (1) What is an RSA?
- (2) What should be included/terms?
- (3) When are they used?
- (4) Examples

What is an RSA or PSA?

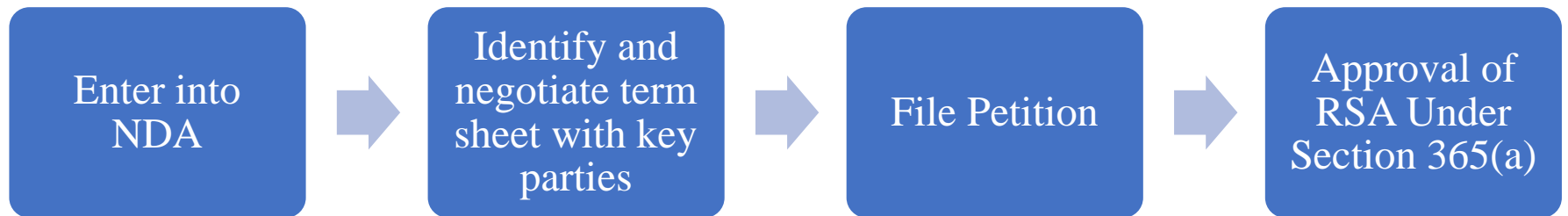
A Restructuring Support Agreement (RSA) or Plan Support Agreement (PSA) is an important tool available to debtors which allows for more certainty and control over the Chapter 11 process through an agreed upon framework for the treatment of debt. Such agreements may be entered into either prepetition or post-petition between the debtor and some or all its creditors. Our panelists will discuss the benefits of RSAs/PSAs to debtors and creditors, the terms which need to be included, the circumstances where RSAs/PSAs are a good option for debtors, and their applicability in middle market or subchapter V cases in California.

Costs and Benefits of RSAs

Comparison of Restructuring Options



Steps:



**Note:* RSAs may also be entered into post-petition and approved pursuant to Bankruptcy Code Sections 363(b) and 105(a) and Bankruptcy Rule 9019.

Common Terms of an RSA

- ▶ **Milestones:** Establish milestone deadlines for key events, *e.g.*, Petition Date, assumption/rejection date, plan and disclosure statement filing date, confirmation hearing date, confirmation date, and effective date.
- ▶ **Non-Solicitation:** Disclaim that the RSA is not and shall not be deemed to be a solicitation for consents to the plan in light of Section 1125(b) of the Bankruptcy Code, which states that “[a]n acceptance or rejection of a plan may not be solicited after the commencement of the case under this title from a holder of a claim or interest with respect to such claim or interest, unless, at the time of or before such solicitation, there is transmitted to such holder the plan or a summary of the plan, and a written disclosure statement approved, after notice and a hearing, by the court as containing adequate information.”
- ▶ **Remedies for Breach of RSA:** provide that specific performance shall be deemed the exclusive remedies for breach of the RSA by any Party or its representatives.
- ▶ **Impaired Consenting Class:** identify impaired class to satisfy Section 1129(a)(8).
- ▶ **Professional Fees:** Determine terms for payment of over-secured creditors’ attorneys’ fees allowable under Section 506 of the Bankruptcy Code
- ▶ **“Fiduciary Out”:** Allowing the debtor to terminate the RSA in the reasonable exercise of its fiduciary duties, if an alternative exit option that maximizes value to the estate unfolds during the bankruptcy case.

Examples

- ▶ *In re Quotient Ltd.*, Bankr. S.D. Tex. Case No. 9:23-bk-90003 (DJ)
- ▶ *In re Glostation USA, Inc.*, Bankr. C.D. Cal. Case No. 1:20-bk-11435 (MB)
- ▶ *In re Northfolk Community Power, LLC.*, Bankr. N.D. Cal. Case No. 4:22-bk-41001 (RE)



In re Glostation USA, Inc., **Bankr. C.D. Cal. Case No. 1:20-bk-11435** **(MB)**

Petition Date: August 13, 2020

Confirmation: November 27, 2020

Type: prepackaged

Key players: secured creditors (Silicon Valley Bank, TriplePoint Capital LLC, ATEL Growth Capital), and parent (Sandbox VR, Inc.).



***In re Northfolk Community Power, LLC.,
Bankr. N.D. Cal. Case No. 4:22-bk-41001
(RE)***

Petition Date: January 11, 2022

Confirmation: February 8, 2023

Type: prepackaged

Key Players: indenture trustee (UMB Bank), bondholders (Lapis Advisers, LP as advisor to holders of Series 2019A Bonds and Series 2019B).



***In re Quotient Ltd., Bankr. S.D. Tex. Case
No. 9:23-bk-90003 (DJ)***

[plan may not be confirmed as of CBF, so we may remove]



The Honorable Martin R. Barash

United States Bankruptcy Judge Martin R. Barash was sworn in on March 26, 2015, and assigned to serve in the Woodland Hills branch of the Central District of California.

Judge Barash attended Taft High School in Woodland Hills, received his undergraduate degree at Princeton University, and law degree at the UCLA School of Law. Following law school, he worked at Stutman, Treister & Glatt P.C. and Klee, Tuchin, Bogdanoff & Stern, LLP. He also taught for a year at California State University Northridge.



Robbin L. Itkin

Partner, Sklar Kirsh LLP

Robbin has been recognized as a Chambers USA-ranked attorney in restructuring. Super Lawyers has featured her since 2005 and has named her among Southern California's Top 50 Women lawyers and Top 100 lawyers.

She also is recognized by Best Lawyers in Southern California and Martindale Hubbell. Robbin was the recipient in 2013 of the Century City Bar Association's "Bankruptcy Lawyer of the Year" award and was featured on the inaugural list of LawDragon's 2020 Leading U.S. Bankruptcy & Restructuring Lawyers.

In 2021, the Los Angeles Business Journal honored Robbin among its Women of Influence – Attorneys. In 2021 and 2022, the Los Angeles Times' "Business of Law" issue named Robbin a "Legal Visionary." She is the recipient of the 2022 TMA Large Company Turnaround/Transaction of the Year Award for Professional Financial Investors, Inc., (PFI).



David S. Kupetz

Partner, Locke Lord LLP

David Kupetz has more than 35 years of experience in distressed transactions, crisis avoidance consultation, workouts, restructurings, reorganizations, bankruptcies, receiverships, assignments for the benefit of creditors, creditor rights, and other non-bankruptcy insolvency solutions and related transactions and litigation.

David represents debtors (in restructurings and workouts and in chapter 11 reorganization cases), secured creditors, unsecured creditors' committees, assignees for the benefit of creditors, buyers/sellers of businesses/assets in distressed circumstances and other entities in insolvency and bankruptcy situations.

David's many articles on bankruptcy-related subjects have been published in local and national publications. He is the author of the Collier Handbook for Creditors' Committees and served as the author of Collier Commercial Bankruptcy Forms for many years.



Joshua Morse

Partner, Pillsbury Winthrop Shaw Pittman LLP

Joshua Morse focuses his practice on all aspects of corporate restructurings, special situations and bankruptcy proceedings and represents bondholders, debtors, secured lenders, indenture trustees and ad hoc and official committees.

Joshua's experience includes both out-of-court restructuring negotiations and representing constituencies in complex matters in bankruptcy courts throughout the United States. He serves clients across a wide range of industries and sectors, including technology, gaming, media, retail, aerospace, transportation, oil and gas, power generation, mining and manufacturing.

He was selected as Insolvency & Restructuring Deal of the Year, 2016 Australasian Law Awards, restructuring and recapitalization of Atlas Iron Limited. He has been recognized by Best Lawyers (published by BL Rankings LLC), Bankruptcy and Creditor Debtor Rights/Insolvency and Reorganization Law (2022 – 2023), Litigation – Bankruptcy (2023), by The Legal 500 U.S. (2014 – 2016) and was named a Super Lawyers “Rising Star” (2007 – 2011).

