

National Steel Mill Group Presentation

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Insolvency Credit Risk:

Impactful Chapter 11 Trends Increase Vendors' Credit Risk



1. Insolvency/Chapter 11 Credit Risk for Vendors

- Pre-petition accounts receivable balance
- Post-petition sales on terms
- Potential loss of sales or Supply Agreement
- Avoidance actions
 - Preferences
 - Fraudulent Conveyances
 - Invoice A, ship to B

2. Vendor Tools to Minimize Risk

- Critical Vendor payments
- Section 503(b)(9) – 20 day administrative claim
- Assumption of Executory Contracts
- Setoff or Recoupment
- Uniform Commercial Code Section
 - 2-609: Adequate Assurances of Performance
 - 2-702: Cash before delivery for Insolvent Companies

- Section 547 preference defenses
 - Subsequent New Value
 - Ordinary Course of Business
 - Contemporary Exchange for Value
 - Auriga Polymers 11th Circuit Court of Appeals Decision

TRANSFORMED 547 DEFENSES IN FAVOR OF CREDITORS

3. Restructurings, insolvencies and Chapter 11 filings – 1ST half 2023

- In 1H 2023, 72 large companies filed for bankruptcy, already surpassing the total number of bankruptcies filed in 2022 and more than three times the number of bankruptcies in 1H 2022.
- Venue
 - \$100+ million – DE (39%), SD Texas (32%), SDNY (7%), District of NJ (7%)
 - Top 20 Largest Bankruptcies – 16 – SD Texas, 1-DE
 - Top 4 venues – 85% of the largest corporate Chapter 11 cases
 - Judge Jones SD Texas
 - Party City and Serta Simmons
 - “I want to go faster”

■ Types of Chapter 11 cases

- Way beyond Chapter 11 or Chapter 7

- Prepackaged with RSA

Carestream, OSG Group Holdings, Inc. (National Business Systems, National Data Services, NCP Solutions)

- Prearranged with RSA

- Section 363 sale or Liquidation

Bed Bath & Beyond, Rite Aid?

- Free fall

Rite Aid, Revlon, SAS

- Have you been DIP'ed?

Carestream, Instant Brands (InstaPot, Pyrex, Corning, Corelle)

- Chapter 11 is the ultimate capitalist model

... in the right court it's completely unregulated

4. Trends in Chapter 11

- DIPs provided by third-parties, not pre-petition lenders
- First Day DIP is Plan with Exit Financing

Carestream

- First Day DIP is a Sale of All Assets

SAS Airlines

- Prearranged Plan that isn't prearranged

DIP Milestones

“Toggle Event”

Section 363 sale

Party City

- Plan Class Voting out the window

Serta Simmons

- Black Swan Event – Give the Money Back
 - Revlon
- Americanas, S.A. – Supply Chain Finance and Off Balance Sheet Debt
- First Day Orders limit creditors' rights
 - Prohibition on modifications to contracts – no cash before delivery
 - Worldwide automatic stay
- Immense pressure on First Day Hearing/Orders – Vendors must engage early
 - Dean Foods objection

- Liquidation Plan
 - Residual assets aka preference actions
 - Plan releases
 - Purdue Pharma – U.S. Supreme Court
 - Bang Energy Drinks –
 - Releases vendor setoff claims
 - Preserves Debtor setoff claims
 - Setoff vs. recoupment

- Implosion of Judge Jones and the SD of Texas
 - Mega case assignment procedures
 - Most Bankruptcy Courts have abolished – SDNY – Judge Drain – Purdue
 - November 1, 2023 Demand to make Pharma case assignments random
 - Jones fallout hits law firms
 - The demise of the SD of Texas?

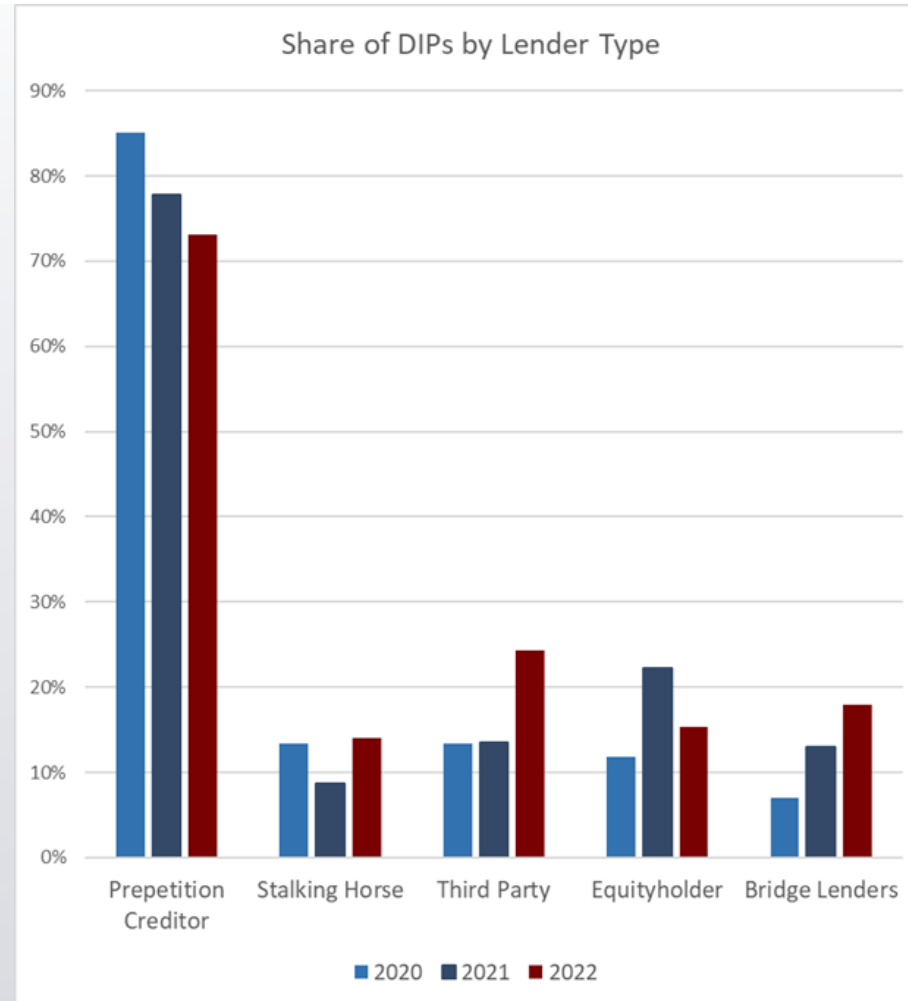
Carestream Health commenced a prepackaged case in August with the support of its existing lenders, exiting 38 days after its petition date. **Lumileds**, another August billion-dollar filer, ran a 63-day prepackaged confirmation process, which was longer than **Cypress Environmental's** 45-day prepack, which provided 100% of new equity to prepetition and DIP lender Argonaut Private Equity. Integrated customer communications and engagement services company **OSG Group** ran an even shorter process, confirmed in 24 days and effective just 25 days after entering bankruptcy.

Sungard Availability Services, a data center services provider, found itself back in bankruptcy after a 24-hour speedy prepack three years earlier. This time around, Sungard pursued a toggle sale/plan process. In 2022 there was a very quick prepack from **Seadrill New Finance**, which achieved a one-day confirmation (and its effective date nine days after the petition date) for its prepack designed to amend and extend approximately \$622.7 million of senior secured notes and to issue pro forma equity to the senior secured noteholders as part of the broader Seadrill restructuring.

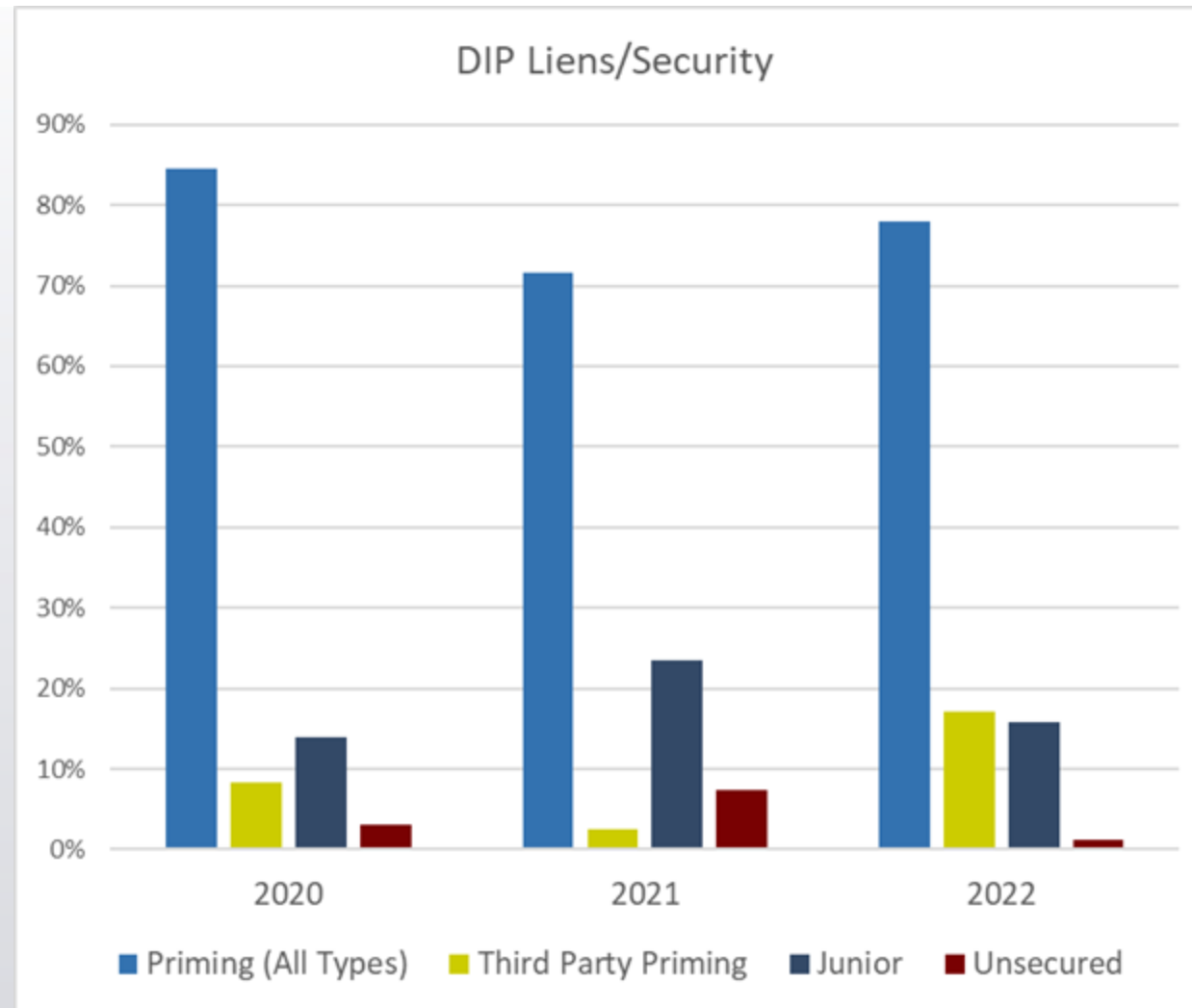
In contrast, the highest-profile true free-falls of the year were undoubtedly **FTX** and **Revlon**, discussed further below.

DIP Financing Trends

In 2022 we saw a rise in DIP financing provided by third parties, alongside a continuing drop in the share of DIPs provided by prepetition lenders (which nevertheless still account for super-majority of DIPs):



In addition to the increased prevalence of third-party-provided DIP financing facilities from 2021 to 2022, the proportion of DIPs lent by third parties seeking to prime the liens of prepetition secured parties increased significantly:



DIP Lenders as Stalking Horses

A number of 2022's debtors ran sale processes with the DIP lender also serving as stalking horse bidder, and in some cases the lender was also the prepetition lender. In almost all of these cases, the stalking horse ultimately prevailed as the successful bidder and purchaser, including in the following cases in which there were no other qualified bids: **Gold Standard Baking's** credit bid sale to the DIP lender and stalking horse, **Pareteum Corp.**'s sale to stalking horse bidders Circles MVNE Pte. Ltd. (also serving as DIP lender) and Channel Ventures Group LLC (the former minority holder of the company's first lien debt and agent and lender under an existing junior subordinated secured debt facility), insurance brokerage services provider **Vesta Holdings'** sale to the stalking horse, an affiliate of existing lenders and DIP lender, **NewAge Inc.**'s sale to the stalking horse and DIP lender, and **Corsicana Bedding's** sale to stalking horse, prepetition and DIP agent.

Stimwave Technologies Inc. also achieved a sale of substantially all of its assets to an affiliate of prepetition and DIP lender Kennedy Lewis, but only after a "competitive" auction; the debtors describing this as a "unicorn" sale that would result in full or close to full payment to GUCs, and overcoming an objection from the wife of the debtors' former CEO, who alleged that the sale was based on "insider manipulation."

An exception to the stalking horse prevailing as the purchaser was **EYP Group Holdings Inc.**, in which third-party Page Southerland Page Inc. was ultimately approved as the purchaser, over stalking horse, prepetition and DIP lender Ault Alliance. The auction had been adjourned several times, after the debtors and the official committee of unsecured creditors reached an agreement on the designation of Page's bid as a qualified bid.

Despite eventual approval of nearly all of these sales to DIP lenders and/or existing lenders, the debtors had some roadblocks to approval of bid protections, including Judge J. Kate Stickles' denial of bid protections for the stalking horse in the **Gold Standard Baking** case in light of objections from the U.S. Trustee and official committee of unsecured creditors, and Judge Lisa G. Beckerman sustaining the UCC's objection to a breakup fee for the stalking horse bidders in Pareteum Corp. Judge Laurie Selber Silverstein ultimately approved Vesta's bid procedures, overcoming concerns that \$1.5 million in expense reimbursement for the stalking horse bidder, a consortium of first lien lenders, was a "disguised breakup fee." Judge Silverstein also approved a breakup fee and expense reimbursement in **NewAge Inc.**, finding that the eventual purchaser - stalking horse and DIP lender - was not an insider on the basis of what was known at the time of the bid procedures hearing.

Certain other debtors proposed bid procedures without a breakup fee or expense reimbursement, including Stimwave, which did not contemplate any breakup fee or expense reimbursement for the stalking horse, which the debtors stressed would not impede overbids. **MD Helicopters** also did not have any proposed breakup fee or expense reimbursement and achieved an eventual sale to the stalking horse affiliated with Zohar funds (holders of certain of the debtors' equity and first lien obligations). That case ended with a structured dismissal, despite opposition to the sale from the state of the Netherlands, which had its motion for stay pending appeal of the sale denied.

Thank you for your attendance.

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