

NASBP Virtual Events

# Chapters 7, 11, and 13 Are Not Just in Books: Understanding Bankruptcy as a Surety Professional

CHAD L. SCHEXNAYDER AND ALANA L. PORRAZZO  
JENNINGS, HAUG & CUNNINGHAM, LLP

CLS3

## Bankruptcy Climate in 2020

### •Energy

- Chesapeake, Fieldwood, Arena Energy...

### •Retail

- Pier 1, Neiman Marcus, Tailored Brands...

### •Hospitality/Entertainment

- Pain Quotidien...
- AMC Theatres?

### •Transportation

- Hertz, The Las Vegas Monorail Company...
- Airlines?



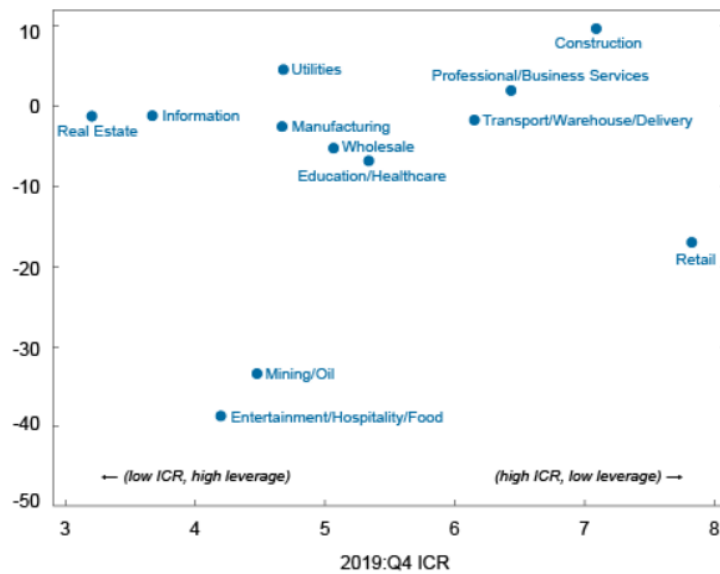
NASBP Virtual Events

CLS4

## Q1:2019 vs. Q1:2020 The Largest Cash Flow Declines Were in Two High-Leverage Industries

Source: [American Bankruptcy Institute Newsroom](#) (CRSP-COMPUSTAT Merged Database, Fundamentals Quarterly)

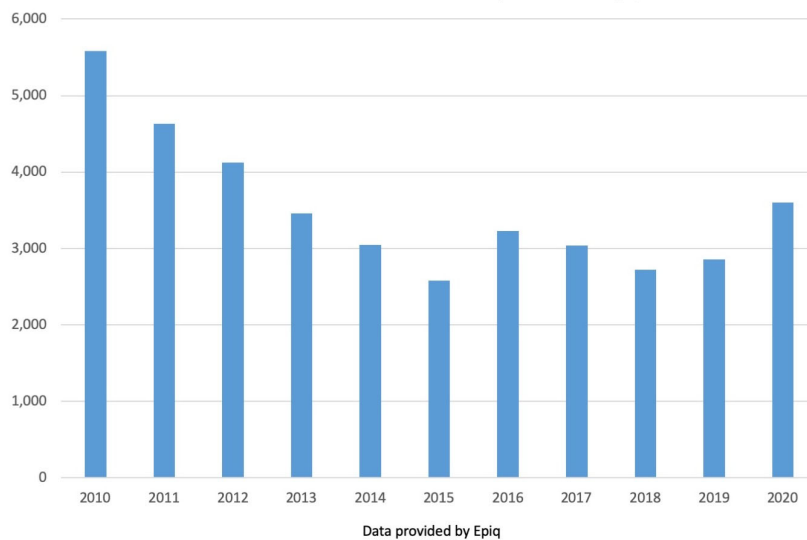
Percent change in EBITDA, 2019:Q1-2020:Q1



CLS12



First Half Calendar Year Commercial Chapter 11 Filings, 2010-20



CLS6

# CHAPTER 7

---

- Liquidation
- Appointment of bankruptcy trustee to identify, collect, liquidate, and distribute assets
- Core tenets of “breathing space”; ratable distribution; and discharge apply



NASBP Virtual Events

CLS7  
CLS23

# CHAPTER 13

---

- “Wage earner’s plan”
- Individuals or sole proprietorships
- Installment repayments over 3–5 years
- Appointment of trustee to whom Debtor makes plan payments
- Unsecured and secured debt thresholds for eligibility



NASBP Virtual Events

CLS9

# CHAPTER 11

---

- Reorganization or liquidation
- Objective: Plan confirmation or reorganization
- Expensive
- Advent of the pre-pack



NASBP Virtual Events

CLS10

# CHAPTER 15

---



- Modeled after UNCITRAL Model Law on Cross-Border Insolvency
- Recognition of foreign insolvency proceedings in U.S. Bankruptcy courts
- Key concepts:
  - Main vs. nonmain proceedings
  - Recognition
  - Post-recognition relief



NASBP Virtual Events

CLS11

## SBRA: The New Small Business Bankruptcy

---

- New subchapter V of chapter 11 effective February 19, 2020 (“sub V case”)
- Temporary increase of debt limits for eligibility under the CARES Act (from \$2,725,625 to \$7.5 million)
- Trustee, but with debtor in possession of assets and control of business
- Expedited administration:
  - 60-day status conference
  - Plan within 90 days; no disclosure statement
- Consensual plan -> Discharge (termination of the automatic stay)
- Cramdown plan -> Discharge to occur until completion of plan payments (3–5 years)



NASBP Virtual Events

CLS26

## The Commercial Surety Account and Chapter 11

---



NASBP Virtual Events

CL12  
CLS14

## The Days and Months Before Bankruptcy...



NASBP Virtual Events

CLS15

## What Can You Do? Will It Work?

- Obtaining Collateral
- Types of collateral
  - Letters of credit (“LOCs”)
  - Cash
  - Security interest in receivables, etc.
- Bankruptcy’s “preference” doctrine
- Types of collateral not created equal
  - LOCs and their proceeds:
    - Advantageous, but not invincible



NASBP Virtual Events

CLS27

## Bankruptcy Is Filed



NASBP Virtual Events

CLS16

## First Day Motions and Declarations

- Why? [CLS17](#)
- Utilities motion
- Debtor-in-possession ("DIP") financing motion
- Insurance and/or surety bond motion [CLS18](#)

[CLS19](#)

NASBP Virtual Events

CLS20

## Pendency of the Chapter 11 Case

- Debtor operations in Bankruptcy
- Surety exposure likely Increases
- Continued role of underwriting, account agent-broker
- Bond continuation or renewal
- Bond cancellation
- Post-petition surety credit facility



NASBP Virtual Events

CLS22

## Disclosure Statement and Plan

- Plan release, exculpation, and injunction provisions
- Post-confirmation issues
  - New indemnity agreements/collateral agreements needed?
  - Return of collateral considerations



NASBP Virtual Events



## WITH QUESTIONS



Chad L. Schexnayder  
[CLS@JHC.law](mailto:CLS@JHC.law)  
602-234-7830

Alana L. Porrazzo  
[ALP@JHC.law](mailto:ALP@JHC.law)  
602-234-7856



NASBP Virtual Events

CLS1

## Collateral Swaps

*#1: A distressed account requests that the surety's existing LOC be cancelled, and the surety re-collateralized with an equivalent amount of cash.*

ANY RISK?

*#2: A distressed account requests that the surety accept an LOC in lieu of the cash presently held by the surety as collateral.*

ANY RISK?



NASBP Virtual Events

CLS25

## Underwriting Long Before the Threat of Bankruptcy

---

- The indemnity agreement
- *Signed* (and specific) financial statements
  - Non-dischargeability in bankruptcy CLS24
- The collateral agreement



NASBP Virtual Events