Examiners: The Chapter 11 Investigator, Mediator And Fiduciary Of The Bankruptcy Estate

Introduction

For this article, Allen Law Group P.C. compiled a list of large companies that have filed for chapter 11 (mostly publicly traded companies) from 2011 to 2019. The sample size is 228 companies. Out of the sample size of 228 large companies that filed for bankruptcy from the list we compiled, in nine (9) of those bankruptcy cases a court appointed an examiner. Thus, out of the sample size of 228 large companies, the court appointed an examiner in 3.9% of the time. This rate is consistent with a previous study that also had a rate of 3.9% where a court appointed an examiner based on a sample size of large publicly traded companies which filed for chapter 11 from 1991 to 2010.[1]

Research indicates that examiners are more likely to be appointed in very large, highly disputed cases like the Enron, Worldcom and Lehman cases and that a party's request to appoint a trustee makes it more likely a court will appoint an examiner.[2] The research we conducted for this article is consistent with these findings that examiners are more likely to be appointed in very large, highly disputed cases; the recent cases we researched such as the Caesars and Dynegy cases are very large, complex and highly contested. Further, our research indicates that these cases often involve private equity investors, who are accused of fraudulent transfers and breach of fiduciary duty claims.

At the end of this article is an exhibit, which provides the sample size of 228 large companies. This article will present background on examiners generally and background on the nine (9) cases we found from 2011 to 2019 where a court appointed an examiner. The chapter 11 cases are Caesars Entertainment Operating Company, Inc., Dynegy Holdings, Residential Capital, Wonderwork Inc., Transtar, Firestar Diamond Inc., Samuels Jewelers, IPS Worldwide, and Sears Holdings.

For chapter 11 cases, the U.S. Bankruptcy Code allows for a party in interest to request a court to appoint an examiner to investigate as the court considers appropriate. Generally, an examiner will file a report, which provides the examiner's findings, with the court; the examiner may find several reports as the investigation progresses. As the nine cases we present in this article demonstrate, an examiner can play a crucial role in resolving disagreement among parties in a chapter 11 case and ultimately facilitate a settlement agreement among the parties for the debtor's reorganization plan in chapter 11, and examiners are also, generally, very effective at uncovering fraud and misconduct.

A party in interest in chapter 11, such as the creditors, debtor, U.S. trustee, or equity holders may request a court to appoint an examiner. An examiner is a disinterested fiduciary, whose findings are relied upon by courts, to be independent and objective. Unlike a chapter 11

trustee, who takes over management from the debtor, an examiner carries out his or her independent investigation and other duties while the debtor continues to run the business.

Under § 1104(c) of the Code, a party in interest or the U.S. trustee, in chapter 11, may request a court to appoint an examiner before confirmation of a plan of reorganization. Also, § 1104(c) states that the court will appoint an examiner to investigate if it is in the interests of creditors, equity holders, and other interests of the estate or the debtor's fixed, liquidated, unsecured debts exceed $5 million. This section further provides that a court will appoint an examiner, "as appropriate," to investigate "any allegations of fraud, dishonesty, incompetence, misconduct, mismanagement or irregularity in the management of the affairs of the debtor of or by current or former management of the debtor."[3]

The plain meaning of § 1104(c)(2) would seem to imply that if the debt has over $5 million of unsecured debt, if a party in interest files a motion to the court, the court must appoint an examiner. However, not all courts agree on this interpretation of § 1104(c)(2).[4] Examiners may investigate allegations such as fraud, dishonesty, incompetence and mismanagement and can compel broad discovery of documents and have broad discretion of individuals they may interview under Rule 2004 of the Bankruptcy Rules.

§1104(c) of the U.S. Bankruptcy Code provides the statutory basis for a court to appoint an examiner.[5] Rule 9104 of the Federal Rules of Bankruptcy Procedure governs a party in interest's filing of a motion to appoint an examiner.[6] Also, § 1112(b) of the Code provides another path to appoint an examiner.[7] Several courts have ruled that they have the inherent authority to appoint an examiner sua sponte.[8] Under the plain language of § 1104(c), the appointment of examiner is discretionary if debtor owes less than $5 million; but courts are in disagreement as to whether the appointment is mandatory if the debtor owes greater than $5 million despite the plain language of §1104(c) suggesting that such appointment is mandatory if debtor owes over $5 million.[9] Also, some courts have opted to assign the duties to an official committee of unsecured creditors instead of appointing an examiner.[10]

Once a bankruptcy court orders to appoint an examiner, the U.S. trustee after consultation with parties in interest will appoint a disinterested person, subject to the court's approval, which is not the U.S. trustee, to act as the examiner in the case.[11] Usually, the examiner is an individual; but the U.S. Bankruptcy Code allows a court to appoint a partnership or a corporation as an examiner.[12]

The only express qualifications for an examiner is that the examiner be a "disinterested person" and not be a U.S. Trustee under the U.S. Bankruptcy Code.[13] Under the Code, a "disinterested person" is not a creditor, equity holder, or insider and was not a director, officer or employee of the debtor within 2 years of the debtor's filing for bankruptcy; and does not hold an interest materially adverse to the estate or any class of creditors or equity holders.[14]

Bankruptcy Rule 2007 requires that the court's order that approves the appointment of the examiner must be made via an application submitted by the U.S. Trustee, and the application must provide the names of the parties in interest that the U.S. Trustee consulted with in regards to the appointment.[15] A candidate for appointment as an examiner must include any "relationships" or "connections" of the individual's firm that may pose a conflict with parties to the case.[16]

A court's order of appointment for the examiner must, at least, include that the court's finding that the examiner is a disinterested person, the examiner's specific and general duties, directions to the parties in interest, including the debtor, to cooperate with the examiner, which includes providing access to documents and information that is relevant to the investigation and that the creditors' committee, any equity committee (if appointed) and examiner cooperate to avoid unnecessary duplicative effort.[17] The order must also include the deadline the examiner must file the initial, interim and final reports, the examiner's grant of authority to retain professionals and that examiner and the examiner's professionals must be paid pursuant to any court orders concerning interim compensation entered in the case and a grant of authority to issue subpoenas, require document production and undergo Rule 2004 exams.[18] Thus, because the issue of whether an examiner is disinterested is subject to the scrutiny of a court and parties in interest, the examiner's report is generally viewed as credible and neutral to be relied upon by the court and parties in interest.

Generally, an examiner's duties include investigating the debtor and preparing and filing a report that documents the examiner's findings. An examiner has expansive discretion to undergo his or her investigation unless the court expressly limits the scope of the investigation.

As this article will demonstrate, recent chapter 11 cases where a court appoints an examiner, such as the Caesars, Dynegy and ResCap bankruptcies demonstrate once again that examiners and their legal and financial advisors, in practice act as disinterested and independent fiduciaries that effectively facilitate chapter 11 reorganizations, which are in the best interest of the debtor's bankruptcy estate and the estate's creditors. Further, some courts rely on § 1106(b), which allows an examiner's duties to expand beyond investigation and reporting to include any "other duties of the trustee that the court orders the debtor-in-possession not to perform," such as the duty to mediate disputes and negotiate chapter 11 reorganization plans or settlements among parties.[19]

As the following cases demonstrate, the examiner's report can play a crucial role in resolving areas of disagreement among the parties in interest and lead to a successful reorganization plan in complex and highly contested chapter 11 cases and avoid litigation among the parties in interest. Generally, an examiner also is very effective at uncovering fraud and misconduct as shown in several of the following cases.

Caesars Bankruptcy

In Caesars bankruptcy, the examiner investigated over fifteen related transactions between the debtor, Caesars Entertainment Operating Company (CEOC), a subsidiary, and other entities under the control of the parent company, Caesars Entertainment Corporation (CEC) and private equity sponsors, Apollo Global Management and TPG Capital over a period of more than five years.[20] The examiner determined while the parent company, CEC, and the sponsors, had treated CEOC as if it was a solvent wholly owned subsidiary, in reality CEOC was insolvent, which was confirmed by recent financial analysis created by CEC and the sponsors.[21]

The Caesars' chapter 11 case was a very complex bankruptcy case as demonstrated by the examiner's reports, which totaled 1,787 pages. Leading up to the bankruptcy, in 2008, private equity investors including Apollo and TPG, undertook a leveraged buyout (LBO) of $31 billion of CEC, which was one of the largest LBOs ever.[22] By late 2008 through 2014, the examiner found that there is a strong case CEOC was insolvent and "from the last quarter of 2013 through 2014 (when the most significant transactions took place) it was certainly insolvent."[23] In the report, the examiner concluded that the results of his investigation of the related transactions provide evidence giving rise to claims against CEC, its board and other related parties for engaging in constructive fraudulent transfers, actual fraudulent transfers, breaches of fiduciary duty, and aiding and abetting breach of fiduciary duty.[24] As a result, the potential damages for "claims considered reasonable or strong" range from $3.6 billion to $5.1 billion for recovery by the debtor's bankruptcy estate and its creditors, the examiner stated.[25]

More specifically, the examiner concluded his findings indicate "strong claims" that a certain transaction, referred to as the CERP Transaction constituted both a constructive and actual fraudulent transfer, that the directors and Apollo and TPG, the controlling shareholders, breached their fiduciary duties and the Apollo and TPG and affiliates aiding and abetting the breach of fiduciary duties.[26] The report states that a strong claim is "a claim having a high likelihood of success.....if litigated."[27]

In the CERP Transaction, CEOC suffered a net loss "of between $200 million and $298 million, with a midpoint loss of $249 million," the examiner found.[28] Further, for the CERP Transaction, "CEC and the Sponsors [Apollo and TPG] were on both sides of the transaction – buyer and seller – and actively sought to secure the lowest price for the seller, CEOC, thereby clearly harming CEOC's creditors."[29] In completing the report, the examiner and his advisors reviewed over 8.8 million pages of documents and interviewed 92 individuals. Input obtained through meetings and written presentations received from the parties in interest including CEC, Apollo, TPG, the two official committees, Caesars Acquisition Corporation (CAC) and the ad hoc committees of first lien note holders and first lien bank debt and their advisors was of great value to the examiner, according to the examiner's report.[30]

Further, due to CEOC's financial troubles by late 2012, the sponsors, Apollo and TPG, started to implement a strategy with the purpose of strengthening CEC's and the sponsor's position in potential restructuring negotiation with creditors and improving their position in bankruptcy for CEC or CEOC, the examiner reported.[31]

In 2008, as a result of a leveraged buyout (LBO), CEOC become highly leveraged incurring $17.4 billion in debt.[32] The examiner found that CEOC was solvent at the time of the LBO and that the LBO did not render it insolvent.[33] Then, from late 2008 through mid 2012, the sponsor and CEC through CEOC engaged in over 30 financial transactions and as a result by late 2012 extended the maturity dates of CEOC's debt to 2015 and beyond in hopes that the economy and gaming business would recover by then.[34] By the end of 2013, the sponsors and CEOC become increasingly concerned about a potential CEOC bankruptcy, and this prompted the sponsors and CEC to engage in transactions to protect CEC.[35]

Once an entity becomes insolvent the fiduciary duties of officers, directors and controlling shareholders change since the "residual beneficiaries of an insolvent entity are no longer limited to its equity holders, but also include its creditors," the examiner reported.[36] Thus, the examiner explained that once CEOC became insolvent a potential conflict of interest arose between CEC, which owned CEOC and CEOC itself.[37] Officers and directors who served both CEC and CEOC were thus in an "inherently conflicted position;" but, CEC, the sponsors and their advisors until at least late June 2014 never acted as if such an inherent conflict existed, according to the examiner's report.[38]

Moreover, CEC, Apollo and TPG effectively made the decisions on behalf of CEC and in none of the investigated transactions before August 2014 did CEOC have independent directors or advisors to look out for its best interests, and the chief financial officer of CEC testified in a deposition that until May 2014 CEC made decisions on behalf of CEOC, the examiner found. Thus, CEOC should have had independent directors and advisors for the period of time concerning the investigated transactions, the examiner explained.[39]

In order to assess the financial condition of an entity for purposes of fraudulent transfer and breach of fiduciary duty, courts make three separate inquiries: 1) the balance sheet test, 2) cash flow test and 3) capital adequacy.[40] Failure of any one of the three tests can give rise to legal claims.[41] The balance sheet test measures solvency and asks whether the fair value of CEOC's assets are in excess of its debts; thus if the debts are greater than the assets the entity is insolvent at the date of the balance sheet.[42] The cash flow test asks whether CEOC had the ability to pay its debts as they came due.[43] The capital adequacy test asks whether CEOC had adequate capital for the business in which it was engaged.[44]

In the exhibits of the examiner report is detailed valuation analysis of the investigated transactions.[45] The examiner retained Alvarez & Marsal Global Forensic and Dispute Services,

LLC as his financial advisors for valuation and other financial analysis.[46] According to the financial analysis of the examiner's financial advisors there is a strong case that CEOC was insolvent at the end of 2008, 2009, 2010, 2011, 2012, 2013 and 2014 under the balance sheet test; also there is a strong case CEOC failed the capital adequacy test for each of those years and a reasonable case CEOC failed the cash flow test through the end of 2011, and a strong case it failed that test in years subsequent.[47]

The extent of CEOC's insolvency increased greatly over time; CEOC was insolvent by $3.25 billion for the end of 2008 and for the end of 2011 it was insolvent by $6.77 billion, and then by the end of 2014 CEOC was insolvent by $12.31 billion, according to the examiner's report.[48] The examiner refuted CEC's computation of enterprise value, stating that to compute enterprise value, CEC's analysis "used EBITDA numbers higher than reported in their 10-Ks" and that CEC made other errors in its financial analysis.[49]

The examiner found that although the witnesses for the CEC and Apollo and TPG uniformly stated that they did not believe CEOC was insolvent since it was paying its debts, had not defaulted and extended its debt maturities that this view ignores "everything but the objective aspect of the cash flow test and bears no relationship to the actual solvency test" and that there was "no realistic possibility that the debt could ever be repaid at anything close to face value."[50]

Further, a fact finder would not find the sponsors or CEC's witnesses' positions to be credible, particularly because in an April 2009 presentation the board of CEC was "explicitly advised about the legal definition of insolvency" and more importantly because of the "numerous facts" available to CEC, its board and sponsors, which were "clear signs of insolvency," the examiner reported.[51] For instance, Apollo and CEC analyses and board presentations described "CEOC as being free cash flow negative by a wide margin for the foreseeable future absent extraordinary – and wholly unrealistic – increases in CEOC's EBITDA, even without considering repayment of principal," the examiner explained.[52]

The examiner further found that given all the information available to CEC and its sponsors, Apollo and TPG, who are "among the most sophisticated investors in the country," they should have understood the reality of the financial condition of CEOC and taken appropriate action.[53] Further, one of the independent directors appointed to CEOC's board in late June 2014 stated in an interview that he did not need to conduct a formal solvency analysis of CEOC; he simply looked at the information available and concluded that "his operating assumption had to be that CEOC was insolvent," according to the examiner's report.[54]

The examiner reviewed and analyzed several "fairness" opinions to the relevant transactions that the financial advisors provided at the request of CEC, Apollo or the CEC special board committees; the "fairness" opinions were given to the CEC board, and, in some cases, to the CEOC board.[55] These opinions were "sought in recognition of the fact that if CEOC

was insolvent" the opinion would be important in avoiding claims of fraudulent transfer and also in some cases to comply with requirements of credit agreements for related party transactions, according to the examiner's report.[56] The opinions "relied heavily on the accuracy of information and assumptions provided by management," and, generally, the projections that should be used in valuations are the "most recently available ordinary course company projections," and not projections, which were created "solely for the purpose of securing a fairness opinion," as the examiner explained.[57]

During the relevant period, Apollo served as the de facto chief financial officer of CEOC, and the chief executive of officer of CEC and CEOC and other senior management deferred to Apollo and TPG on key issues, which included selecting certain CEOC properties to be sold to affiliated entities controlled by CEC and Apollo and TPG, the examiner found.[58] Further, it appears Apollo and TPG's past success in negotiating resolutions concerning distressed companies played a role in their assuming they could engage in transactions on behalf of CEOC "without the need to pay adequate attention to the requirements associated with being fiduciaries of an insolvent entity," the examiner reported.[59]

Apollo structured a certain transaction referred to as the Four Properties Transaction, which includes the sale of certain casino and resort properties, in such a manner that the assets were transferred from CEOC and placed in other entities under the control of Apollo, TPG and CEC, thereby allowed Apollo to "effectively retain possession and/or control of these assets," according to the examiner's report.[60] In other words, Apollo and TPG seemingly ignored the fiduciary duties that they and CEC owed to the estate of CEOC and CEOC's creditors; as shareholders and de facto officers of CEOC, Apollo and TPG owed a duty of loyalty to CEOC, which includes a duty to act in the best interests of CEOC's estate and the estate's creditors and not put their self interest before CEOC estate's interest and the estate's creditors. Thus, Apollo and TPG by acting in their own self interest, and thereby inflicting great financial harm to CEOC's estate and its creditors, seemingly breached their fiduciary duty, specifically, the duty of loyalty that they owed to CEOC's estate and its creditors. The examiner found that in the "vast majority (if not all) of the transactions under investigation," the duty loyalty was implicated since CEC, Apollo and TPG were on both sides of the transactions and CEO's board at almost all relevant times was "comprised solely of CEC officers;" CEOC did not have independent directors on its board until late June 2014.[61]

The examiner report led to a settlement of the disputed transactions and debtor's and sponsors' alleged misconduct.[62] Ten months after the examiner report, in January 2017, the bankruptcy court approved Caesar's reorganization plan, which included the settlement of debtor's, CEOC's, and its creditors' legal claims against the parent company and its private equity sponsors.[63] As for the reorganization plan, the parent company and its sponsors, Apollo and TPG, agreed to contribute more than $5 billion to CEOC's restructuring.[64] The settlement amount of more than $5 billion is consistent with the examiner's report's range of the potential

damages for "claims considered reasonable or strong" range from $3.6 billion to $5.1 billion for recovery by the debtor's bankruptcy estate and creditors.[65]

The settlement greatly increased the expected recovery of junior creditors to about 66 cents of every dollar owed; at the beginning of the case, junior creditors were only expected to recovery nine cents of every dollar.[66] Thus, the examiner's findings in this case led to the relatively swift settlement and, considerably increased the recoveries for junior creditors.[67] Accordingly, as shown in the Caesars case, examiners can serve a crucial role in facilitating settlements among parties in complex and highly contested chapter 11 bankruptcies.

Other Recent Bankruptcy Cases Involving Examiners

Dynegy

In March of 2012, in the bankruptcy of Dynegy Holdings LLC, a subsidiary of Dynegy Inc., the parent company, the court appointed examiner found that certain assets transferred from the subsidiary to the parent company before the subsidiary's bankruptcy filing gave rise to claims for actual and constructive fraudulent transfer against Dynegy Inc.[68] Also, the examiner found that the board of directors of Dynegy breached their fiduciary duty by approving the transfer of assets.[69] In the months prior to Dynegy Holdings filing for bankruptcy, Dynegy Inc. engaged in a series of transfers with the purpose of restructuring its corporate debt; certain coal power plant assets of Dynegy Holdings with a value of $1.25 billion were transferred to Dynegy Inc. in exchange for unsecured debt that required Dynegy Inc. to make payments to satisfy the debt to Dynegy Holdings.[70] The examiner determined that this transfer in effect "transferred hundreds of millions of dollars away from Dynegy's creditors in favor of its stockholders," and the purpose of the transfer was to force Dynegy Holding's bondholders to agree to an exchange for bonds that Dynegy Inc. issued.[71] Dynegy had actual intent to hinder and delay, but not necessarily to defraud its creditors in the transfer of assets, and thus, the transfer may be recoverable as an actual fraudulent transfer under the U.S. Bankruptcy Code, according to the examiner's report.[72]

The examiner explained that "it is a bedrock principle that a company's creditors must be paid in full before its stockholders can receive or retain any value - unless, of course, creditors agree otherwise."[73] This principle is embodied in the "absolute priority rule" as provided in § 1129(b)(2)(B)(ii) of the U.S. Bankruptcy Code.[74] In the bankruptcy of Dynegy Holdings LLC, after a bond trustee filed a motion to appoint an examiner to investigate for fraudulent transfers and other misconduct, the court appointed an examiner to investigate Dynegy's conduct prior to its filing for bankruptcy.[75] Also, the examiner found that the assets may be recovered under constructive fraudulent transfer grounds to the extent Dynegy was insolvent at the time of the transfer.[76] Under § 548(a)(1)(B) of the Code, a trustee or debtor-in-possession may avoid a transfer on constructive fraud grounds if the transfer was made for "less than a reasonably equivalent value."[77] The examiner valued the bonds that Dynegy Inc. had planned to issue to

have a present value of $860 million, which was much less than value that Dynegy Inc. received for the coal related assets.[78]

The examiner found that Icahn Enterprises LP, a private equity firm, who was the largest shareholder of Dynegy Inc., designated two of its employees to Dynegy Inc.'s board; these two directors which were employees of Icahn actively planned and voted in favor of the disputed transfer of the coal power plant assets; also, Seneca Capital Investments, LP, a private equity firm, had designated one of its employees to Dynegy Inc.'s board, who also voted in favor of the disputed transfer.[79]

The examiner's report led to a mediation, in which the examiner served as a mediator that resulted in a reorganization plan where the unsecured creditors would receive 99% of the equity and Dynegy Inc. shareholders, including Icahn and Seneca would receive 1% of the equity plus warrants; in September 2012, the New York bankruptcy court confirmed that reorganization plan.[80] The Dynegy case, as with the Caesars case shows the unique and important role examiners can play in facilitating agreements among parties in highly contested and complex chapter 11 cases.

Samuels Jewelers

In February of 2019, in the Samuels Jewelers bankruptcy, a court appointed an examiner, who filed a report stating Samuels Jewelers laundered money in connection with an alleged $2 billion fraud on India's Punjab National Bank.[81] According to the examiner's report, the alleged fraud occurred for several years involving the U.S., India, Hong Kong and the United Arab Emirates.[82] The examiner report stated that several businesses controlled by Mehul Choksi engaged in sham transactions of tens of millions of dollars in cash and diamonds, which created the illusion that the transactions occurred with outside companies.[83]

Choksi used Samuels Jewelers as a conduit to flow money through deals with "puppet vendors" and "paper companies," which engaged in sham transactions with entities controlled by Choksi and thereby helping to mislead Punjab National Bank into providing financing to entities under the control of Choksi, according to the examiner's report.[84] Also, the examiner found that Choksi used several shell companies to carry out the fraud in order to convince the Punjab National Bank that Samuels Jewelers was in a better financial position than it actually was in.[85]

Samuels Jewelers, which operated about 120 stores across the U.S., began in 1891 and later was acquired by Choksi in 2006 and, then filed for chapter 11 bankruptcy in August 2018; stating that the negative publicity from bank fraud allegations hurt its business.[86]

WonderWork

In November 2017, in the bankruptcy of WonderWork Inc., a non profit charity, the examiner's report stated that due to the "evidence of mismanagement and improper fundraising and reporting practices" there was sufficient grounds to appoint a trustee to run the charity.[87]

According to the examiner's report, WonderWork served as an example on how a chief executive officer (CEO), "left unchecked by a passive and overly deferential board of directors, can damage a charity beyond repair."[88] After the examiner filed the report, WonderWork stated that the CEO would step down from his position and from the board of directors.[89] The CEO had used $54.4 million in donations in cumulative since 2011 to unduly enrich himself and others, and used false and deceptive solicitation materials; failed to honor matching donations, and also made false and deceptive statements in public filings, the examiner reported.[90] The examiner's report also led to WonderWork, its top creditor and the U.S. Trustee, to agree that the court should appoint a chapter 11 Trustee as the report had suggested, and the court to subsequently request the U.S. Trustee to find a chapter 11 trustee to run the charity.[91]

WonderWork, a charity that provides free surgeries globally to children and adults, had filed for bankruptcy a year prior to the examiner's report due to long standing litigation with another charity organization, Help Me See, that provides free medical work.[92] After WonderWork filed for bankruptcy, Help Me See, who was owed $16 million from WonderWork, asked the court to appoint a chapter 11 trustee; the court was concerned that appointing the chapter 11 trustee, and thereby ousting the management including the CEO from running the charity would be "the death penalty for WonderWork."[93] Thus, the court opted to appoint an examiner to investigate into the financial position of WonderWork and the conduct of its CEO.[94]

Firestar Diamond

After Punjab National Bank (PNB) accused Firestar Diamond Inc. and other related businesses of participating in an alleged $2 billion banking scam, Firestar filed for bankruptcy and a court appointed an examiner.[95] The examiner's report in this case confirmed PNB's allegations.[96] The examiner's report stated that the founder of Firestar used foreign shell companies to orchestrate the alleged financing fraud and that there was evidence that the shell companies purchased and sold unfinished jewelry stones in transactions with U.S. companies.[97]

However, the line of business that the U.S. companies dealt in was the selling of finished jewelry rather than unfinished jewelry stones.[98] The examiner's report further explained that Firestar's founder, in essence, believed the more diamonds Firestar and related entities could buy and sell among each other the more financing that Firestar and related entities could obtain from PNB; the same diamonds were sold over and over again sometimes at "wildly inflated prices.[99] For instance, one yellow orange cushion-cut stone appeared to have been exported three times

and imported one time within a five week period.[100] An expert had said that the stone was worth about $188,000 and it apparently was exported several times with a price of over $1 million in each instance.[101] Soon after the examiner's report was filed, a chapter 11 trustee took over the business of Firestar.[102] The chapter 11 trustee stated he would review the examiner's report in detail to determine how to proceed.[103]

IPS Worldwide

In February 2019, a bankruptcy court appointed an examiner in the chapter 11 bankruptcy case of IPS Worldwide LLC, a freight payment service provider, in order to investigate IPS in regards to over $100 million of the company's debt.[104] In the IPS case, the U.S. Trustee stated that serious allegations had been raised by numerous creditors and that an examiner would aid in providing clarity.[105]

An unsecured creditor with a claim of at least $35 million in the bankruptcy, Stanley Black & Decker Inc. accused IPS of misappropriating funds, stating the company "diverted, stole or otherwise misappropriated millions of dollars of funds that properly belong to Stanley Black & Decker."[106]

The U.S. Trustee stated that management's inability to explain the whereabouts of tens of millions of dollars indicates at a minimum incompetence or misconduct.[107] The examiner's initial report in the case stated that while IPS is a viable business, management lacked "sufficient knowledge to lead day-to-day operations effectively."[108]

Then, a chapter 11 trustee took over in running IPS after the U.S. Trustee asked for the appointment of the chapter 11 trustee.[109] The judge in the case stated that the examiner's reports indicated "significant fraud, gross mismanagement, incompetence and every kind of condition needed to appoint a chapter 11 trustee."[110]

Accordingly, the Samuels Jewelers, WonderWork, Firestar and IPS cases each demonstrate how examiners, generally, are very effective at investigating and uncovering fraud and misconduct.

Residential Capital

In June 2012, in the bankruptcy case of Residential Capital LLC, the bankruptcy court appointed an examiner; granting Berkshire Hathaway Inc.'s motion to appoint an examiner.[111] The examiner report was made public in late June 2013 after the bankruptcy court approved the settlement agreement.[112] The bankruptcy court agreed to allow the examiner report to be filed and kept under seal from public disclosure while ResCap, its creditors and Ally negotiated a binding settlement agreement.[113]

In ResCap, the examiner's report totaled over 2,200 pages and ResCap's bankruptcy estate incurred costs of about $80 million.[114] The appointed examiner, former U.S. Bankruptcy

Judge Arthur J. Gonzalez was requested by creditors including Berkshire Hathaway.[115] The creditors of ResCap, which included mortgage insurers and bondholders, contended that parent company Ally Financial Inc. exercised complete control over ResCap throughout the existence of both ResCap and Ally, and thus, creditors of ResCap argued that Ally, the parent company, should be liable for an estimated $25 billion of ResCap mortgage liabilities.[116]

The examiner found several problematic issues with Ally and ResCap's relationship.[117] However, the examiner found that it would be difficult for the parties to prove Ally fraudulently transferred assets from ResCap.[118] The examiner report in ResCap is the result of one of the largest bankruptcy examinations to ever have been undertaken.[119] The examiner and his advisors reviewed nearly nine million pages of documents and conducted nearly 100 interviews of 83 witnesses.[120]

The release of the examiner's report was viewed to be a crucial factor in getting ResCap, its creditors and Ally to agree to a settlement, which the bankruptcy court approved in late June 2013.[121] Pursuant to the settlement agreement, Ally agreed to pay $2.1 billion to ResCap's bankruptcy estate for distribution to ResCap's creditors, and the agreement prevents the parties from backing out of the agreement based on the findings of the examiner's report.[122]

The settlement agreement replaced an earlier agreement in which Ally proposed to pay $750 million to ResCap's bankruptcy estate; ResCap's creditors had rejected the amount and had argued the amount was too small relative to the size of ResCap's liabilities.[123] Thus, the ResCap case in an excellent example of the value of the examiner's report in facilitating a settlement among the parties, and how keeping the report under seal can facilitate settlement among the parties since the results are unknown and the potential financial risks to the parties can be very substantial.

Transtar

In late December of 2016, a bankruptcy court appointed an examiner to investigate the chapter 11 debtor, Transtar, which is the largest distributor of automotive transmission parts in the U.S.[124] Transtar had filed for chapter 11 with a pre-negotiated agreement that proposed to transfer Transtar's new equity to its creditors.[125] In the Transtar bankruptcy, the U.S. trustee questioned whether Friedman Fleischer & Lowe LLC, a private equity firm and owner of 94 percent of Transtar's equity, had facilitated a fraudulent transfer by authorizing and receiving a $90 million dividend in 2014.[126]

The U.S. trustee also wanted an examiner to investigate into the steep drop in Transtar's enterprise value from over $600 million to between $275 million and $325 million, which occurred in 2016.[127] Transtar had stated the bankruptcy filing was due to a decline in revenue and earnings.[128]

The U.S. Trustee stated Transtar consented to the appointment of an examiner due in part to its bankruptcy case not having an official committee of unsecured creditors.[129] Ultimately, in January of 2018, Transtar reorganized and left chapter 11. The examiner's report in this case was not disclosed to the public.[130]

Under the terms of Transtar's reorganization plan, all of the equity holders interests were wiped out including majority equity holder Friedman Fleischer & Lowe LLC, which had equity of $100 million wiped out.[131] Under the reorganization plan, the first-lien creditors would receive all of the new equity of the reorganized debtor.[132]

Sears

Recently, in December of 2019, in the Sears Holdings Corp. bankruptcy, a bankruptcy court appointed an examiner to value certain inventory that the Sears bankruptcy estate transferred to the buyer, Transform Holdco LLC, which is controlled by ESL, a hedge fund, controlled by a Sears insider and former chief executive officer of Sears.[133] The results of the examiner's findings in this case are currently pending.

Conclusion

The Caesars, Dynegy and ResCap cases each demonstrate the unique and crucial role examiners can play in facilitating settlements among parties in complex and highly contested chapter 11 cases. The Samuels Jewelers, WonderWork, Firestar Diamond and IPS Worldwide chapter 11 cases show how examiners are, generally, very effective at investigating and uncovering fraud and misconduct. As the cases discussed in this article demonstrate, examiners and their advisors are disinterested and independent fiduciaries that act in the best interest of the bankruptcy estate, and fulfill their fiduciary duty to the debtor's estate in maximizing the value of the estate for the benefit of creditors. The chapter 11 cases presented in this article once again demonstrate that examiners and their advisors act as independent and disinterested fiduciaries, generally, with considerable expertise, to the debtor's bankruptcy estate in contrast to frequently conflicted directors, officers, insiders and controlling shareholders, who owe fiduciary duties to the bankruptcy estate yet often breach their fiduciary duties. Also, out of the sample size of 228 large companies that filed for bankruptcy from 2011 to 2019 in the list we compiled (in the exhibit at the end of this article) in nine (9) of those bankruptcy cases a court appointed an examiner, and thus, out of the sample size of 228 large companies, the court appointed an examiner in 3.9% of the time, and this rate is consistent with a previous study that surveyed 1225 large publicly traded companies in chapter 11 cases from 1991 – 2010 where courts also appointed examiners in those cases at a rate of 3.9%.

[1] Jonathan C. Lipson and Christopher Fiore Marotta, Examing Success (February 22, 2015), at 2 of PDF; the authors found that in 3.9% (48/1225) of the time a court appointed an examiner (sample size of 1225 chapter 11 bankruptcies from 1991 - 2010 of large publicly traded companies).
[2] Id. at 5.
[3] 11 U.S.C. §1104(c).
[4] Id.
[5] Id.
[6] Federal Rules of Bankruptcy Procedure (hereafter "FRBP") Rule 9104.
[7] 11 U.S.C. §1112(b).
[8] In re Mirant Corp., Case No. 03-46590, ECF 4817 (Bankr. N.D. Tex. July 30, 2004); In re FiberMark Inc. 339 B.R. 321 (Bankr. D. Vt. 2006).
[9] 11 U.S.C. §1104(c); In re Wash. Mut. Inc., No. 08-12229 (MFW), 2011 WL 57111, at 4 (Bankr. D. Del. Jan. 7, 2011); U.S Bank Nat'l Ass'n v. Wash. Trust Co. (In re Spansion Inc.), 426 B.R. 114, 127 (Bankr. D. Del. 2010).
[10] In re Table Talk Inc., 22 B.R. 706 (Bankr. D. Mass. 1982); In re Mechem Fin. of Ohio Inc., 92 B.R. 760 (Bankr. N.D. Ohio 1988).
[11] 11 U.S.C. §1104(d).
[12] John C. (Kit) Weitnauer, The Bankruptcy Court's Watchdog: The Appointment, Role and Power of Examiners Today, at 9 (2011); 11 U.S.C. §101(41) defines 'person' to include individual, partnership, and corporation.
[13] 11 U.S.C. §1104(d); 11 U.S.C. §101(14)(c). FRBP 2007.1(c).
[14] 11 U.S.C. §101 (14).
[15] FRBP 2007.1(c).
[16] 11 U.S.C. §101(14)(c). FRBP 2007.1(c).
[17] In re FiberMark Inc., 339 B.R. 321, 323, 324 (Bankr. D. Vt. 2006).
[18] Id.
[19] Order Directing Appointment of Dynegy Holdings Examiner, at 7 (examiner's duties include acting as a mediator); In re the New Power Co., 2007 WL 7143077 (Bankr. N.D. GA; June 25, 2007).
[20] Davis, Richard J., Final Report of Examiner, March 15, 2016. Case 15-01145, Document 3401, at 1.
[21] Id. at 4.
[22] Goldfarb, Jeffrey, "Caesars blinds market with science." New York Times, April 24, 2013; available at: http://dealbook.nytimes.com/2013/04/24/caesars-blinds-market-with-science/
[23] Davis, Richard J., Final Report of Examiner, March 15, 2016. Case 15-01145, Document 3401, at 4.
[24] Id. at 1.
[25] Id. at 1. A claim considered "reasonable" is "a claim having a reasonable, or better than 50/50, chance of success" if litigated.
[26] Id. at 486.
[27] Id. at 1, FN 3.
[28] Id. at 48.
[29] Id.
[30] Id. at 3.
[31] Id. at 2.
[32] Id. at 4.
[33] Id. at 1 – 4.
[34] Id.
[35] Id. at 2, 3.
[36] Id. at 6.
[37] Id.

[38] Id.
[39] Id.
[40] Id.
[41] Id. at 7.
[42] Id.
[43] Id.
[44] Id.
[45] Id. at 1455 of PDF.
[46] Id. at 86.
[47] Id. at 7. FN 10.
[48] Id. at 8.
[49] Id.
[50] Id. at 9.
[51] Id. at 10.
[52] Id.
[53] Id. at 11.
[54] Id.
[55] Id. at 11, 12.
[56] Id. at 12.
[57] Id. at 12. The examiner provided several other reasons as to why the "fairness" opinions and the analysis of the examiner and his advisors differed greatly.
[58] Id. at 2, 3.
[59] Id.
[60] Id. at 662.
[61] Davis, Richard J., Final Report of Examiner, March 15, 2016; Case 15-01145, Document 3401-16, at 130 (PDF page 1139).
[62] Jacqueline Palank, Wall Street Journal, Caesars Unit Wins Court Approval for Chapter 11 Exit Plan, Jan. 17, 2017.
[63] Id.
[64] Id.
[65] Davis, Richard J., Final Report of Examiner, March 15, 2016; Case 15-01145, Document 3401, at 1.
[66] Jacqueline Palank, Wall Street Journal, Caesars Unit Wins Court Approval for Chapter 11 Exit Plan, Jan. 17, 2017.
[67] Id.
[68] Report of Susheel Kirpalani, Examiner, In re Dynegy Holdings, LLC, No. 11-38111 (Bankr. S.D.N.Y. March 9, 2012), at 4 (hereafter "Dynegy Examiner Report").
[69] Id.
[70] Id. at 4, 5, 6, 7.
[71] Id. at 3, 4, 5.
[72] Id. at 4.
[73] Id. at 1.
[74] 11 U.S.C. § 1129(b)(2)(B)(ii). 11 U.S.C. § 1129(b)(2)(B)(ii) requires that in a chapter 11 plan of reorganization, a dissenting class of unsecured creditors must be paid in full before the holder of any junior claim or interest receives or retains any property.
[75] Jonathan Stempel, Wall Street Journal, Dynegy bankruptcy examiner to be appointed: judge, December 30, 2011.
[76] Dynegy Examiner Report at 4.
[77] Id.
[78] Id. at 3.
[79] Id. at 9, 32, 114, 157, 158.
[80] Joseph Checkler, Wall Street Journal, Judge Confirms Dynegy's Plan to Exit Bankruptcy, Sept. 5, 2012.

[81] Peg Brickley, Wall Street Journal, Samuels Jewelers Laundered Money in Indian Bank Fraud, Probe Finds, Feb. 21, 2019.
[82] Id.
[83] Id.
[84] Id.
[85] Id.
[86] Id.
[87] Lillian Rizzo, Wall Street Journal, WonderWork CEO Resigns After Allegations of Fraud at the Medical Charity, November 9, 2017.
[88] Id.
[89] Id.
[90] Id.
[91] Id.
[92] Id.
[93] Id.
[94] Id.
[95] Peg Brickley, Wall Street Journal, Probe Turns Up Evidence Linking Modi's U.S. Companies to Alleged Fraud, Aug. 27, 2018.
[96] Id.
[97] Id.
[98] Id.
[99] Id.
[100] Id.
[101] Id.
[102] Id.
[103] Id.
[104] Becky Yerak, Wall Street Journal, Judge Approves Examiner to Investigate Missing Money at IPS Worldwide, Feb. 11, 2019.
[105] Id.
[106] Id.
[107] Becky Yerak, Wall Street Journal, Bankruptcy Watchdog Seeks Ouster of IPS Management, March 22, 2019.
[108] Id.
[109] Becky Yerak, Wall Street Journal, In Rare Step, IPS Worldwide Gets Court-Appointed Chapter 11 Trustee, April 8, 2019.
[110] Id.
[111] Joseph Checkler, Wall Street Journal, In Win for Buffett, Judge Approves Examiner in ResCap Bankruptcy, June 18, 2012.
[112] Andrew R. Johnson, Wall Street Journal, Examiner Finds Rocky Relationship Between Ally, Rescap, June 26, 2013.
[113] Id.
[114] Id.
[115] Id.
[116] Id.
[117] Id.
[118] Id.
[119] Id.
[120] Id.
[121] Id.
[122] Id.

[123] Id.
[124] Jim Christie, Reuters Legal, Jenner & Block's Levin tapped as examiner for Transtar bankruptcy, December 29, 2016; In re Dacco Transmission Parts (NY) Inc et al (Bankr. SDNY); Case No. 16-13245.
[125] Id.
[126] Id.
[127] Id.
[128] Id.
[129] Id.
[130] Id.
[131] Alex Wolf, Law360, Auto Parts Firm Speedstar Files Amended Plan To Exit Ch. 11, February 22, 2017.
[132] Id.
[133] Josh Saul, Bloomberg, ESL-Sears Bankruptcy Brawl Gets Examiner on Contested Millions, December 10, 2019.

EXHIBIT

Company	Year filed	Examiner Appointed
Constar International Inc.	2011	No
Perkins & Marie Callenders Inc.	2011	No
Nebraska Book Company Inc.	2011	No
Jackson Hewitt Tax Service Inc.	2011	No
Majestic Capital Ltd.	2011	No
Sbarro, Inc.	2011	No
United Artists Theatre Company	2011	No
ShengdaTech, Inc.	2011	No
NewPage Corporation	2011	No
Real Mex Restaurants, Inc.	2011	No
MF Global Holdings Ltd.	2011	No
Syms Corp.	2011	No
AMR Corporation	2011	No
Dynegy Holdings, LLC	**2011**	**Yes**
General Maritime Corporation	2011	No
PMI Group, Inc.	2011	No
Ahern Rentals, Inc.	2011	No
William Lyon Homes	2011	No
Delta Petroleum Corporation	2011	No
Lee Enterprises, Incorporated	2011	No
Trident Microsystems, Inc.	2012	No
Eastman Kodak Company	2012	No
Ener1, Inc.	2012	No
Energy Conversion Devices, Inc.	2012	No
Grubb & Ellis Company	2012	No
Global Aviation Holdings Inc.	2012	No
Residential Capital	**2012**	**Yes**
TBS International plc	2012	No
United Western Bancorp, Inc.	2012	No
Pinnacle Airlines Corp.	2012	No
Reddy Ice Holdings, Inc.	2012	No
Circus and Eldorado Joint Venture	2012	No

Hawker Beechcraft Acquisition Company, LLC	2012	No
FiberTower Corporation	2012	No
Patriot Coal Corporation	2012	No
ATP Oil & Gas Corporation	2012	No
Capitol Bancorp Ltd.	2012	No
Broadview Networks Holdings, Inc.	2012	No
Ampal-American Israel Corporation	2012	No
First Place Financial Corp.	2012	No
A123 Systems, Inc.	2012	No
Overseas Shipholding Group, Inc.	2012	No
THQ Inc.	2012	No
LifeCare Holdings, Inc.	2012	No
Edison Mission Energy	2012	No
LodgeNet Interactive Corporation	2013	No
Powerwave Technologies, Inc.	2013	No
School Specialty, Inc.	2013	No
Penson Worldwide, Inc.	2013	No
RDA Holding Co.	2013	No
Conexant Systems, Inc.	2013	No
Geokinetics Inc.	2013	No
Dex One Corporation	2013	No
SuperMedia, Inc.	2013	No
Rotech Healthcare Inc.	2013	No
GMX Resources Inc.	2013	No
Central European Distribution Corporation	2013	No
China Natural Gas, Inc.	2013	No
OnCure Holdings, Inc.	2013	No
Orchard Supply Hardware Stores Corporation	2013	No
Mercantile Bancorp, Inc.	2013	No
Triad Guaranty Inc.	2013	No
Exide Technologies	2013	No
Hoku Corporation	2013	No
Anchor BanCorp Wisconsin Inc.	2013	No
Revel AC, Inc.	2013	No
Furniture Brands International, Inc.	2013	No

FriendFinder Networks Inc.	2013	No
GateHouse Media, Inc.	2013	No
Global Aviation Holdings Inc.	2013	No
First Mariner Bancorp	2014	No
Dolan Company	2014	No
Global Geophysical Services, Inc.	2014	No
USEC Inc.	2014	No
Coldwater Creek Inc.	2014	No
Energy Future Holdings Corp.	2014	No
Genco Shipping & Trading Limited	2014	No
James River Coal Company	2014	No
Momentive Performance Materials Inc.	2014	No
AMF Bowling Worldwide, Inc.	2014	No
Revel AC, Inc.	2014	No
MModal Inc.	2014	No
Eagle Bulk Shipping Inc.	2014	No
Trump Entertainment Resorts, Inc.	2014	No
NII Holdings, Inc. (2014)	2014	No
GT Advanced Technologies Inc.	2014	No
Endeavour International Corporation	2014	No
Dendreon Corporation	2014	No
Caesars Entertainment Operating Company, Inc.	**2015**	**Yes**
RadioShack Corporation	2015	No
KIT digital, Inc.	2013	No
Allied Nevada Gold Corp.	2015	No
Doral Financial Corporation	2015	No
Quicksilver Resources Inc.	2015	No
Cal Dive International, Inc.	2015	No
American Spectrum Realty, Inc.	2015	No
BPZ Resources, Inc.	2015	No
Standard Register Company	2015	No
Corinthian Colleges, Inc.	2015	No
Patriot Coal Corporation	2015	No
Molycorp, Inc.	2015	No
Milagro Oil & Gas, Inc.	2015	No

Sabine Oil & Gas Corporation	2015	No
Walter Energy, Inc.	2015	No
Alpha Natural Resources, Inc.	2015	No
Hercules Offshore, Inc.	2015	No
Black Elk Energy Offshore Operations, LLC	2015	No
Quiksilver, Inc.	2015	No
Samson Resources Corporation	2015	No
American Apparel, Inc. (2015)	2015	No
RAAM Global Energy Company	2015	No
Miller Energy Resources, Inc.	2015	No
Magnum Hunter Resources Corporation	2015	No
Swift Energy Company	2015	No
Verso Corporation	2016	No
Arch Coal, Inc.	2016	No
RCS Capital Corporation	2016	No
Horsehead Holding Corp.	2016	No
Noranda Aluminum Holding Corporation	2016	No
Paragon Offshore plc	2016	No
Republic Airways Holdings Inc.	2016	No
Aspect Software Parent Inc.	2016	No
Emerald Oil, Inc.	2016	No
Venoco, Inc. (Denver Parent Corp.)	2016	No
New Source Energy Partners L.P.	2016	No
Midstates Petroleum Company, Inc.	2016	No
Ultra Petroleum Corp.	2016	No
Peabody Energy Corporation	2016	No
SunEdison, Inc.	2016	No
Energy XXI Ltd	2016	No
Fairway Group Holdings Corp.	2016	No
Wonderwork Inc.	**2016**	**Yes**
Aeropostale, Inc.	2016	No
Penn Virginia Corporation	2016	No
Breitburn Energy Partners LP	2016	No
Chaparral Energy, Inc.	2016	No
CHC Group Ltd.	2016	No

Dex Media, Inc.	2016	No
Linn Energy, LLC	2016	No
SandRidge Energy, Inc.	2016	No
Triangle Petroleum Corp. (Triangle USA Petroleum Corp. only)	2016	No
Hercules Offshore, Inc.	2016	No
Seventy Seven Energy Inc.	2016	No
C&J Energy Services Ltd.	2016	No
Atlas Resource Partners, L.P.	2016	No
Halcon Resources Corporation	2016	No
Global Geophysical Services, Inc.	2016	No
LRI Holdings, Inc.	2016	No
International Shipholding Corporation	2016	No
ITT Educational Services, Inc.	2016	No
Performance Sports Group Ltd.	2016	No
Basic Energy Services, Inc.	2016	No
Key Energy Services, Inc.	2016	No
Transtar	**2016**	**Yes**
American Apparel, Inc.	2016	No
Erickson Incorporated	2016	No
Illinois Power Generating Company	2016	No
Stone Energy Corporation	2016	No
Azure Midstream Partners, LP	2017	No
Forbes Energy Services Ltd.	2017	No
Avaya Inc.	2017	No
Memorial Production Partners LP	2017	No
Bonanza Creek Energy, Inc.	2017	No
Vanguard Natural Resources, LLC	2017	No
hhgregg, Inc.	2017	No
SquareTwo Financial Corporation	2017	No
Adeptus Health Inc.	2017	No
Ciber, Inc.	2017	No
Nuverra Environmental Solutions, Inc.	2017	No
First NBC Bank Holding Company	2017	No
GulfMark Offshore, Inc.	2017	No
Tidewater Inc.	2017	No

21st Century Oncology Holdings, Inc.	2017	No
Gymboree Corporation (	2017	No
GenOn Energy, Inc.	2017	No
A.M. Castle & Co.	2017	No
Paragon Offshore plc	2017	No
Perfumania Holdings, Inc.	2017	No
Toys R Us, Inc.	2017	No
Paperweight Development Corp.	2017	No
Armstrong Energy, Inc.	2017	No
Real Industry, Inc.	2017	No
Cumulus Media Inc.	2017	No
Global Brokerage, Inc.	2017	No
J.G. Wentworth Company	2017	No
Cobalt International Energy, Inc.	2017	No
Rentech, Inc.	2017	No
Walter Investment Management Corp.	2017	No
EXCO Resources, Inc.	2018	No
Patriot National, Inc.	2018	No
Cenveo, Inc.	2018	No
Bon Ton Stores, Inc.	2018	No
Tops Holding II Corporation	2018	No
Claires Stores, Inc.	2018	No
Firestar Diamond Inc.	**2018**	**Yes**
iHeartMedia, Inc.	2018	No
Orexigen Therapeutics, Inc.	2018	No
FirstEnergy Solutions Corp.	2018	No
SFX Entertainment, Inc.	2018	No
EV Energy Partners, L.P.	2018	No
Rex Energy Corporation	2018	No
Aralez Pharmaceuticals Inc.	2018	No
Westmoreland Coal Company	2018	No
Sears Holdings Corporation	**2018**	**Yes**
Samuel Jeweler	**2018**	**Yes**
Mattress Firm Holding Corp.	2018	No
Gastar Exploration Inc.	2018	No

Parker Drilling Company	2018	No
Emergent Capital, Inc. (White Eagle Asset Portfolio, LP only)	2018	No
Gymboree Corporation	2019	No
PG&E Corp. (Pacific Gas and Electric Co.)	2019	No
Windstream Holdings, Inc. (Windstream Services, LLC)	2019	No
Aceto Corporation	2019	No
Ditech Holding Corporation	2019	No
PHI, Inc.	2019	No
Jones Energy, Inc.	2019	No
Hexion Inc.	2019	No
Southcross Energy Partners, L.P.	2019	No
Orchids Paper Products Company	2019	No
Cloud Peak Energy Inc.	2019	No
Bristow Group Inc.	2019	No
IPS Worldwide	**2019**	**Yes**
FTD Companies, Inc.	2019	No
Legacy Reserves Inc.	2019	No
Monitronics International, Inc.	2019	No
Weatherford International public limited company	2019	No
Emerge Energy Services LP	2019	No

*** Most of the companies on this list are large publicly traded companies listed in Bankruptcy Research Database ("BRD"). See UCLA-LoPucki Bankruptcy Research Database, available at http://lopucki.law.ucla.edu