WHAT'S HOT AND TRENDY IN DEBT AND EQUITY FINANCING

Judge David R. Jones
Sarah Link Schultz, Akin Gump Strauss Hauer & Feld LLP, Partner
Monica S. Blacker, Jackson Walker, L.L.P., Partner
Bryan Lastrapes, Moelis & Company, Oil & Gas Group Head

ABL/RBL – WHAT IS THIS?

Asset Based Loans/Reserve Based Loans - Overview

- ABL/RBLs are typically the lowest cost of capital for E&Ps (LIBOR + 200-400 & 3-5 year term)
- Borrowing base determined by lenders using independent engineers' reserve reports and proprietary formulas
  - Rule of Thumb: 65% PDP PV-10 Value + 35% PDNP PV-10 Value + 25% PUD PV-10 Value
  - Subject to lenders' views on future commodity prices (i.e. does not always reflect strip)
  - Semi-annual redeterminations (borrower can request 1 – 2 additional redeterminations annually)
  - Generally No prepayment penalties or amortization
  - Collateral typically mortgages on >80% of value of oil & gas reserves in reserve report

Source: Vinson & Elkins March 25, 2015 - Credit Facility and High Yield Covenants Presentation, HaynesBoone – January 5, 2015 – Energy Alert, other public filings

Asset Based Loans/Reserve Based Loans – Overview (cont'd)

- Affirmative/Negative Covenants:
  - Limits on other debts and liens
  - Limits on payments of dividends/other equity payments
  - Limits on asset sales and investments
  - Other standard limitations and affirmative reporting requirements
- Financial Covenants (maintenance tests, not incurrence tests):
  - Maximum Leverage Ratio (Debt/EBITDA): Typically 4:1 to 4.5:1
  - Minimum Interest Coverage Ratio (EBITDA/Interest Expense): Typically 2:1 to 3:1
  - Minimum Current Ratio (Current Assets/Current Liabilities): Typically 1:1
- Lenders exercise significant control over process and retain maximum flexibility to adjust terms

Current Lending Market

- ABL/RBLs first source of liquidity for E&Ps
- With only ~20% of 2016 estimated production hedged, ABL/RBLs critical to fund outspend
- Spring redeterminations underway, E&Ps expect greater pain in the fall if prices remain depressed
- Growing alternative lending market is willing and able to provide (for a price) additional liquidity
  - Lending closer to the well (GSO/LINN)
  - More aggressive terms for ABL/RBL (RAAM/Highbridge)
  - Replacing ABL/RBL entirely with first lien term debt (Comstock)

Source: Tudor Pickering Holt Research March 26, 2015, other public filings

Current Lending Market (cont'd)

- Hedge fund community clamoring to do secured financings, even if behind the ABL/RBL lenders
  - Multiple 2nd lien financings announced (EXXI, Breitburn, Goodrich)
  - Provides company a longer runway than ABL/RBL might otherwise provide
  - Traditional distressed players unwilling to buy unsecured debt in many situations due to ability of E&Ps to issue significant amounts of secured debt in front of the unsecured debt (layering the unsecureds)

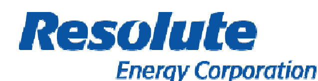
2015 YTD North America E&P Debt Offerings

Date Announced	Issuer Name	Amount Out. ($mm)	Bid Price	Yield to Maturity	Yield to Worst	Coupon (%)	Maturity Date	S&P Rating	Moody Rating	Type Of Issue
Apr. 21	Halcon Resources	$700	102.9	7.9%	7.7%	8.6%	02/20	CCC	B2	Senior Secured Notes
Apr. 15	Gulfport Energy	$350	101.9	6.3%	6.2%	6.6%	05/23	B	B2	Senior Notes
Apr. 14	Carrizo Oil & Gas	650	101.8	6.0%	5.9%	6.3%	04/23	B	B2	Senior Notes
Apr. 09	Matador Resources	400	102.8	6.4%	6.3%	6.9%	04/23	B-	B3	Senior Unsecured Notes
Apr. 06	Endeavor Energy	300	104.3	7.4%	7.2%	8.1%	09/23	B	B3	Senior Unsecured Notes
Mar. 30	Breitburn - EIG	650	--	--	--	--	05/20	--	--	Second Lien Notes
Mar. 24	CONSOL Energy	500	101.8	7.7%	7.6%	8.0%	04/23	BB	B1	Senior Notes
Mar. 24	Whiting Petroleum	750	104.0	5.6%	5.6%	6.3%	04/23	BB	Ba2	Senior Notes
Mar. 23	Rice Energy	400	103.8	6.6%	6.5%	7.3%	05/23	B-	B3	Senior Notes
Mar. 05	Energy XXI Gulf Coast	1,450	95.3	12.3%	12.3%	11.0%	03/20	B	B2	Second Lien Notes
Mar. 05	Newfield Exploration	700	104.4	4.8%	4.8%	5.4%	01/26	BBB-	Ba1	Senior Notes
Mar. 04	Laredo Petroleum	350	103.5	5.7%	5.5%	6.3%	03/23	B	B2	Senior Notes
Mar. 04	Comstock Resources	700	98.8	10.3%	10.3%	10.0%	03/20	B+	Ba3	First Lien Senior Secured Notes
Mar. 03	Antero Resources	750	103.1	5.2%	5.0%	5.6%	06/23	BB	Ba3	Senior Notes
Feb. 26	Goodrich Petroleum[1]	100	68.0	24.0%	24.0%	8.0%	03/18	CCC+	--	Second Lien Notes
Feb. 23	Atlas Resource Partners	250	101.9	9.5%	9.5%	10.0%	02/20	--	--	Second Lien Notes
Feb. 03	CrownRock	350	106.3	6.7%	6.4%	7.8%	02/23	B	Caa1	Senior Notes
Jan. 20	Southwestern Energy	1,000	104.9	4.3%	4.3%	5.0%	01/25	BBB-	Baa3	Senior Notes
Jan. 20	Southwestern Energy	850	104.3	3.1%	3.1%	4.1%	01/20	BBB-	Baa3	Senior Notes
Jan. 20	Southwestern Energy	350	102.7	2.3%	2.3%	3.3%	01/18	BBB-	Baa3	Senior Notes
Jan. 02	LINN Energy	500	--	--	--	--	--	--	--	Blackstone GSO Commitment
Dec. 31	Resolute Energy	350	--	--	--	--	--	--	--	Second Lien Term Loan
	Total	**$12,400**								
			Low	**2.3%**	**2.3%**	**3.3%**				
			Mean	**7.5%**	**7.4%**	**7.1%**				
			Median	**6.4%**	**6.3%**	**6.9%**				
			High	**24.0%**	**24.0%**	**11.0%**				

Source: Bloomberg and company filings.
1. Includes warrants to purchase up to 4.88 million shares of the Company's common stock at an exercise price of $4.66 per share, a 10% premium to the pre-announcement price.

What's Happening in the Market Today?

Resolute Energy / Highbridge Second Lien Secured Term Loan



ORIGINAL CAP TABLE

As of September 30, 2014	BV[1] Outstanding	Maturity	Interest
Credit Facility	$335.0	March 2018	2.41%
Implied Additional Q4 2014 Draw[2]	$37.0		
8.50% Senior Secured Notes due 2020	400.0	May 2020	8.50%
Total Secured Debt	**$772.0**		
Asset Retirement Obligation	33.0		
Total Debt	**$805.0**		
Cash & Equivalents	0.7		
Long Term Restricted Cash	19.9		
Net Debt	**$784.4**		
Cash & Equivalents	0.7		
+ Borrowing Base	425.0		
- Drawn	($335.0)		
- Implied Additional Q4 2014 Draw[2]	($37.0)		
Liquidity	**$53.7**		

PRO FORMA CAP TABLE

As of September 30, 2014	BV[1] Outstanding	Maturity	Interest
Pro Forma Credit Facility	$238.0	March 2018	2.41%
8.50% Senior Secured Notes due 2020	400.0	May 2020	8.50%
Second Lien Secured Term Loan	150.0	November 2019	11.00%
Total Secured Debt	**$788.0**		
Asset Retirement Obligation	33.0		
Total Debt	**$821.0**		
Cash & Equivalents	0.7		
Long Term Restricted Cash	19.9		
Net Debt	**$800.4**		
Cash & Equivalents	0.7		
+ Borrowing Base	330.0		
- Drawn	238.0		
Liquidity	**$92.7**		

- On December 31, 2014, Resolute Energy Corp. entered into a 5-year 11% second lien secured term loan for $150 million with Highbridge Principal Strategies
- Agreement permits Resolute to issue up to $200 million of additional second lien secured debt within 60 days following the initial closing
- Following the closing, the Company has a total borrowing base availability of approximately $92 million

Source: Company Filings, Debtwire.
1. BV = Book Value; MV = Market Value
2. Implied additional draw represents the implied amount of additional revolver draw incurred between 9/30/14 (10-Q date) and closing of the second lien on 12/31/14. The new borrowing base is $330 million with $92 million of current availability, leaving an implied draw as of 12/31/14 of $238 million. A total of $134 million was paid on the credit facility at 12/31/14, implying a balance of $372 million prior to the 12/31/14 closing. This represents an additional implied $37 million draw occurring between 9/30/14 and 12/31/14

What's Happening in the Market Today?

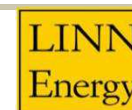
Resolute Energy / Highbridge Summary of Key Terms

Company	Resolute Energy Corporation
Investor	Highbridge Principal Strategies
Security	Secured Second Lien Term Loan
Offer Size	$150,000,000 of gross proceeds, or $134,000,000 net of transaction-related fees, expenses and discounts
Maturity (Term)	November 1, 2019 (4 years, 10 months)
Coupon	LIBOR + 10% (1% LIBOR Floor)
Prepayment	At any time on or after 01/01/2015: 110.00 until 12/31/2015; 105.00 until 12/31/2016; 102.00 until 12/31/2017; par until 11/01/2019. Various scenarios where prepayment penalties do not apply. See 8-k. All subject to 1.25x MOIC.
Accordion	The Company is entitled to borrow up to an additional $200 million of additional term loans under the Term Loan Facility within 60 days following the Closing date
Covenants	Secured Debt-to-EBITDA of no more than 3.5 to 1.0; PV-10 of Total Proved Reserves-to-Total Secured Debt of at least 1.1 to 1.0, rising over time to 1.5 to 1.0; PV-10 of Proved Developed Reserves-to-Total Secured Debt of at least 1.0 to 1.0

Source: Company Filings, Debtwire

What's Happening in the Market Today?

LINN Energy / GSO Capital Drilling Partnership



- On January 2, 2015, Linn Energy announced that it has signed a non-binding letter of intent with GSO Capital Partners to fund oil and natural gas development
- GSO has agreed to commit up to $500 million with 5-year availability to fund drilling programs associated with LINN
- GSO will fund 100% of costs associated with new wells drilled under the agreement, in return for an 85% working interest in the wells until it receives a 15% internal rate of return on an annual grouping of wells
- Upon reaching the internal rate of return target, GSO's interest in the annual grouping of wells will be reduced to 5%, while LINN's will increase from 15% to 95%

	Working Interest	
Reversion Trigger: 15% RoR	Pre-Reversion	Post-Reversion
GSO CAPITAL PARTNERS	85%	5%
LINN Energy	15%	95%
Total	100%	100%

Source: Press releases

ABL/RBL Bankruptcy Considerations

- Not all assets are necessarily collateral for ABL/RBL lender
  - Is there unencumbered cash?
  - Oftentimes less than all land leases are required to be perfected
  - In certain situations, other assets like intercompany notes are not encumbered
  - Unsecured creditors have an important seat in the bankruptcy discussion
- Typically reserves are under land leases from hundreds or thousands of landowners
  - Asset transfers, foreclosure, etc. made much more difficult as a result
  - Acreage might be captive to an existing midstream gatherer and processor
- Issues around valuation of collateral, enterprise value and diminution in value haven’t yet been fought; likely to be significant litigation around differences of opinion on the appropriate way to analyze these issues

Source: Public filings

Emerging Issues / Questions

- Lenders may ask for more expansive definition of collateral going forward
- Continued rise of creative transaction structures as non-traditional lenders seek to deploy capital
- Does the semi-annual redetermination structure work in an environment where commodity prices can fluctuate so dramatically in such a short period of time?
- Impact of latest downturn on future credit pricing and terms?

WILL I GET “MADE WHOLE”?

Make-whole Premiums in Bankruptcy

- "Make-whole" premiums in indentures are intended to protect noteholders (or other debt holders) from the loss of future fixed coupon interest payments resulting from a borrower's decision to prepay the debt (e.g., as a result of declining market interest rates between the date of issuance and the date of repayment)
- Make-whole disputes can arise in chapter 11 context if a make-whole provision is triggered:
  - prior to bankruptcy but remains unpaid at the time of filing,
  - automatically by the filing of bankruptcy,
  - during the bankruptcy by virtue of a pay down or refinancing, or
  - by the terms of a plan
- Recently noteholders and indenture trustees have sought payment or allowance of make-whole premiums in several recent cases, including *Energy Future Holdings* (Bankr. D. Del.), *Momentive Performance Materials* (Bankr. S.D.N.Y.), *American Airlines* (Bankr. S.D.N.Y.), and *School Specialty* (Bankr. D. Del.).

What Happened in Momentive?

- No Makewhole Awarded
- "[T]he option [for a makewhole premium], as noted, must be specific if the parties want it to apply even after acceleration of the debt." *In re MPM Silicones, LLC*, No. 14-22503, 2014 WL 4436335, at *12 (Bankr. S.D.N.Y. Sept. 9, 2014).
- "Thus, the first and 1.5 lien holders' right to an Applicable Premium, or make-whole, hinges on whether the relevant sections of their indentures and notes provide with sufficient clarity for the payment of such premium after the maturity of the notes has been accelerated."
- If an Event of Default specified in Section 6.01(f) or (g) [which includes filing a bankruptcy petition] with respect to the Company occurs, the principal of, premium, if any, and interest on all the Notes shall ipso facto become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Holders." Ex. 5, Indenture at 92, *In re MPM Silicones, LLC*, No. 14-22503 (Bankr. S.D.N.Y. June 18, 2014) (Dkt. No. 464-1) (emphasis added).
- "[U]nless the parties have clearly and specifically provided for payment of a make-whole (in this case the Applicable Premium), notwithstanding the acceleration or advancement of the original maturity date of the notes, a make-whole will not be owed." *In re MPM Silicones, LLC*, 2014 WL 4436335 at *14

What about Energy Future Holdings?

- CSC Trust Co. of Delaware, as indenture trustee for first lien notes, commenced an adversary proceeding shortly after the chapter 11 cases were filed, seeking a declaratory judgment that the repayment of the first lien notes with a debtor-in-possession financing facility triggered allowance of a make-whole premium
- The indenture trustee claimed that the debtors' repayment of the first lien notes constituted an "Optional Redemption" under the indenture, which required payment of an "Applicable Premium" (e.g., the make-whole premium) in addition to the principal amount of the notes then outstanding:
  - The indenture trustee also filed a separate motion seeking a determination that the automatic stay did not prevent the indenture trustee from rescinding acceleration of the notes upon a bankruptcy filing or, to the extent the automatic stay did apply, granting the indenture trustee relief from the automatic stay to deliver a rescission notice decelerating the notes
- The debtors argued that the indenture trustee was not entitled to a make-whole premium because the notes were automatically accelerated by the bankruptcy filing and the plain language of the indenture did not provide for payment of a make-whole premium following a bankruptcy acceleration

Energy Future Holdings (cont'd)

- Judge Sontchi agreed with the debtors, concluding that the first lien notes were not entitled to a make-whole premium because the notes were automatically accelerated by the bankruptcy filing and lacked the express language necessary for payment of a make-whole premium upon acceleration:
  - Court compared the language of the first lien indenture with indentures in other recent cases involving make-whole premiums, including *Calpine*, *Premier Biloxi*, *Momentive*, and *Solutia* and concluded that, as in each of these cases, the plain language of the indenture did not provide for payment of a make-whole premium following a bankruptcy acceleration;
- Judge Sontchi also found that the automatic stay prohibited rescission of the acceleration of the notes, but that if the court were to lift the automatic stay *nunc pro tunc* to a date on or before the debtor-in-possession facility closed, the repayment would constitute an "Optional Redemption" under the indenture and the make-whole premium would be due and owing. However, the court concluded that there was a genuine issue of material fact precluding summary judgment as to whether cause existed to modify the automatic stay
- The decision is consistent with the ruling in *Momentive,* where Bankruptcy Judge Drain concluded that noteholders were not entitled to a make-whole premium for the debtor's repayment of notes through a plan of reorganization because the indenture at issue did not unambiguously state that that a make-whole premium was owed following the acceleration of notes

THE GREAT VENUE DEBATE

The Great Venue Debate

- Bankruptcy Code section 1408 provides that:

  A case under Title 11 may be commenced in the district court for the district – (1) in which the domicile, residence, principal place of business in the United States, or principal assets in the United States, or the person or entity that is the subject of such case have been located for the 180 days immediately preceding such commencement or (2) in which there is pending a case under Title 11 concerning such person's affiliate, general partner, or partnership." allows for the commencement of a case in the district where

So what is happening in Caesars?

- January 7, 2015 involuntary chapter 11 petition was commenced against Caesars Entertainment Operating Company in Delaware – where the main operating subsidiary was incorporated
- January 15, 2015 Caesars sought chapter 11 protection in the Northern District of Illinois – where at least one of the applicable debtors was incorporated
- Following a hearing to determine proper venue, Judge Gross ultimately ruled that the circumstances supported transferring the Delaware case to Illinois because it was in the interest of justice to do so
- This ruling tested the premise that the Bankruptcy Code provides bankruptcy courts with the tools to determine the proper venue for a case and debtors with the flexibility to make strategic decisions to fulfill their fiduciary duties

What did Judge Gross rely on?

- Gross reviewed section 1408's sister provision, section 1412, which provides the court with a mechanism to transfer a case if it believes that venue was initially chosen improperly or if the existing forum is inconvenient for the relevant parties.

- Section 1412, however, did not directly address the issue squarely before Gross in Caesars, which was how to tackle two bankruptcy petitions pending against the same debtor in separate bankruptcy courts.

- To aid in his analysis, Gross looked to Bankruptcy Rule 1014(b), which provides: "If petitions commencing cases under the code or seeking recognition under Chapter 15 are filed in different districts by, regarding, or against (1) the same debtor, (2) a partnership and one or more of its general partners, (3) two or more general partners, or (4) a debtor and an affiliate, the court in the district in which the first-filed petition is pending may determine, in the interest of justice or for the convenience of the parties, the district or districts in which any of the cases should proceed."

Judge Gross's Decision

- While sections 1408 and 1412 and Bankruptcy Rule 1014 would each permit the two bankruptcy cases to proceed before the bankruptcy court of either Delaware or Illinois, Judge Gross determined that, pursuant to Rule 1014(b), he—as the presiding judge in the court in which the first-filed bankruptcy petition was pending—was charged with making the determination as to where the cases should proceed.
- Judge Gross noted that Rule 1014(b) follows the language in Section 1412 that provides a flexible, dual-track test to determine venue: A case should proceed based on (1) the interest of justice or (2) the convenience of the parties; *see In re Qualteq* (Bankr. D. Del. Feb. 16, 2012): "It has been observed that Section 1412 is ... written in the disjunctive, making transfer of venue appropriate either in the interest of justice or for the convenience of the parties, and that this statutory provision creates two distinct analytical bases upon which transfer of venue may be grounded," quoting *In re LaGuardia Associates*, 316 B.R. 832, 837 (Bankr. E.D. Pa. 2004). Applying this standard, Gross concluded that the interest of justice favored the debtor's choice of forum, which is entitled to substantial deference.

GETTING CRAMMED MOMENTIVE STYLE

Cramdown Dispute

- ***Cramdown Plan Terms***
  - In the event that the holders of Senior Lien Notes voted to reject the Plan — which, in fact, occurred — the Plan provided that they would receive Replacement Notes "with a present value equal to the Allowed amount of [each] holder's [Senior] Note Claim."
  - The respective rates of interest on the Replacement First Lien Notes and the Replacement 1.5 Lien Notes provided in the Plan were: (i) a 7-year Treasury Rate plus 1.50% (approximately 3.6%) and (ii) a 7.5-year Treasury Rate plus 2.00% (approximately 4.1%), respectively.
    - These rates were lower than the rates the Debtors secured for the Exit Financing.

Applicable Law

- ***Applicable Law – Bankruptcy Code***
  - Section 1129(b)(2)(A) of the Bankruptcy Code permits confirmation of a chapter 11 plan when a class of secured creditors votes to reject the plan if:

    (i)(I) such creditors retain the liens securing their prepetition claims, and

    (II) such creditors receive "deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the effective date of the plan, of at least the value of" the secured claim;

    (ii) such creditors' collateral is sold, subject to the secured creditors' right to credit bid, and a lien attaches to the proceeds of the sale; or

    (iii) such creditors receive the "indubitable equivalent" of their secured claims.
  - Because the Plan did not contemplate the sale of the Senior Lien Noteholders' collateral or propose to provide the Senior Lien Noteholders with the indubitable equivalent of their secured claims through a means other than that provided under section 1129(b)(2)(A)(i), the latter two cramdown methods were not at issue.
  - Because the present value of the deferred payments under clause (i)(I) is achieved through the application of an appropriate interest rate, determining the correct interest rate is paramount.

Applicable Law (cont'd)

- ***Applicable Law – Case Law***
  - *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004) – In a chapter 13 cramdown interest rate dispute, a plurality of the Supreme Court held that a "formula approach" should be utilized to determine the appropriate rate by adding a "risk premium," generally between 1 and 3 percent, to the national prime rate.
    - Footnote 14 of the *Till* decision stated that "in a Chapter 11 case, it might make sense to ask what rate an efficient market would produce," which differs from the chapter 13 context, in which the plurality said an efficient market did not exist.
    - The *Till* plurality also concluded that Congress likely intended courts to use a uniform approach whenever the Bankruptcy Code required them to choose an interest rate to discount a stream of deferred payments to present value, whether in a chapter 11 or 13 case.

Applicable Law (cont'd)

- ***Applicable Law – Case Law (cont'd)***

  - *GMAC v. Valenti (In re Valenti)*, 105 F.3d 55 (2d Cir. 1997) – Prior to *Till,* the Second Circuit, in another chapter 13 case, held that an appropriate cramdown interest rate was the rate of interest on a U.S. Treasury instrument having a maturity equivalent to the repayment schedule under the plan, plus a premium of between 1 and 3 percent reflecting the risk to the creditor receiving deferred payments.

    - The Second Circuit noted that "the value of a creditor's allowed claim does not include any degree of profit. There is no reason, therefore, that the [cramdown] interest rate should account for profit."

    - The *Till* decision cited to *Valenti* with approval.

Senior Lien Trustees' Arguments

- ***Senior Lien Trustees' Arguments – Market Rate***
  - The Senior Lien Trustees contended that the Plan was not "fair and equitable" under section 1129(b) of the Bankruptcy Code because (i) *Till*'s formula approach should not apply to chapter 11 cases and should be limited to chapter 13 cases; and (ii) the Replacement Notes' interest rates ignores the command in Footnote 14 of *Till* that the market rate of interest should be used if an efficient market is available.
  - The Senior Lien Trustees contended that an efficient market existed in this case, as evidenced by the availability of the Exit Financing and the robust markets for leveraged loans and high-yield debt generally.
  - The Senior Lien Trustees contended that the Replacement Notes would trade below par and as such would not provide their respective noteholders with the full value of the allowed amount of their claims.

Senior Lien Trustees' Arguments (cont'd)

- ***Senior Lien Trustees' Arguments – Formula Rate***

  - The Senior Lien Trustees also argued that even if the *Till* formula approach were appropriate, the Replacement Notes' interest rates did not comply with *Till* for two reasons:

    - **Use of Treasury Rate** – The Replacement Notes should utilize the prime rate as a base rate, because a prime rate "reflects the financial market's estimate of the amount a commercial bank should charge a creditworthy commercial borrower" (quoting *Till*) and was the rate specifically approved by the *Till* plurality.

    - **Inadequate Risk Premium** – The risk premium of 1.5% and 2% for the First and 1.5 Lien Replacement Notes, respectively, failed to adequately compensate the Senior Lien Noteholders for the risk of the Debtors' business and industry, as well as the specific features of the Replacement Notes (*e.g.*, extended maturity, relaxed covenants, and non-availability of certain premiums).

Debtors' Arguments

- ***Debtors' Arguments – Use of Formula Rate***
  - The Debtors contended that the *Till* decision dictated the use of a "formula" approach, not a market analysis, in chapter 11 cases.
    - *Till* specifically held that Congress intended a single methodology for determining the present value of a future payment stream to apply under both chapter 11 and chapter 13 of the Bankruptcy Code.
    - Footnote 14 of *Till* does not require a market interest rate analysis and the Debtors followed *Till's* "straightforward and objective formula approach."
- ***Debtors' Arguments – Appropriate Formula Rate***
  - The Debtors also contended that their specific formula for the cramdown rate on the Replacement Notes was appropriate for several reasons:
    - The use of a Treasury rate was appropriate because *Till* did not mandate the use of the prime rate, and other cases, including *Valenti*, used a Treasury rate as the benchmark.
    - The risk premiums for the Replacement Notes were appropriate in light of the Debtors' post-emergence circumstances.

Bankruptcy Court Ruling

- ***Bankruptcy Court Ruling – Use of Formula Rate***
  - The Bankruptcy Court rejected the Senior Lien Trustees' arguments and held that the "formula" approach was the correct methodology to establish a cramdown interest rate.
    - The Bankruptcy Court noted that the "first principles" of *Till* and *Valenti* rejected a market-based approach in favor of a formula approach.
    - The Bankruptcy Court also noted that Footnote 14 of *Till* was a "very slim reed" on which to contradict these first principles.
    - Relying on *Valenti*, the Bankruptcy Court concluded that a cramdown rate "should not contain any profit or cost element" and "it is highly unlikely that there will ever be an efficient market that does not include a profit element."
  - Although *Till* and *Valenti* concerned chapter 13 debtors, the Bankruptcy Court noted that they were likely intended to apply in chapter 11 as well.
    - Quoting *Till*, the Bankruptcy Court noted: "Congress likely intended bankruptcy judges and trustees to follow essentially the same approach when choosing an appropriate interest rate under any of the many Code provisions requiring a court to discount a stream of deferred payments back to their present dollar value."

Bankruptcy Court Ruling (cont'd)

- ***Bankruptcy Court Ruling – Specific Formula Rate***
  - While approving the formula approach for cramdown interest rates, the Bankruptcy Court nevertheless increased the risk premiums by 0.5% and 0.75% for the First Lien and 1.5 Lien Replacement Notes, respectively.
    - The Bankruptcy Court noted that the prime rate discussed in *Till* accounted for some level of risk of nonpayment, while the Treasury rate proposed under the Plan did not.
    - Even after these adjustments, the cramdown interest rate on the First Lien Replacement Notes is still approximately 1% below the interest rate on the portion of the Exit Financing earmarked to repay the First Lien Notes, and the interest rate on the 1.5 Lien Replacement Notes is approximately 2.15% below the interest rate on the portion of the Exit Financing earmarked to repay the 1.5 Lien Notes.
- ***Senior Lien Trustees' Motion to Change Plan Votes***
  - Subsequent to the Bankruptcy Court's ruling, the rejecting Senior Lien Noteholders filed motions, pursuant to Bankruptcy Rule 3018, to change their votes to accept the Plan *(i.e.* to opt for payment in cash, albeit without the Applicable Premium).
    - The Bankruptcy Court denied these motions, ruling that it would not be proper to allow the Senior Lien Noteholders to undo the consequences of their timely exercised voting decisions with respect to the Plan.

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