



Pros and Cons of the Pre-Pack Bankruptcy

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Energy Future Holdings Corp. filed a prepackaged ("pre-pack") chapter 11 in April 2014 seeking a complete restructuring and quick-exit from bankruptcy, aiming to be in and out of bankruptcy in under 11 months. In May 2014, the Bankruptcy Court for the District of Delaware confirmed the prepackaged disclosure statement and reorganization plan of Quiznos, and on May 23, 2014, the Bankruptcy Court for the Southern District of New York approved a \$570 million loan in the Momentive Performance Materials prepack bankruptcy. These are just a few examples of the fast-paced, evolving world of the pre-pack chapter 11 bankruptcy.

The pre-pack also has disadvantages. The debtor must work closely with certain creditors to reach an agreement as to the treatment of their claims (which could result in those creditors being paid in full). The goal of the pre-pack is to enter and exit bankruptcy in a substantially shortened time period - often between three and twelve months. As with any form of bankruptcy, the pre-pack carries certain pros and cons.

The most important advantages to a pre-pack are savings of time and money. Thanks to the expedited schedule, fees and costs associated with monthly reports, attorneys, other professionals, and creditor committees are minimized. Pre-pack bankruptcies also reduce uncertainty as creditors already know what to expect from the reorganization and there are no risks of competing reorganization plans. Another advantage of the pre-pack is its ability to minimize damage to public image that could result from a long, drawn-out and contentious bankruptcy. While this benefit is difficult to quantify, it is certainly valuable to a debtor and its creditors alike.

The pre-pack also carries certain disadvantages. Part of negotiating with creditors in advance of filing a bankruptcy petition naturally involves notifying creditors that a company is about to file for bankruptcy protection. For companies relying on credit, a tightening of credit could put them over the edge more quickly than anticipated. Tipping creditors off to a distressed company's intentions could lead creditors to force the issue with an involuntary bankruptcy petition filing. Further, since the petition has not yet been filed, there are no stay protections in place including the ever-important automatic stay under Section 362.

Candidates for pre-packs are distressed companies with a relatively small pool of creditors, and those creditors will ideally be organized and capable of negotiation. Potential debtors that have a large

number of contingent or unliquidated liabilities are not good candidates for pre-packs as the potential claims have not been valued on the front end of the plan. A pre-pack bankruptcy is also not ideal for debtors that rely on trade credit. Creditors faced with pre-pack bankruptcies should be mindful of the proposed petition date and aware of how that date will affect the nature of the debt and their relationship with the debtor going forward. Overall, for a certain pool of troubled companies and their creditors, a pre-pack bankruptcy may be the best option.

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