

# Educational Materials

Friday October 10, 2014 10:20 AM - 11:20 AM

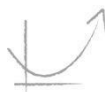
## Advancing Straight to Go: Avoiding Pitfalls in Pre-Packaged and Pre-Arranged Chapter 11 Plans

Roundtables Presented By

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of Bankruptcy Judges



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# Avoiding Pitfalls of Pre-Packaged and Pre-Arranged Chapter 11 Plans

October, 2014



# Speakers

- **Judge Robert E. Gerber, US Bankruptcy Court, SDNY**
- **Mark D. Collins, Chair, Bankruptcy & Corporate Restructuring Department  
Richards, Layton & Finger, P.A., Wilmington, Delaware**
- **Becky Roof, AlixPartners LLP, New York, NY**
- **Ken Ziman, Skadden, Arps, Slate, Meagher & Flom LLP, New York, NY**



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- What do Partial Prepack, Prepack, and Prearranged really mean?
- Plan Support Agreements
- Solicitation Period
- Local Rules
- Case Examples

## What do Prearranged, Prepack, Partial Prepack really mean?

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- **Prearranged Bankruptcy** – The debtor enters Chapter 11 after negotiating the terms of a restructuring with certain of its major stakeholders and having entered into a "lock-up" or "plan-support" agreement with such stakeholders setting forth the salient terms of the restructuring. Promptly following the commencement of the cases, the debtor will file a chapter 11 plan and related disclosure statement reflecting the agreed upon terms and seek to move fairly quickly to have the bankruptcy court approve the restructuring.
  - “True” Prearranged cases typically take 75-90 days from filing to effective date
  - Many so-called Prearranged bankruptcy filings fail to resolve complex outstanding issues which can significantly lengthen the debtors’ time in bankruptcy
- **Prepackaged Bankruptcy** – Variant of Prearranged Bankruptcy where before filing for bankruptcy, the debtor has fully negotiated its proposed restructuring and the related documentation, including the chapter 11 plan and disclosure statement. The debtor then solicits formal votes on that chapter 11 plan from impaired classes of creditors and uses those votes to obtain confirmation. Because much of the work has been completed ahead of the filing, a prepackaged Chapter 11 case can be completed in a much shorter time frame (typically 30-45 days) than a typical prearranged or traditional free-fall Chapter 11 case, thereby minimizing administrative costs and reducing uncertainties inherent in the bankruptcy process
- **Partial Prepackaged Bankruptcy** – There are some cases where you can solicit certain classes of creditors before filing chapter 11 and other classes afterward. These are referred to as Partial Prepacks.

## What do Prearranged, Prepack, Partial Prepack really mean?

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- Why doesn't everyone use a Prepack if it is quicker and cheaper than a normal chapter 11 case?
- What impact does securities law have on the decision to do a Prepack vs a Partial Prepack?

# Plan Support Agreements

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- Plan Support Agreements
  - What are they?
  - What is the view of the Courts to Plan Support Agreements?
  - What is the view of the Courts to pre-petition vs post-petition plan support agreements?

# Solicitation Period

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- Solicitation Period
  - What is it?
  - How long does it need to be?
  - Who manages it?
  - What is the intersection with securities law?



## Local Rules

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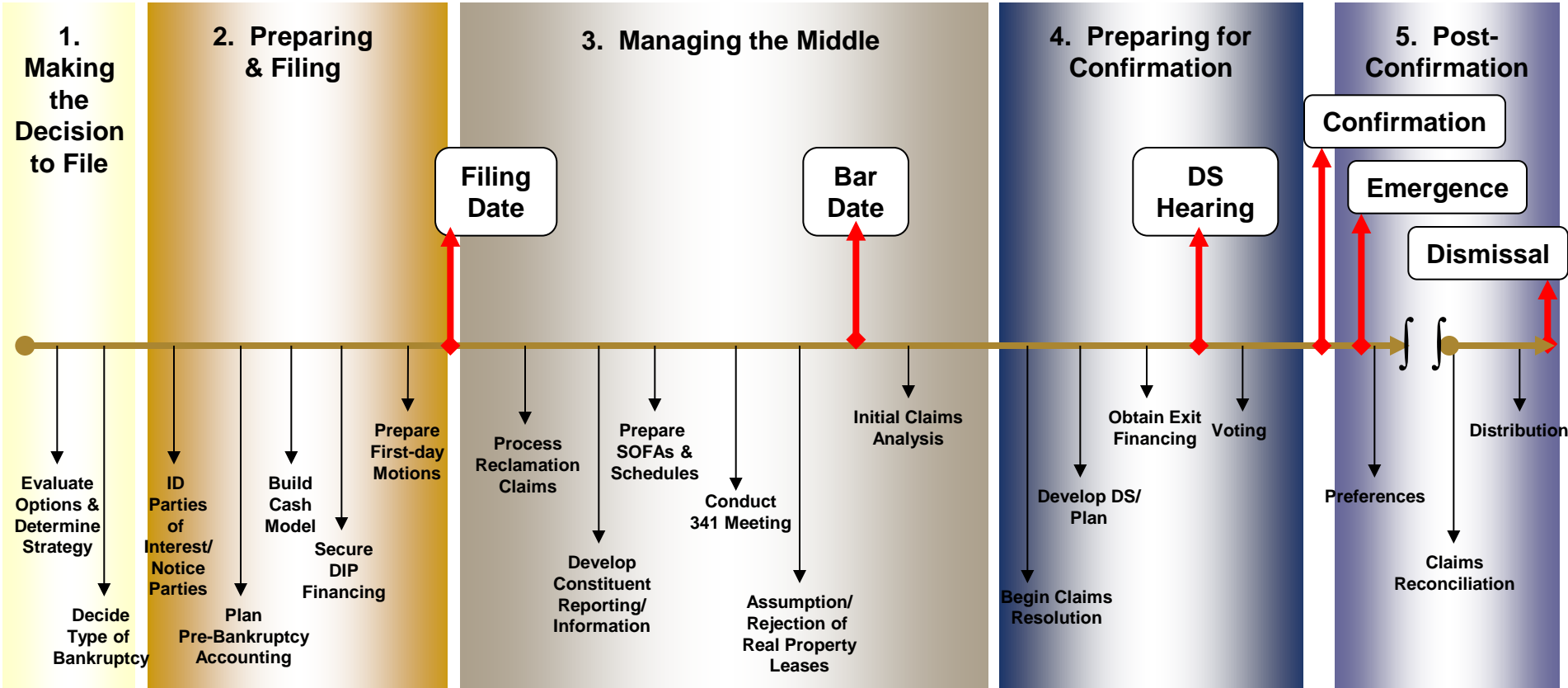
- What local bankruptcy rules need to be considered?
  - Southern District of New York
  - District of Delaware
  - Other jurisdictions
- Can you file in the middle of a solicitation?

## Case Examples

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- NII Holdings – ongoing negotiations to resolve issues prior to filing chapter 11 if necessary
- Energy Futures Holdings – ongoing case filed under the auspices of a pre-arranged deal
- Hawkeye Renewables – 180 day bankruptcy in 2010 with prepackaged filing
- Six Flags – 11 month bankruptcy in 2009 / 2010 filed under the auspices of a pre-arranged deal
- Overseas Shipholding Group – 20 month bankruptcy filed under the auspices of a pre-arranged deal
- Select Staffing – 60 day prepackaged filing in April 2014

# Typical Bankruptcy Process & Timeline



PRE-PACK TASKS TYPICALLY ACCOMPLISHED BEFORE FILING

PRE-ARRANGED TASKS TYPICALLY ACCOMPLISHED AS PART OF FILING