**“Sinking Ship LLC” A Receivership Tale**

**FACT SHEET**

* **Debtor is “Sinking Ships, LLC”** 
  + LLC members Wilhelm Gustloff, Edmund Fitzgerald, Andrea Doria-Fitzgerald,  General Slocum,and Leonardo “Titanic” DiCaprio (all sunken ships)
    - Wilhelm 50% membership interest
    - others all 12.5% membership interest
    - Captain Phillips - Hired to turn around Sinking Ships, LLC
* **Three facilities (leasing)**:
  + Grand Rapids: totally obsolete part: physical map holders
  + Grand Rapids: interior boat parts: steering wheels, cup holders, etc.  All plastic injection molding
  + Kalamazoo: Fiberglass and composite manufacturer of boat hulls
    - Fiberglass and composite manufacturers generate hazardous and non-hazardous air emissions, solid waste, and water wastes. The emissions from processes and materials may also impact worker health and safety.
    - The most significant environmental concern is due to the use of resins and gelcoats during fabrication. These materials are considered hazardous substances and sources of toxic air emissions, primarily because of styrene content. Styrene is used as a reactive diluent in the fabrication process - it thins the polyester resin, and also provides the "bridge" to "crosslink" the polyester molecule chains. Styrene is a volatile substance, and a percentage of it escapes from the resin during application and curing phases. As it escapes from the resin matrix, it becomes an "air contaminant" that is regulated by SCAPCA and other health and safety and environmental agencies.
    - Other hazardous substances used in the fabrication process are resin catalysts, solvents, paints, thinners, foaming agents, and adhesive products.
    - Businesses that choose to minimize the use of traditional resins and solvents and change to low volatile organic compounds (VOC) and low hazardous air pollutant (HAP) products are moving in the same direction as federal, state and local regulations. The switch to these new materials not only decreases emissions, but may also reduce nuisance complaints from neighboring businesses and the public.
* **Landlord—Fishy Business, LLC** (landlord for all three facilities)
  + LLC Members:
    - Jules Verne: 33% member
    - Davey Jones: 33% member
    - Andrea: 33% member
* **Debtor Members:**
  + Wilhelm Gustloff: No relation, owns 50%
  + Edmund Fitzgerald: married to Andrea.
  + Andrea Doria: married to Edmund, sleeping with Leonardo “Titanic” DiCaprio
  + General Slocum: Edmund’s father
  + Leonardo “Titanic” DiCaprio (all sunken ships)
* **Employee roles in Debtor**
  + Wilhelm: President
  + Edward Teach Blackbeard: CFO (and Wilhelm’s cousin) - No Ownership
  + Edmund: COO
  + Andrea: Vice-President of Marketing
  + Leonardo: Vice-President, responsible for Sales
  + General Slocum: No active role

Basic background: originally, debtor was owned 50/50 by Wilhelm’s dad and General. Wilhelm’s dad died and Wilhelm took over his membership interest.  General was slowing down, so he sold some of his membership interests to his son (Edmund), daughter-in-law Andrea, and Leonardo—who he has always thought of as a son and grew up with the family and was Edmund’s best friend.

**Financial Matters:**

* Anchor Bank —Primary Lender
  + Loans:
    - Term Note--$10 million on Equipment
    - Line of Credit: $20 million
      * $17 million outstanding
  + All asset security agreement
* Ballast Bank—Second Lender
  + Equipment Note for $3 million
  + Security Agreement
  + PMSI on injection molding (one of the GR facilities)
  + Second on all other equipment
* Leases:
  + Kalamazoo:
    - 10 years remain on lease
    - Stuck with above market rate
  + GR facilities:
    - 2 years remain
    - Leases currently approximate market

Over the last five years, Debtor has remained profitable.  However, its margins have substantially shrunk.  Debtor learned that as of July 1, 2017, its main purchaser of the map holders was shuttering its doors and that would cause Debtor to lose a significant portion of its business (representing 25% of net revenues). Debtor reported this development to the Bank.

**3/14/2017: SESSION THREE: Salvaging the Wreckage: Bankruptcy**

**Panelists:**

* **Moderator - Ben White - White Law Firm**
* **Turnaround – John Jansen – Conway MacKenzie**
* **Bank - Karl Norton - Comerica**
* **Legal - Mike McElwee - Varnum**
* **Legal – David Bevins - Rhoades McKee**

Factual Background:

* Receiver requesting bankruptcy
* To reject Kalamazoo lease contract
* Other reasons?
* Do the owners approve?
* Do the owners (some/all) object?
  + Does the LLC document stipulate how the LLC may file for bankruptcy?
* Sinking Ship files for bankruptcy
  + Receiver/creditor wanting to retain receivership but Debtor wants to declare bankruptcy
  + Debtor files a motion for turnover; Anchor Bank objects (11 USC 543(d)(1))

**Issues to Address:**

* Who can file for bankruptcy?
  + Can Receiver file?  need permission from members?
* Bank’s Recourse/Options when Debtor files for bankruptcy
  + Bank objects to debtor remaining in possession.
  + Appointment of Trustee
  + Motion to be excused from turnover of property
  + Other options to prevent debtor from remaining in possession?