**“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.

**2/14/2017: SESSION TWO: The Hurricane Hits:  Receivership and State Court Law**

**Panelists:**

* **Moderator: Denny Briggs**
* **Turnaround - Steve Weber - O’Keefe**
* **Bank - Traci Courter - Mercantile Bank**
* **Legal - Joe Ammar - Plunkett Cooney**
* **Legal - Mike Almassian - Keller & Almassian**

Factual Background:

* Anchor Bank calls the note due as it has matured and files a lawsuit against Sinking Ship for claim and delivery, claim on debt, and appointment of a Receiver.
* **Personal Issues:**
	+ The affair: Edmund v. Andrea/Leo--Captain Phillips determined that Andrea and Leo were falsifying expense records.
	+ Wilhelm refuses to terminated Blackbeard.  Blackbeard agrees to repay what was embezzled and agrees to step down as CFO, but will still be involved in the business.  Slocum agrees to become acting CFO until a replacement can be found.
* **Bank’s Perspective and Concerns:** Bank wants to exit the loan relationship.  This could be achieved through a sale of the business, refinancing, injection of new capital, etc.
1. **Issues to Address:**
* **Logistics of Receiver:**
* Receiver of Sinking Ships?
* Receiver of Fishy Business?
* Stipulation to appoint Receiver vs. contested receivership
* How to determine who should be recommended as a Receiver?
* **Receivership Issues:**
	+ Reasons a Receiver vs. turnaround consultant
* Relationship between bank, Receiver, business
	+ Fiduciary Duty
* Mechanics of Getting a Receiver Appointed
	+ Lawsuit Required, ancillary relief to main claim
* Authority of a Receiver
	+ Receivership Order
		- What is required:
			* Payment of fees
			* Bond
			* Authority
			* Scope
			* Actions allowable by Debtor/Debtor Owners
			* Prevention of spoilage of receivership property
* In this case we have two different lenders, effect on receivership
	+ What if they don’t agree?
* **Legal Update**
	+ New MCR rules
	+ New case law
	+ Receiver fees
	+ Receiver ability to sell free and clear
	+ Liens on property
* Receivership forms
	+ Initial filing forms
	+ Payment of Fees
	+ Receivership property