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# Return of the Credit Crunch



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# Bankers' Responses to Problem Loans

- Loan file review
  - Legal review of loan documents
  - Identify any non-standard provisions
  - Review lien status and title searches



# Bankers' Responses to Problem Loans

- Financial statements
  - Review borrower's cash flows
  - Review management compensation and fees



## Bankers' Responses to Problem Loans

- Management and operations
  - Inspect property and collateral
  - Assess capabilities of management
  - Assess borrower's ability to compete
  - Identify additional sources of financing



# Bankers' Responses to Problem Loans

- Workout plan
  - Review borrower's management plan
    - Borrower may need a turnaround consultant
  - Develop workout plan
  - Structure workout proposal and evaluate viability
  - Determine cost of workout to lender vs. probably loss assuming bankruptcy
  - Identify exit strategy



# Lawyers' Responses to Problem Loans

- Reservation of Rights Letters
  - Early and often
  - Content
  - Borrower needs to borrow right away
    - o Working capital facility
    - o Acquisition facility
    - o Construction loan
- Pre-Negotiation Agreements
  - Content/purpose



# Lawyers' Responses to Problem Loans

- Forbearance Agreements
  - Opportunity for valuable estoppels and releases
  - Turnaround consultants
  - “Forbearance advances”
  - Consent to appointment
  - Compound interest
  - Which bills to pay



# Lawyers' Responses to Problem Loans

- Standstill Agreements
  - Short-term stabilizers
- Reaffirmation of Guaranties
  - Waivers of suretyship defenses
  - What is a novation?
  - Five guarantors, but only four agree to reaffirm.  
Now what?





# Lawyers' Responses to Problem Loans

- Problems with certain potential new collateral
  - Hidden “liens”
    - Lien Law
    - Arts and Cultural Affairs
  - Economic interests in partnerships and LLC’s



## Lawyers' Responses to Problem Loans

- Federal tax liens
  - Not a superlien, but beware the 45-day rules
- Fraudulently filed UCC termination statements; “correction” statements
- CPLR§ 3213
- 9-607 Letters



# Bankruptcy Issues

- Automatic stay
  - What is stayed?
    - Legal actions to collect the loan
    - Actions to liquidate collateral
  - What is not stayed?
    - Enforcement of rights against guarantors and third party collateral



# Bankruptcy Issues

- Cash collateral
  - What is cash collateral?
  - Under what circumstances can the debtor use cash collateral?
  - Adequate protection – what is it?
- DIP financing
  - How does DIP financing differ from use of cash collateral?



# Bankruptcy Issues

- Avoidance actions
  - Preferences
    - Unsecured credit
    - Secured credit
  - Fraudulent conveyance
    - Intentional fraud
    - Constructive fraud



# Bankruptcy Issues

- Plan process
  - Treatment of secured and unsecured lenders
  - Can your loan be modified by the Debtor?

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[www.herrick.com/events](http://www.herrick.com/events)

Stephen Selbst  
Partner

(212) 592-1405

[sselbst@herrick.com](mailto:sselbst@herrick.com)

Stephen Brodie  
Partner

(212) 592-1452

[sbrodie@herrick.com](mailto:sbrodie@herrick.com)

Andrew Gold  
Partner

(212) 592-1459

[agold@herrick.com](mailto:agold@herrick.com)

