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Successfully Pursuing Prepackaged and Prearranged Chapter 11 Plans

Compilation of 2018 Cases

By: Jessica Boelter

Prepackaged and prearranged Chapter 11 cases have long been the preference of Chapter 11 practitioners advising clients in need of debt restructurings. They are often faster, cheaper and less volatile than traditional "free-fall" Chapter 11 cases, and also permit a debtor to reorganize debt without the need to achieve unanimity among affected debtholders as is otherwise required outside of a bankruptcy proceeding. The principal hallmark of a prepackaged or prearranged proceeding is a pre-bankruptcy agreement between the debtor and one or more of its principal stakeholders concerning the terms of a consensual plan of reorganization for the debtor. Whether the case is considered a "prepackaged" or "prearranged" bankruptcy usually turns upon the degree to which the plan of reorganization was actually solicited pre-bankruptcy. In circumstances where the plan was solicited prior to the bankruptcy case, even if solicitation was not completed on the petition date, the case is typically viewed as a prepackaged Chapter 11 proceeding. In contrast, where the debtor has reached agreement with key stakeholders but has not actually begun solicitation, the case is typically viewed as a prearranged or pre-negotiated Chapter 11 proceeding.

As with other recent years, calendar year 2018 saw its fair share of prepackaged and prearranged Chapter 11 cases. We surveyed twenty-six (26) prepackaged and prearranged Chapter 11 cases that were filed during 2018.[1] Part I of this paper provides a summary of key data points in the 2018 cases. Part II of this paper summarizes the surveyed cases. Part III of

[1] This paper does not contain an exhaustive list of all prepackaged or prearranged Chapter 11 cases that were filed or confirmed in 2018. Rather, the list provides the reader with a resource of representative cases during 2018.

this paper identifies cases that were filed in late 2018 but were unresolved as of the date of this paper.

I. 2018 Trends in Prepackaged and Prearranged Cases.

With respect to the twenty-six (26) cases surveyed, we reviewed five categories of information: (1) whether the case was prepackaged or prearranged; (2) length of the proceeding from the petition date to the confirmation date; (3) filing venue; (4) whether the debtor entered into a restructuring support agreement with key creditors; and (5) the industry in which the debtor operates.

A. Number of 2018 Prepackaged and Prearranged Cases Surveyed.

Prepackaged	**Prearranged**
18	8

B. Length of Proceeding from Petition Date to Confirmation Date (in days).

20-29	**30-39**	**40-49**	**50-59**	**60-69**	**70-79**
2	1	11	1	2	1
90-99	**100-09**	**150-59**	**180-89**	**200-09**	**310-19**
2	2	1	1	1	1

C. Filing Venue.

Delaware	**S.D. Tex.**	**S.D.N.Y.**	**N.D. Tex.**	**W.D. Wash.**
17	4	3	1	1

D. Restructuring Support Agreement.

Restructuring Support Agreement	**NO Restructuring Support Agreement**
23	3

E. **Industry**.

Energy	**Retail**	**Financial Services**	**Manufacturing**	**Health Care**
6	6	3	3	2
Maritime/Shipping	**Automotive**	**Media**	**Restaurant**	**Technology**
2	1	1	1	1

II. Summary of 2018 Prepackaged and Prearranged Chapter 11 Cases.

A. *In re Seattle Proton Center LLC*, Case No. 18-14380 (TWD) (Bankr. W.D. Wash. 2018); 20 Days.

Seattle Proton Center LLC and its affiliated debtors (collectively, "Seattle Proton") filed for Chapter 11 protection on November 14, 2018. Seattle Proton filed a prepackaged plan of reorganization the next day. Seattle Proton operates a cancer treatment center in Seattle that specializes in outpatient proton radiation treatment. Seattle Proton experienced financial distress as a result of financial performances below projections caused by high start-up costs and insurers' reluctance to provide coverage for new cancer treatments.

Seattle Proton, its senior secured lenders, the Seattle Cancer Care Alliance, and IBA Proton Therapy Inc. (Seattle Proton's primary medical equipment vendor) entered into a restructuring support agreement prior to the petition date. Solicitation commenced on November 12, 2018. All voting classes voted to accept the plan, and the plan was confirmed on December 4, 2018.

B. *In re Rand Logistics, Inc.*, Case No. 18-10175 (BLS) (Bankr. D. Del. 2018); 29 Days.

Rand Logistics, Inc. and related debtors (collectively, "Rand") filed a voluntary petition for Chapter 11 relief on January 30, 2018, in the Bankruptcy Court for the District of Delaware. The Chapter 11 bankruptcy filing included a prepackaged plan of reorganization. Rand is one of the largest providers of bulk freight shipping services in the Great Lakes region. Several factors, including, the volatility in the valuation of the U.S. dollar relative to the Canadian dollar and the increased costs of repairing, maintaining and certifying vessels combined to make the Rand's capital structure unsustainable. In order to address the issues with its capital structure, Rand engaged in negotiations with its second lien lender regarding a consensual deleveraging restructuring transaction while simultaneously pursuing a third party sales process.

Prior to the petition date, Rand entered into a restructuring support agreement with its second lien lender in which the parties agreed to pursue a consensual reorganization. Pursuant to the restructuring support agreement, the parties agreed to support a plan of reorganization that would, among other things, convert the second lien claims to new common stock of the reorganized Rand and pay in full in cash all other claims. As a result, Rand only solicited votes from the second lien lender in connection with the plan. Other creditors were deemed unimpaired, while Rand's equity was extinguished and deemed to reject. Rand's plan was confirmed on February 28, 2018.

C. *In re Orchard Acquisition Company, LLC*, Case No. 17-12914 (KG) (Bankr. D. Del 2017); 36 Days.

Orchard Acquisition Company, LLC and related debtors (collectively, "Orchard") filed a voluntary petition for Chapter 11 relief on December 12, 2017. On that date, Orchard also filed

a prepackaged plan of reorganization. Orchard is a provider of direct-to-consumer access to financing through a variety of avenues including mortgage lending, structured settlements, annuity and lottery payment purchasing, prepaid cards, and conduits to personal loan providers. Leading up to filing, Orchard faced increasing competition to its home-lending line of business as well as increased scrutiny from federal, state, and local regulators. As a result of these challenges, Orchard decided to reach out to certain of its lenders in order to proactively deleverage its balance sheet.

Prior to its bankruptcy filing, Orchard entered into a restructuring support agreement with certain of its lenders. The restructuring support agreement provided for a consensual restructuring of the lenders debt pursuant to a prepackaged plan of reorganization. Prior to filing, Orchard commenced solicitation of votes on the plan from those classes and interest holders entitled to vote on the plan. The established voting deadline, however, straddled the petition date—falling on December 29, 2017, approximately two and a half weeks after Orchard commenced the Chapter 11 cases. The Orchard prepackaged plan was confirmed on January 17, 2018, a mere thirty-six (36) days after the petition date.

D. *In Remington Outdoor Co., Inc.*, Case No. 18-10684 (BLS) (Bankr. D. Del. 2018); 40 Days.

Remington Outdoor Co., Inc. and certain of its affiliated debtors (collectively, "Remington") filed voluntary petitions for Chapter 11 relief on March 25, 2018, in the United States Bankruptcy Court of the District of Delaware. Remington filed a prepackaged joint plan of reorganization that same day. Remington is one of the country's largest manufacturers of firearms, ammunition and related products for commercial, military, and law enforcement

customers throughout the world. Remington experienced financial distress as a result of a significant decline in sales coupled with an increase in costs.

Remington, certain of its Term Lenders, and certain of its Third Lien Noteholders entered into a restructuring support agreement that allowed Remington Outdoor Company to borrow an additional $45 million to satisfy certain obligations of its subsidiaries and provide postpetition financing, as well as an additional $100 million in postpetition financing through a Term DIP Facility in exchange for, among other things, a distribution of 17.5% of the equity in the reorganized parent entity to the Third Lien Noteholders, and 82.5% of the equity in the reorganized parent entity to the Term Lenders. Solicitation commenced on March 22, 2018, with a voting deadline of April 26, 2018. All voting classes voted to accept the plan, and the plan was confirmed on May 4, 2018.

E. *In re Global Brokerage, Inc.*, Case No. 17-13532 (MEW) (Bankr. S.D.N.Y. 2017); 42 Days.

Global Brokerage, Inc. ("Global Brokerage") filed a voluntary petition for Chapter 11 relief on December 11, 2017. Global Brokerage also filed a prepackaged plan of reorganization and restructuring support agreement at the time of its Chapter 11 filing. Global Brokerage was a holding company with limited business operations. It derived all of its revenue from distributions and payments made by its subsidiaries, which provide online foreign exchange trading and related services to retail and institutional customers worldwide.

Global Brokerage had issued $172.5 million aggregate principal amount of 2.25% Convertible Senior Notes due in 2018. In November 2017, the price of Global Brokerage's Class A common stock fell to a point where the stock was delisted by NASDAQ. The delisting triggered the right of each note holder to require Global Brokerage to purchase for cash all of the

holder's notes for the price of the principal amount. Global Brokerage was unable to repurchase the notes, which constituted an event of default under the indenture. In addition, Global Brokerage was unable to make an interest payment on the notes that were due in December 2017, and was confronting an impending maturity of the notes in June 2018. In light of these circumstances, Global Brokerage engaged in negotiations with an ad hoc group of the noteholders around the terms of a consensual restructuring that was embodied in a restructuring support agreement and a prepackaged plan of reorganization.

Global Brokerage commenced and completed solicitation of votes on the prepackaged plan in December 2017, before the petition date. Holders of more than 78.5% in dollar amount of the notes claims voted to accept the plan, and no holder voted to reject the plan. Pursuant to the plan, the noteholders received new notes with an extended maturity and increased interest rate as well as additional governance rights in the reorganized company. Global Brokerage's other creditors were left unimpaired under the plan, and shareholders retained their equity. The Global Brokerage plan was confirmed on January 22, 2018.

F. *In* re *Mattress Firm, Inc.*, Case No. 18-12241 (CSS) (Bankr. D. Del. 2018); 42 Days.

Mattress Firm and its affiliated debtors (collectively, "Mattress Firm") was once the largest specialty mattress retailer in the United States, with over 3,230 stores across 49 states. Mattress Firm filed for Chapter 11 as a result of liquidity constraints caused by two significant structural challenges: (1) a complicated capital structure that restricted Mattress Firm from securing additional funding, including a total of more than $3.2 billion in funded debt and debt restrictions in existing debt facilities; and (2) an overly aggressive expansion of the company's retail footprint through organic growth and major store acquisitions that more than doubled its

store count between 2006 and 2016 and resulted in an inefficient geographic distribution of Mattress Firm stores.

Mattress Firm filed Chapter 11 petitions on October 5, 2018, and filed their Joint Prepackaged Chapter 11 Plan of Reorganization (the "Plan") that same day. Prior to the petition date, the Mattress Firm's primary stakeholders agreed to support the Plan pursuant to a restructuring support agreement dated October 4, 2018. Only the intercompany class of claims was entitled to vote on the Plan. Solicitation packages were distributed on October 4, 2018, with a voting deadline of October 5, 2018.

The Plan was confirmed on November 16, 2018. Among other things, the Plan provided for payment in full of the Mattress Firm's prepetition secured debt and all general unsecured claims, including allowed lease rejection claims. The Plan became effective on November 21, 2018. Currently, the case is still open as Mattress Firm resolves certain disputes with respect to cure amounts and lease rejection claims.

G. *In re New MACH Gen LLC*, Case No. 18-11368 (MFW) (Bankr. D. Del. 2018); 42 Days.

New MACH Gen, LLC and certain of its affiliated debtors (collectively, "New MACH Gen") filed voluntary petitions under Chapter 11 on June 11, 2018, in the United States Bankruptcy Court for the District of Delaware. New MACH Gen filed a prepackaged plan of reorganization that same day, with an amended plan filed on July 18, 2018. New MACH Gen owns and manages a portfolio of three natural gas-fired electric generating facilities in the U.S., and generates revenue through the sale of energy, capacity, and ancillary services from its electricity facilities into certain power markets pursuant to energy management agreements. In 2016, New MACH Gen significantly underperformed and suffered a net loss of approximately

$589.8 million, with liquidity issues continuing as a result of certain regulatory obstacles affecting pipeline construction in the New York market, lower than expected market prices, higher than expected service agreement costs, and hedging restrictions in its First Lien Credit Agreement.

New MACH Gen, its First Lien Lenders, and certain non-debtor affiliates entered into a restructuring support agreement on June 4, 2018, pursuant to which one of the electric generating facilities would be transferred to the First Lien Lenders in exchange for a reduction of the indebtedness under the First Lien Credit Agreement, a refinancing of the remaining indebtedness under the First Lien Credit Agreement, and a new financing from the non-debtor affiliates on a second lien basis. Solicitation commenced on June 4, 2018, a week before the petition date, with a voting deadline of June 5, 2018. The plan was unanimously approved by the classes entitled to vote, and the amended plan was confirmed on July 23, 2018.

H. *In re Taco Bueno Restaurants, Inc*, 2018 WL 6820774 (SGJ) (Bankr. N.D. Tex. 2018); 44 Days.

Taco Bueno Restaurants, Inc. and its related debtors (collectively, "Taco Bueno") filed voluntary petitions for Chapter 11 relief on November 6, 2018, which included a prepackaged plan of reorganization, in the Northern District of Texas Bankruptcy Court. Prior to the petition date, Taco Bueno had entered into a restructuring support agreement with a new investor by which the new investor agreed to acquire all senior debt in the company and then convert such debt into equity pursuant to a plan of reorganization. All general unsecured claims in the company were deemed to reject the plan and were not entitled to a recovery.

The bankruptcy court confirmed the plan, finding that: i) prior to filing, Taco Bueno commenced solicitation of votes on the plan from those classes and interest holders entitled to

vote on the plan; ii) the only eligible holder of a claim in the voting class approved the claim; iii) Taco Bueno then filed a plan supplement, and later modified the plan; iv) although there was a single dispute regarding a store lease, it was resolved and affirmed by the court; v) Taco Bueno had complied with the applicable provisions of the Bankruptcy Code. Taco Bueno's plan was confirmed on December 20, 2018.

I. *In re Ascent Resources Marcellus Holdings, LLC*, Case No. 18-10265 (LSS) (Bankr. D. Del. 2018); 45 Days.

Ascent Resources Marcellus Holdings, LLC and related debtors (collectively, "Ascent Resources") filed voluntary petitions for Chapter 11 relief on February 6, 2018. Concurrently therewith, Ascent Resources filed a joint prepackaged plan of reorganization. Ascent Resources acquired, explored for, developed, produced and operated natural gas and oil properties in the Marcellus Shale basin in the U.S. These activities are capital intensive, and declining prices in the natural gas and oil market significantly decreased Ascent Resources' revenues and the amount of internally generated cash available for operating expenses. Due to the unfavorable market conditions, Ascent Resources was left unable to cover its expenses and satisfy its contractual commitments.

In light of the continuing adverse conditions, Ascent Resources began negotiating with certain first and second lien lenders, and eventually entered into a restructuring support agreement with these lenders, which established a timeline for Ascent Resources and supporting creditors to pursue a marketing process for the sale of all or substantially all of Ascent Resources' assets. The parties also agreed to pursue a consensual reorganization under which the first and second lien lenders would convert their debt to equity, all general unsecured creditors

would be unimpaired, and the existing management team would continue to manage the business in exchange for equity in the reorganized Ascent Resources.

Ascent Resources commenced solicitation of votes on the plan from holders of first and second lien claims prior to filing, with the deadline for submitting votes one month later. Both classes of claims unanimously voted to approve the plan. The plan was confirmed shortly after the petition date on March 23, 2018.

J. *In re EV Energy Partners LP*, Case No. 18-10814 (CSS) (Bankr. D. Del. 2018); 45 Days.

EV Energy Partners, L.P. and certain of its affiliate debtors (collectively, "EV Energy Partners") filed voluntary petitions for Chapter 11 bankruptcy on April 2, 2018, in the United States Bankruptcy Court for the District of Delaware. EV Energy Partners filed a prepackaged plan of reorganization on the same date. EV Energy Partners' are upstream oil and natural gas producers whose primary assets are its producing and non-producing oil, natural gas, and NGL reserves, which are interests that provide EV Energy Partners with the right to drill, produce, and maintain wells in specific geographic regions. EV Energy Partners experienced financial distress as a result of low natural gas and oil prices and sought to comprehensively restructure their balance sheet rather than wait for improved market conditions.

EV Energy Partners, certain noteholders representing approximately 70% of the value of senior notes claims, the secured lenders, and certain non-debtor affiliates entered into a restructuring support agreement in which, among other things, the noteholders would receive 95% of the equity in the reorganized debtors' parent entity and secured lenders would receive new revolving loans under an amended credit agreement and cash equal to accrued by unpaid interest and letter of credit fees payable to such lenders. Solicitation commenced on March 14,

2018, with a voting deadline of March 30, 2018, and all voting classes voted to accept the plan. The plan was confirmed on May 17, 2018.

K. *In re David's Bridal, Inc.*, Case No. 18-12635 (LSS) (Bankr. D. Del. 2018); 46 Days.

David's Bridal, Inc. and its affiliated debtors (collectively, "David's Bridal") filed a voluntary petition for Chapter 11, which included a prepackaged plan of reorganization. David's Bridal is an international bridal retailer deriving their revenue from online merchandise and brick-and-mortar locations, alterations services, franchising arrangements, partnership programs, and wedding services programs. Despite maintaining steady operating cash flows over the years, David's Bridal was burdened by a substantial amount of borrowed-money debt, as well as the pressures of the changing market affecting retailers generally, and decided to seek bankruptcy protection.

David's Bridal engaged in extensive negotiations with their principal stakeholders, resulting in a consensual restructuring support agreement with holders of approximately 85% of the $481.2 million in outstanding principal amount of term loans, holders of 97% of the $270 million in outstanding principal amount of unsecured notes, and David's Bridal principal equity holders. The RSA outlines the material terms of the prepackaged plan, contemplating a substantial deleveraging that will reduce the David's Bridal funded indebtedness from $777 million to $343 million.

Under the prepackaged plan, the Term Lenders agreed to receive their pro rata share of $240-260 million in junior secured takeback term loans, 76.25% of common equity of reorganized David's Bridal and common equity and warrants to be issued to holders of unsecured notes, and the right to participate in the Priority Exit Facility. Lenders who participate

in the Priority Exit Facility will receive a pro rata share of an additional 15% of the new common equity. The Term Lenders also agreed to waive any deficiency claims. Unsecured noteholders will receive a pro rata share of 8.75% of the new common equity, and the warrants, which will be exercisable within 5 years of the effective date for 20% of the new common equity. The prepackaged plan also provides that general unsecured trade creditors will receive 100% recovery on their claims.

L. *In re Fieldwood Energy LLC*, Case No. 18-30648 (DRJ) (Bankr. S.D. Tex. 2018); 46 Days.

Fieldwood Energy LLC and its affiliated debtors (collectively, "Fieldwood Energy") filed for Chapter 11 on February 15, 2018, in the U.S. Bankruptcy Court for the Southern District of Texas. On the petition date, Fieldwood Energy also filed a prepackaged plan of reorganization and a restructuring support agreement.

Fieldwood Energy operates an energy business focused on the acquisition, development, exploitation, and production of oil and natural gas properties. Fieldwood Energy experienced financial distress due to the distressed market conditions in the oil and gas industry, largely due to the volatility of the commodity markets and the depressed prices of oil and natural gas for a prolonged period of time.

The restructuring support agreement was between Fieldwood Energy and its prepetition equity sponsor and single largest lender holding second lien claims, an ad hoc group of lenders holding several kinds of first lien and second lien claims, and an ad hoc group of lenders holding first lien claims. The only classes entitled to vote on the plan were the holders of the first lien claims and second lien claims (Classes 4, 5, and 6), and each class voted to accept the plan. The prepackaged plan was confirmed on April 2, 2018.

M. *In re Southeastern Grocers, LLC*, Case *No*. 18-10700 (MFW) (Bankr. D. Del. 2018); 48 Days.

Southeastern Grocers, LLC and several affiliated debtors (collectively, "Southeastern Grocers") filed voluntary petitions under Chapter 11 after negotiating and voting on a plan of reorganization. The plan provided for restructuring Southeastern Grocers' balance sheet to reduce their funded debt by about $500 million and annual debt service obligations by about $40 million. As of the petition date, 68% of the unsecured noteholders and 99% of the existing equity had voted in support of the prepackaged plan.

The prepackaged plan contemplated the sale or rejection of unprofitable store locations and assumption of other stores. A property manager for two of the store locations objected to confirmation, claiming that those leases had been terminated or were in default pre-petition because Southeastern Grocers failed to accurately report gross sales and pay the percentage of rent due thereon. Southeastern Grocers filed an amended plan providing that leases subject to a dispute would not be assumed until the dispute was resolved. At the confirmation hearing, the Bankruptcy Court directed the parties to agree to a scheduling order to brief the issues.

At the heart of the dispute was the issue of whether the gross sales included the total amounts paid by customers for ancillary services offered in the stores (such as ATMs, sale of gift cards, and check cashing services) or only the amount of fees Southeastern Grocers actually received for allowing these services at their store locations. After examining the lease provisions, the Bankruptcy Court found the leases unambiguous and concluded that the term "gross sales" encompassed the total revenues from the store services, including the ancillary services. The Bankruptcy Court ordered a status hearing to consider any additional issues relative to the leases at the next omnibus hearing.

N. *In re Walter Investment Management Corp.*, Case No. 17-13446 (JLG) (Bankr. S.D.N.Y. 2017); 49 Days.

Walter Investment Management Corp. and related debtors (collectively, "Walter Investment") filed a voluntary petition for Chapter 11, which included a joint prepackaged plan of reorganization. Walter Investment's businesses are comprised of three primary segments: (i) forward mortgage originations; (ii) forward mortgage servicing; and (iii) reverse mortgage servicing. During the years prior to filing, Walter Investment grew its business through a number of acquisitions. As a result of those acquisitions, Walter Investment incurred debt and became highly leveraged. On top of that, Walter Investment recorded significant net losses for the three years leading up to the filing.

Walter Investment entered into a restructuring support agreement with its lenders and noteholders, in which the parties agreed to pursue a consensual reorganization. Prior to filing, Walter Investment commenced solicitation of votes on the plan from those classes and interest holders entitled to vote on the Plan. The prepackaged plan received the overwhelming support of all voting classes. Walter Investment's plan was confirmed on January 18, 2018.

O. *In re Gastar Exploration, Inc.*, Case No. 18-36057 (MI) (Bankr. S.D. Tex. 2018); 50 Days.

Gastar Exploration, Inc. and its affiliated debtors (collectively, "Gastar") filed for Chapter 11 protection on October 31, 2018. Gastar filed a prepackaged plan of reorganization that same day. Gastar is primarily involved in the identification, acquisition, exploration, and development of oil and natural gas properties on unconventional reserves, such as shale resource plays. After a 2017 refinancing, Gastar experienced financial distress due to low market prices

for oil and gas, as well as operational challenges stemming from a failure of a DrillCo Venture to develop up to 60 wells in Oklahoma.

Gastar entered into a restructuring support agreement with certain of its Term Lenders, second lien noteholders, and its shareholder. Solicitation commenced on October 26, 2018, with a voting deadline of October 30, 2018 (the day prior to the petition date). All voting classes unanimously voted to approve the plan, and the plan was confirmed on December 20, 2018.

P. *In re PES* Holdings, *LLC*, Case No. 18-10122 (KG) (Bankr. D. Del. 2018); 64 Days.

PES Holdings, LLC and its affiliated debtors (collectively, "PES") filed for Chapter 11 on January 21, 2018, in the U.S. Bankruptcy Court for the District of Delaware. PES also filed a prepackaged plan of reorganization with a restructuring support agreement on that date.

PES operations primarily consist of two business segments—oil refining and logistics. PES experienced financial distress due to increased environmental regulatory burdens, changes in crude oil prices, and the imbalanced supply/demand in the refining market leading to compressed refining margins.

Prior to filing for Chapter 11, PES negotiated a prepackaged plan of reorganization and entered into a restructuring support agreement with their parent parties, 100% of the holders of their Term Loan A Debt, the Term Loan A Agent, holders of 91% of Term Loan B Debt, and Sunoco Logistics Partners Operations LP (as an additional financing lender). In January 2018, prior to the petition date, PES commenced solicitation, with the holders of Term Loan A Claims and Term Loan B Claims (Classes 7 and 8) eligible to vote. Both classes voted to accept the plan. The plan was confirmed on March 26, 2018.

Q. *In re ATD Corporation*, Case No. 18-12221 (KJC) (Bankr. D. Del. 2018); 66 Days.

ATD Corporation and certain of its affiliated debtors (collectively, "ATD") filed voluntary petitions under Chapter 11 on October 4, 2018, in the United States Bankruptcy Court for the District of Delaware. Shortly after the petition date, on October 15, 2018, ATD filed a pre-negotiated plan of reorganization and a restructuring support agreement. ATD operates the largest distribution network of replacement tires across North America. ATD filed for bankruptcy relief in order to deleverage their balance sheet and obtain additional liquidity.

ATD, an ad hoc group of Senior Subordinated Noteholders, and ATD's equity sponsors were parties to the restructuring support agreement, pursuant to which the Senior Subordinated Notes would be exchanged for 95% of the equity in reorganized ATD. The solicitation package and disclosure statement were both approved by the Bankruptcy Court on November 14, 2018. Solicitation of the plan commenced on November 16, 2018, with a voting deadline of December 14, 2018. Each class entitled to vote approved the plan, and the plan was confirmed on December 19, 2018.

R. *In re HGIM Holdings LLC*, Case No. 18-31080 (DRJ) (Bankr. S.D. Tex. 2018); 77 Days.

HGIM Holdings, LLC and its affiliated debtors (collectively, "HGIM") filed for Chapter 11 protection on March 7, 2018, in the U.S. Bankruptcy Court for the Southern District of Texas. Shortly after filing its petition, HGIM filed a pre-packaged plan of reorganization together with a restructuring support agreement.

HGIM is a maritime transportation company owning and operating a fleet of offshore supply and multi-purpose support vessels. HGIM experienced financial distress due to depressed

oil prices, which caused oil production and rig companies (an important source of HGIM's revenue) to cut back on the number of projects for which they utilized the debtors' services.

HGIM entered into the restructuring support agreement with its equity sponsor and a broad base of lenders under its credit agreement. HGIM's completed solicitation of votes on its plan before filing Chapter 11, where only holders of allowed claims on account of the credit agreement were entitled to vote on the plan. Holders of approximately 94% in number and 75.5% in dollar amount voted to accept the plan, excluding the votes of insiders. The plan was confirmed on May 23, 2018.

S. *In re Patriot National, Inc.*, Case No. 18-10189 (KG) (Bankr. D. Del. 2018); 94 Days.

Patriot National, Inc. and its affiliated debtors (collectively, "Patriot National") filed for Chapter 11 on January 30, 2018, in the U.S. Bankruptcy Court for the District of Delaware. Patriot National filed a pre-negotiated plan of reorganization with a restructuring support agreement on that date.

Patriot National (through its subsidiaries) provides comprehensive technology-enabled outsourcing solutions to insurance carriers, primarily in the workers' compensation sector, to mitigate risk, comply with complex regulations, and save time and money. In November 2017, one of Patriot National's most significant customers was placed into receivership in Florida, causing its cash payments to Patriot National to sharply fall off and depleting the Patriot National's cash and operating capital.

Patriot National entered into the restructuring support agreement with the agents for its lenders, certain of the lenders themselves, and TCW Asset Management Co. LLC, which agreed to acquire Patriot National. After filing its initial plan of reorganization, Patriot National filed

three amended plans in response to concerns raised by various parties in interest and by the Court. The fourth amended plan was confirmed on May 4, 2018.

T. *In re The Walking Co. Holdings Inc*, Case No. 18-10474 (LSS) (Bankr. D. Del. 2018); 99 Days.

The Walking Company Holdings, Inc. and its affiliated debtors (collectively, "Walking Company") filed for Chapter 11 on March 6, 2018, in the U.S. Bankruptcy Court for the District of Delaware. Walking Company filed a pre-negotiated plan of reorganization on that date, having already obtained support from key equity and creditor constituencies.

Walking Company is engaged in the design, manufacture, and sale of comfort footwear, graphic T-shirts, and casual sportswear and accessories. Walking Company underwent a restructuring in 2009 due to the general downturn in the 2008 recession. While Walking Company's business improved significantly after the first reorganization, allowing it to expand and develop its business and brands, by 2017, Walking Company began to experience financial distress again due to the increasing power of online retailers.

One of the key obstacles to the plan of reorganization was securing new equity commitments from current shareholders and financing from the Walking Company's primary lender, Wells Fargo. The commitments were contingent on Walking Company conforming its lease portfolio to market rents, which required extensive negotiations with landlords. Walking Company's management and advisers negotiated with the landlords postpetition and were eventually able to obtain required concessions. The First Amended Plan of Reorganization was confirmed on June 13, 2018.

U. *In re Fallbrook Technologies Inc*, Case No. 18-10384 (MFW) (Bankr. D. Del. 2018); 105 Days.

Fallbrook Technologies Inc. and its affiliated debtors (collectively, "Fallbrook") filed for Chapter 11 protection on February 26, 2018, in the U.S. Bankruptcy Court for the District of Delaware. Fallbrook had entered a restructuring support agreement prior to the petition date, with the stated intention to file a pre-negotiated plan of reorganization shortly thereafter.

Fallbrook invented and patented mechanical technology that enhanced performance and improved efficiency in machinery, vehicles, and equipment. Fallbrook's revenue streams were insufficient to satisfy their debt and operating expense obligations.

The prepetition restructuring support agreement was between Fallbrook and its most significant creditors (the holders of existing notes, the holders of claims against and other interests in the Fallbrook parties, and additional supporting creditors). Despite the significant support for the plan, the plan received two objections – a shareholder holding approximately 3.5% of Fallbrook's prepetition equity challenged the value of Fallbrook's interest in one of its non-debtor subsidiaries as well as the feasibility of the plan, and the IRS objected because Fallbrook did not yet file its 2017 tax returns. Fallbrook viewed the first objection as non-meritorious, and worked with the IRS to resolve the second objection. The First Amended Plan was confirmed on June 11, 2018.

V. *In re HCR ManorCare, Inc.*, Case No. 18-10467 (KG) (Bankr. D. Del. 2018); 109 Days.

HCR ManorCare and its affiliated debtors (collectively, "HCR") is a leading national healthcare provider that, through certain non-debtor providers, operates a network of more than 450 locations across the United States for long-term patient care at skilled nursing, inpatient rehabilitation and assisted living facilities, hospice care agencies, and outpatient rehabilitation clinics. HCR itself is a holding company with no material assets other than its ownership

interests in its operating subsidiaries. HCR filed for Chapter 11 on March 4, 2018, after facing liquidity constraints caused by an overall decline in the market for skilled nursing facility operators that left the company unable to meet rent obligations incurred as part of a 2011 sale-leaseback transaction with a publicly traded real estate investment trust.

HCR had initially filed a prepackaged plan (the "Original Plan"), pursuant to which 100% of the Reorganized HCR's stock was to be transferred to Quality Care Products ("QCP"), the owner and lessor of approximately 98% of the company's skilled nursing and assisted living facilities. Solicitation packages were distributed on March 3, 2018, with a voting deadline on the same day. The Original Plan was unanimously approved, and was confirmed at an uncontested hearing on April 13, 2018. The effective date of the Original Plan was conditioned on the closing of the Plan Sponsor Agreement between HCR and QCP, dated as of March 2, 2018.

Before any distributions were made under the Original Plan, HCR, QCP, and other parties entered into various agreements to affect an alternative transaction, pursuant to which Welltower, Inc. would acquire all outstanding stock of QCP under a merger agreement, and the Reorganized HCR would transfer 100% of its New Common Stock to an indirect subsidiary of non-profit ProMedica Health System, Inc. The alternative transaction would result in an 80-20 joint venture between Welltower and ProMedica to own and operate HCR's business, with the joint venture owning the real estate, and ProMedica leasing the real estate from the joint venture. To support the alternative transaction, the parties executed an alternative plan support agreement, alternative restructuring support agreement, and an amendment to the original plan support agreement. Pursuant to the merger agreement between Welltower and QCP, QCP solicited proposals for higher bids, with one bidder offering a potentially superior offer.

To reflect the alternative transaction, HCR filed its amended plan (the "Amended Plan"). The Amended Plan created three voting classes, which were solicited on May 23, 2018, with a voting deadline of June 15, 2018. All three voting classes voted unanimously to approve the Amended Plan, and the Amended Plan was confirmed after an uncontested hearing on June 21, 2018. After the Amended Plan was confirmed, the additional bidder for QCP withdrew its offer to acquire the company.

On July 25, 2018, QCP's shareholders voted to approve the merger, and the Amended Plan became effective on July 26, 2018. The bankruptcy case was closed on October 19, 2018.

W. *In re Gibson Brands Inc.,* Case No. 18-11025 (CSS) (Bankr. D. Del. 2018); 155 Days.

Gibson Brands, Inc. and certain of its subsidiary debtors (collectively, "Gibson") filed voluntary petitions under Chapter 11 on May 1, 2018, in the United States Bankruptcy Court for the District of Delaware. Gibson filed as a pre-negotiated case with a restructuring support agreement, and filed its initial plan on June 20, 2018. Gibson is one of the world's leading designers and manufacturers of guitars, guitar products, other fretted instruments, and accessories. Gibson began experiencing financial distress after a significant decline in its consumer electronics businesses, caused by credit restrictions and loss of credit insurance overseas along with unsustainable overhead costs of its consumer electronics business. After defaulting on its International Term Loan Agreement, the foreign non-debtor subsidiaries comprising the consumer electronics business entered liquidation proceedings, which themselves triggered cross-defaults on other debt facilities.

Gibson, an ad hoc group of noteholders owning approximately 69% of the principal amount of notes, and Gibson's majority shareholders entered into a restructuring support

agreement that would result in a change of control of the musical instrument business. A number of objections to the initial plan were filed, including by the creditors committee, challenging, among other things, the proposed treatment of unsecured creditors (who were to receive a 0.2% recovery) and Gibson's lack of a prepetition marketing process. After months of negotiations, discovery, and the filing of an amended plan, Gibson eventually reached a global settlement with the plan objectors that raised recoveries for general unsecured creditors to between 5.1% to 10.8%, and provided a certain objecting creditor an allowed guaranty claim under the International Term Loan Agreement. Amended solicitation packages were distributed to classes impacted by the global settlement on September 14, 2018, with a voting deadline of September 27, 2018. All voting classes voted to accept the amended plan. Gibson's Fifth Amended Joint Chapter 11 Plan of Reorganization was confirmed on October 3, 2018.

X. *In re Claire's Stores Inc.*, Case No. 18-10584 (MFW) (Bankr. D. Del 2018); 186 Days.

Claire's Stores, Inc. and its affiliated debtors (collectively, "Claire's") filed for Chapter 11 relief on March 19, 2018, in the U.S. Bankruptcy Court for the District of Delaware. Concurrently with the filing, Claire's filed a restructuring support agreement with an ad hoc group of Claire's first lien lenders and its equity sponsor, Apollo Global Management, LLC.

Claire's was a girl's accessories and jewelry retailer, which experienced financial distress due to the highly competitive retail market and changing retail landscape. Claire's filed for Chapter 11 bankruptcy protection to eliminate a substantial portion of debt. After the bankruptcy filing, Claire's majority second lien creditor, Oaktree Capital Management, challenged its plan, specifically taking aim at the propriety of corporate decision-making by claiming that Claire's restructuring was wrongly structured to benefit its equity sponsor, thus hurting its more senior

stakeholders. Various other creditors, including BOK Finance NA, lodged challenges to various aspects of Claire's plan, claiming the plan discouraged alternative offers and restructuring proposals and improperly favored Claire's plan sponsor and first lien lender.

The objections to Claire's plan were ultimately resolved, and the plan was confirmed approximately six months after the case was filed on September 21, 2018.

Y. *In re Cenveo Inc.*, Case No. 18-22178 (RDD) (Bankr. S.D.N.Y. 2018); 200 Days.

Cenveo, Inc. and its affiliated debtors (collectively, "Cenveo") filed for Chapter 11 protection on February 2, 2018, in the U.S. Bankruptcy Court for the Southern District of New York. Cenveo entered into a restructuring support agreement prior to the petition date, but did not file a plan until two months later.

Cenveo is one of the largest North American printing and envelope companies, operating a streamlined "one-stop" shop for all envelop, label, and print-related services. Cenveo filed for Chapter 11 relief due to persistent negative industry trends, an unsustainable capital structure, vendors' contraction of trade terms causing rapidly deteriorating liquidity, and customer reduction in exposure to Cenveo.

The restructuring support agreement was between Cenveo and an ad hoc first lien noteholder group holding more than half of their first lien debt. Despite this support, the Cenveo faced immediate opposition from Brigade Capital Management, its largest second lien holder who also held equity and a cross-over first lien positions. Brigade raised concerns about improper prepetition insider transactions, among other deficiencies.

After filing its initial plan on April 2, 2018, Cenveo submitted three amended plans of reorganization. The official committee of unsecured creditors objected to the first plan, claiming

it was patently unconfirmable. The plan was eventually amended to address the objections and was ultimately confirmed on August 21, 2018.

***Z. In re iHeartMedia, Inc.*, Case No. 18-31274 (MI) (Bankr. S.D. Tex. 2018); 314 Days.**

iHeartMedia, Inc. and its affiliated debtors (collectively, "iHeart") filed for Chapter 11 protection on March 14, 2018, in the U.S. Bankruptcy Court for the Southern District of Texas. At the time of filing, iHeart had an "agreement in principle" on a restructuring transaction with the support of a group of holders of more than $10 billion of outstanding debt obligations and iHeart's equity sponsors. iHeart did not have a restructuring support agreement finalized as of the petition date.

iHeart is a diversified media, entertainment, and data company, owning and operating radio stations and other advertising-supported and consumer-focused platforms. The global downturn in 2008 resulted in a decline in advertising and marketing spending by iHeart's customers, leading to a decline in advertising revenues. After the economy recovered, iHeart's industry faced new competition from the online and digital advertising industry and on-demand streaming services. As a result, iHeart needed to undergo a restructuring to right size its balance sheet.

On March 16, 2018, shortly after the bankruptcy case was filed, iHeart entered into a restructuring support agreement with a group of creditors holding Term Loan Credit Facility Claims, PGN Claims, Legacy Notes Claims, and 2021 Notes Claims, and equity holders. iHeart proposed its initial plan of reorganization on April 28, 2018, and went through five amendments. The Official Committee of Unsecured Creditors, who tried to assert standing to bring causes of action relating to some $13 billion in claims against the lenders asserting various causes of

action, requested more information concerning the restructuring negotiations, and suggested the general unsecured creditors should be entitled to more than the projected recovery under the plan. These concerns were eventually resolved by Creditors Committee, Senior Creditors, and sponsors and resulted in improved recoveries for unsecured creditors under the plan. The Fifth Amended Plan of Reorganization was eventually confirmed on January 22, 2019.

III. 2019 Prepackaged and Pre-negotiated Chapter 11 Cases to Watch

The following cases are prepackaged and pre-negotiated Chapter 11 cases that had not yet confirmed plan of reorganizations as of the date of this paper.

- *In re Angel Medical Systems Inc.*, Case No. 18-12903 (KG) (Bankr. D. Del. 2018) (filed bankruptcy petition and prepackaged plan of reorganization on December 31, 2018; approval of disclosure statement and confirmation of plan of reorganization scheduled to be heard on February 11, 2019).
- *In re Duro Dyne National Corp.*, Case No. 18-27963 (MBK) (Bankr. D.N.J. 2018) (filed pre-negotiated Chapter 11 proceeding on September 7, 2018; confirmation is pending).
- *In re LBI Media Inc.,* Case No. 18-12655 (CSS) (Bankr. D. Del. 2018) (case was commenced on November 21, 2018, with pre-negotiated plan and restructuring support agreement filed on November 23, 2018; confirmation of the plan is pending).
- *In re ONE Aviation* Corp., Case No. 18-12309 (CSS) (Bankr. D. Del. 2018) (filed prepackaged Chapter 11 case on October 9, 2018; subsequently filed an amended plan on January 18, 2019, and confirmation is pending).

- *In re Parker Drilling Company*, Case No. 18-36958 (MI) (Bankr. S.D. Tex. 2018) (filed a restructuring support agreement and pre-negotiated plan of reorganization together with a bankruptcy petition on December 12, 2018; confirmation hearing scheduled for March 5, 2019).
- *In re PetroQuest Energy, Inc.*, Case No. 18-36322 (DRJ) (Bankr. S.D. Tex. 2018) (pre-negotiated case filed with a restructuring support agreement and plan of reorganization on November 6, 2018; an amended plan was confirmed on January 31, 2019)
- *In re Westmoreland Coal Company*, 18-35672 (DRJ) (Bankr. S.D. Tex. 2018) (pre-negotiated Chapter 11 proceeding providing for the sale of certain core assets pursuant to a restructuring support agreement; the case was filed on October 9, 2018, and the plan of reorganization was filed on October 25, 2018; confirmation hearing is scheduled for February 13, 2019).