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# RECENT ALTERNATIVES TO TRADITIONAL DEBTOR-IN-POSSESSION FINANCING

*In recent years, distressed companies and lenders have been more creative in how they structure post-petition financing arrangements. With companies struggling during the pandemic that until recently had no end in sight, access to traditional debtor-in possession ("DIP") financing has proven to force existing lenders to treat post-petition financing as more of a long game. In this article, the author discusses how distressed companies and institutional lenders have explored alternative financing avenues; specifically, this article discusses the advantages and disadvantages of four recent exemplar case studies, two of which involved a debtor's use of cash collateral in lieu of entering into a post-petition financing facility, one of which involved a "hybrid" financing facility, and one of which involved the sale of stock to raise cash.*

By Maris J. Kandestin *

A company in distress as a result of the pandemic or other macroeconomic headwinds may have difficulty procuring affordable post-petition financing for its chapter 11 case. During the pandemic, which until recently had no end in sight, some lenders were more reluctant to provide new money financing on reasonable terms, especially if the lenders have no interest in owning the distressed assets in question. As a result, distressed companies have turned to their institutional lenders more often, seeking to use cash collateral to finance their case, with companion DIP commitments to ensure that additional liquidity is readily available if necessary to fund operations and the administration of the chapter 11 case. Over the past year or so, the industry has witnessed debtors and lenders negotiate the use of cash collateral in novel ways in lieu of procuring outside DIP financing. In addition to relying purely on cash collateral during the entirety of a chapter 11 case, some companies have procured additional cash immediately prior to a chapter 11 filing through single-draw term loans and, in one instance, a debtor-in-possession's attempt to raise cash during a chapter 11 case through the sale of unissued common stock.

In light of the recent spate of debtors-in-possession defaulting under, or otherwise failing to perform in accordance with, their DIP obligations during the pandemic,[1] institutional lenders can greatly benefit from

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[1] *See, e.g., In re Bouchard Trans. Co., Inc.*, No. 20-34682 (DRJ) (Bankr. S.D. Tex. 2020); *In re VIP Cinema Holdings, Inc.*, No. 20-10345 (MFW) (Bankr. D. Del. 2020); *In re CraftWorks*

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