

CLAIM ESTIMATION

Swap Termination Costs

Special treatment in the Code for counterparties to financial contracts, such as swaps, repos, forwards, etc.

Not subject to the automatic stay

Financial contract counterparties have the right to liquidate, terminate or accelerate

Most currency and interest rate swaps are secured pari passu with the respective loans; others likely to be unsecured

Cash Management Obligations

Obligations under automated clearing house programs and other cash management services provided by a borrower's banks

May be incremental to its exposure to its bank lenders under its credit facilities

May be material

May be secured pari passu with the bank collateral

Securitizations

Standard A/R programs involve sale of A/R to a bankruptcy-remote SPV at arms' length, commercially reasonable terms

Securitization investors do not have any recourse against the estate --> not claimants

However, if the A/R in question continue to be listed on the debtor's B/S, then securitized debt a secured claim

With priority on the value from the receivables in the securitization

A future flow type of securitization, securitizing all or part of the borrower's future revenue and cash flow would have a claim

Trade Creditor Claims

Typically unsecured claims that rank pari passu with general unsecured pool

Many pre-petition claims are either paid in the ordinary course or treated as administrative claims, in practice

Leases

First, assume a reasonable lease rejection rate given the types of assets leased, the industry and simulated default scenario

Take the amount of lost rental income and subtract the net value to lessor by sale or re-lease of the asset

Deficiency claim in commercial real estate is max (1 yrs rent, 15% of remaining rental payments for no more than 3 years left)

For most companies, S&P takes deficiency claim = lease rejection rate x 3x annual rent

Exceptions to this include leases on transportation equipment

No deficiency claim for leases held by individual SPVs that do not have credit support (no guarantee), and are non-recourse

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Employment Related Claims

No claim if the contracts are unaltered

Collective Bargaining Rejection Claims: unsecured claims

If rejected, then limited to 1 yrs' comp + unpaid comp due under the CBA

If negotiated without rejection, damages for lost wages and benefits may not be limited

Pension Plan Termination Claims: generated by terminating a defined benefit plan per ERISA guidelines

Beneficiary: PBGC

PBGC assumes the liabilities of the pension up to ERISA limits

Unsecured claim for the unfunded benefits

Difficult to calculate the size of this claim based on public information

Retiree Benefits Modifications Claims: claims related to termination of retiree benefits for retired employees