

Welcome to Today's Webinar Presentation

Bankruptcy: How to Avoid It, Benefit from It, and How to Fund It

*Presented by
FEI Dallas Chapter*

August 21, 2020

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Welcome and Introductions



Ron Rushing
CFO, ProStar Energy Services
and
FEI Dallas Chapter President

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Speakers



Moderator
Kelly Harris
Partner
Harris & Dickey, LLC



Hon. Stacey G. Jernigan
United States Bankruptcy Judge
U.S. Bankruptcy Court,
Northern District of Texas,
Dallas Division



Ross Gaitlin
CEO and Managing Partner
Prophet Equity

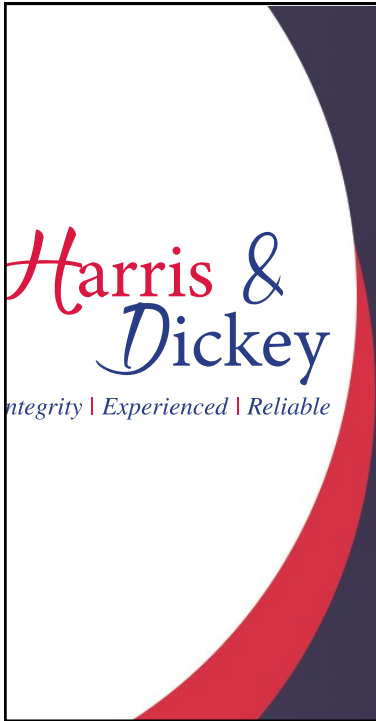


John Tittle, Jr.
Managing Director & Head of
Turnaround/Restructuring
Practice
Harris & Dickey, LLC



John D Penn
Partner & Firmwide Chair,
Bankruptcy and Restructuring
Practice
Perkins Coie LLP

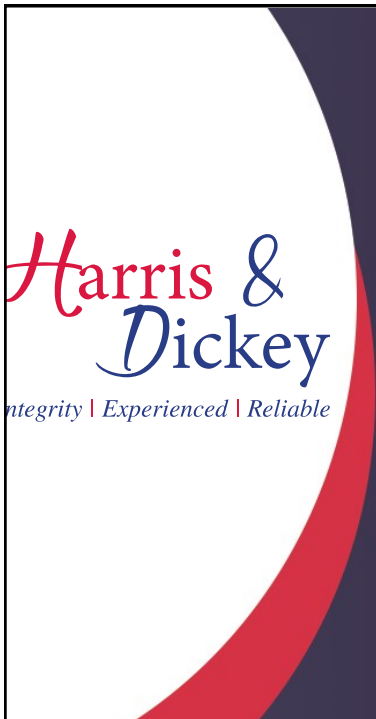
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**Bankruptcy –
How to Avoid It,
Benefit from It
and How to Fund
It**

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**Increased
Business
Bankruptcies-
The First Wave?**

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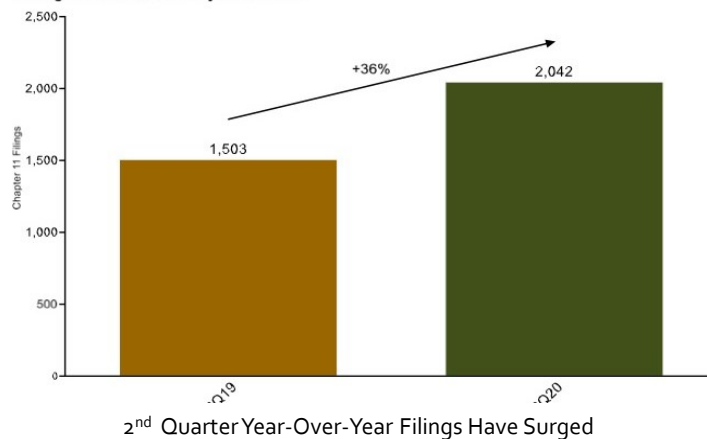
Factors Contributing to the First Wave

- Energy cases (mostly oil and gas E&P companies, midstream, or service/suppliers right now)
- Retail and Restaurant Cases
- Travel & Hospitality cases (including the ripple effects, like what is the impact of rental car companies trimming their fleets)
- Healthcare Cases

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Factors Contributing to the First Wave (cont'd)

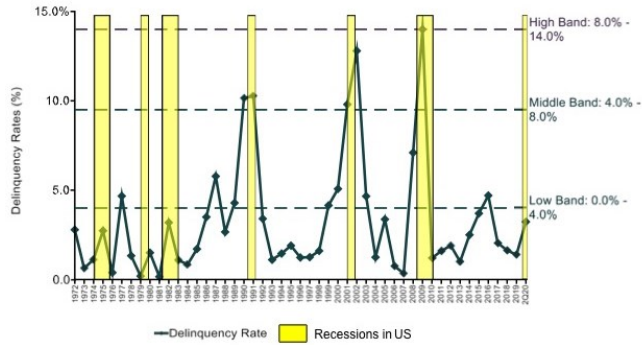
36% increase in Chapter 11 filings year-over-year is a leading indicator of likely additional filings through the course of this year and 2021



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Factors Contributing to the First Wave (cont'd)

Despite government aid, 1H 2020 has begun showing an increasing amount of defaults, suggesting a reversion to historical downturn levels

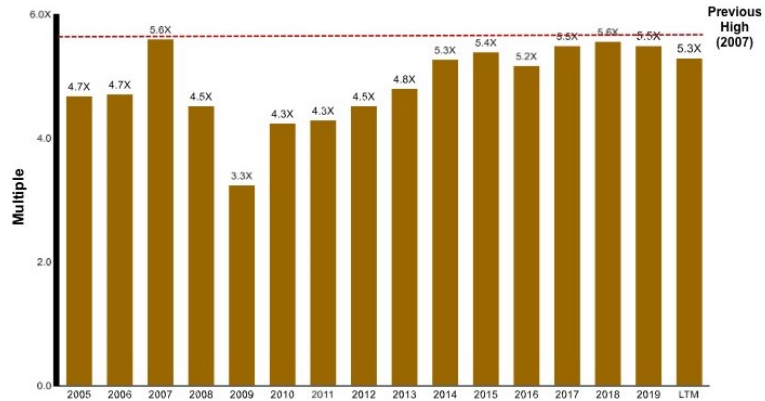


Historic Range of Defaults Reflects Likely Impact

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Factors Contributing to the First Wave (cont'd)

...and Debt Multiples remain near pre-Great Recession highs...

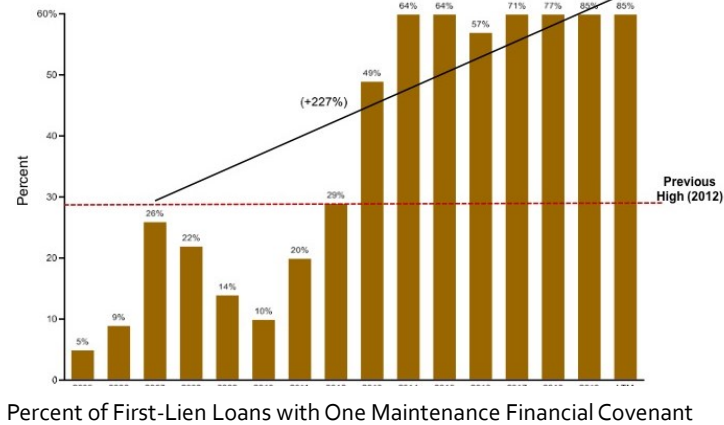


Average Debt Multiples of Middle-Market Loans

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Factors Contributing to the First Wave (cont'd)

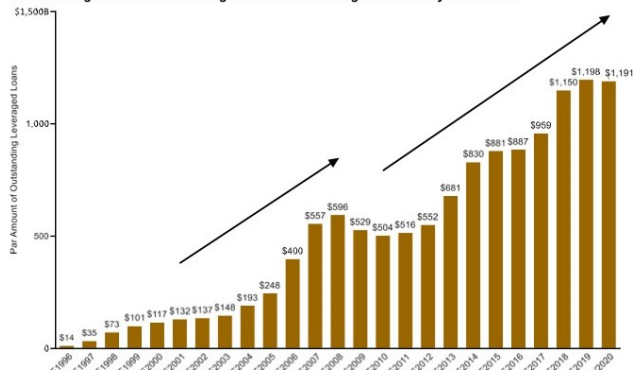
...while one covenant loans are 227% more common than in pre-Great Recession peak levels...



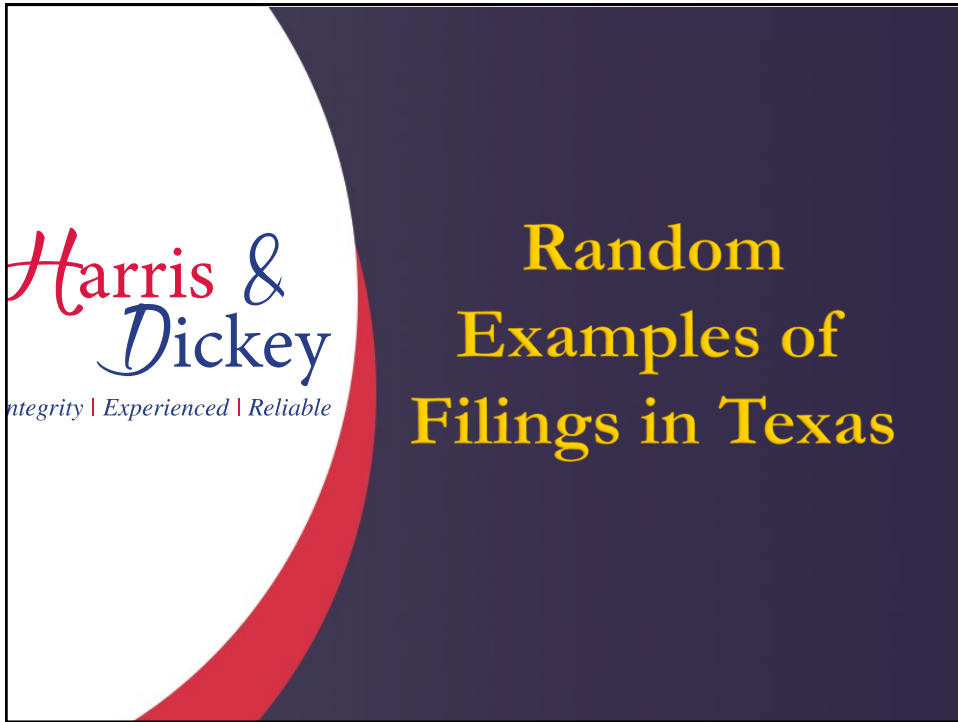
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Factors Contributing to the First Wave (cont'd)

...on the largest amount of leveraged loans outstanding in the history of the U.S.A



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The slide features the Harris & Dickey logo at the top left, with the tagline "Integrity | Experienced | Reliable". To the right, the title "Random Examples of Filings in Texas" is written in yellow. Below the title, the section "Energy Sector" is underlined, followed by a bulleted list of 20 company names. A red curved graphic element is positioned behind the logo.

Energy Sector

- McDermott International, Inc.
- Unit Petroleum Co.
- Hornbeck Offshore Services Inc.
- Gavilan Resources LLC
- Ultra Petroleum Corp.
- Diamond Offshore Drilling Inc.
- SpeedCast International, Ltd.
- Whiting Petroleum Corp.
- Chesapeake
- California Resources
- Bruin E&P Partners LLC
- BJ Services;
- Rosehill
- Denbury Resources
- Fieldwood
- Yuma Energy
- Diamondback Industries
- New Emerald Energy, LLC
- Vista Proppants and Logistics, LLC.

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Retail/Restaurant

- Neiman Marcus
- J.C. Penney
- Tuesday Morning
- Stage Stores
- Gold's Gym
- Chuck E Cheese
- California Pizza Kitchen
- Twisted Root Burger
- J. Hilburn

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Travel Industry

- RE Palm Springs (half constructed hotel in Palm Springs California with Texas owners)

Healthcare

- Endologix and Tri-Vascular (medical device/stent manufacturer)
- LT Smile, alongside Benevis Corp. (dental chain)
- Choice Clinical Lab, L.L.C.
- Greenleaves Diagnostic Laboratories LLC

Other

- Muzak Mood Media

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Interesting factoid:

N.D. Texas has had more large healthcare chapter 11s in recent years than any district in the country, including such cases as: Senior Care Centers (140+ nursing home chain); Tarrant County Senior Living Center; Mayflower Communities, Inc.; 4West Holdings; PHI Air Medical; Adeptus (120+ free-standing ER facilities); Evergreen Helicopters International, Inc.; Sears Methodist Retirement System; Erickson Retirement Communities; Walnut Hill Hospital; Forest Park Hospitals.

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Types of Bankruptcy Cases

- Chapter 7 (Liquidation)
- Chapter 9 (State Governmental Entities)
- Chapter 11 (Reorganization)
 - Variation on Chapter 11 – “Subchapter 5”
- Chapter 12 (Family Farmer)
- Chapter 13 (Individual with regular income)
- Chapter 15 (Ancillary proceeding in U.S. for foreign insolvency proceeding)

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Petition Date – Line of Demarcation

- Pre-petition / Post-Petition Claims
- Post-petition claims should be paid at 100%
- Secured claim to the extent of collateral value
- Unsecured claims paid in “itsy bitsy bankruptcy dollars”

Automatic Stay

- Freezes collection actions and efforts
- Relief is available

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Leases and Contracts

- Can Assume or Reject
- Rejection damage claims are pre-petition
- Real estate lease claims have strict limitations

Avoidance Actions

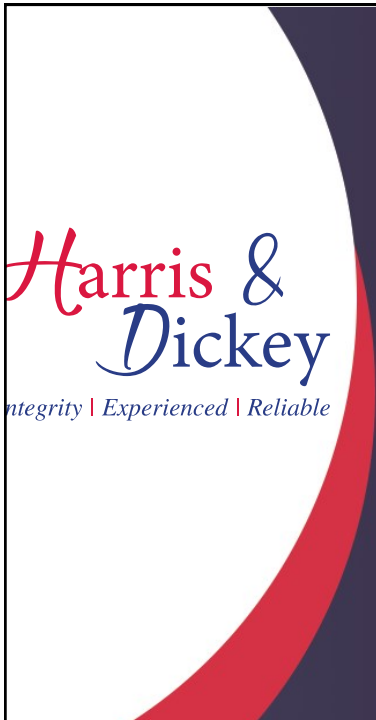
- Preferential transfers – 90-day lookback
- Fraudulent transfers – 2- & 4-year lookbacks

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Plan Process

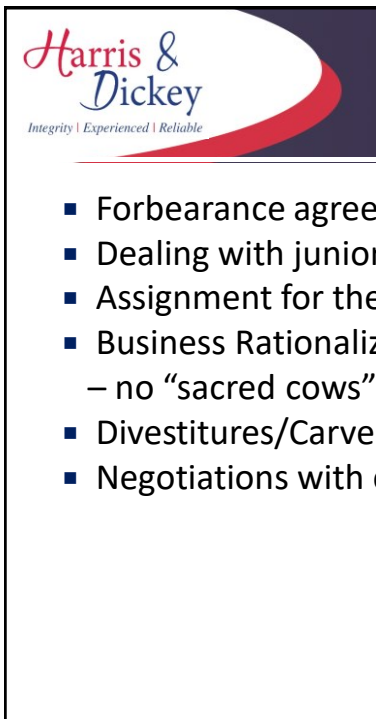
- Disclosure statement
- Plan requirements
- Secured – present value of payments \geq collateral value
- Unsecured – not less than would receive in liquidation
- Absolute priority rule

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Out of Court Workouts and Contingency Planning

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Out of Court Workouts and Contingency Planning

- Forbearance agreements
- Dealing with junior creditors (2nd lien, etc....)
- Assignment for the Benefit of Creditors
- Business Rationalization Strategies
 - no “sacred cows”
- Divestitures/Carve-outs (Non-core v. Core)
- Negotiations with creditors

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- Negotiations with your troubled customers or suppliers
- Personal liability of officers, directors, and owners
- Zone of Insolvency
- Pre-bankruptcy planning
- Pre-arranged vs. Prepackaged bankruptcy

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Funding for the successful Chapter 11

- Time and money to restructure usually in short supply
- Give yourself time and some “dry powder”
- DIP Financing as well as new players
- Typical terms and range of rates
- Superpriority Liens
- Potential resistance of Courts to “high” front end costs and onerous terms
- Unencumbered assets

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Funding for the successful Chapter 11

- Priming DIPs
- Use of Cash Collateral and concept of Equity Cushion
- Lender/investor perspective
- Selling assets during case
- Diminution of lenders' collateral
- Buying distressed debt and other investment opportunities involving companies in Chapter 11

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Funding the exit

- Exit financing generally
- Provider of the DIP?
- Other players, including “loan to own”
- Valuation issues and dilution
- Investor perspective – – structure, required rates of return, investment time horizon
- Cramdown as an alternative
- Best Interests Test

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Bankruptcy – What Is Different Now?

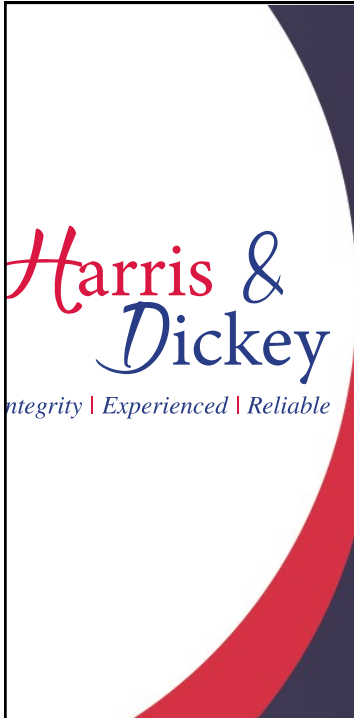
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- Starting with the obvious, we have many pandemic-related cases (only pandemic caused the problems)
- Different lenders involved (not so much traditional banks but private equity; hedge funds; maybe a PPP loan)
- DIP Loan/Post-petition Financing might be atypical (vendors; landlords; second lien lenders; others)
- Landlords suddenly have less leverage than before perhaps

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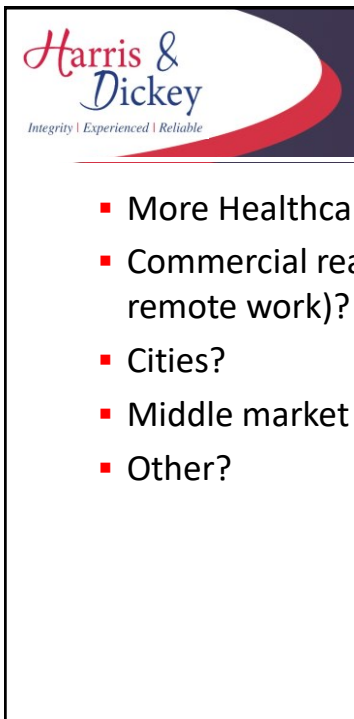
- Atypical Strategies (Hertz Car Rental case—idea of doing a public offering of stock, because of irrational market exuberance, instead of a DIP loan; SEC didn't like that)
- More Debt-for-Equity Swaps/Fewer Section 363 Sales
- Key Employee Retention Plans (KERPS)/ Key Employee Incentive Plans (KEIPS)

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A Second Wave of Bankruptcy Filings?

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A second wave of bankruptcy filings?

- More Healthcare Cases?
- Commercial real estate & offices (and the effect of remote work)?
- Cities?
- Middle market cases?
- Other?


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Questions

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Closing Remarks



Ron Rushing
CFO, ProStar Energy Services
and
FEI Dallas Chapter President

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thank you!

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