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ACQUIRING DISTRESSED ASSETS

One man's distressed assets are your opportunity. Acquiring a failing competitor's customers, equipment, real estate or other assets will be a golden opportunity in the coming months. This opportunity, however, requires that you and your legal team figure out the best way to transfer the assets free of any lien or other third party claims to the assets.

Bankruptcy

Bankruptcy sales are the gold standard of troubled asset acquisitions. The simple reason is you get a bankruptcy court order that says the assets are transferred free and clear of liens. The Court order stops any person claiming a lien on the assets in their tracks. This gold standard, however, comes at a price. There is typically a bid process as the objective in bankruptcy is to get the highest price for the assets to pay creditors. This means your competitors can show up to bid on the assets and drive up your cost to acquire them. The bankruptcy route also takes time and if you're trying to acquire customers of your competitor they could flee somewhere else before you can purchase them through the bankruptcy court.

Non Bankruptcy Sales

Troubled asset acquisitions can and do take place outside bankruptcy. In this scenario dealing with the party who has the senior lien on the assets is critical. The senior secured creditor has the ability to foreclose on the assets pursuant to the Uniform Commercial Code. This senior secured creditor can then sell these assets free and clear of most liens except government taxes to a buyer in a private sale. This type sale can save time and money and preserve the value of the purchased asset. Dotting your i's and crossing the t's is where your legal team earns their keep giving advice on these types of transactions. If you do not structure these transactions properly you will have acquired assets with all kinds of problems. The dollars and time expended to fix these issues means the value of the transaction has likely evaporated.

Troubled assets acquisitions present many opportunities inside and outside bankruptcy. The benefits and risks on the bankruptcy or non bankruptcy route are critical in assessing which route makes the most sense for you.

As always, your trusted legal resource for practical advice.

For more information about me, click below.

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