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Session: # 38034

IDENTITY CRISIS: Risks and Best Practices When Doing Business With Newly Acquired Entities and Conglomerates

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318145876.3

OVERVIEW: WHO IS YOUR CUSTOMER, ANYWAY?



- Properly Identifying Customer Entities
- Changes in Customers' Corporate Structures
- Case Studies
- Best Practices and Preventive Measures



PROPERLY IDENTIFYING CUSTOMER ENTITIES



IDENTITY CRISIS: Risks and Best Practices for Doing Business With Affiliated and Newly Acquired Entities

PROPERLY IDENTIFYING CUSTOMER ENTITIES

- **Three Fundamental Data Points:**
 - **Name**
 - Full, correct legal name of the entity
 - Not the trade name, division name, DBA
 - **Type**
 - Type of business entity
 - LLC, corporation, general / limited partnership, sole proprietorship
 - **State**
 - Where the entity is legally organized
 - Often different from physical location



TYPES AND CHARACTERISTICS OF BUSINESS ENTITIES

Type	Limited Personal Liability for Business Debts	Formal Legal Entity
Corporation	Yes	Yes
General Partnership	No	No
Limited Partnership	Yes (LP) No (GP**)	Yes
Limited Liability Partnership (LLP)	Yes (LP*) No (GP**)	Yes
Limited Liability Company (LLC)	Yes	Yes
Sole Proprietorship	No	No

- Limited partners in limited liability partnerships (LLPs) are not generally liable for business debts of the partnership, but do remain liable for their own professional malpractice even if it occurs in the course of the partnership's business.
- ** General partners in limited partnerships and limited liability partnerships can be, and frequently are, themselves limited liability entities such as corporations or LLCs.

PROPERLY IDENTIFYING CUSTOMER ENTITIES

- Other Important Data Points:
 - Capital Structure
 - Owners / Parent Companies
 - Subsidiaries
 - Material Affiliates

WHERE ARE THE ASSETS?



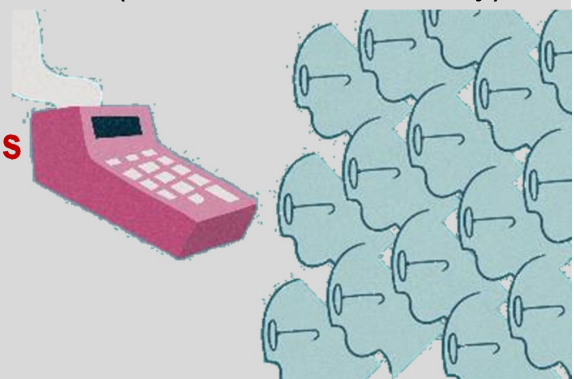
PROPERLY IDENTIFYING CUSTOMER ENTITIES – RISKS AND PITFALLS: INSOLVENCY

- You may be – unknowingly – doing business with an entity that is **insolvent or illiquid** (or both) even though it is part of a larger family of **collectively solvent and liquid** entities
- **Asset and Liability Silos**
 - Operating companies (Opcos) are frequently structured as an **insolvency “lightning rod”**
 - Valuable assets (typically intellectual property, real estate, and equity interests in valuable subsidiaries) **get siloed elsewhere** in the corporate family tree, often in “bankruptcy remote” Holdcos or Propcos



PROPERLY IDENTIFYING CUSTOMER ENTITIES – RISKS AND PITFALLS: COLLECTION

- If you have identified the wrong customer legal entity . . .
 - **Lien and judgment searches** will not be informative as they will be on the **wrong entity**
 - If you have a security interest, it will likely be **unperfected and avoidable** since you will file a UCC1 against the wrong party
 - You probably will **sue the wrong defendant** (or a nonexistent entity) in a collection lawsuit
 - Your **case may get dismissed**
 - You might end up with a **worthless or uncollectible judgment**



PROPERLY IDENTIFYING CUSTOMER ENTITIES – RISKS AND PITFALLS: COLLECTION

- If you have identified the wrong customer legal entity (continued) . . .
 - Guaranties may be **worthless** if they identify the wrong principal debtor
 - Banks **may refuse to fund** drawings under letters of credit if the drawing condition is based on a default by the wrong named entity
 - Credit insurers may **deny claims** if the actual debtor (correct legal entity) is not covered by your policy
 - Counterparties to put options may **decline to perform** if the option names the wrong debtor



CHANGES IN CUSTOMERS' CORPORATE STRUCTURES



CHANGES IN CORPORATE STRUCTURE

- Acquisitions and other changes in customer's corporate structure bring about significant changes in ownership, leadership, capital structure and culture
- Upon learning that a customer has been acquired, has acquired a company, or has undergone a change in corporate structure, you need to understand the specifics of the transaction and take action to protect your company
- Key questions
 - Must your customer sign a new credit application?
 - Should terms be changed?

CHANGES IN CORPORATE STRUCTURE

Does your credit department require a new credit application after an acquisition?



CHANGES IN CORPORATE STRUCTURE

- Sales
 - Sale of Business Entity
 - Sale of Business Assets
 - Substantially All Assets vs. Select Assets
- Mergers
- Spin-Offs
- Subsidiary Consolidations
- Restructuring Transactions
 - Non-Bankruptcy
 - Bankruptcy

CHANGES IN CORPORATE STRUCTURE: SALES

- Sale of Business Entity (“Stock Sale”)



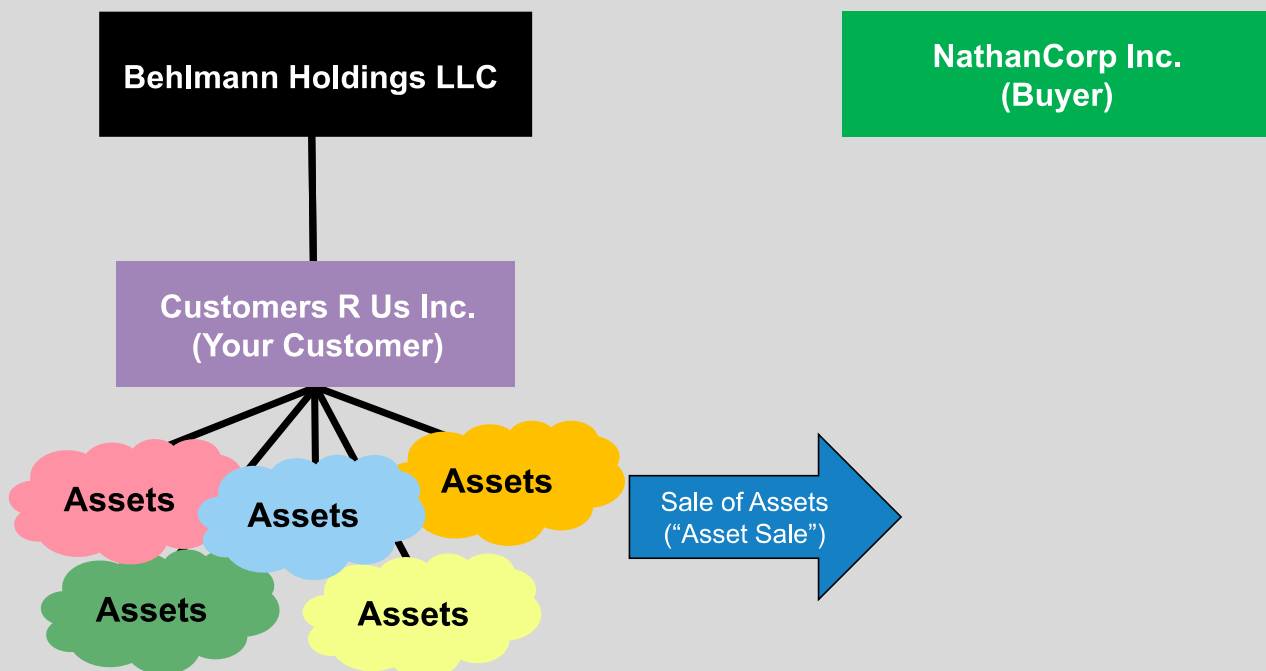
CHANGES IN CORPORATE STRUCTURE: SALES

Sale of Business Entity (“Stock Sale”)

- Post-closing, you are still doing business with the **same legal entity**, which retains the assets and liabilities that existed before closing, but . . .
- . . . *many factors will impact its creditworthiness both immediately after closing and in the future*
 - Post-closing leverage
 - Debt financing the acquisition
 - Obligations under acquiror’s existing debt
 - Seller vs. Buyer risk tolerance levels
 - Growth trajectory / other acquisitions
 - Capital retention vs. upstreaming cash
 - Post-closing “silo” restructuring transactions

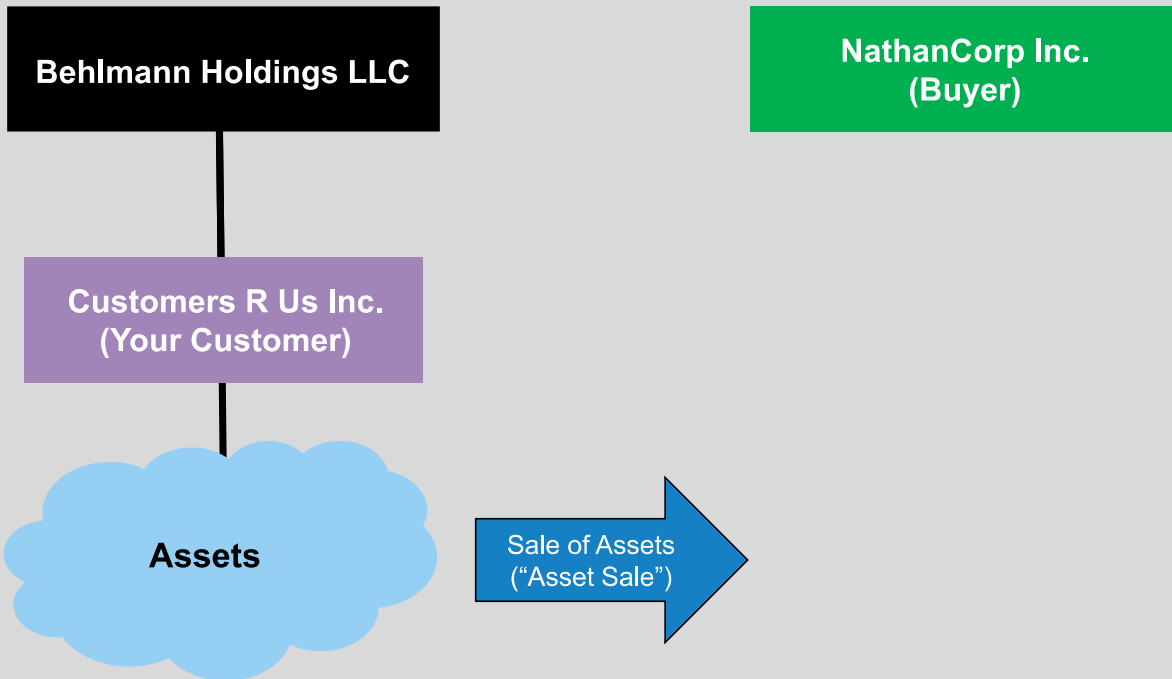
CHANGES IN CORPORATE STRUCTURE: SALES

• Sale of Business Assets (Partial)



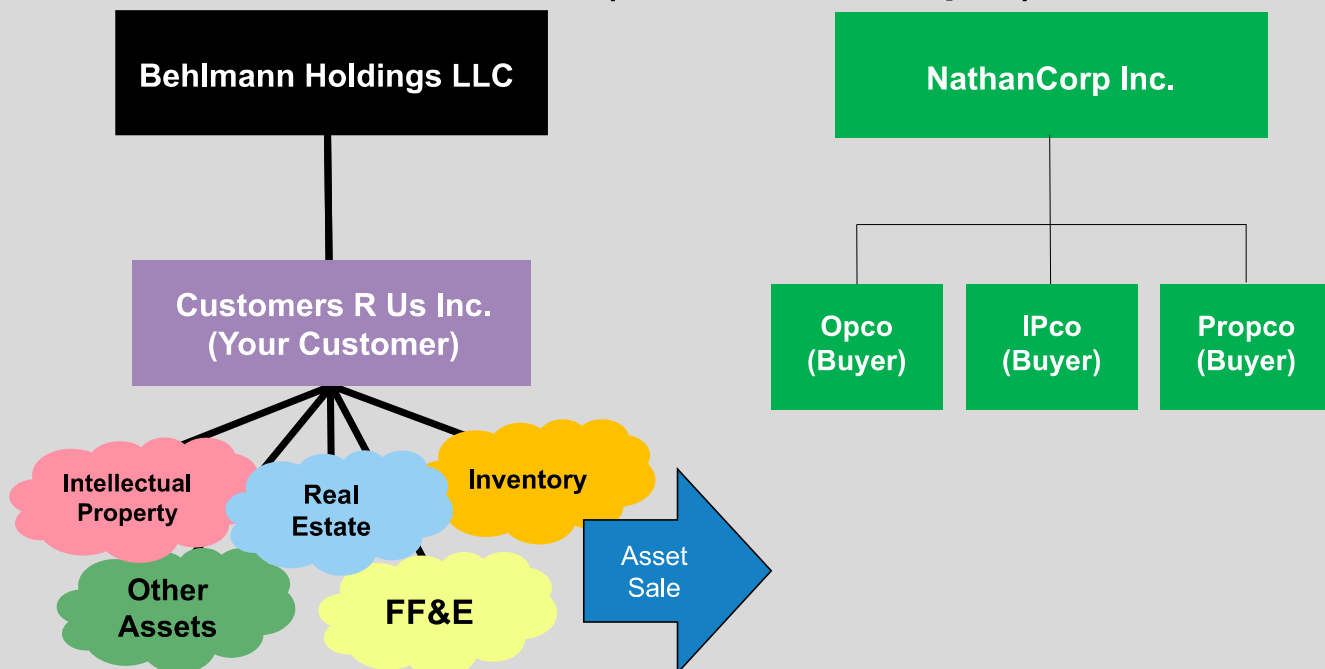
CHANGES IN CORPORATE STRUCTURES: SALES

- Sale of Business Assets (All/Substantially All)



CHANGES IN CORPORATE STRUCTURE: SALES

- Sale of Business Assets (All, to Holdco/Opco)



CHANGES IN CORPORATE STRUCTURE: SALES

Sales of Business Assets

- **All Assets:** Post-closing, your former customer is likely now a dormant shell with few or no assets.
 - If you start doing business with the buyer, you have a **new customer** to underwrite – **not a continuation**
- **Some Assets:** You might continue doing business with the seller, start doing business with the buyer, or both
 - Depending on the nature and extent of the assets sold, former customer's credit profile could be materially different post-closing – **effectively a new customer**
 - Buyer is a **new customer** (unless they were an existing customer that made a strategic purchase)
- **Watch out for sales to opco/propco structures**
 - Could occur **at or after closing**

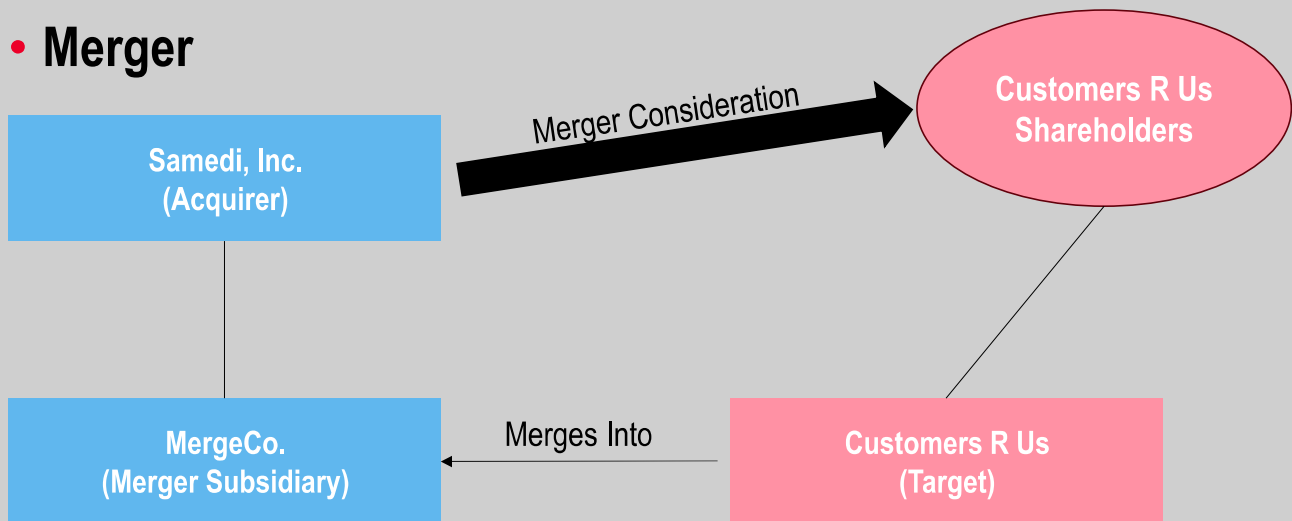
CHANGES IN CORPORATE STRUCTURE: SALES

BUYER MAY OR MAY NOT ASSUME LIABILITIES IN AN ASSET SALE! ONLY WAY TO KNOW IS TO REVIEW THE TRANSACTION DOCUMENTS (ASSET PURCHASE AGREEMENT AND DISCLOSURE SCHEDULES)!

BE PREPARED TO REQUIRE NEW CREDIT APPLICATION AND DOCUMENTATION FROM BUYER AND CONSIDER CHANGE IN TERMS BASED ON BUYER CREDIT RISK

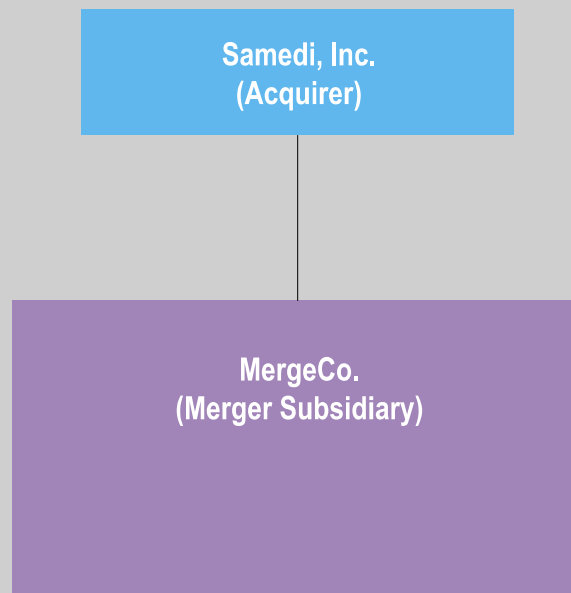
CHANGES IN CORPORATE STRUCTURE: MERGERS

- Merger



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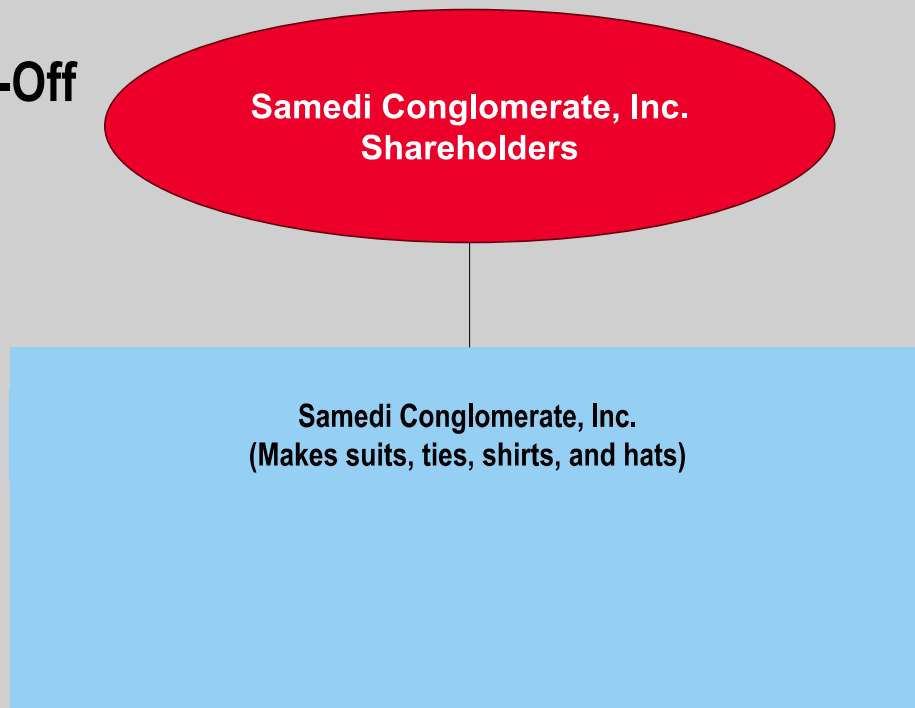


CHANGES IN CORPORATE STRUCTURE: MERGERS

- A merger involves **two companies** of comparable size and market influence combining to form a **single new entity**.
 - Typically structured as a statutory merger or consolidation, with both boards and shareholders approving the transaction.
 - The merged entity pools resources, integrates operations, and aims for enhanced capabilities and market leverage.
- Integrating distinct corporate cultures, operational systems, and contractual obligations presents significant complexity.
- Harmonizing liabilities can result in post-merger disputes.
- If new single merged entity is a different legal entity, it should sign new credit application and documentation and be subject to change in terms depending on credit risk

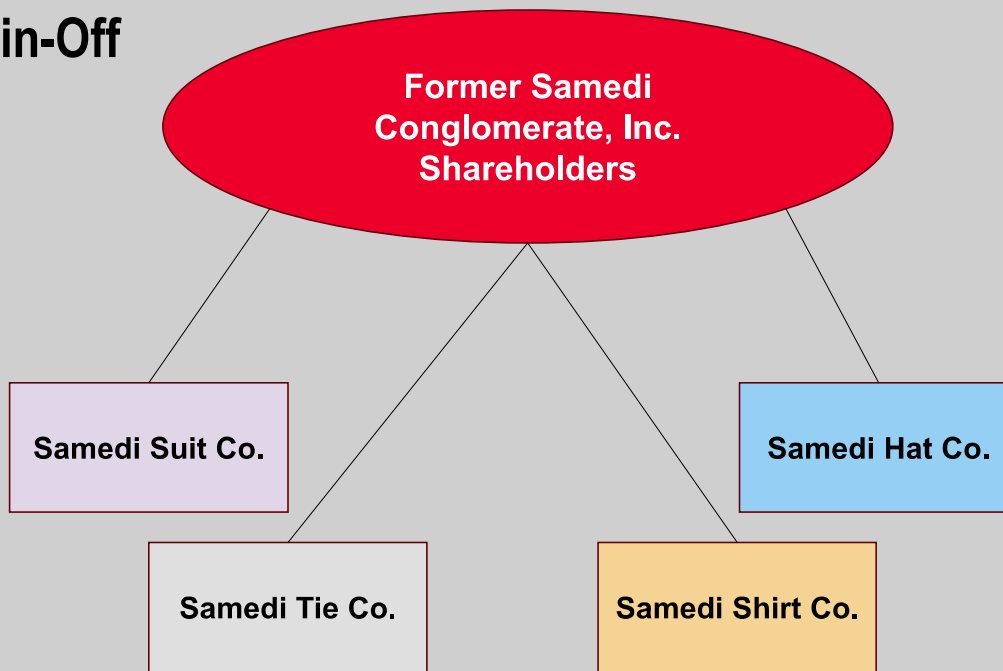
CHANGES IN CORPORATE STRUCTURE: SPIN-OFFS

- Spin-Off



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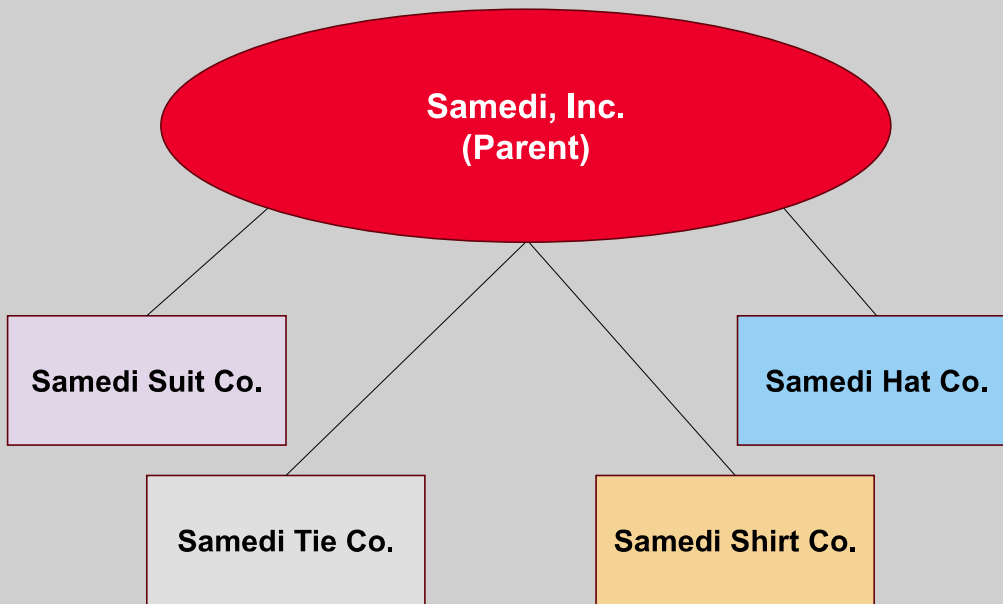


CHANGES IN CORPORATE STRUCTURE: SPIN-OFFS

- A spin-off separates a portion of a parent company's business into a new, independent entity, distributing shares to existing shareholders.
- The parent transfers assets and liabilities to the new entity, which then operates independently with its own management and board.
- The transaction aims to give each business a clear strategic focus and optimize capital structure for growth or profitability.
- Allocating and transferring assets, liabilities, and contracts may trigger third-party consents or breaches of existing agreements.
- Negotiating ongoing relationships, such as shared services and intellectual property rights, can be sources of future disputes.
- Regulatory approvals and potential shareholder consent add procedural hurdles and risk of litigation from dissenting stakeholders.
- Spun off entities should provide new credit application and documentation and be subject to change in terms depending on credit risk.

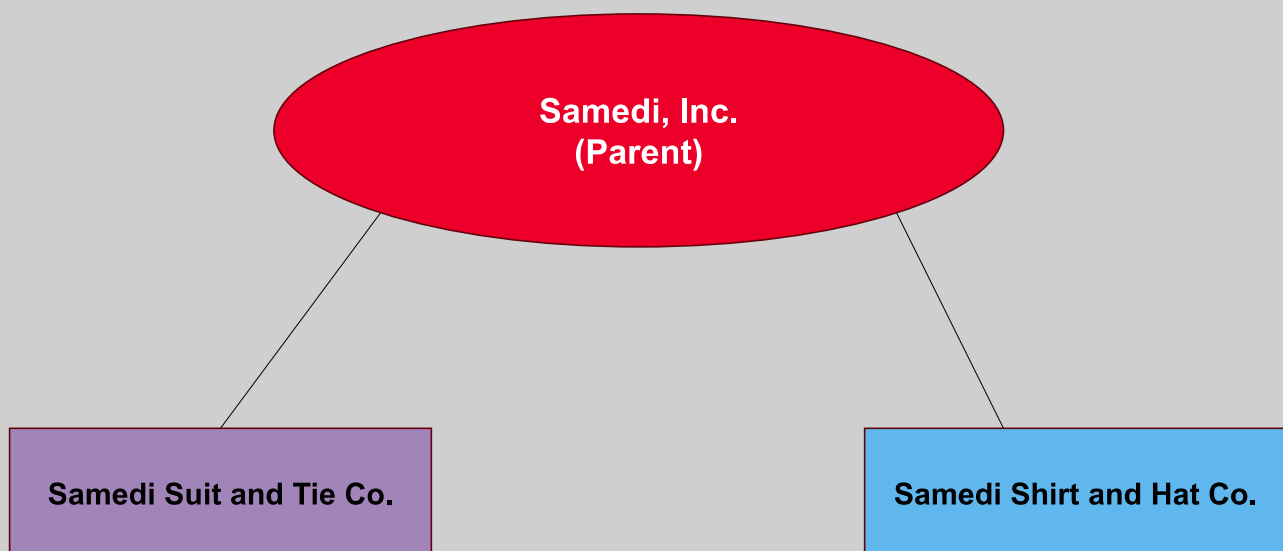
CHANGES IN CORPORATE STRUCTURE: SUBSIDIARY CONSOLIDATION

- Consolidation



CHANGES IN CORPORATE STRUCTURE: SUBSIDIARY CONSOLIDATION

- Consolidation



CHANGES IN CORPORATE STRUCTURE: SUBSIDIARY CONSOLIDATION

- Entity restructuring and consolidation reorganize a company's legal structure to improve efficiency, integrate acquisitions, or achieve tax benefits.
- Consolidation combines **two or more entities into a new entity**, with **original entities ceasing to exist** and assets/liabilities vesting in the new entity.
- The process requires board and shareholder approval, and addresses allocation of assets, liabilities, and ownership interests.
- Consolidation may involve system migrations, workforce reductions, and rebranding to streamline operations and focus on strategic priorities.

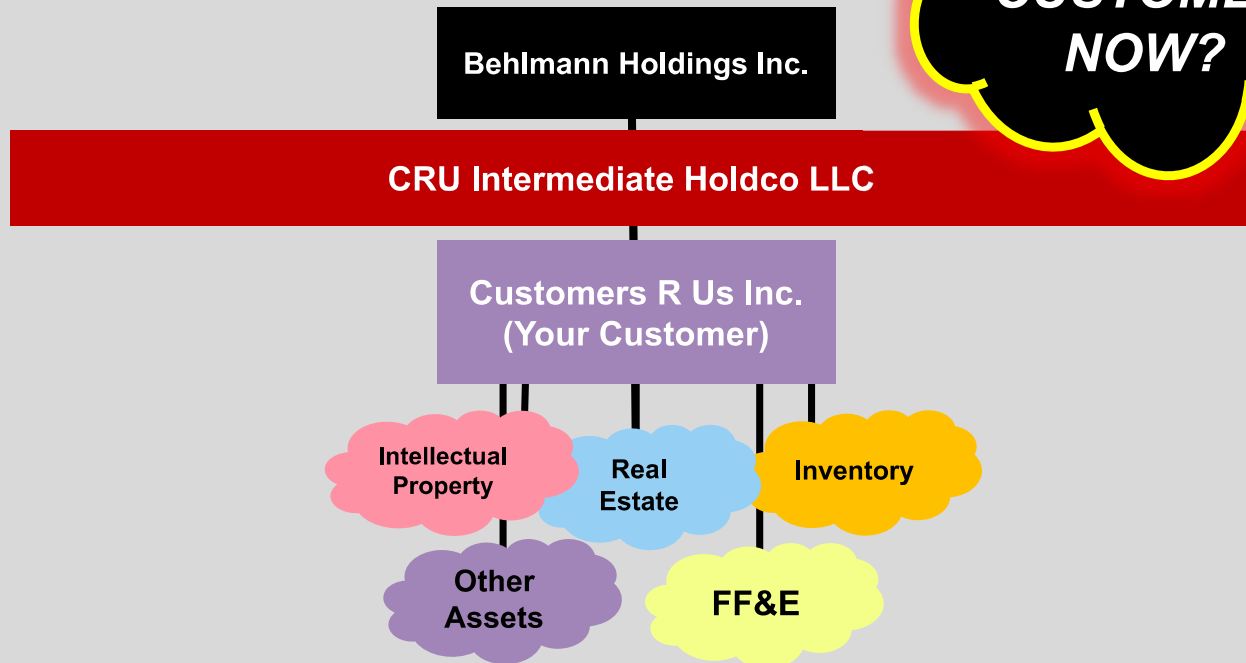
CHANGES IN CORPORATE STRUCTURE: SUBSIDIARY CONSOLIDATION

- Compliance with varying statutory requirements across jurisdictions, especially with cross-border or multi-entity transactions.
- Need for multiple regulatory approvals, including antitrust clearance and industry-specific consents, which can delay or derail the process.
- Due diligence to identify hidden liabilities, harmonize organizational documents, and manage employee agreements is legally burdensome.
- Resistance from creditors, minority owners, or employees may lead to litigation or costly settlements, threatening anticipated benefits.
- New entity should sign new credit application and documentation and be subject to change in credit terms depending on credit risk.

CHANGES IN CORPORATE STRUCTURE

WHO IS THE ACTUAL CUSTOMER NOW?

- Restructuring (Non-Bankruptcy)



CHANGES IN CORPORATE STRUCTURE: RESTRUCTURING

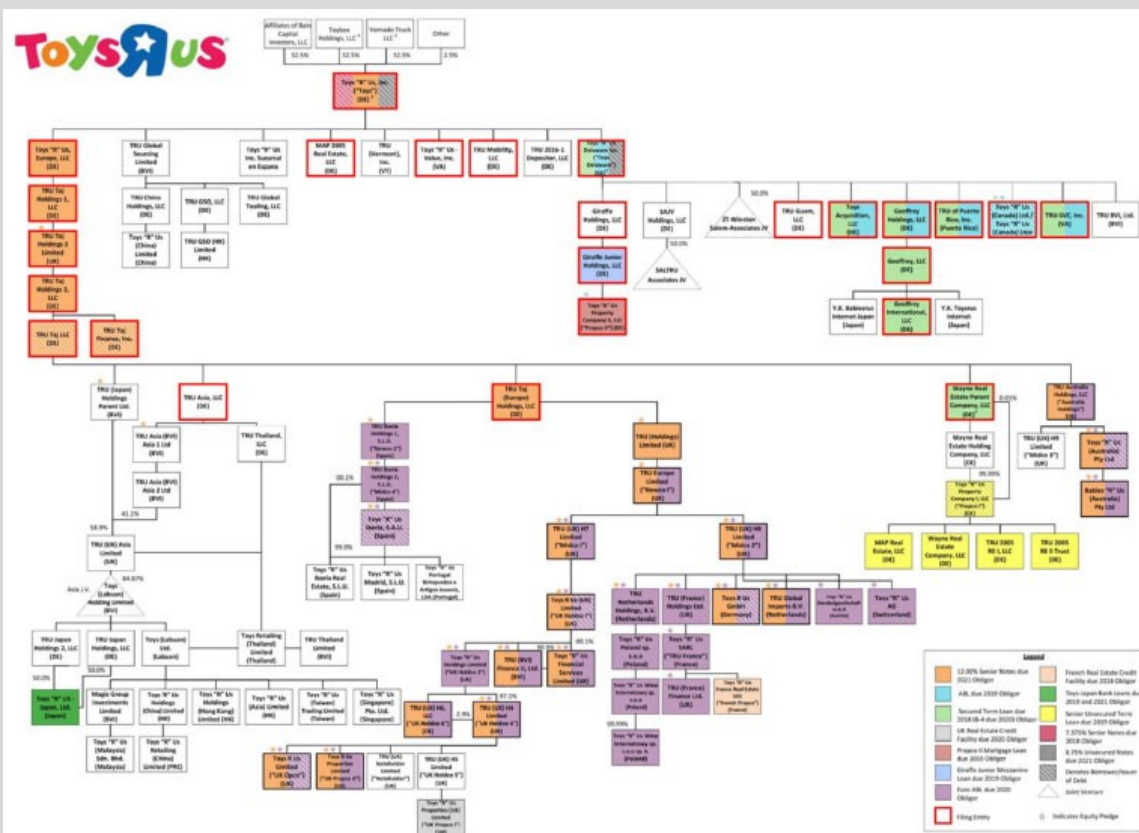
If your customer is . . .

- a **public company**, you might learn about a corporate restructuring transaction through...
 - an **SEC filing alert** based on keywords or
 - a Google (or other) **news service alert**
- a **private company**, you might not learn about a corporate restructuring transaction at all until it's too late, ***unless you ask.***
 - Periodic updates via **Name Checklist**
 - Keep an eye on **context clues**
 - The transaction ***might*** show up in the news
 - Request **copies of transaction documents!**

CASE STUDIES

IDENTITY CRISIS: Risks and Best Practices for Doing Business With Affiliated and Newly Acquired Entities

EXAMPLE OF (VERY) COMPLEX STRUCTURE



DRF LOGISTICS: BACKGROUND

- The Debtors in these chapter 11 cases were DRF Logistics, LLC and DRF, LLC.
- The Debtors were leading providers of domestic ecommerce parcel services as well as cross-border logistics (the “Global E-Commerce Business”).
- Prior to the chapter 11 bankruptcy:
 - ✓ DRF Logistics, LLC was named “Pitney Bowes Global Ecommerce Inc.”
 - ✓ DRF, LLC was named “Pitney Bowes Global Logistics LLC.”
 - ✓ Both entities were indirect subsidiaries of Pitney Bowes Inc. (“PBI” and with its affiliates, “Pitney Bowes”), which acquired the Debtors’ predecessor, Newgistics Inc. in 2017.
 - ✓ **PBI had a market capitalization of approximately \$2 billion.**
- Since 2017, the Debtors experienced significant losses, including significant annual reductions in their adjusted segment earnings before interest and taxes.
- The Debtors determined to pursue an in-court winddown, **but only after effectuating a strategic transaction to sever the Global E-Commerce Business from the rest of PBI and its relevant affiliates.**




DRF LOGISTICS: THE PREPETITION TRANSACTION

- **The Names Change:**
 - July 25, 2024: Pitney Bowes Global Logistics LLC becomes DRF, LLC and redomesticates from a Delaware LLC to a Texas LLC.
 - August 7, 2024: Pitney Bowes Global Ecommerce Inc. becomes DRF Logistics, LLC and converts from a Delaware corporation to a Delaware LLC.
- **Hilco Transaction:**
 - On August 8, 2024, immediately before the chapter 11 petitions are filed, the following occurs:
 - An affiliate of Hilco Global, a financial services company, acquires an 81% voting interest in DRF Logistics for *de minimis* consideration.
 - A subsidiary of PBI retains a 19% voting interest and 100% economic interest.
 - DRF Logistics and DRF LLC are also released from guarantee obligations under Pitney Bowes International’s unsecured funded debt.
- **No New Subsidiaries Were Created:**
 - Following the Hilco transaction, DRF operated under the new entity names and continued to adhere to the terms of their previously existing agreements with their trade vendors.



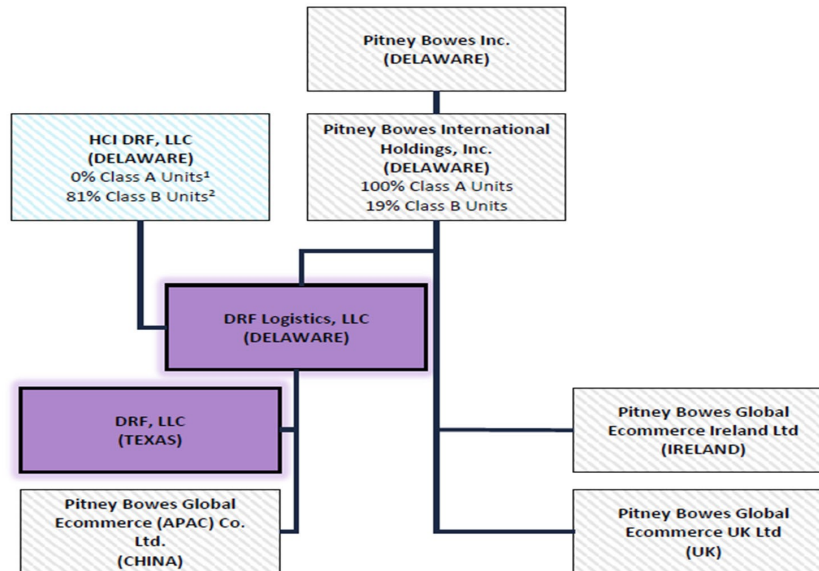
DRF LOGISTICS / PITNEY BOWES: CORPORATE ORGANIZATIONAL CHART

LEGEND

 Hilco (Non-Debtor)

 Non-Debtor Pitney Bowes Entity

 Debtor



¹ Class A Units have economic rights but no voting rights.
² Class B Units have voting rights but no economic rights.

DRF LOGISTICS: THE CHAPTER 11

- Immediately after the consummation of the Hilco transaction, DRF filed for Chapter 11 on August 8, 2024 in the United States Bankruptcy Court for the Southern District of Texas.
- DRF filed the Chapter 11 cases to winddown the DRF business pursuant to a plan of liquidation that was the product of negotiations with PBI and certain other creditors.
 - As part of the original chapter 11 plan, PBI agreed to fund \$3.3 million in distributions to the DRF's secured creditor and up to \$15.5 million to holders of general unsecured claims.
 - In exchange, PBI and its affiliates would obtain a third-party release from creditors that failed to opt-out of the releases.
 - The initial plan provided for distributions to general unsecured creditors in the range of **~3%**.
- **Key questions raised by unsecured creditors:**
 - **Who is DRF?**
 - **Why am I part of this bankruptcy?**
 - **Why is Pitney Bowes not responsible for paying my unsecured claim in full? They have plenty of money!**

DRF LOGISTICS: WHO WERE CREDITORS DEALING WITH?

Key Issues for Creditors

- Was DRF an “alter ego” of Pitney Bowes?
- Contractual Privity:
 - Whether creditors had claims against Pitney Bowes and not DRF where creditors solely had contracts with Pitney Bowes?
 - Creditors of Pitney Bowes should not be bound by any DRF plan terms and should be able to recover 100% of their claims directly from Pitney Bowes (as opposed to a much lower recovery from DRF!).
 - Whether a creditor that had contractual privity with DRF and PBI should receive a larger recovery on account of its claim?

DRF LOGISTICS: THE INVESTIGATION

- **The Creditors’ Committee’s Investigation**
 - The Committee launched an investigation to determine if certain purported creditors of the Debtors are really creditors of Pitney Bowes.
 - Goals:
 - Maximize distributions to DRF’s unsecured creditors and ensure the unsecured creditors pool is not diluted by creditors of Pitney Bowes;
 - Provide certain creditors the opportunity to recover against Pitney Bowes if there was no/some privity with DRF; and
 - Protect creditors of Pitney Bowes from third-party releases under the Plan.
- **What did the Committee Investigate?**
 - Contractual privity
 - Over 28,000 documents from Pitney Bowes and DRF (*i.e.*, contracts & correspondence)
 - Depositions of Pitney Bowes and DRF’s representatives

DRF LOGISTICS: THE CONTRACTS

The underlying contracts reflected various iterations of Debtor-related counterparties and terms:

- **Contracts with “Pitney Bowes Global Logistics LLC” and “Pitney Bowes Global Ecommerce Inc.”** These entities were renamed to DRF Logistics, LLC and DRF, LLC, and these contracts provided for direct privity with the Debtors.
- **Contracts with “Pitney Bowes Inc. and its affiliates.”** Certain of the contracts were executed by PBI or a non-debtor affiliate of PBI without specifically including the Debtors as a counterparty or obligating the Debtors in any other way.
- **Contracts with “Pitney Bowes Inc. and its affiliates” that required separate affiliate agreements.** Certain of the contracts were executed by PBI or a non-debtor affiliate of PBI and attached a separate form “affiliate agreement,” which would have clarified to which PBI affiliate the contract counterparty would be providing goods or services. In many cases, despite a form affiliate agreement being attached to and part of the initial contract, no affiliate agreements were subsequently executed.
- **Contract amendments that changed the counterparty prepetition.** Certain contracts executed by PBI or a non-debtor affiliate were amended prepetition to replace a non-debtor contract counterparty with one of the Debtor entities as the counterparty.

DRF LOGISTICS: VALUE MAXIMIZED OUTCOMES

- The Committee concluded through its contractual privity analysis that many of DRF’s purported creditors (listed in DRF’s schedules as unsecured creditors) had valid basis to assert that Pitney Bowes was liable for creditor claims.
- The Committee’s recommendations regarding treatment of general unsecured claims that were incorporated in approved Chapter 11 plan:

Creditor Category	Recovery Under Revised Chapter 11 Plan
Creditors who solely did business with and had contracts with DRF (Category 1 Creditors)	Category 1 creditors received approximately 19.5% of their allowed amount of their claims
Creditors who did business with and/or have contracts with Pitney Bowes and DRF (Category 2 Creditors)	Category 2 creditors received approximately 52.5% of their allowed claim
Creditors who solely did business with or solely had contracts with Pitney Bowes (Category 3 Creditors)	Category 3 Creditors were not impacted by the plan, and <i>should be satisfied by Pitney Bowes</i>

DRF LOGISTICS: TAKEAWAYS FROM THE CASE

- **Contractual Privity Impacts Credit Risk**
 - Creditors that had a basis to assert that both a DRF entity and a Pitney Bowes entity were liable for the debt receive as much as a 52.5% recovery.
 - Creditors that only had contractual privity with the DRF entities receive an approximately 19.5% recovery.
- **Stay Informed**
 - Much of the Hilco transaction was kept under wraps, but some information was available/leaked. For example, PBI released the following 8-K **before** the August 8 Hilco transaction.



ITEM 7.01 REGULATION FD DISCLOSURE.

On July 26, 2024, certain media outlets reported that Pitney Bowes Inc. (“Pitney Bowes” or the “Company”) had sold its entire Global Ecommerce segment. On the same day, the Company’s representatives promptly informed these media outlets that the Company had not sold the segment, resulting in full or partial updates to relevant articles. For the avoidance of doubt, the Company is releasing the following statement today:

“Pitney Bowes is still working to conclude its strategic review of the Company’s Global Ecommerce segment. In the meantime, it has sold the segment’s fulfillment services business, which is a small piece of the segment.”

DRF LOGISTICS: TAKEAWAYS FROM THE CASE

- **Stay Informed (Cont’d)**
 - The issues of contractual privity and whether Pitney Bowes was liable for certain creditors’ debt were not readily apparent from the Debtors’ pleadings. During the case, the Committee filed letters on the docket and required that a letter to creditors be included in the Debtors’ plan solicitation package.
 - Keeping an eye on the docket and any communications from an Official Committee of Unsecured Creditors can help keep creditors apprised of the nuances of the case and additional avenues for recovery. **Creditors’ committees can be a great source of information!**

To: All Unsecured Creditors of DRF Logistics, LLC, et al.

Re: Creditors’ Committee Investigation and Voting Recommendation in *In re DRF Logistics, LLC, et al.*, No. 24-90447 (CML) (Bankr. S.D. Tex.)

Dear Unsecured Creditors:

The Official Committee of Unsecured Creditors (the “Committee”) of DRF Logistics, LLC, et al. (the “Debtors” or “DRF”) submits this letter to all unsecured creditors concerning their decision to vote to accept or reject the Debtors’ Amended Joint Plan of Liquidation [Docket No. 277] (as amended from time to time, the “Plan”).

If you received a ballot to vote on the Plan, please note that the deadline to vote to accept or reject the Plan is November 8, 2024, at 4:00 p.m. (Central Time) (the “Voting Deadline”). Unsecured creditors can cast their vote on the Plan by completing and submitting the voting ballot prior to the Voting Deadline. The instructions for completing and submitting the ballot are included on the ballot.

(ii) Contractual Privity

Are you confused as to why you are listed as a creditor in DRF’s chapter 11 cases? Perhaps your understanding is that you are a creditor of Pitney Bowes, not DRF. In that regard, the Committee is also investigating the extent by which certain purported creditors of the Debtors are not creditors of the Debtors because they solely have contracts with Pitney Bowes, and are, therefore, more appropriately creditors of Pitney Bowes (the “Contractual Privity Analysis”). The Contractual Privity Analysis is important because to the extent a purported creditor of the Debtors is a creditor of Pitney Bowes, that party should not be bound by the terms of the Plan or the proposed releases. Instead, that party should be permitted to recover directly from Pitney Bowes, who is not a Debtor in these chapter 11 cases and should be paying its creditors in full.³ The Contractual Privity Analysis is also relevant in determining (i) the size of the Debtors’ unsecured claims pool, and (ii) whether the Plan’s third-party releases of Pitney Bowes are appropriate, especially as to parties that are not creditors of these estates.

LIABILITY MANAGEMENT CASE STUDY: THE DROPDOWN (REVLON)

Before

After

Figure 1: Pre-IP Dropdown

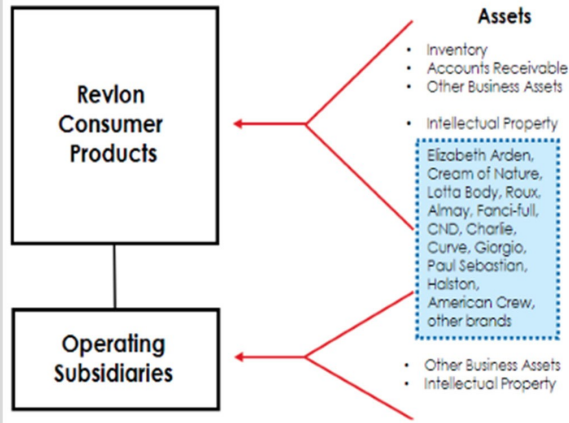
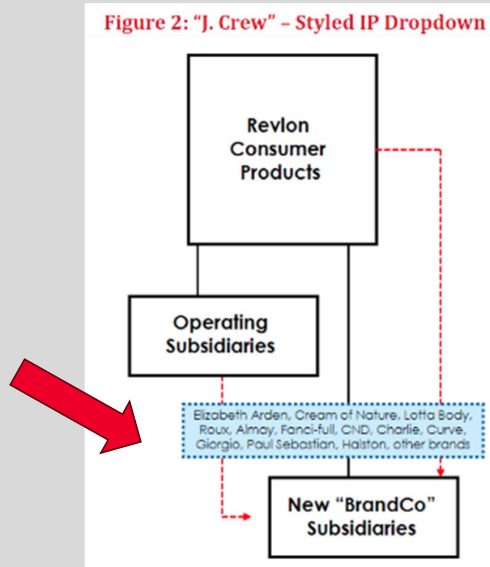
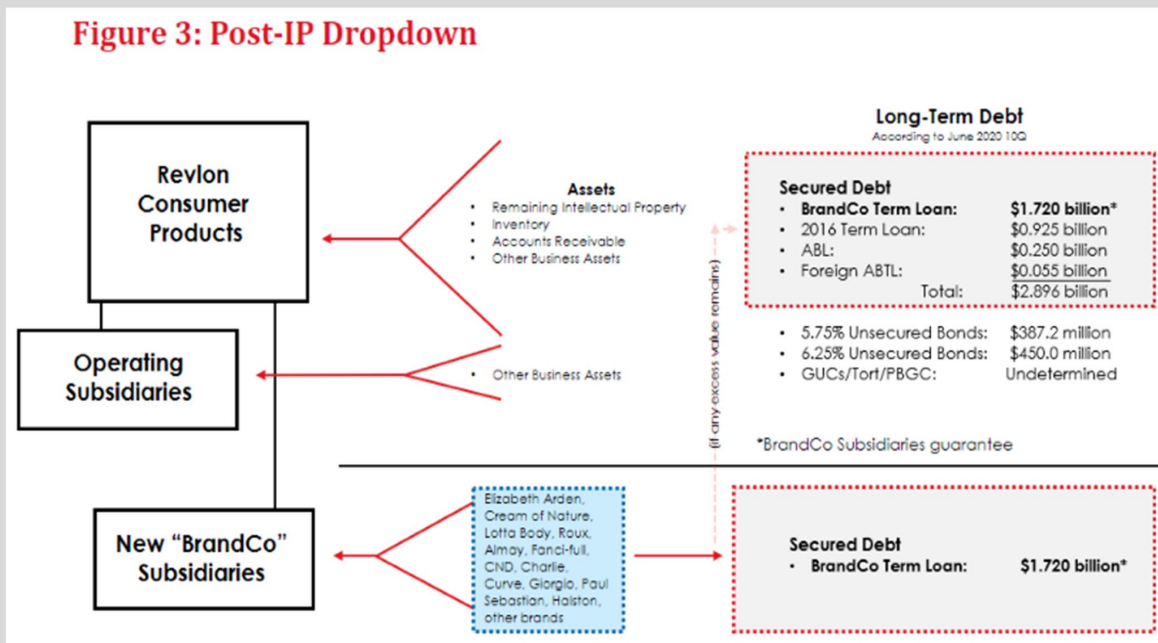


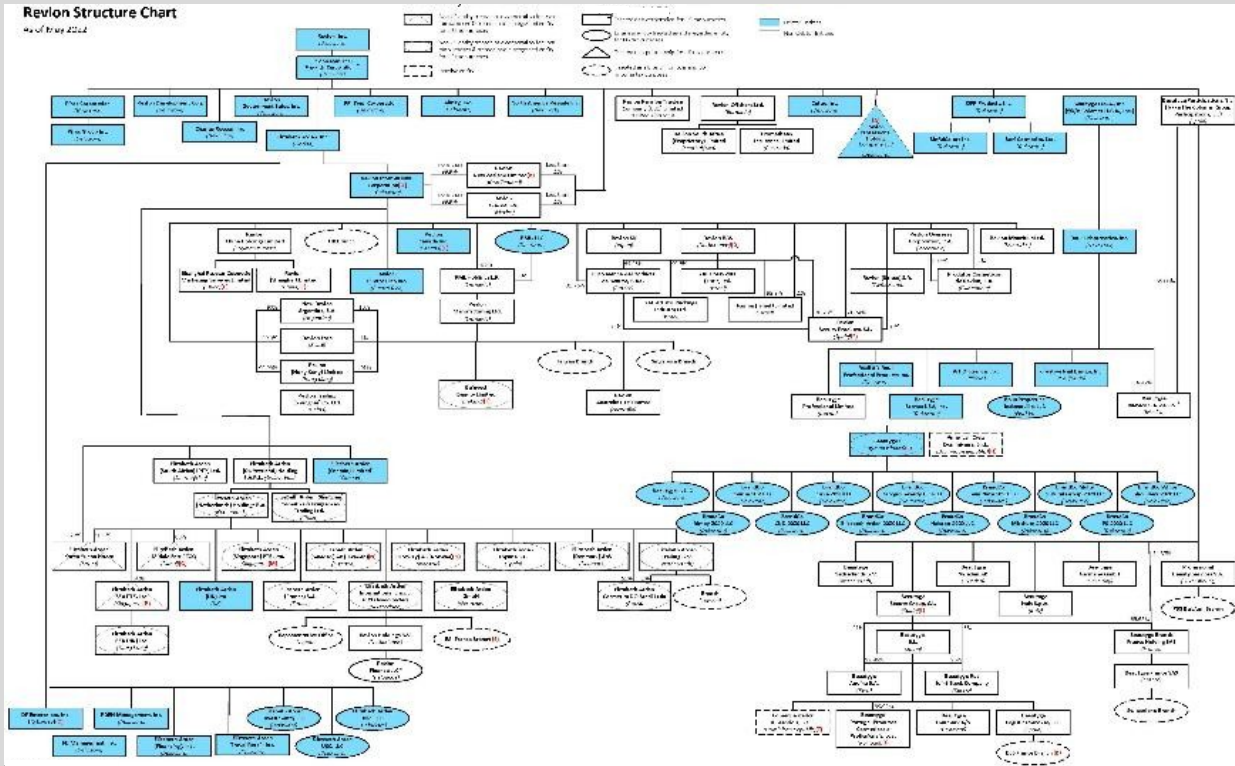
Figure 2: "J. Crew" - Styled IP Dropdown



REVLON CONTINUED . . .

Figure 3: Post-IP Dropdown





BEST PRACTICES AND PREVENTIVE MEASURES



BEST PRACTICES AND PREVENTIVE MEASURES

- **Getting the Right Name**
 - Best Practices
 - Sources of Information
- **Terms and Conditions**
- **Risk Management – Back to Basics**
- **Guaranties**

GETTING THE RIGHT NAME: BEST PRACTICES

New Customers

- Require key entity information on the credit application
 - Full, Correct Legal Name
 - State of Formation
 - Type of Entity
- **Missing / incomplete entity information = No Credit!**

Existing Customers

- Require **periodic updates** of entity information via a simple questionnaire
- Can be a standalone process or tied to periodic W-9 or sales tax updates if applicable
- Periodically **self-audit customer status** – especially customers with large exposure, aged balances, risky industries

Both

- Verify **existence** and **good standing** via the applicable Secretary of State website – at the credit investigation **and** periodically thereafter
 - Many states are free; some charge a small fee
 - Some states require registration (username/password)
- Large accounts: Lien search, judgment search, docket alert

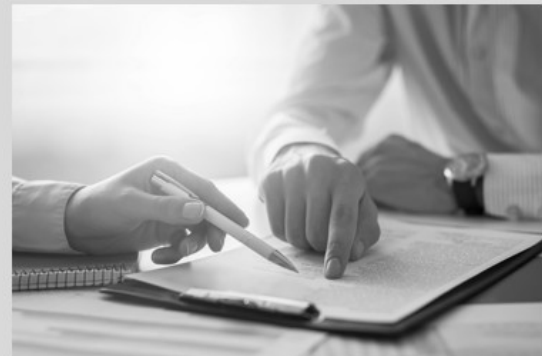
GETTING THE RIGHT NAME: SOURCES OF INFORMATION

- Customer Itself
- Secretary of State Database
- SEC Filings (Public Companies)
 - SEC Edgar – Free
 - Securities Mosaic / BamSEC – \$\$\$
- Context Clues
 - Names on checks, purchase orders, e-mail, letterhead, shipping documents, sales tax exemption certificate, W-9, etc.
- Lien / Judgment / Docket Search and Alert



TERMS AND CONDITIONS

- Change Notification
 - Require customer to provide **timely notification of changes** to corporate structure
 - Legal Name
 - Entity Type
 - Ownership
 - Provide **enforcement mechanisms** if customer fails to provide updated information / documents if requested
 - Credit Application
 - Guaranties



RISK MANAGEMENT – NEVER FORGET THE BASICS!

- Watching for **red flags and warning signs of distress or fraud** can help to detect an actual or impending change in entity structure that could materially impair your ability to collect
- Signs of distress can provide a basis to . . .
 - Request updated financials
 - Request updated corporate structure information
 - Restrict credit lines
 - Transition customers to COD / CIA terms
 - Request parent / affiliate / personal guaranties
 - Terminate the customer’s credit line (worst case)
- Require new credit application and documentation in the event of a change in customer’s legal entity structure



GUARANTIES

- What is a guaranty?
 - An agreement by a third party (the guarantor) to answer for the debts of someone else (the debtor)
- Types of Guaranties
 - Guaranty of payment (*the preferred type!)
 - Creditor can pursue the guarantor **without first exhausting collection efforts** against the principal debtor.
 - Guaranty of collection
 - Creditor must **exhaust collection efforts** against the principal debtor before it can proceed against the guarantor!.
- Bankruptcy
 - Even if the guarantor is part of a group of affiliated debtors that file together, recovery may be enhanced for creditors with guaranties



GUARANTIES: FRAUDULENT CONVEYANCE RISKS

- **Parent / Downstream Guaranty**
 - Parent guaranty of subsidiary obligation
- **Affiliate / Cross-Corporate Guaranty**
 - Affiliate guaranty of affiliate obligation
- **Subsidiary / Upstream Guaranty**
 - Subsidiary guarantee of parent obligation

QUESTIONS?



THANK YOU

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