

You're Out! Swapping Boards and Other Management Strategies Planning for Bankruptcy

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Overview

- Lenders, investors, and business partners want to reduce exposure, protect remedies, and maximize recoveries.
- To do so, they can take various approaches directed to governance:
 - One pre-petition method is to exercise their right to enforce pledge rights.
 - Another pre-petition method is to make borrowers “bankruptcy remote” by implementing a “blocking director” organizational structure.
 - One post-petition method is to change the board of directors during a Chapter 11 proceeding.
- Depending on the facts and jurisdiction, these tactics may or may not be enforceable.



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Pre-Petition: Exercising Pledge Rights

Overview of Pledgee's Exercise of Rights

- Why is it a recent phenomenon?
- Different Approaches
- Pledge Tools
- Does the type of entity matter?
- Different Documentation for Exercising Rights

Why Is It a Recent Phenomenon?

- Alternative to Court Access
- Theoretical Simplicity
- Cost and Timing versus Other Alternatives
- Risk Evaluation

Different Perspectives

- Lender
- Borrower
- Owner
- Board/Management
- Third Parties

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