

Contents and Today's Agenda

- Introduction and Goal of Session
- Restructuring & Business Basics
- Essential Ingredients For A Successful Restructuring
- CCAA from A – Z: BuildDirect.com Technologies Inc.
- Misc. Topics
- Break
- Small Group Practice Case: – Centre Island Airlines

Section 1

Restructuring & Business Basics

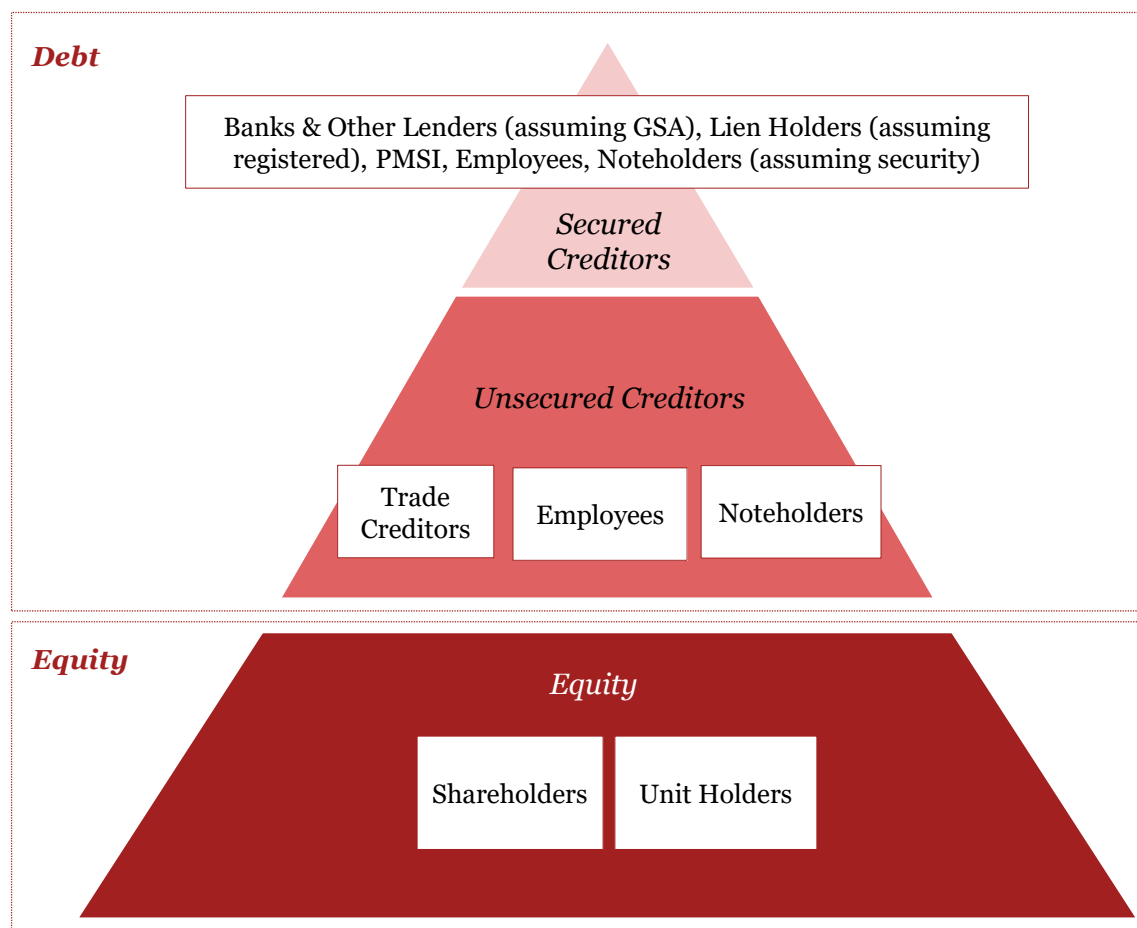
Widely Used Corporate Language & Concepts

- General Security Agreement “GSA”
- Loan covenants
- Sales and Investment Solicitation Process “SISP”
- Key Employee Retention Program “KERP”



- Land Titles Office “LTO”
- Personal Property Registry “PPR” & Personal Property Security Act “PPSA”
- Purchase Money Security Interest “PMSI” (Equipment Lessors)
- Retail vs. Institutional Investors
- Forbearance Agreement
- Interim Financing or DIP Financing

Capital Stack, or “How Has the Company Financed Itself?”



Technical: General Security Agreements

✓ I highly recommend reading a GSA

- Company ‘grants’ security, usually in exchange for cash
- Holder of security then registers the security in PPR
- Improper or no registration of the GSA *may* spell disaster for the lender
- GSA spells out what the security entails, usually ‘over everything’
- GSA also speaks to what ‘default’ looks like, the remedies the debtor can take to correct same and, the rights of the lender
- GSA also speaks to the appointment of a Receiver
- Company signs the GSA

Steps in the Restructuring Process

Formulate Business Plan

- ▶ Critically evaluate the business and potential value as a restructured business
- ▶ Develop vision and strategy for the restructured business
- ▶ Identify and evaluate operational initiatives (e.g. disclaim of unfavourable contracts, sale of non-core assets, work force reduction, cost control)
- ▶ Develop business plan

Develop Restructuring Strategy

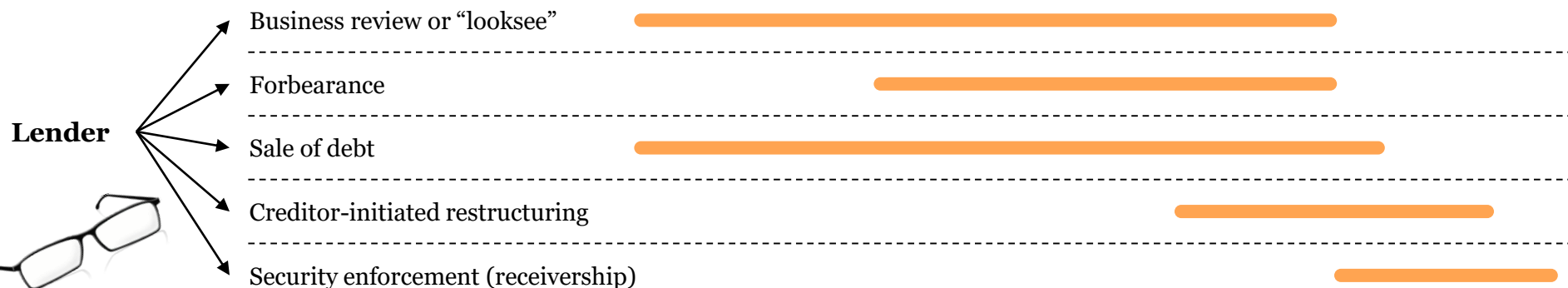
- ▶ Based on business plan, determine the appropriate capital structure
- ▶ Based on the desired capital structure and valuation estimates, evaluate value and form of consideration to be paid to creditors
- ▶ Develop creditor negotiation strategy
- ▶ Formulate execution plan for the restructuring strategy

Execute Restructuring Strategy

- ▶ Negotiate the terms of the debt restructuring with creditors
- ▶ Determine if a legal process is required
- ▶ Carry out any operational restructuring initiatives (as required)
- ▶ Source financing for the restructured business (as required)

What Are My Options?

Possible Strategies Relative to Financial Health



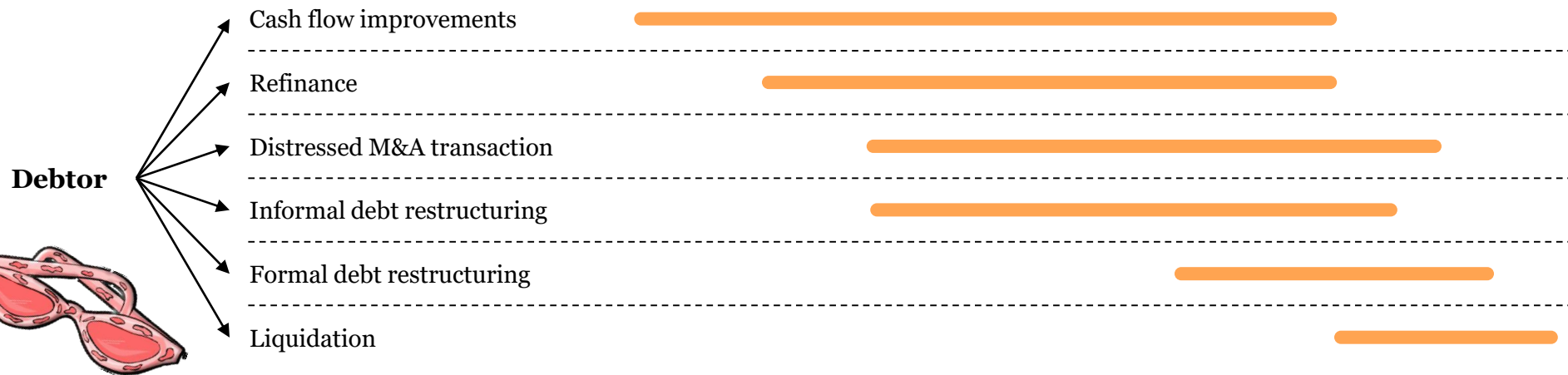
Debtor’s financial health

Stress

Loan non-performance

Distress

Insolvent



Informal Restructuring Pros and Cons

	PRO	CON
• Likely lower costs (e.g. little or no professional fees)	✓	
• Flexibility in negotiating arrangements with specific creditors, as there is no need to treat all parties the same way	✓	
• Company maintains a higher degree of control	✓	
• Avoid ‘opening the kimono’, and any stigma of a formal filing	✓	
• No stay of proceedings; no certainty!		✓
• Negotiating with individual creditors (takes time and can be distracting for the company)		✓
• Company cannot use BIA/CCAA provisions (e.g. can’t disclaim a lease)		✓

Conclusion: informal restructuring usually works best if the company only has one or two (likely secured) creditors debts to restructure

Formal Restructuring Pros and Cons

	PRO	CON
• Trustee/Monitor and the Court lend independence, credibility transparency and authority to process	✓	
• Greater flexibility for company (e.g. can disclaim a lease and compromise the resulting restructuring claim)	✓	
• Professional fees are expensive		✓
• Stay of proceedings in place gives immediate relief and allows the luxury of breathing; pre-filing debt is parked	✓	
• Treatment of like debt of all affected creditors is fair	✓	
• Public scrutiny, stigma, media exposure		✓
• External stakeholders can exert major influence on business		✓

Conclusion: Yes, it's a more expensive and open process, but usually you get more 'bang for your buck'.

Comparison of Restructuring Options BIA & CCAA – Key Considerations

Appendix N in the CQP Knowledge Course provides an excellent comparison on many aspects of using the CCAA, BIA, WURA, CBCA or Chapter 11 for a restructuring. However, I consider these points key:

- CCAA requires minimum \$5m in debt of company/affiliated company
- NOI gives an immediate stay if needed – it's fast and simple. If starting under an NOI, the file may be transferred to CCAA, as long as no Proposal has been filed. Filing for CCAA can take days/weeks of preparation
- Stays under an NOI cannot exceed 6 months, when a Proposal must be filed or else a bankruptcy occurs. In a CCAA, the Court is not limited as to how long to extend a stay period, and there is no 'deadline' to file a Plan
- In a CCAA, there is no automatic bankruptcy feature
- Under the BIA, inspectors can be appointed to assist the Trustee

Comparison of Restructuring Options BIA & CCAA – Key Considerations – cont.

- Critical Suppliers are only contemplated under a CCAA filing
- Landlords whose contracts have been disclaimed have a prescribed calculation of their claim in the BIA; in the CCAA, in the case where a lease has been disclaimed, landlords are expected to mitigate (reduce) their claim after they re-rent the premises. As such, in a CCAA these claims are often considered ‘contingent’ until fully mitigated.
- In a CCAA, each class contained in the Plan must achieve the voting requirements in order for the Plan to pass. In the BIA, only the unsecured creditor class must achieve the voting requirement in order for the proposal to pass.

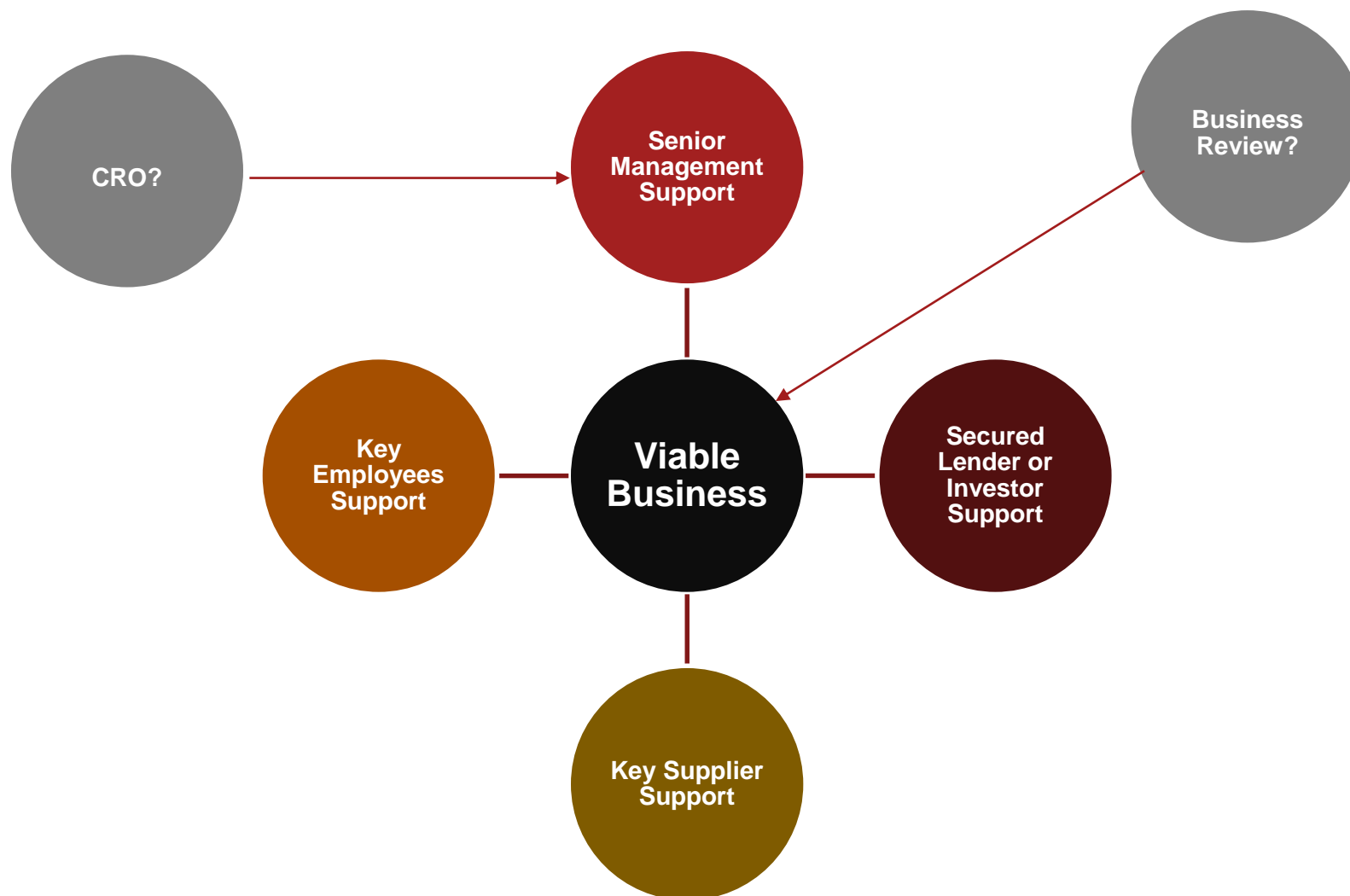
Possible Ways Forward

- ▶ Extension of time to repay debts
 - ▶ Settlement of debt at less than 100 cents on the dollar
 - ▶ Conversion of debt into equity
 - ▶ Injection of new cash:
 - Sale of non-core assets
 - Sale and leaseback of assets
 - Government funds (SR&ED)
 - New investment in the form of equity and / or debt
- ▶ Improvement in operating cash flow:
 - Curtail unprofitable operations
 - Operational enhancements
 - Price concessions from customers or suppliers
 - ▶ Sale of the business
 - ▶ Orderly liquidation of the debtor's assets

Section 2

Essential Ingredients For A Successful Restructuring

The Essentials



Section 3

BuildDirect.com Technologies Inc.

Background of BuildDirect (“BD”)

Some Basics

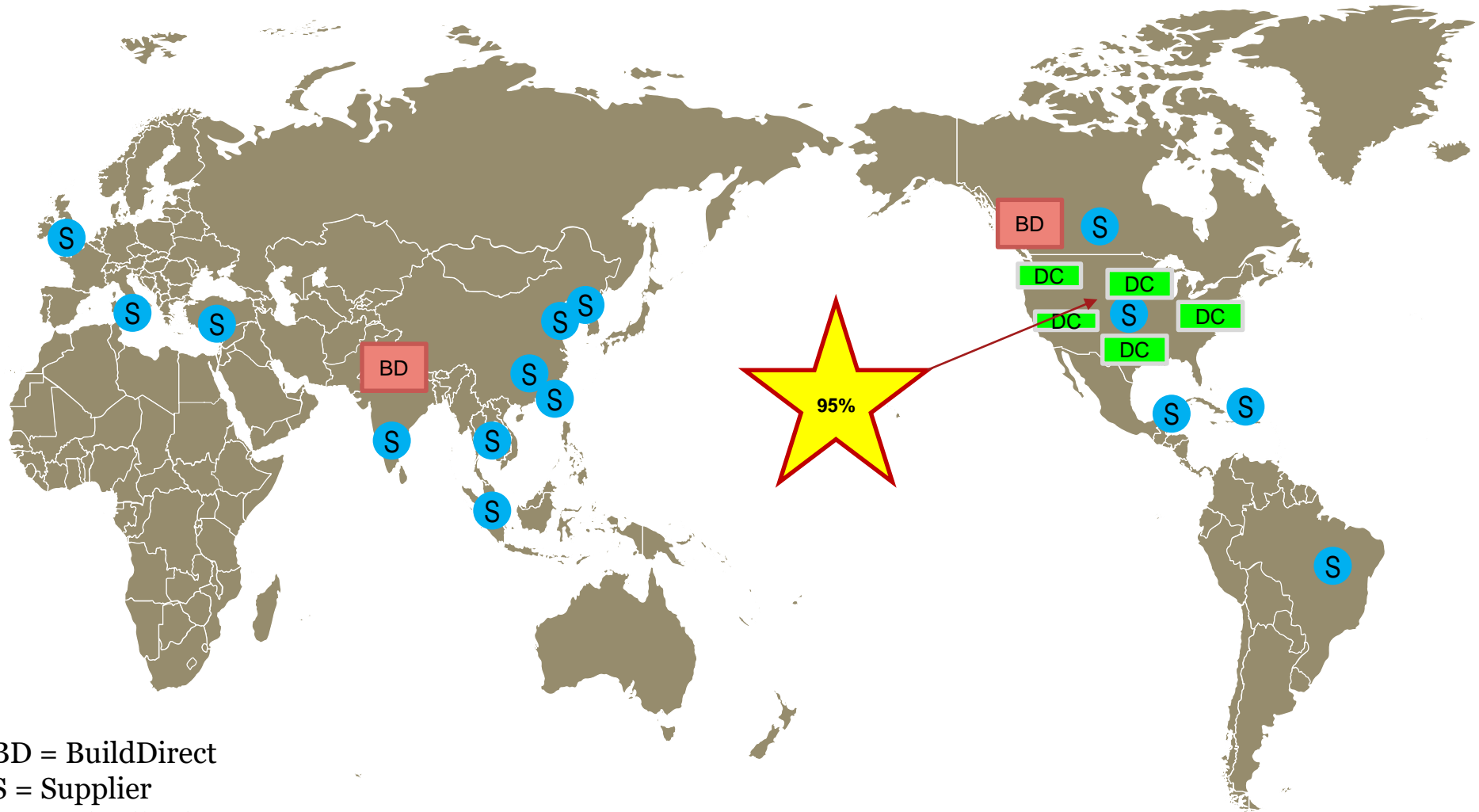
- A technology company, founded in 1999
- Historically BD has consistently generated revenue, but *not* profitability
- Created and operate an **online market platform** (its primary asset) for the sale of home improvement products (flooring, decking, tiles etc.)
- BD’s platform “facilitates a sale” between a Customer and a Supplier
- Employ 225 people; 40 in India, and the rest in Canada
- BD wants to become the *Amazon* of heavyweight home improvement products (over 150 lbs.)



Still Developing BD's 'Value Add' Business & Distinction

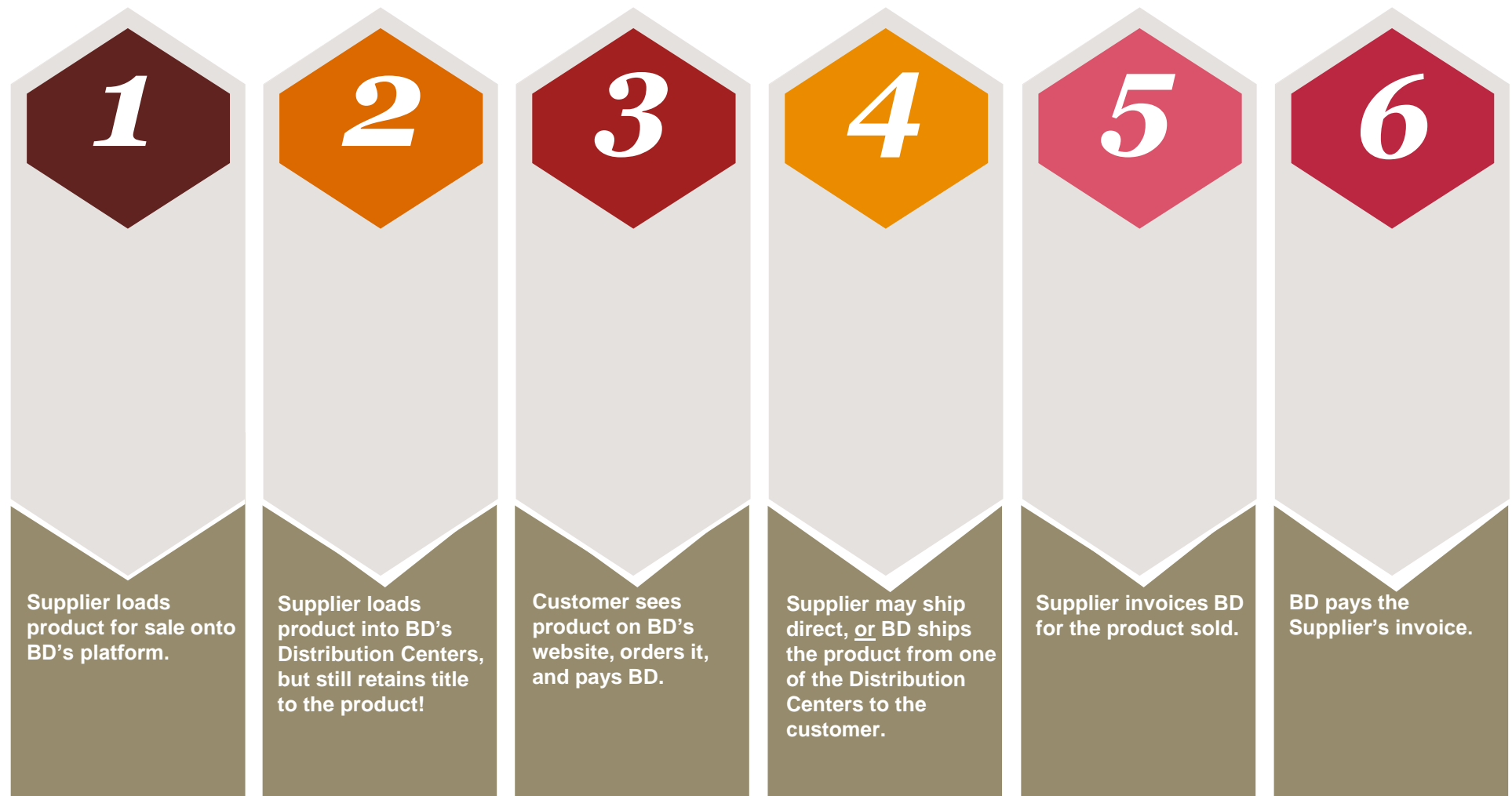
- BD has continued to evolve, by changing many aspects of their business:
 - BD used to target the 'home reno guy', who's only going to be a one time customer ☹
 - ✓ Now, their focus is a 'professional contractor' ☺
 - Used to be a manual process to source and add suppliers to website
 - ✓ In the last 2 years this has become a much more automated process
 - Historically, suppliers did not have any data on their sales
 - ✓ Now, data and predictive analytics are provided
- BD operates (but does not own) a highly integrated network of 6 distribution centers in the US. They also have a system of fixed transportation routes to facilitate regular movement of product

Global Reach: 540 Suppliers from 20 countries



BD = BuildDirect
S = Supplier
DC = Distribution Centre

How Does BD “Facilitate” A Sale?



How Does BD Make Money? It's All About The Fees!

\$ For a fee, a Supplier can store their product at one or more of BD's Distribution Centers, which allows for timely and cost effective shipping to the customer.

\$ For a fee, a Supplier can access BD's Gateway Seller Portal which allows the Supplier to make use of BD's heavyweight transportation and storage network to service their customer base, and data analytics.

\$ For a fee, a Supplier can move product around the various Distribution Centers and essentially 'piggy back' onto BD's already existing contracts with transportation vendors. This allows the Suppliers to leverage BD's heavyweight supply chain without having to invest in an expensive inventory strategy.



BD's Financing and The Lead Up To CCAA

BD had financed themselves with several rounds of financing through the years:

- **Equity** financing (\$57.6 million in 2014 & \$15.0 million in 2015)
- **Secured notes** were issued (\$30.0 million in 2015; \$25.0 million in 2016 and \$29.6 million in 2016 – 2017)
- In Oct 2016, PwC was advising BD, and filing for CCAA was a possibility then, but financing came through at the last minute, and CCAA was averted
- **Debt to Equity swap** totaling \$14.0 million took place in 2017
- In mid 2017, BD entered into a Forbearance Agreement with some of the existing noteholders
- As per the Forbearance Agreement, BD had to raise enough new financing to fund its operations for several more months, to give it time to either secure a new equity investment, or, sell the business. PwC was still advising BD during this time

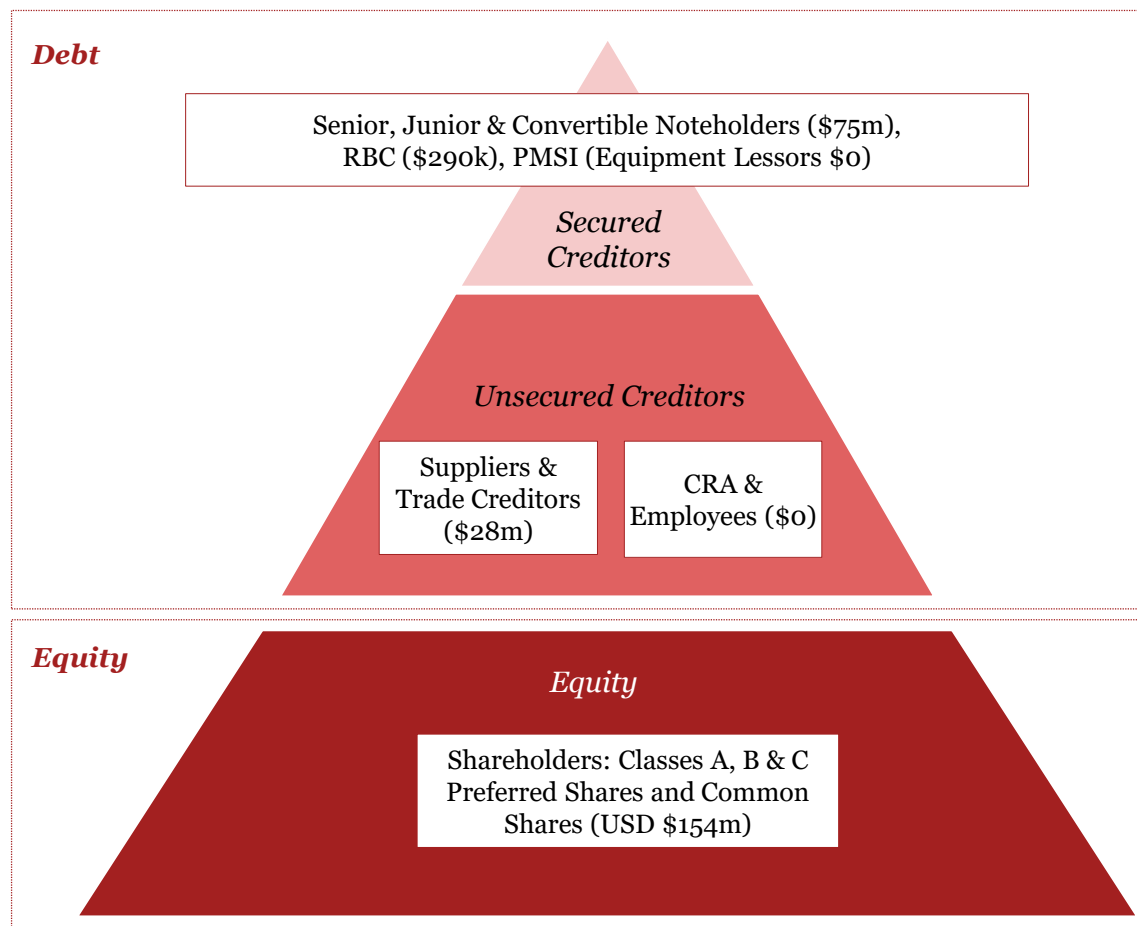
Technical: Forbearance Agreements

✓ I highly recommend reading a Forbearance Agreement

✓ Did you know a Forbearance Agreement can be entered into *after* the bank has issued its Notice of Intention to Enforce its Security?

- It's a tool for a lender to use
- States the balance of the loan/debt, and that a default has occurred
- States that the bank/lender/noteholder will not enforce their security, IF the company complies with certain new actions or covenants
- May state the engagement of a consultant
- States the fees associated with the agreement
- States what a default of the agreement looks like
- Gives the Company time to find replacement financing, or sell the business, or...
- Both parties sign the agreement

BD's 'Simplified' Capital Stack – October 30, 2017



Stormy Days

- BD encountered delays in the rollout of their new technology, which slowed growth and impacted their ability to raise new financing. As a result, BD failed to meet its obligations under the Forbearance Agreement
- The capital raise BD was trying to close, did not materialize, and BD was running out of cash to fund its operations
- Caution - uncertainty lies ahead!



How Did BD Get Ready for a CCAA filing?

BD got prepared for a CCAA filing by doing the following:

- They prepared a cash flow report, which showed a net negative cash flow of \$8.4 million in the 5 weeks ending December 3, 2017 (S. 10(2))
- They calculated they would need USD \$15.0 million over a CCAA period, started working on the Interim Financing requirement, and found a lender who would lend these funds
- They calculated what a D&O charge might look like over the course of a CCAA period
- As well, BD approached PwC to be the CCAA Monitor. PwC filed a “pre-filing” report with the Court, which reported on the above 3 points, and confirmed to the Court that they were willing to act, and had no restrictions in doing so

Initial Cash Flow & Report The Basics

Weeks Covered

- typically, should cover the time period being requested in the stay (30 days)
- weekly

Three Reports in One

- net cash flow
- cash position
- interim financing position

Restructuring Costs

- make sure these are included, as the company will be paying these as they arise
- keep separate

Opening Cash Balance

- don't forget it!
- make sure it's the same figure as what the bank statement says!

Notes & Assumptions

- ensure these are robust and meaningful

Final Check

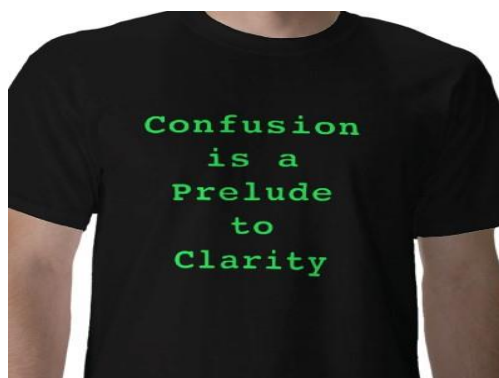
- make sure it adds, both ways!

October 31, 2017

“Losses tip B.C. online retailer BuildDirect into creditor protection”

“BuildDirect files for creditor protection under the CCAA”

“Vancouver tech firm files for creditor protection”



The Initial Order – October 31, 2017

Something In It For Everyone

For the Petitioner:

- Jurisdiction, right to file a Plan, in possession and operating
- What they *may, shall, or be entitled* to do, with or without Court, Monitor or Interim Lenders approval:
 - Pay employee pre-filing debt, pay post-filing debt
- What they can't do:
 - Grant security
 - Incur liabilities outside normal course
- Stay of Proceedings & Comeback Hearing (Nov 21)

For the Creditors:

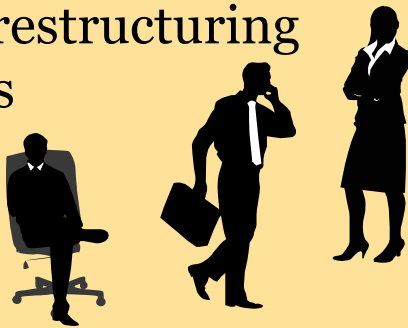
- No Interference with Rights, & Continuation of Service to Company
- Post-Filing is 'fair game'
- No proceedings against D&O during the stay period

For the Monitor:

- Appointment of Monitor – powers and duties
- Priority Charges – who's in first now & who just got primed?

Technical – Administrative (“Admin”) Charge

✓ The Admin charge offers financial protection to the professionals who are assisting the company in their restructuring efforts



❖ Someone once said to me, “Who would ever do this work if they didn’t get paid?”

- What is it? A charge over the assets, granted by the Court to the Monitor, its legal counsel, and the Petitioner’s legal counsel (and sometimes other parties too), for their fees
- The Court determines how much the charge shall be, in total. For example, on BD, the admin charge was up to \$500,000 for the 3 parties.
- The parties that are covered by the charge, generally agree on the ‘split’ of the charge
- As Monitor, we track how much is owed to the 3 parties at any given point in time, to ensure the collective total is within the charge amount. Otherwise, we may be ‘at risk’ in getting paid.

Technical – Interim Financing Charge aka “DIP” in the US

Term Sheet Contents:

- ✓ Borrower, Lender
- ✓ Maximum Amount
- ✓ Maturity Date
- ✓ Advance Dates
- ✓ Use of Proceeds
- ✓ Interest Rate
- ✓ Security
- ✓ Covenants
- ✓ CCAA Milestones
- ✓ Events of Default

- As mentioned before, BD determined via their cash flow, that they needed USD \$15M to last from Nov – end of Feb (which is when they expected to exit from CCAA)
- Without this financing, BD could not continue on in business.
- Term sheets are documents the lenders provide; effectively it's an offer to finance
- What may a lender consider?
 - Supporting debtor; keeps a seat at the table
 - Good return vs. the risk
 - “Loan to own” strategy
 - Is it enough to see them through the CCAA?

Technical – Interim Financing Charge aka “DIP” in the US – cont.

Factors the Court considers (S.11.2):

- ✓ Length of CCAA
- ✓ Management of Company during CCAA
- ✓ Confidence of major creditors
- ✓ Does it enhance the viability of the Plan?
- ✓ Creditors prejudiced if the charge is granted
- ✓ Monitor's recommendation

- There are minimum standards under the CCAA, in order to get an Interim Financing charge/order
 - Usually, it's granted to 'keep the lights on'
 - Notice to any parties the charge will prime
 - The terms of the Interim Financing are reasonable
- The Court approved a Charge of up to USD \$15M, which 'primes' other parties
- Three of the current noteholders (institutional) agreed to lend the Interim Financing
- Why would a current noteholder lend even more money?

Technical – D & O Charge

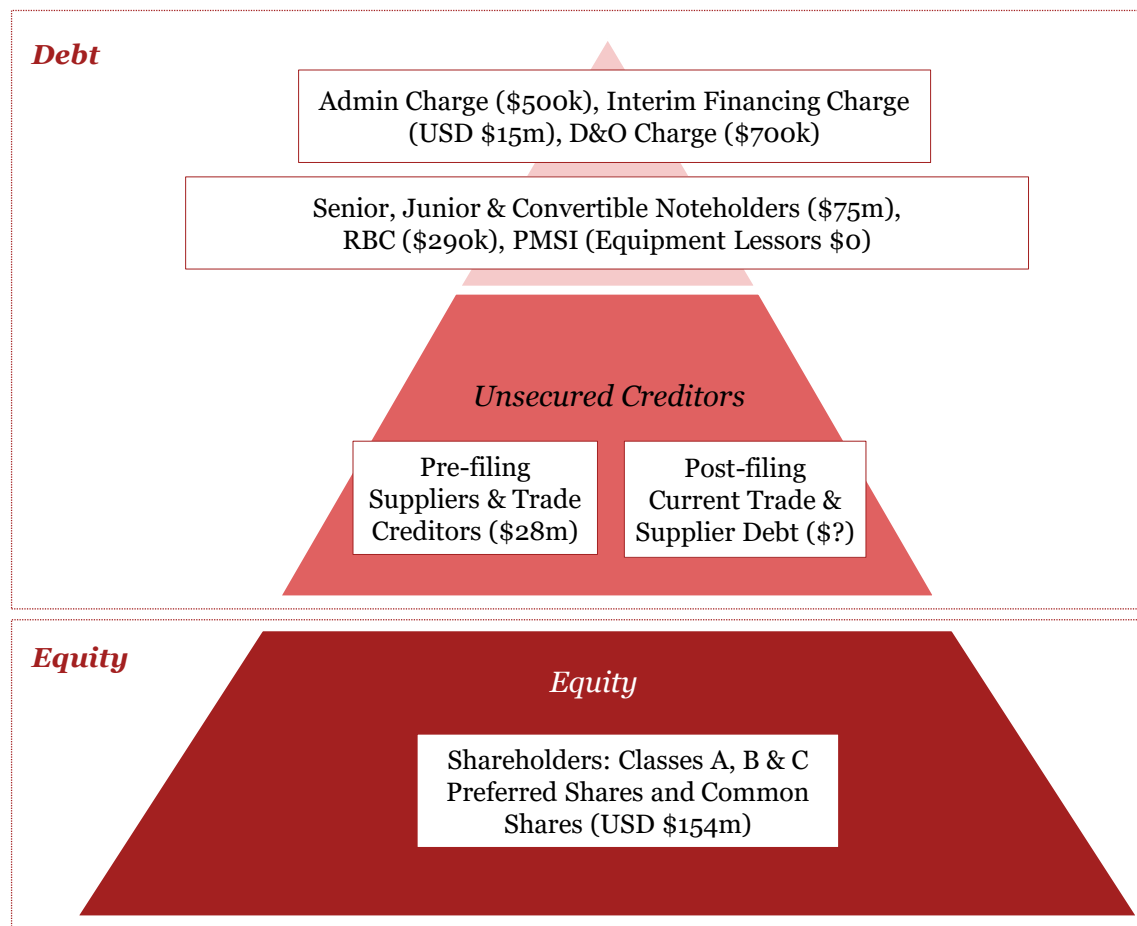
- ✓ It's necessary to keep the corporate structure of the Company (i.e. Directors) intact
- ✓ It's also desirable to have committed, capable, knowledgeable and engaged Directors and Officers, who can make or break the restructuring efforts!



- ❖ Can a company automatically get a D&O charge?
- ✓ ONLY if the Court is satisfied that insufficient protection exists, or cannot be reasonably obtained
- ❖ What does this charge cover?
- ✓ Post-filing D & O obligations only, in the normal course
- ❖ Can a Plan deal with *all* pre-filing D & O claims?
- ✓ No, as you cannot compromise D & O claims arising from 'allegations of misrepresentations, or claims of wrongful or oppressive conduct' (S.5.1)
- ✓ No, as it does not cover personal guarantees!

BD estimated that the maximum liability that may arise for the D&Os and be payable during a CCAA, was up to \$700,000

BD's 'Simplified' Capital Stack – After CCAA Filing October 31, 2017



Statutory: What Now?

- ❖ Who usually makes the court application for a CCAA filing?
 - ✓ The Petitioner (S. 10(1))
- ❖ What one main document is submitted with the application?
 - ✓ Company's affidavit – includes CF & report on CF; and FS (S.10(2))
- ❖ Why could PwC act as Monitor, when they were involved beforehand?
 - ✓ We haven't been their auditor or accountant, etc. in the last 2 years (S.11.7)
- ❖ When does the 2 year period start?
 - ✓ Generally starts from the last time you signed a report
- ❖ What does the Monitor have to do in the first 24 - 48 hours?
 - ✓ OSB Form 1 & the Affidavit materials to the OSB (CCAA Regs S.9)
- ❖ What else does the Monitor have to do in the first 5 days?
 - ✓ OSB Form 2, creditor mailing, website postings & follow the Initial Order

Issue on Day One – the US Court November 1, 2017

Cross Border Issue:

- BD has a highly integrated warehouse & distribution network in the US, without which, there is no business and no ability to restructure.
- What action would you recommend BD take at this point, if any?

USBC Choices:

- Chapter 7 – Liquidation? Chapter 11 – Reorganization?
- Chapter 15 – Recognition Order?
- BD, the Foreign Representative, made an application to the US Court, requesting a Chapter 15 Recognition Order, and that the CCAA proceedings be known as the foreign main proceedings
- Why did BD take this step?
- Why didn't BD take this step in say, China?

Issue on Day One – the US Court November 1, 2017 – cont.

The Problem with the US Proceeding:

- The US Court would hear the application to grant the Chapter 15 Recognition Order on December 6 - **5 weeks down the road!**
- Can anything be done to expedite the Recognition Order?

US Provisional Order:

- BD also filed for an immediate Provisional Order from the US Court
- This Order would allow BD to get an immediate stay against 22 named key transportation & warehouse providers and certain suppliers
- Without this, BD would have to wait 5 weeks to get a stay of proceedings against all US creditors/suppliers
- The US Court granted the Provisional Order on November 3 (and subsequently the Recognition Order on December 6)

Day One Actions & Concepts

- What's one of the most important considerations for any company that's just filed for creditor protection?
- What group of stakeholders mentioned above do you think were the most important group to the survival of BD?
- What do you think BD did on day one, and every day since?
- Have a Communication Plan to deal with noteholders, employees, media, customers, suppliers (foreign & domestic) and shareholders
- Suppliers, both of goods and services
- Aggressive effort to contact key suppliers & **build consensus** – the key of restructuring
- Focus on the future

Quick Court Issue

November 14, 2017

Company:

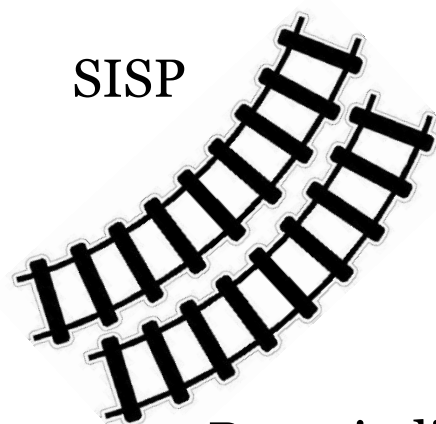
- Made an application to Court, needing Court approval on:
 - Launch of SISP
 - KERP (\$500,000 charge)
 - Other small stuff

Monitor's Role:

- Wrote Report for Hearing, focusing on:
 - Activities of BD since filing, (acting in good faith and with due diligence)
 - Information and comment on SISP
 - Information and comment on KERP
 - Update on US proceedings

Technical – Sales & Investment Solicitation Process (“SISP”)

Dual Tracks:



Recapitalization
("Recap")

- A corporate restructuring can proceed down 2 different tracks, at the same time
- During the CCAA, BD engaged a Financial Advisor (“FA”) to try and sell the Company, or solicit new investment into BD. *At the same time*, BD was working towards filing a Plan to restructure its debt
- If a sale could bring about a buyer, that might solve BD’s financial problems
- A Recap is a ‘fallback plan’ to restructure using current investors, vs. new investors in a SISP
- A sale did not materialize, and BD continued on its recapitalization track; the FA continued raising capital

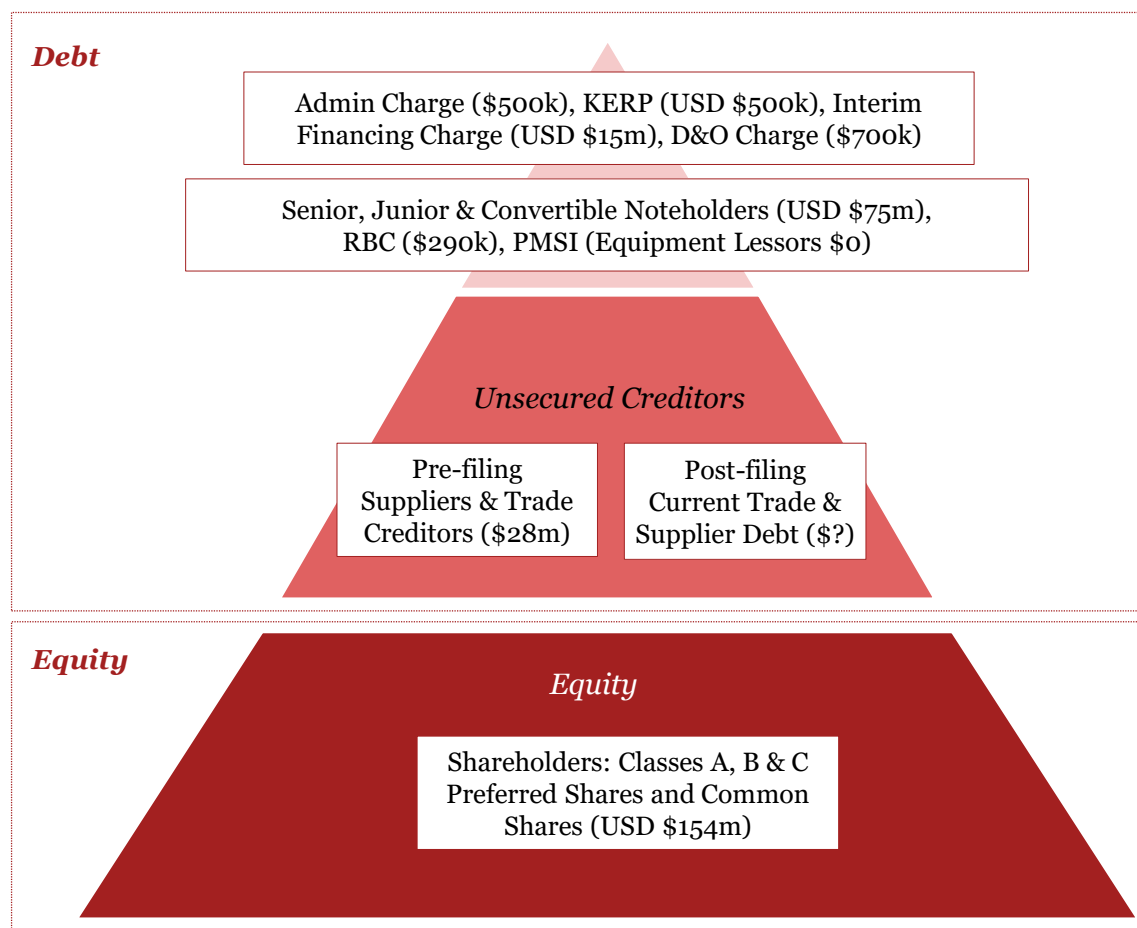
Technical – Key Employee Retention Program (“KERP”)

✓ BTW, the Interim Lenders agreed to the KERP charge, which is important, as the KERP was priming them in the capital stack



- Approximately 20 employees were identified by BD as being ‘key’ to the survival of BD
- Typically, they’d be asked if they would be supportive of BD throughout the CCAA period (end of February 2018)
- KERPs usually have 2 bonuses payable; one in the mid term, and one at the exit from CCAA
- The affidavit filed in Court by BD to ask for the KERP charge was confidential and sealed by the Court (common practice)

BD's 'Simplified' Capital Stack – November 14, 2017



Investigation Into BD for Comeback Hearing November 20, 2017

The Monitor, being the eyes and ears of the court reported to the Court on these subjects:

- Investigated for accuracy and completeness the facts contained in the Company's Affidavit about their situation
- Cash Flow, comparing actual vs. forecast to date, *and* extending out to end of CCAA
- Engagement of the Financial Advisor (capital raise)
- BD acting in good faith, and the Stay of Proceedings extension (Feb 23)
- At the end of the comeback hearing, the Initial Order is 'restated' with the new stay of proceedings expiry date. The resulting order is known as the Amended and Restated Initial Order ("ARIO")

Technical – Disclaiming a Contract & the Resulting Restructuring Claim

- A Company cannot issue a Disclaim Notice prior to filing an NOI or BIA Proposal, or, filing for CCAA



- A company in a CCAA or BIA restructuring can disclaim certain contracts (S.32)
- BD wanted to terminate an internet service contract that they no longer needed

Q: Who usually initiates & serves the Disclaim Notice on the creditor?

A: The Company

Q: What if the creditor disagrees with the Disclaim?

A: They have 15 days to appeal to Court

Q: What happens if the Monitor doesn't agree with the Disclaim?

A: The Company can apply to Court

Technical – Disclaiming a Contract & the Resulting Restructuring Claim – cont.

- The effective date of the disclaim is 30 days from the date of issue. Is the period between the date of issue and the effective date considered to be a pre-filing or post-filing debt?
- It's considered to be post-filing, and therefore has to be paid by the Company.
- Restructuring Claims are claims that arise due to a disclaimed contract
- The debt, although arising in the post-filing period, pertains to a contract that was entered into before the CCAA filing
- Therefore a restructuring claim is treated like a pre-filing claim, and compromised under a Plan
- In the case of a disclaimed contract concerning a leased premise, the CCAA is silent on the calculation of the claim, however, a BIA Proposal must speak to how the landlord's claim is to be calculated (BIA S.65.2(4))

Claims, Claims, Claims

January 18, 2018

I don't understand these forms!



- As the Company was moving towards filing a Plan, they made an application to Court to call for claims, i.e. a Claims Process Order (“CPO”)
- As with all claims processes, they are needed to determine the quantum of claims for voting and distribution purposes
- Dealing with so many foreign creditors was challenging!

Why can't I claim a current invoice?

What's happening?



A CPO details all actions to be carried out during a claims process, including:

- What forms are to be used
- Monitor's role in claims process
- Who completes the creditor mailing
- Who receives and vets the claims!
- Who issues any NORDs
- The NOD procedure
- The Claims Bar Date (Feb 9th)

But when do we get paid?



How was BD Going To Restructure Itself? The 3 Pronged Approach

✓ **Raise new funds (Capital Financing)**

- These funds would be used to fund the Plan distributions, *and* provide adequate working capital for the future



✓ **Reorganize BD's capital stack**

- This is a pre-requisite in order to get the Capital Financing



✓ **Compromise Unsecured Debt**

- Done through the CCAA Plan



Successful Restructuring

It's A Bit Of A 'Catch 22'!

- The CCAA Plan was dependent upon the Capital Financing being raised
- The Capital Financing wouldn't be advanced unless the CCAA Plan passed, and the various debts were compromised



The Plan

The Unusual ‘Pay to Play’ Concept

Unsecured Creditor Class:

- Payment in full, if your claim was below \$2,000 (voted FOR)
- Opportunity to reduce your claim to \$2,000, and receive a \$2,000 payment (voted FOR the full value of the claim)
- Otherwise, \$0.05/dollar (can vote either FOR or AGAINST)

Secured Noteholder Class:

- All existing notes are to be converted to *shares*, and
- If they invest new cash, they get new *shares*
- (Conversion factor differs between the Senior/Junior/Convertible notes and the new cash)
- One Unaffected Secured Noteholder

Mandatory Provisions:

- Similar between CCAA & BIA

To shareholders:

- If they invest new cash, they get new shares, otherwise, their existing shares will be cancelled

The Meeting Order (“MO”) February 22, 2018

Company:

- Filed the Plan with the Court
- Made an application to Court for an Order to conduct the Creditor Meeting and vote
- Meeting was to be held March 12
- Extend Stay of Proceedings

Court:

- Approved the Meeting Order & the Stay extension to March 19

Monitor’s Role:

- Wrote Report for Hearing, focusing on:
 - Operations & Cash Flow update
 - Update on claims process & SISP
 - Comments on the Plan
 - Comments on the Meeting Order
 - Comments on the Stay extension request
 - Recommendations





Monitoring for a Material Adverse Change (“MAC”)

A MAC is defined as an event or such which:

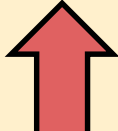
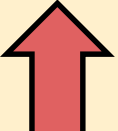
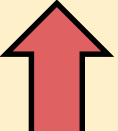

- has a significant adverse effect on the Cash Flow
 - impairs the ability of the insolvent party to carry on operations
 - impairs the chance of a successful proposal/plan being made
 - significantly prejudices a class of creditors
- ✓ Tell the Company what constitutes a MAC at the onset of the file

A MAC can manifest itself in many ways:

- inventory suddenly becomes dated, obsolete or recalled
- loss of a large contract or other significant source of revenue
- death of a significant party
- Company defaults on Interim Financing
- Company doesn't remit post-filing source deductions to CRA, or doesn't keep the post-filing payments current

Creditor Meeting and The Vote

March 12, 2018

Secured Noteholder Class						Unsecured Creditor Class					
Result - Secured Noteholder Class						Result - Unsecured Creditor Class					
(\$)			(#)			(\$)			(#)		
For	Against	Total	For	Against	Total	For	Against	Total	For	Against	Total
55,073,082	-	55,073,082	23	-	23	7,426,861	1,150,198	8,577,059	213	12	225
(%)			(%)			(%)			(%)		
100.0%	0.0%	100.0%	100.0%	0.0%	100.0%	86.6%	13.4%	100.0%	94.7%	5.3%	100.0%
											

Two goals achieved – recapitalization (moving the secured noteholders to equity, as per the Plan), and the compromise on unsecured creditor debt

The Court sanctioned the Plan on March 13. The US Court sanctioned the Plan on March 20.

Plan Implementation

March 23, 2018

- The FA collected all the new funds raised re: Capital Financing
- Counsel for the Company did the work to cancel the existing shares, and issue new shares as per the Plan. As a result, the shareholders own a significant part of BD going forward
- Funds to satisfy the Unsecured Creditors' compromised claims were paid to the Monitor, and a distribution to Unsecured Creditors was made on March 26 - 28
- With the above steps completed, BD exited from CCAA proceedings, and the US proceedings

***Capital
Raised***

***Creditor
Support***

***Committed
Management***

***Viable
Business***

***Employee
Support***

***Supplier
Support***

Key Results & Successes in BD's CCAA

Thinking back to their capital stack, what has changed:

- ✓ Debt of Secured Noteholders (\$75m), was swapped to equity, except for one Unaffected Creditor who holds a \$4m secured note
- ✓ Debt of Unsecured Creditors (\$28m), was extinguished at \$0.05/dollar, or a \$2,000 payment (or less)
- ✓ The D&O and KERP charges fall away; the Admin charge fell away after the Monitor's discharge

AND

- ✓ The Interim Lenders who had lent the Interim Financing of USD \$15m, agreed to convert this loan to equity (thus removing their charge)

AND

- ✓ BD raised \$33m in capital financing
- ✓ BD retained 99% of their suppliers for future business

Section 4

Other Topics

Critical Suppliers Available Under the CCAA

➤ Court Application & Subsequent Charge

- Court application is made by the Company (& notice is given to secured creditors who will be primed). Company must prove to the Court that Supplier is critical to the continued operation of the Company
- Court may give a charge on the assets, in respect of goods/services supplied in the post-filing period
- Court sets the priority order of the various charges (e.g. Admin, KERP, Interim Financing, D&O, etc.)
- Why didn't BD use this feature of the CCAA?
 - It was determined the best approach was to work with each supplier
 - New deposits, COD, other altered terms, etc.

Liquidating Using A Restructuring Vehicle

➤ **Liquidating Using the CCAA**

- Used when there is a benefit to continuing in CCAA, instead of receivership or bankruptcy, such as:
 - Court oversight is desired;
 - Complexity of file, multiple secured creditors, cross border
- Monitor may become ‘Super Monitor’, having enhanced powers
- Example – League Assets
 - 105 legal entities in CCAA; 65 legal entities outside CCAA
 - 22 commercial properties; 28 secured lenders
 - Company ultimately decided they couldn’t restructure, that liquidation was best for stakeholders

WEPPA & BIA 30 Day Goods Provisions Do They Apply In A Restructuring?

➤ WEPPA

- No, WEPPA only applies to companies in receivership or bankruptcy

➤ 30 Day Goods Provision

- No, it does not apply as the BIA and CCAA allow a debtor to use their assets in order to try and restructure

Proceedings under the Canada Business Corporations Act (“CBCA”)

➤ Sections 173, 191, 192 and 241

- Primarily, the CBCA is used in a restructuring context to compromise funded debt *without* impacting the regular creditors/trade suppliers. The compromise is usually a conversion of ‘debt to equity’ and hence the CBCA refers to changing the share structure.
- If there’s a group of companies, at least the applicant company must be solvent, and the corporations emerging from the restructuring must be solvent
- ‘Pre-pack’ deals are common, where the sale or settlement has been negotiated before making any court application. This minimizes costs. What would the Court’s issues be with this type of transaction?
- No Monitor role

Time For a Break!

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