

**THE DISAPPEARANCE OF RETAIL REORGANIZATIONS  
UNDER THE AMENDED SECTION 365(d)(4)**

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“Circuit City, Eddie Bauer, Boscov’s, Borders, and Beyond:  
Is Chapter 11 Bankruptcy Working for Retailers?”

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*To the extent we understand the law of corporate reorganizations as providing a collective forum in which creditors and their common debtor fashion a future for a firm that would otherwise be torn apart by financial distress, we may safely conclude that its era has come to an end.*<sup>2</sup>

The year was 2002, nearly three years before President George W. Bush signed into law the Bankruptcy Abuse Prevention and Consumer Act of 2005, S. 256 (“BAPCPA”), when Professors Baird and Rasmussen published this epitaph mourning the passage of chapter 11 as a means by which companies could restructure debt and emerge from bankruptcy as reorganized and rehabilitated entities. According to Baird and Rasmussen, structural changes in the U.S. economy over the preceding twenty-five years, including the national shift from a manufacturing economy to a service economy, the globalization of financial markets, and the increasing significance of intangible assets and intellectual capital, combined to leave the Chapter 11 process ill-suited for the twenty-first century.<sup>3</sup>

The factors cited by Baird and Rasmussen are certainly important to any macroscopic analysis of Chapter 11 reorganization, particularly in view of the significant “intangible asset” bankruptcies of Enron, WorldCom and Adelphia that dominated headlines roughly 10 years ago. But the systemic decline of Chapter 11 reorganization has also invaded the retail sector, where “hard assets” are no less prevalent today than they were in the 1990s, a time when many distressed retailers used the significant powers and protections of the Chapter 11 process to resuscitate their businesses.<sup>4</sup>

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<sup>1</sup> Lawrence C. Gottlieb is the former Chair of the Bankruptcy & Restructuring Group of Cooley LLP. The Cooley Bankruptcy & Restructuring group has played significant roles in some of the largest retail bankruptcies and out of court restructuring cases. Cooley represents and has represented official committees of unsecured creditors in such cases as Montgomery Ward, Federated Department Stores, Hancock Fabrics, Mervyn’s, Eddie Bauer, Boscov’s, Goody’s, Gottschalks, Athlete’s Foot, Footstar, The Bombay Company, Florsheim Shoes, Sharper Image, and Levitz Home Furnishings, among many others. Cooley also served as counsel to Crabtree & Evelyn, one of only a handful of retailers since the implementation of the 2005 bankruptcy amendments to emerge successfully as an unimpaired reorganized entity. Mr. Gottlieb has authored numerous published articles on various retail bankruptcy issues, including the effects of the 2005 amendments on retail reorganization. Mr. Gottlieb has also testified before the House Judiciary Committee on the effects of BAPCPA.

<sup>2</sup> Douglas G. Baird & Robert K. Rasmussen, *The End of Bankruptcy*, 55 STAN L. REV. 751, 753 (2002).

<sup>3</sup> *Id.*

<sup>4</sup> The Federated Department Stores case (*In re Federated Dep’t Stores, Inc.*, Case No. 90-10130 (BP) (Bankr. S.D. Ohio 1990)) symbolizes the highly successful retail restructurings of that decade. Before its Chapter 11 case, Federated was saddled with \$7.5 billion of debt after its purchase as part of a highly leveraged takeover by Canada’s Campeau Corporation in 1988. Faced with a declining business and loss of confidence among its vendors, Federated filed for Chapter 11 protection in 1990, where it was forced to quickly sell various key assets, including a portion of its real estate interests. Despite these problems, Federated was able to restructure its debt and triumphantly emerge from bankruptcy as a reorganized entity in 1992 by swapping \$5 billion in debt and other

Today, retailers almost invariably begin the Chapter 11 process with little hope of emerging as a standalone entity. Numerous economic factors—including capital constraints, competition from online and discount retailers, and weak consumer demand—have clearly contributed to this downward spiral (particularly during the height of the recent recession), however, to pin the disappearance of retail reorganization solely on one or more of these economic factors would be to ignore the devastation wrought by the amendment under BAPCPA’s amendment to the provisions of the Bankruptcy Code concerning a debtor’s deadline to assume or reject unexpired leases of nonresidential property.

Prior to BAPCPA, section 365(d)(4) of the Bankruptcy Code was a powerful tool used by retailers to downsize operations while simultaneously adding considerable value to their estate. Under the old regime, a debtor had 60 days to decide whether to assume or reject its commercial real estate leases, without the consent, and often over the objection, of its lessors. This 60-day period was subject to extension “for cause.” The Bankruptcy Code placed no limit on the duration or number of extensions that could be sought, and extensions were routinely granted by courts presiding over mid-size and larger cases, where the requesting debtor was continuing to perform its lease obligations.

BAPCPA revised section 365(d)(4) to place an outside limit of 210 days on the time by which a debtor must assume or reject a commercial real estate lease. Specifically, section 365(d)(4) provides that a commercial real estate lease is deemed rejected if not assumed by the debtor by the earlier of (i) 120 days after the petition date; or (ii) confirmation of a plan. Courts are authorized to extend the 120-day period for up to an additional 90 days for cause shown. Extensions beyond 210 days—irrespective of whether the retailer operates 10 stores or 1,000 stores—are not within the discretion of the bankruptcy courts and may only be granted upon the consent of the landlord. The revisions to 365(d)(4) were designed to provide a “firm, bright line deadline” on a debtor’s ability to assume or reject its leases,<sup>5</sup> regardless of the individualized challenges facing a debtor.

The deadline established under BAPCPA for a debtor to assume or reject unexpired leases of nonresidential property has had a substantial and unfortunate affect on retailers’ ability to meet liquidity needs and obtain extended postpetition financing—the lynchpin to any successful retail reorganization effort. Now, more than 7 years removed from the enactment of BAPCPA and having observed its impact on numerous retail Chapter 11 cases, I can objectively say that BAPCPA has negatively impacted a retailer’s ability to meet its liquidity needs in Chapter 11 irrespective of the other factors driving a lender’s decision to provide postpetition financing. As can be seen from the attached charts summarizing 25 of the largest retail bankruptcy cases since BAPCPA and 20 of the largest retail bankruptcy cases prior to BAPCPA, BAPCPA resulted in drastic changes to retail reorganization, and the vast majority of retail chapter 11 filings now end in liquidation or a quick sale under section 363 of the Bankruptcy

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liabilities for new notes and equity. Federated went on to acquire Macy’s in connection with Macy’s Chapter 11 case in 1994 and by 1998 Federated’s debt was rated as “investment” grade by the major rating agencies.

<sup>5</sup> H.R. Rep. No. 109-31, pt. 1, at 86 (2005) *reprinted in* 2005 U.S.C.C.A.N. 152–53.

Code. The consequences of these changes can be dramatic: the liquidation of Circuit City and Linens 'n Things alone resulted in more than 50,000 lost jobs.

Liquidity is the lifeblood of reorganization. Absent the ability to pay certain postpetition debts as they come due, including sums owed employees, vendors, common carriers, utility providers and estate professionals to name just a few, the prospect of a retail reorganization is little more than a pipe dream. Most retailers contemplating a Chapter 11 filing have experienced sustained periods of liquidity problems and have therefore relied on the secured lending of banks and other financiers for years preceding their bankruptcy filings.<sup>6</sup> Consequently, at the commencement of most cases, substantially all of a retailer's assets will be subject to the prepetition liens of its lenders and may not be used or sold without their consent.

Lenders are disinclined to permit the use and disposition of their collateral and, just as important, to extend additional financing, absent a firm belief in a debtor's capacity to effectively reorganize and thereby avoid any diminution in the value of their collateral. Where a prepetition lender does not possess the requisite level of confidence in a given debtor prior to or during the Chapter 11 process, it will inevitably attempt to force a sale of the collateralized assets pursuant to section 363 of the Bankruptcy Code. Unfortunately, the revision to section 365(d)(4) of the Bankruptcy Code under BAPCPA has made it significantly more difficult for a lender to have confidence in a retail debtor's ability to reorganize in a timely manner.

From a lender's perspective, a retailer's ability to routinely obtain extensions of the lease assumption/rejection period provided three critical protections:

- First, a lender could be assured that the retailer was provided with sufficient time to analyze the value of each individual store lease before making the critical decision to assume or reject the lease.
- Second, lenders were assured that the value of a debtor's commercial lease could be monetized in the event of a failed reorganization because debtors had an indefinite period of time to assign below-market commercial leases to third parties at a premium.

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<sup>6</sup> The growth of the second lien lending market over the past decade has compounded these liquidity problems for distressed retailers. Not only must retailers position themselves to pay the present value of the often substantial secured claims of their senior lenders upon confirmation of a Chapter 11 plan, but many now face a relatively new and additional layer of secured debt that must also be paid in full upon emergence. Second lien lending originated in the early 1990s when the debt market stalled as a result of increased conservatism among banks and other traditional senior lenders. Second lien lenders, in contrast to mezzanine lenders, invariably play an active role in the Chapter 11 process because, in the event of a borrower default, the second lien lender can exercise its remedies (including foreclosure) against the debtor. While the second lien market has benefited distressed retailers by providing new channels of liquidity, it has also created more difficulties for those companies attempting rehabilitation in the face of both senior and second lien debt. Second lien loans have increasingly become a favorite investment vehicle of private equity firms that are judged by their internal rate of return on investments. These firms profit from generating quick returns on investment and, accordingly, are even less willing to endure the reorganization process than banks and other financial institutions.

- Third, lenders were also assured that they would be provided with enough time to conduct a “going-out-of-business” (“GOB”) sale on the premises in the event a decision was subsequently made to terminate the reorganization process.

Although all three protections play important roles in a lender’s decision to provide financing, it is the latter protection which is most crucial. A lender’s willingness to permit the use of its collateral and/or provide postpetition financing to a retailer is in large part based on the value of the retailer’s inventory at a GOB sale. Absent the ability to conduct a GOB sale from the debtor’s store locations, a lender is deprived of the most commercially viable location to liquidate the collateralized inventory, and the lender’s recovery may not fulfill its expectations. This issue is exacerbated for lenders because they do not have control over a debtor’s decisions to assume or reject unexpired leases.

Accordingly, prepetition lenders use their substantial leverage to ensure that a retail debtor will be able to conduct a GOB sale. However, GOB sales must be planned, approved by the Bankruptcy Court (after parties in interest are provided with sufficient notice), and conducted in manner that maximizes value. All told, preparing and conducting a GOB sale takes at least 120-days in most cases. The 210-day limit set by BAPCPA therefore leaves a debtor with less than three months after the commencement of its case before GOB sales must be implemented.

As a result, most prepetition lenders now refuse to provide any more postpetition financing than necessary to fund an immediate sale or liquidation process. This is particularly problematic because retailers that file for Chapter 11 protection today increasingly have balance sheets that are encumbered by ever growing amounts of secured debt, and there is therefore virtually no ability for retailers to survive on cash collateral alone. Due to the modern retailer’s capital structure, prepetition lenders have all of the bargaining power, and the result is that most postpetition financing facilities either (i) expire within the first few months of the case, (ii) include “milestones” or “trigger notices” requiring the Debtors’ to follow a strict path towards liquidation or a sale, (iii) include substantial reductions in the advance rate as the case extends beyond a certain length, or (iv) employ some combination of the above. These provisions give lenders certainty that a liquidation sale will occur and be concluded before the expiration of the 210-day period provided for debtors to assume or reject leases.

Lenders are simply not willing to bear the risks associated with reorganization for fear that the retailer may lose its store leases before a GOB sale is completed. The decision not to provide reorganization financing is made by secured lenders before the debtor files for bankruptcy. This is why it is illusory for creditors or landlords to believe that they will have any influence on whether a debtor will obtain sufficient postpetition financing to conduct a reorganization.

Unsurprisingly then, retail cases filed over the past 7 years have invariably taken one of two forms: either the case is filed as a liquidation, a quick sale under Section 363 of the Bankruptcy Code, or the debtor is given a window of no more than three to four months to complete a reorganization process that history dictates takes at least three times that amount of time to accomplish. The most compelling explanation for this development is that both retailers and their lenders are acutely aware that even a full seven months in the life of a retail debtor is not a long time, particularly because most retailers and their lenders cannot judge the vitality of

the business without going through at least one Christmas season. Absent the ability to extend the assumption/rejection period beyond the 210-day limit, a debtor will often be forced into the impossible position of having to prematurely determine whether to assume or reject its commercial leases—decisions of critical importance to the ultimate success of any reorganization. Furthermore, the 210-day period does not provide a debtor sufficient time to exploit many of the tools provided by chapter 11 to assist the debtor’s rehabilitation. Accordingly, even in those cases where the lender has agreed to provide financing on a preliminary, “wait-and-see” basis, such willingness has invariably been tempered, if not extinguished, by the very nature of the retail industry.

The end result is that retailers can no longer reorganize unless their prepetition lender is interested in owning the company or supporting a reorganization for some other unique reason. Appended to this testimony are charts summarizing 25 of the largest retail bankruptcy cases since BAPCPA, as well as 20 of the largest retail bankruptcies in the years preceding BAPCPA.<sup>7</sup> These cases demonstrate just how hobbled the chapter 11 process for retailers has become, as demonstrated by the following summary statistics:

	<b><u>POST-BAPCPA</u></b>	<b><u>PRE-BAPCPA</u></b>
Total number of cases analyzed:	25	20
Number of cases where plan of reorganization was approved:	3 (12%) <sup>8</sup>	10 (50%)
Number of cases where the debtor(s) liquidated:	12 (48%)	7 (35%)
Number of cases resolved pursuant to a 363-sale:	10 (40%)	3 (15%)
Average sale/liquidation/reorganization period: <sup>9</sup>	3 months	12 months

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<sup>7</sup> The retail debtors discussed in the chart summarizing pre-BAPCPA cases (Appendix A) include: Ames Department Stores, Athlete’s Foot, Bob’s Stores, Bradlees I and II, Breuners Home Furnishings a/k/a Huffman Koos, Casual Male Corp., Drug Emporium, Flooring America, Footstar, Friedman’s, Heilig-Meyers Company, Kmart, Loehmann’s, Montgomery Wards I and II, Phar-Mor, Spiegel, Stage Stores, and Trend-Lines.

The retail debtors discussed in the chart summarizing post-BAPCPA cases (Appendix B) include: Bachrach Clothing, Blockbuster, Borders, Boscov’s, Circuit City, Crabtree & Evelyn, Eddie Bauer, Finlay Enterprises, G+G Retail, Goody’s, Gottschalks, Harry & David, Hub Holdings, Levitz Furniture, Linens ’n Things, Loehmann’s, Movie Gallery, Musicland d/b/a Sam goody, Ritz Camera Centers, Sharper Image, Steve & Barry’s, Syms/ Filene’s Basement, the Bombay Company, Tweeter Home Entertainment, and United Retail Group.

<sup>8</sup> In each of post-BAPCPA cases that reorganized, the debtors’ prepetition secured lender either accepted equity in exchange for the cancelling of its debt or was also a prepetition equity holder of the debtor.

<sup>9</sup> The sale/liquidation/reorganization period is the period between the commencement of the chapter 11 proceeding(s) and the date that the Court (i) approves a plan of reorganization, (ii) authorizes the sale of substantially all of the debtor’s assets, or (iii) converts the case to chapter 7 or otherwise dismisses the proceedings.

	<u>POST-BAPCPA</u>	<u>PRE-BAPCPA</u>
The number of cases where the sale/liquidation/reorganization period exceeded 210 days:	0 (0%) <sup>10</sup>	13 (65%)
The average duration of cases where debtor(s) reorganized:	99 days	576.5 days
The average duration of cases where the debtor(s) liquidated:	93.4 days	122.3 days
The average duration of the cases resolved pursuant to a 363-sale:	81.7 days	236.7
The average recovery for general unsecured creditors (as set forth in the disclosure statements): <sup>11</sup>	16.3%	33.6%

For the reasons explained above, these results are entirely understandable and predictable in a post-BAPCPA world. Prior to BAPCPA, chapter 11 provided retail debtors with the time and the tools to not only address balance sheet issues, but to right-size their business and test new business plans. For example, in more than half of the pre-BAPCPA cases described in Appendix A, the debtor adjusted its retail footprint after going through a holiday season; in contrast, in the post-BAPCPA cases discussed in Appendix B, virtually no debtors were able to take similar advantage of the chapter 11 process because they were not given the time. Perhaps the past practice of providing unlimited extensions of the assumption/rejection period was unnecessary. It is clear that this practice created a substantial backlash among landlords and others that ultimately produced the truncated assumption/rejection period provided under BAPCPA. But the pendulum has swung too far. The fixing of an immutable deadline for the assumption or rejection of commercial real estate leases has dealt a knockout blow to prospective retail reorganizations.

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<sup>10</sup> Technically, Syms/Filene's Basement emerged from bankruptcy after 302 days, but it emerged as a real estate company and all other assets were liquidated within the first 2 months of the case, so for purposes of this summary statistic it is not identified as a case with a reorganization period exceeding 210 days.

<sup>11</sup> For purposes of calculating the average creditor recovery, (i) where the disclosure statement did not provide a projection, the case was not included in the average, and (ii) where a disclosure statement provided a range for the projected recovery, the mid-point was used.

Case Name	Disposition	Petition Date	Sale / Reorg. Date	Ch. 11 Reorg. Period	GUC Creditor Recovery	Discussion
Bradlees Stores Inc. (95-42777) (S.D.N.Y.)	Reorganization	6/23/1995	11/18/1998 <sup>1</sup> 1/27/1999 <sup>2</sup>	1244 days	8–20% <sup>3</sup>	<p>The “reorganization period” is calculated based on the date that Bradlees’ plan was originally confirmed on November 18, 1998, even though certain landlords successfully appealed the Bankruptcy Court’s decision to confirm the plan, and an amended plan was approved in January 1999. During the bankruptcy, Bradlees reduced its retail footprint from 136 stores in June 1995 to 104 in February 1999.</p> <p>The recovery for general unsecured creditors estimated in the disclosure statement varied for the different Debtors, but ranged between 8 and 20%.</p>
Montgomery Ward Holding Corp (97-1409) (D. Del.)	Reorganization	7/7/1997	7/28/1999 <sup>4</sup>	751 days	28–29% <sup>5</sup>	<p>During the pendency of the reorganization, the Montgomery Wards Debtors liquidated an unprofitable subsidiary and closed 96 Montgomery Ward stores. The Montgomery Ward Debtors were also able to balance their inventory stock, dispose of unsaleable merchandise, and replace old merchandise with fresher, more saleable product through a vendor program approved by the Bankruptcy Court.</p>

<sup>1</sup> *Order Confirming First Amended and Modified Plan of Reorganization for Bradlees Stores, Inc. and Affiliates Under Chapter 11 of the Bankruptcy Code* (Docket No. 3226), entered November 18, 1998.

<sup>2</sup> *Order Confirming Second Amended Joint Plan of Reorganization for Bradlees Stores, Inc. and Affiliates Under Chapter 11 of the Bankruptcy Code* (Docket No. 3416), entered January 27, 1999.

<sup>3</sup> *First Amended Disclosure Statement Pursuant to Bankruptcy Code § 1125 for Joint Plan of Reorganization of Bradlees Stores, Inc. and Affiliates Under Chapter 11 of the Bankruptcy Code* (Docket No. 3075), dated October 2, 1998.

<sup>4</sup> *Order Under 11 U.S.C. § 1129(a) and (b) and Fed. R. Bankr. P. 3020 Confirming First Amended Joint Plan of Reorganization of Montgomery Ward Holding Corp. And Its Debtor Subsidiaries* (Docket No. 5225), entered July 28, 1999.

<sup>5</sup> *First Amended Disclosure Statement with respect to First Amended Joint Plan of Reorganization of Montgomery Ward Holding Corp. and Its Debtor Subsidiaries* (Docket No. 4498), dated May 26, 1999.



Case Name	Disposition	Petition Date	Sale / Reorg. Date	Ch. 11 Reorg. Period	GUC Creditor Recovery	Discussion
Loehmann's, Inc. (99-01138) (D. Del.)	Reorganization	5/18/1999	9/06/2000 <sup>6</sup>	477 days	53% <sup>7</sup>	During its chapter 11 proceeding, Loehmann's undertook substantial operational changes and closed 21 non-core stores as part of an effort to concentrate on three core markets. The Debtor first obtained authority to conduct GOB sales at 13 underperforming stores in July 1999 (auctioning the leases in October 1999), and then obtained authority to conduct additional GOB sales in April and May 2000.
Stage Stores, Inc. (00-35078) (S.D. Tex.)	Reorganization	6/1/2000	8/8/2001 <sup>8</sup>	433 days	N/A	After filing for Chapter 11 protection, the Stage Store Debtors conducted two store closing initiatives, conducting GOB sales at 107 shortly after filing and 121 stores about six months later.  General unsecured creditors were entitled to either equity or some combination of equity and cash, and the disclosure statement did not provide an estimated recovery. However, the Debtors projected a 7% recovery for trade vendors in the event of a liquidation, and stated that general unsecured trade creditors received more under the plan, indicating an expected return exceeding 7%. <sup>9</sup>
Flooring America, Inc. (00-68370) (N.D. Ga.)	Liquidation	6/15/2000	7/25/2000 <sup>10</sup>	40 days	4-14% <sup>11</sup>	A chapter 11 trustee was appointed in January 2001, by which point the vast majority of the Debtors' assets had been liquidated.

<sup>6</sup> *Findings of Fact, Conclusions of Law, and Order Confirming Second Amended Plan* (Docket No. 1368), entered September 6, 2000.

<sup>7</sup> *Second Amended Disclosure Statement Accompanying Second Amended Plan of Reorganization of Loehman's, Inc. Under Chapter 11 of the Bankruptcy Code, as Modified on July 28, 2000* (Docket No. 1230).

<sup>8</sup> *Order Confirming Third Amended Chapter 11 Plan of Reorganization of Stage Stores, Inc., Specialty Retailers, Inc. and Specialty Retailers, Inc. (NV), as Modified* (Docket No. 1650), entered August 8, 2001.

<sup>9</sup> *Amended and Restated Disclosure Statement Under 11 U.S.C. § 1125 in Support of Third Amended Plan of Reorganization of Stage Stores, Inc., Specialty Retailers, Inc., and Specialty Retailers, Inc. (NV), As Modified* (Docket No. 1330), filed on June 6, 2001.

<sup>10</sup> *Order Approving Store Closings, Closing Sales and Rejection of Related Unexpired Leases and Executory Contracts* (Docket No. 276), entered July 25, 2000.

<sup>11</sup> *Disclosure Statement in Connection with Joint Chapter 11 Plan of Liquidation for Flooring America, Inc. and Related Debtor Entities Proposed by: Morton P. Levine, the Chapter 11 Trustee for Flooring America, Inc. and Related Debtor Entities, And the Official Committee of Unsecured Creditors for Flooring America, Inc. and Related Debtor Entities* (Docket No. 1983), dated December 31, 2002.

Case Name	Disposition	Petition Date	Sale / Reorg. Date	Ch. 11 Reorg. Period	GUC Creditor Recovery	Discussion
Trend-Lines, Inc. (00-15431) (Mass.)	Reorganization	8/11/2000	10/17/2001 <sup>12</sup>	432 days	N/A	<p>Early in the proceedings, the Debtors sought approval of an agency agreement for the liquidation of the inventory located in the Golf Day Stores and in Trend-Lines' distribution center. Subsequently, in April 2001, the Debtors liquidated their Post Tool business in the face of declining sales. The Debtors also reduced headcount and overhead, instituted management and sales programs to improve their business, and moved into a new warehouse and headquarters during the pendency of the chapter 11 cases.</p> <p>The distribution to unsecured creditors consisted of a cash distribution as well as shares in the reorganized Debtor, and the disclosure statement did not provide an estimated recovery.<sup>13</sup></p>
Heilig-Meyers Company (00-34533) (E.D. Va.)	Liquidation	8/16/2000	4/24/2001 <sup>14</sup>	251 days	3.5-5% <sup>15</sup>	<p>The Debtors commenced the chapter 11 proceedings operating approximately 872 stores. In September 2000, 302 Heilig-Meyers Furniture and ValueHouse stores were closed. In February 2001, 181 additional stores were closed. In the face of continuing underperformance, the Debtors decided to close the remaining 349 Heilig-Meyers Furniture stores in April 2001.</p>

<sup>12</sup> *Order Confirming First Amended Joint Reorganization Plan of Trend-Lines, Inc. and The Official Committee of Unsecured Creditors (Docket No. 974)*, entered on October 17, 2001.

<sup>13</sup> *First Amended Disclosure Statement with Respect to First Amended Joint Reorganization Plan of Trend-Lines, Inc. and the Official Committee of Unsecured Creditors (Docket No. 882)*, filed September 7, 2001.

<sup>14</sup> *Order (A) Authorizing Debtors and/or their Agent to Conduct Certain Store Closing Sales Pursuant to Sections 105 and 363 of the Bankruptcy Code at Their Remaining Heilig-Meyers Store Locations; (B) Approving Certain Employee Retention Plans; and (C) Granting Ancillary Relief Related Thereto (Docket No. 1549)*, entered April 24, 2001.

<sup>15</sup> *Disclosure Statement Pursuant to Section 1125 of the Bankruptcy Code in Support of Second Amended and Restated Joint Liquidating Plan of Reorganization Proposed by Heilig-Meyers Company, Heilig-Meyers Furniture Company, Heilig-Meyers Furniture Company West, Inc., HMY Star, Inc., and Macsaver Financial Services, Inc. and The Official Committee of Unsecured Creditors (Docket No. 6025)*, dated May 5, 2005.

Case Name	Disposition	Petition Date	Sale / Reorg. Date	Ch. 11 Reorg. Period	GUC Creditor Recovery	Discussion
Bradlees Inc. (00-16035) (S.D.N.Y.)	Liquidation	12/26/2000	1/4/2001 <sup>16</sup>	8 days	12-24% <sup>17</sup>	Bradlees first filed for bankruptcy in June 1995 and emerged in February 1999 before filing again in late 2000 and liquidating its assets. Prior to commencing the second chapter 11 proceedings, the Debtors marketed their assets and ultimately selected a bid by liquidators, including Gordon Brothers Retail Partners LLC.
Montgomery Ward, LLC (00-4667) (D. Del.)	Liquidation	12/28/2000	1/16/2001 <sup>18</sup>	19 days	4-100% <sup>19</sup>	Montgomery Ward first filed for bankruptcy in July 1997 and emerged in July 1999 before filing again in late 2000 and liquidating its assets.  Recovery to general unsecured creditors depended on the outcome of litigation, and ultimately exceeded 30%.
Drug Emporium, Inc. (01-41066) (N.D. Oh.)	Reorganization	3/24/2001	9/4/2001 <sup>20</sup>	164 days	18-23% <sup>21</sup>	These proceedings effectuated a prenegotiated sale of the Debtors' business to Snyder Drug Stores (which would file for bankruptcy in 2003). During the pendency of the Chapter 11, the Debtors held an auction for 50 of their underperforming stores, certain of which were sold as going concerns and certain of which were liquidated.

<sup>16</sup> Order Pursuant to Sections 105(a), 363(b) and 365(a) of the Bankruptcy Code and Bankruptcy Rule 6006 for Authorizing the Debtors (A) to Assume an Agency Agreement Among Gordon Brothers Retail Partners LLC, *et al.* and the Debtors, (B) To conduct GOB Sales, (C) To sell Assets Free and Clear of Liens and Other Interests, and (D) To Pay Severance to Terminated Employees (Docket No. 70), entered on Jan. 4, 2001.

<sup>17</sup> Second Amended Disclosure Statement Relating to Third Amended Joint Plan of Liquidation of Bradlees Stores, Inc., *et al.*, Together With the Official Committee of Unsecured Creditors Under Chapter 11 of the Bankruptcy Code (Docket No. 972), dated November 7, 2001.

<sup>18</sup> Final Order (A) Authorizing Debtors to Conduct Store Closing Sales and Discontinue Operations at Stores, Distribution Centers and Other Facilities and (B) Granting Ancillary and Other Relief (Docket No. 204), entered January 16, 2001.

<sup>19</sup> Third Amended Disclosure Statement to Accompany Third Amended Plan of Liquidation Filed by Official Committee of Unsecured Creditors of Montgomery Ward, LLC, *et al.*, Under Chapter 11 of the Bankruptcy Code (Docket No. 3257), filed May 7, 2002.

<sup>20</sup> Findings of Fact, Conclusions of Law and Order Confirming Chapter 11 First Amended Joint Plan of Reorganization (Docket No. 685), entered September 4, 2001.

<sup>21</sup> Disclosure Statement Concerning the Debtors' First Amended Joint Plan of Reorganization (Docket No. 450-1), dated July 25, 2001.

Case Name	Disposition	Petition Date	Sale / Reorg. Date	Ch. 11 Reorg. Period	GUC Creditor Recovery	Discussion
Casual Male Corp. (01-41404) (S.D.N.Y.)	363 Sale	5/18/2001	5/7/2002 <sup>22</sup>	354 days	5.2%–93.1% <sup>23</sup>	<p>The recoveries for general unsecured creditors projected in the disclosure statement varied per Debtor, ranging from 5.2% to 93.1%.</p> <p>During the pendency of these cases, the Debtors conducted GOB sales at underperforming sales under Court orders obtained in August 2001 and January 2001. In addition, the Debtors sold their “Work’n Gear” businesses as a going concern in April 2002. The remainder of the Casual Male business was sold as a going concern in May 2002 after the Debtors, the creditors’ committee, and the secured lenders agreed that a stand-alone reorganization was not in the estates’ best interests.</p>
Ames Department Stores (01-42217) (S.D.N.Y.)	Liquidation	8/20/2001	8/16/2002 <sup>24</sup>	361 days	0–1% <sup>25</sup>	<p>The Ames Debtors methodically closed underperforming stores throughout the bankruptcy cases, obtaining orders in August, November, and December 2001, as well as in June 2002, to conduct GOB sales at 123 of the Debtors’ store locations. In August 2002, after having failed to meet sales estimates, the Debtors, the postpetition lenders, and the official committee of unsecured creditors decided it was in the best interest of the estates to wind down operations.</p> <p>The Ames Department store cases are ongoing, with the Debtors filing a disclosure statement on June 17, 2013.</p>

<sup>22</sup> *Order Granting Motion of Debtors for (I) Authority to Sell All or Substantially All of the Assets of the Debtors’ Businesses, (II) Authority to Assume and Assign Executory Contracts and Unexpired Leases Related Thereto, and Other Related Relief* (Docket No. 862), entered May 7, 2002.

<sup>23</sup> *Disclosure Statement for Joint Plan of Liquidation of Casual Male Corp., et al., Together With the Official Committee of Unsecured Creditors Under Chapter 11 of the Bankruptcy Code* (Docket No. 1525), dated August 18, 2003.

<sup>24</sup> *Order Pursuant to Sections 105 and 363(b), (f), (m), and (n) of the Bankruptcy Code Authorizing (i) Entry into Agency Agreement with a Joint Venture Comprised of the Nassi Group, LLC, Gordon Brothers Retail Partners LLC, and SB Capital Group LLC, (ii) Going Out of Business Sales at all the Debtors’ Remaining Store Locations, and (iii) Sale of Certain Assets Free and Clear of Liens and other Interests* (Docket No. 1096), entered August 17, 2002.

<sup>25</sup> *Debtors’ Disclosure Statement for Modified First Amended Chapter 11 Plan* (Docket No. 4081), dated June 17, 2013.

**Appendix A** to *The Disappearance of Retail Reorganization Under the Amended Section 365(d)(4)*

Written testimony of L. Gottlieb for the ABI Commission to Study the Reform of Chapter 11

**Pre-BAPCPA Cases**

Case Name	Disposition	Petition Date	Sale / Reorg. Date	Ch. 11 Reorg. Period	GUC Creditor Recovery	Discussion
Phar-Mor Inc. (01-44007) (N.D. Oh.)	363 Sale	9/24/2001	7/18/2002 <sup>26</sup>	294 days	15-18% <sup>27</sup>	Phar-Mor initially filed for chapter 11 protection in 1992 in the wake of corporate mismanagement and fraud, and emerged approximately three years later in 1995. In September 2001, it entered chapter 11 again, and began liquidating its assets. The Debtors obtained approval to liquidate 65 underperforming stores on October 10, 2001. After closing these stores in November of 2001, the Debtors continued operations at 74 remaining stores, reducing overhead and attempting to solidify its position in the marketplace. In the wake of continued operating losses, however, the Debtors and the official committee of unsecured creditors determined that a sale or liquidation of the company was in the best interests of the estates. On July 18, 2002, the Debtors obtained authority to liquidate their remaining stores.

<sup>26</sup> *Order (A) Authorizing the Sale of Substantially all of the Debtors' Assets Free and Clear of Liens, Claims and Encumbrances; and (B) Authorizing Going-Out-of-Business Sales*, entered on July 18, 2002 (Docket No. 766).

<sup>27</sup> *Disclosure Statement Pursuant to Section 1125 of the Bankruptcy Code For First Amended Joint Plan of Liquidation Dated January 23, 2003 Proposed Jointly by the Debtors and the Official Committee of Unsecured creditors* (Docket No. 1495).

Case Name	Disposition	Petition Date	Sale / Reorg. Date	Ch. 11 Reorg. Period	GUC Creditor Recovery	Discussion
Kmart (02-02474) (N.D. Ill.)	Reorganization	1/22/2002	4/22/2003 <sup>28</sup>	455 days	9.7% <sup>29</sup>	<p>Under the Plan, general unsecured creditors' recovery included stock in the reorganized entity as well as interests in a litigation trust, which was estimated in the Disclosure Statement to represent a 9.7% recovery.</p> <p>While in bankruptcy, the Debtors obtained authority to close and conduct GOB sales in 283 stores in March 2002, and, after the 2002 holiday season, the Debtors conducted another review and decided to close an additional 317 stores.</p> <p>During the pendency of the bankruptcy proceedings, the Kmart Debtors resolved certain government inquiries, obtained approval of a voluntary program with their vendors to return seasonal, slow-moving, unsaleable or defective merchandise, and established programs to (a) give vendors junior liens on their merchandise under certain conditions and (b) liquidate personal injury and other litigation claims, among other things.</p>
Spiegel, Inc. (03-11540) (S.D.N.Y.)	Reorganization	3/17/2003	5/25/2005 <sup>30</sup>	800 days	85.3–91% <sup>31</sup>	<p>The Debtors' catalog business – including Spiegel Catalog and Newport News – was sold in June 2004. The Eddie Bauer businesses successfully reorganized (though Eddie Bauer would subsequently file for bankruptcy in 2009, as discussed above). In addition, during the reorganization period, the Debtors' management turned over, 21 Spiegel and Newport News outlet stores were closed, approximately 100 Eddie Bauer stores were closed (while another 11 stores were opened), excess inventory was liquidated, the workforce was reduced, and distribution operations were consolidated, among many other operational changes.</p>

<sup>28</sup> Findings of Fact, Conclusions of Law, and Order Under 11 U.S.C. Sections 1129(a) and (b) and Fed. R. Bankr. P. 3020 Confirming the First Amended Joint Plan of Reorganization of Kmart Corp. and its Affiliated Debtors and Debtors-in-Possession (Docket No. 10,871), entered April 22, 2003.

<sup>29</sup> Disclosure Statement with Respect to First Amended Joint Plan of Reorganization of Kmart Corporation and its Affiliated Debtors and Debtors-in-Possession (Docket No. 8925), dated February 25, 2003.

<sup>30</sup> Findings of Fact and Conclusions of Law and Order Pursuant to 11 U.S.C. Subsection 1129(a) and Rule 3020 of the Federal Rules of Bankruptcy Procedure Confirming Modified First Amended Joint Plan of Reorganization of Affiliated Debtors and Granting Related Relief (Docket No. 3590), entered May 25, 2005.

**Appendix A** to *The Disappearance of Retail Reorganization Under the Amended Section 365(d)(4)*

Written testimony of L. Gottlieb for the ABI Commission to Study the Reform of Chapter 11

**Pre-BAPCPA Cases**

Case Name	Disposition	Petition Date	Sale / Reorg. Date	Ch. 11 Reorg. Period	GUC Creditor Recovery	Discussion
Bob's Stores (03-13254) (D. Del.)	363 Sale	10/22/2003	12/23/2003 <sup>32</sup>	62 days	70% <sup>33</sup>	The sale of substantially all of the Debtors' assets to an affiliate of The TJX Companies was negotiated prepetition under a stalking horse asset purchase agreement, though the bid was substantially improved after an auction held during the bankruptcy proceedings. Recovery for general unsecured creditors would eventually total 98%, significantly exceeding the projection included in the disclosure statement.
Footstar, Inc. (04-22350) (S.D.N.Y.)	Reorganization	3/2/2004	1/27/2006 <sup>34</sup>	696 days	100%	Under the plan of reorganization, Footstar was able to continue operating the footwear departments in Kmart stores until 2008, at which point Kmart would buy out the Debtors' inventory at book value.  During the first few months of the bankruptcy case, the Debtors sold 353 Footaction stores to Foot Locker, Inc. as a going-concern while also liquidating 75 Footaction retail stores, 88 Just For Feet stores, and 3 Uprise retail stores.
Breuners Home Furnishings Corp. a/k/a Huffman Koos (04-12030) (D. Del.)	Liquidation	7/14/2004	7/30/2004 <sup>35</sup>	16 days	N/A	After immediately liquidating their stores, the Debtors sought and obtained an order converting the Debtors' chapter 11 cases to cases under Chapter 7 of the Bankruptcy Code in February 2005. <sup>36</sup>

<sup>31</sup> *First Amended Disclosure Statement Pursuant to Section 1125 of the Bankruptcy Code for the First Amended Joint Plan of Reorganization of Affiliated Debtors* (Docket No. 3084), dated March 28, 2005.

<sup>32</sup> *Order (I) Authorizing and Approving Sale of Substantially All Assets of the Debtors Free and Clear of Liens, Claims, Encumbrances and Interest; (II) Approving Asset Purchase Agreement (As Amended and Restated); (III) Authorizing and Approving Assumption and Assignment of Executory Contracts and Unexpired Leases; and (IV) Granting Certain Related Relief* (Docket No. 355), entered December 23, 2003.

<sup>33</sup> *Disclosure Statement For Consolidated Joint Plan of Liquidation of the Debtors Together with the Official Committee of Unsecured Creditors Under Chapter 11 of the Bankruptcy Code, Dated May 14, 2004* (Docket No. 803).

<sup>34</sup> *Order Confirming Debtors' First Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, Dated December 5, 2005* (Docket No. 3267), entered on January 25, 2006.

<sup>35</sup> *Order (A) Authorizing the Debtors to Conduct Going Out of Business Sales Pursuant to 11 U.S.C. § 363 and (B) Approving Agency Agreement* (Docket No. 171), dated July 2, 2004.

<sup>36</sup> *Order Converting Case* (Docket No. 874), entered February 8, 2005.

Case Name	Disposition	Petition Date	Sale / Reorg. Date	Ch. 11 Reorg. Period	GUC Creditor Recovery	Discussion
Athlete's Foot (04-17779) (S.D.N.Y.)	Liquidation	12/07/2004	12/17/2004 <sup>37</sup>	10 days	7-10% <sup>38</sup>	The Debtors ran approximately 124 Athlete's Foot stores and filed for bankruptcy to liquidate those stores. Hundreds more Athlete's Foot stores owned by franchisees continued operating.
Friedman's (05-40129) (S.D. Ga.)	Reorganization	1/14/2005	11/23/2005 <sup>39</sup>	313 days	n/a	During the chapter 11 proceeding, the Debtors reduced their retail footprint from approximately 650 stores to approximately 480 stores. Friedman's returned to chapter 11 in 2008.  The recovery for general unsecured creditors depended on the outcome of certain estate causes of action.

<sup>37</sup> Order Pursuant to Sections 363, 365 and 554 of the Bankruptcy Code (A) Authorizing and Approving the Conduct of Store Closing, or Similar Themed Sales Free and Clear of All Liens, Claims and Encumbrances, (B) Approving An Agency Agreement for the Conduct of the Subject Sales as Debtor's Exclusive Agent Therefore, (C) Approving Procedures for Rejection of Leases and Abandonment of Certain Assets, and (D) Granting Other and Further Relief (Docket No. 92), entered December 17, 2004.

<sup>38</sup> Disclosure Statement for Joint Plan of Liquidation of the Debtors Together with the Official Committee of Unsecured Creditors Under Chapter 11 of the Bankruptcy Code (Docket No. 618), dated August 8, 2005.

<sup>39</sup> Findings of Fact, Conclusions of Law, and Order Under 11 U.S.C. §§ 1129(a) and (b) and Fed. R. Bankr. P. 3020 Confirming the First Amended Joint Plan of Reorganization of Freidman's, Inc. and Certain Affiliates, Debtors and Debtors-In-Possession, As Modified (Docket No. 1338), entered on November 23, 2005.



**Appendix B** to *The Disappearance of Retail Reorganization Under the Amended Section 365(d)(4)*

Written testimony of L. Gottlieb for the ABI Commission to Study the Reform of Chapter 11

**Post-BAPCPA Cases**

Case Name	Disposition	Petition Date	Sale / Reorg. Date	Ch. 11 Reorg. Period	GUC Creditor Recovery	Discussion
G+G Retail (06-10152) (S.D.N.Y.)	363 sale	1/2/2006	2/17/2006 <sup>1</sup>	46 days	50% <sup>2</sup>	Postpetition financing was provided to G+G Retail by the stalking horse purchaser, which did not end up as the winning bidder for the Debtor's assets.
Musicland d/b/a Sam Goody (06-10064) (S.D.N.Y.)	363 sale	1/13/2006	3/24/2006 <sup>3</sup>	70 days	Unknown <sup>4</sup>	Recovery to general unsecured creditors was dependent on the outcome of certain litigation.
Bachrach Clothing (06-06525) (N.D. Ill.)	Liquidation	6/6/2006	7/10/2006 <sup>5</sup>	34 days	Unknown	Recovery to general unsecured creditors was dependent on the outcome of certain litigation.
Tweeter Home Entertainment (07-10787) (Del.)	363 sale	6/11/2007	7/13/2007 <sup>6</sup>	32 days	Unknown	Recovery to general unsecured creditors was dependent on the outcome of certain litigation. <sup>7</sup>
The Bombay Co. (No. 07-44084) (N.D. Tex.)	Liquidation	9/20/2007	10/16/2007 <sup>8</sup>	26 days	16.4–28.9% <sup>9</sup>	After an auction (held within the first three weeks of the case) produced no going concern bids, Bombay liquidated its U.S. stores under a joint venture agreement with Gordon Bros. and Hilco.

<sup>1</sup> Order Pursuant to 11 U.S.C. §§ 105, 363 and 365 and Fed. R. Bankr. P. 2002, 2004 and 6006 Authorizing and Approving Sale of Substantially all of the Debtor's Assets to Max Rave, LLC, Free and Clear of Liens, Claims, Encumbrances and Interests (Docket No. 236), dated Feb. 17, 2006.

<sup>2</sup> Disclosure Statement in Support of Plan of Liquidation of G+G Retail, Inc. under Chapter 11 of the Bankruptcy Code (Docket No. 760), dated October 18, 2006.

<sup>3</sup> Order Approving Motion for Order Approving (A) Sale of Substantially All Debtors' Assets (B) Asset Purchase Agreement (Docket No. 781), dated March 24, 2006.

<sup>4</sup> Disclosure Statement for First Amended Joint Plan of Liquidation of Musicland Holding Corp. and Its Affiliated Debtors (Docket No. 1163), dated Sept. 14, 2006.

<sup>5</sup> Order Authorizing (1) Agency Agreement and Addendum, (2) Sale of the Debtor's Assets Free and Clear of Liens, Claims and Interests, and (3) Related Liquidation Sales (Docket No. 126), entered July 10, 2006.

<sup>6</sup> Order Approving Sale of Substantially All of the Debtors' Assets Free and Clear of All Liens, Claims, Interests and Encumbrances (Docket No. 452), entered on July 13, 2007.

<sup>7</sup> Disclosure Statement With Respect to Joint Plan of Liquidation of TWTR, Inc. (F/K/A Tweeter Home Entertainment Group, Inc.) and its Affiliated Debtors and Debtors in Possession (Docket No. 2297), dated Sept. 28, 2012.

<sup>8</sup> Order Pursuant to Sections 363, 365 and 554 of the Bankruptcy Code (A) Authorizing and Approving the Conduct of Store Closing or Similar Themed Sales, with Such Sales to be Free and Clear of All Liens and Encumbrances, (B) Approving an Agency Agreement for the Conduct of the Subject Store Closing Sales (Docket No. 400), entered on October 16, 2013.

Case Name	Disposition	Petition Date	Sale / Reorg. Date	Ch. 11 Reorg. Period	GUC Creditor Recovery	Discussion
Levitz Furniture (07-13532) (S.D.N.Y.)	Liquidation	11/8/2007	12/4/2007 <sup>10</sup>	26 days	Unknown	Recovery to general unsecured creditors was dependent on the outcome of certain litigation.
Sharper Image (08-10322) (Del.)	Liquidation	2/19/2008	5/30/2008 <sup>11</sup>	101 days	>1% <sup>12</sup>	Sharper Image obtained Court authority to conduct GOB sales at 96 of its 184 stores on March 12, 2008, less than a month after the case commenced. After being unable to reorganize or find a bidder for its assets as a going concern, Sharper Image sold its remaining assets on May 30, 2008.
Linens 'n Things (08-10832) (Del.)	Liquidation	5/2/2008	10/16/2008 <sup>13</sup>	167 days	N/A	General unsecured creditors were given a stake in a trust which was vested with certain causes of action, but little or no recovery was anticipated for general unsecured creditors.  The postpetition financing facility required the Debtors to file a plan of reorganization by August 29, 2008, but the Plan was not acceptable to certain necessary parties, so the Debtors and their secured lenders agreed on a timeline for the liquidation of the remaining stores. The Debtors obtained approval to conduct going out of business sales and liquidate those stores on October 16, 2008.

<sup>9</sup> *Disclosure Statement for First Amended Consolidated Joint Plan of Liquidation of the Debtors Together with the Official Committee of Unsecured Creditors Under Chapter 11 of the Bankruptcy Code* (Docket No. 1369), dated July 2, 2008.

<sup>10</sup> *Order Pursuant to Sections 363, 365, and 554 of the Bankruptcy Code (A) Authorizing and Approving the Conduct of Going Out of Business, Store Closing or Similar Themed Sales, with such Sales to be Free and Clear of All Liens, Claims and Encumbrances, (B) Approving an Agreement for the Sale of Certain Assets, the Conduct of the Subject the Store Closing Sales and the Sale of Designation Rights* (Docket No. 314), entered on December 4, 2007.

<sup>11</sup> *Order Approving Asset Purchase Agreement, Agency Agreement, Store Closing Sales, And Related Relief* (D.I. No. 763, entered on May 30, 2008).

<sup>12</sup> *Joint Motion of the Debtor and the Official Committee of Unsecured Creditors, Pursuant to Sections 105(a), 305(a), and 1112(b) of the Bankruptcy Code, for Entry of an Order (I) Approving Procedures for (A) the Dismissal of the Debtor's Chapter 11 Case, (B) the Distribution of Certain Funds to Holders of Allowed Unsecured Claims, and (C) the Disallowance of Certain Gift Card Claims and (II) Granting Certain Related Relief* (Docket No. 2465), approved on August 13, 2012 (Docket No. 2475).

<sup>13</sup> *Order Approving Agency Agreement, Store Closing Sales and Related Relief* (Docket No. 1861), entered October 16, 2008.

Case Name	Disposition	Petition Date	Sale / Reorg. Date	Ch. 11 Reorg. Period	GUC Creditor Recovery	Discussion
Steve & Barry's (08-12579) (S.D.N.Y.)	363 Sale	07/9/2008	08/22/2008 <sup>14</sup>	44 days	1.75–2.52% <sup>15</sup>	The Debtor sold substantially all of its assets to BH S&B Holdings, LLC in less than 60 days of the commencement of the bankruptcy case.  Less than three months after purchasing the Steve & Barry's assets, BH S&B filed for bankruptcy, and the remaining Steve & Barry's stores were liquidated.
Boscov's (No. 08-11637) (Del.)	363 Sale	8/4/2008	11/21/2008 <sup>16</sup>	109 days	6.4–15.74% <sup>17</sup>	The winning bidder was an affiliate of the prepetition owners.
Circuit City (No. 08-35653) (E.D. Va.)	Liquidation	11/10/2008	1/16/2009 <sup>18</sup>	67 days	10–32% <sup>19</sup>	Auction for substantially all of the Debtors' assets held days after disappointing holiday season produced no going concern bids.
Goody's (No. 09-10124) (Del.)	Liquidation	1/13/2009	1/21/2009 <sup>20</sup>	8 days	0.5% <sup>21</sup>	Goody's Jan. 13, 2009 bankruptcy filing was its second in a single year. Its predecessor company filed for bankruptcy in June 2008 and emerged four months later after closing numerous stores and restructuring its debt. In advance of its second bankruptcy filing, Goody's entered into a joint venture agreement with Hilco and Gordon Brothers to run GOB sales.

<sup>14</sup> Order Pursuant to Sections 105(A), 363 and 365 of the Bankruptcy Code and Bankruptcy Rules 6004, 6006 and 9014 Authorizing the Sale of Substantially All of the Debtors' Assets, Free and Clear of Liens, Claims, Encumbrances and Other Interests (Docket No. 628), dated August 22, 2008.

<sup>15</sup> Disclosure Statement for Joint Plan of Liquidation Under Chapter 11 of the United States Bankruptcy Code Proposed by the Debtors and the Official Committee of Unsecured Creditors (Docket No. 1912), dated March 4, 2008.

<sup>16</sup> Order Approving Asset Purchase Agreement and Authorizing the Sale of Assets of Debtors Outside the Ordinary Course of Business (Docket No. 729), entered on 11/21/2008.

<sup>17</sup> Second Amended Disclosure Statement Pursuant to Section 1125 of the Bankruptcy Code of Joint Plan of BSCV, Inc. (F/K/A Boscov's, Inc.) and its Debtor Affiliates, dated July 22, 2009 (Docket No. 1242).

<sup>18</sup> Order Approving Agency Agreement, Store Closing Sales and Related Relief (Docket No. 1635), dated Jan. 16, 2009.

<sup>19</sup> Supplemental Disclosure with Respect to Second Amended Joint Plan of Liquidation of Circuit City Stores, Inc. and its Affiliated Debtors and Debtors in Possession and Its Official Committee of Creditors Holding General Unsecured Claims and Notice of Deadline to Object to Confirmation (Docket No. 8253), dated August 9, 2010.

<sup>20</sup> Order (I) Approving Assumption of Agency Agreement (Docket No. 122), entered January 21, 2009.

Case Name	Disposition	Petition Date	Sale / Reorg. Date	Ch. 11 Reorg. Period	GUC Creditor Recovery	Discussion
Gottschalks, Inc. (No. 09-10157) (Del.)	Liquidation	1/14/2009	4/1/2009 <sup>22</sup>	77 days	3.8–13.3% <sup>23</sup>	A potential going concern bidder decided at the last minute not to participate in the auction, and only liquidation bids were received.
Ritz Camera Centers (09-10617) (Del.)	363 Sale	2/22/2009	7/23/2009 <sup>24</sup>	151 days	4–14% <sup>25</sup>	In 2012, the purchaser of Ritz’s assets filed for bankruptcy and the company was liquidated.
Hub Holdings Corp. (No. 09-10617) (Del.)	363 Sale	5/27/2009	7/30/2009 <sup>26</sup>	64 days	2–4% <sup>27</sup>	Debtors sold certain of their Levi’s, Dockers, and Anchor Blue stores on a going concern basis, while simultaneously liquidating approximately 60 stores.
Eddie Bauer (No. 09-12099) (Del.)	363 Sale	6/17/2009	7/23/2009 <sup>28</sup>	36 days	2–17% <sup>29,30</sup>	Eddie Bauer continued as a going concern, but with a substantially reduced retail footprint.
Finlay Enterprises (No. 09-14873) (S.D.N.Y.)	Liquidation	8/5/2009	9/25/2009 <sup>31</sup>	51 days	4.85% <sup>32</sup>	Winning bidder was Gordon Brothers with a liquidating bid. Secured claims were not paid in full, but \$7 million was carved out of their collateral for the benefit of general unsecured creditors in exchange for, <i>inter alia</i> , the release of certain claims.

<sup>21</sup> First Amended Disclosure Statement for the Debtors’ First Amended Plan of Liquidation Pursuant to Chapter 11 of the United States Bankruptcy Code Dated as of December 23, 2009 (Docket No. 997).

<sup>22</sup> Order Approving Agency Agreement, Store Closing Sales and Related Relief (Docket No. 349), entered April 1, 2013.

<sup>23</sup> Disclosure Statement for Debtor’s Chapter 11 Plan of Liquidation (January 14, 2010 Modification) (Docket No. 1353).

<sup>24</sup> Order Approving Sale of Substantially All of the Debtor’s Assets and Granting Related Relief (Docket No. 837), dated July 23, 2009.

<sup>25</sup> First Amended Disclosure Statement Pursuant to Section 1125 of the Bankruptcy Code with Respect to the First Amended Joint Plan of Liquidation Under Chapter 11 of the United States Bankruptcy Code Proposed by the Debtor and the Official Committee of Unsecured Creditors, dated March 2, 2010 (Docket No. 1373), dated March 2, 2010.

<sup>26</sup> The Levi’s and Dockers divisions were sold on June 30, 2009, while the Anchor Blue division was sold on July 30, 2009. See Docket Nos. 273, 497, and 182.

<sup>27</sup> Disclosure Statement for First Amended Joint Plan of Liquidation Under Chapter 11 of the Bankruptcy Code (Docket No. 1353), dated January 6, 2011.

<sup>28</sup> Order (A) Approving the Sale fo the Debtors’ Assets Free and Clear of all Liens, Claims, Encumbrances and Interests (Docket No. 507), entered July 23, 2009.

<sup>29</sup> Disclosure Statement for the First Amended Joint Plan of Liquidation of EBHI Holdings, Inc., et al. (Docket No. 1270), dated Jan. 26, 2013.

<sup>30</sup> Holders of unsecured convertible notes received no distribution on account of their prepetition claim.

<sup>31</sup> Order Approving Agency Agreement, Store Closing Sales and Related Relief (Docket No. 262), entered Sept. 25, 2009.

Case Name	Disposition	Petition Date	Sale / Reorg. Date	Ch. 11 Reorg. Period	GUC Creditor Recovery	Discussion
Crabtree & Evelyn (09-14267) (S.D.N.Y.)	Reorganization	11/17/2009	1/13/2010 <sup>33</sup>	57 days	45% <sup>34</sup>	The Debtor's prepetition secured lender, which was also the Debtor's prepetition equity holder, provided a feeless postpetition financing facility, as well as exit financing.
Movie Gallery (10-30696) (E.D. Va.)	Liquidation	2/2/2010	5/20/2010	107 days	N/A <sup>35</sup>	<p>Movie Gallery emerged from its first bankruptcy proceeding in 2008. At the commencement of the second bankruptcy in February 2010, certain stores were immediately liquidated. In April of 2010, the Debtors and their creditors concluded that it was in the best interest of creditors and other parties in interest to liquidate the Debtors' remaining assets and wind-down the Debtors' affairs. On May 20, 2010, the Court entered an Order approving the liquidation of most of the Debtors' remaining assets with Great American acting as liquidator.</p> <p>General unsecured creditors obtained interests in a liquidating trust on account of their prepetition claims. The trust was funded with \$5 million.</p>
Blockbuster (10-14997) (S.D.N.Y.)	363 Sale	9/23/2010	4/14/2011 <sup>36</sup>	203 days	0%	While the case is still pending, it is unlikely that there will be any distribution to creditors because the proceeds generated by the sale of the Debtors' assets did not exceed the Debtors' secured indebtedness and no assets were carved out of the secured lenders' collateral for the benefit of general unsecured creditors. Blockbuster's assets were sold to the DISH Network Corporation after an auction where the Debtors' prepetition secured lenders also bid for the Debtors' assets.

<sup>32</sup> *Disclosure Statement for Debtors' Modified Plan of Liquidation Under Chapter 11 of the Bankruptcy Code* (Docket No. 661), dated May 18, 2010.

<sup>33</sup> *Order Confirming First Amended Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, As Modified on January 12, 2010* (Docket No. 301), entered January 14, 2010.

<sup>34</sup> *First Amended Disclosure Statement With Respect to the Debtor's First Amended Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* (Docket No. 230), dated November 17, 2009.

<sup>35</sup> *Disclosure Statement with Respect to Joint Plan of Liquidation of Movie Gallery Inc. and its Affiliated Debtors and Debtors in Possession* (Docket No. 1752), dated September 8, 2010.

<sup>36</sup> *Order Pursuant to 11 U.S.C. §§ 105(a), 363, and 365 and Fed. R. Bankr. P. 2002, 6004, 6006 and 9014 Authorizing and Approving the Sale of Debtors' Assets Free and Clear of Interests* (Docket No. 1602), entered April 14, 2011.

Case Name	Disposition	Petition Date	Sale / Reorg. Date	Ch. 11 Reorg. Period	GUC Creditor Recovery	Discussion
Loehmann's (10-16077) (S.D.N.Y.)	Reorganization	11/15/2010	2/9/2011 <sup>37</sup>	86 days	7.6% <sup>38</sup>	Debt for equity swap accomplished with the support of certain of the Debtors' prepetition secured lenders (with a restructuring support agreement negotiated prepetition).
Borders (No. 11-10614) (S.D.N.Y.)	Liquidation	2/16/2011	7/21/2011 <sup>39</sup>	155 Days	4-10% <sup>40</sup>	After an unsuccessful auction for substantially all of the Debtors' assets, Borders was liquidated by Hilco and other liquidators.
Harry & David (No. 11-10884) (Del.)	Reorganization	3/28/2011	8/29/2011 <sup>41</sup>	154 days	10% <sup>42,43</sup>	Prepetition secured lender agreed to a debt for equity conversion, provided certain postpetition financing for the chapter 11 process, and made an equity contribution to the reorganized Debtors upon their emergence from bankruptcy.

<sup>37</sup> *Findings of Fact, Conclusions of Law and Order Confirming Debtors' Second Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* (Docket No. 398), entered on February 9, 2011.

<sup>38</sup> *Disclosure Statement for Debtors' Second Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* (Docket No 246), dated January 3, 2011.

<sup>39</sup> *Order Approving Agency Agreement, Store Closing Sales and Related Relief*, entered on July 21, 2011.

<sup>40</sup> *See Disclosure Statement for First Amended Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code Proposed by the Debtors and the Official Committee of Unsecured Creditors* (Docket No. 2110), dated November 10, 2011.

<sup>41</sup> *Order Confirming the Second Amended Joint Plan of Reorganization of Harry & David Holdings, Inc. and its Debtor Subsidiaries, as Modified and Restated* (Docket No. 767), entered on August 29, 2011.

<sup>42</sup> *Disclosure Statement Pursuant to Section 1125 of the Bankruptcy Code for the Second Amended Joint Plan of Reorganization of Harry & David Holdings, Inc. and its Debtor Subsidiaries* (Docket No. 504), dated June 24, 2011.

<sup>43</sup> Certain unsecured noteholders and the Pension Benefit Guaranty Corporation were given an alternative recovery, which was estimated to be worth between 2 and 17.4% of their claim. *Id.*

Case Name	Disposition	Petition Date	Sale / Reorg. Date	Ch. 11 Reorg. Period	GUC Creditor Recovery	Discussion
Syms / Filene's Basement (11-13511) (Del.)	Liquidation <sup>44</sup>	11/2/2011	8/30/2012 <sup>45</sup>	302 days (but all assets except owned real estate were liquidated within the first 2 months of the case)	75-100% <sup>46</sup>	<p>General unsecured creditors of Syms and certain general unsecured creditors of Filene's received a distribution of 100% of their prepetition claims.</p> <p>Other general unsecured creditors of Filene's Basement received 75% of their allowed general unsecured claims.</p> <p>The distinction between the groups has to do with solvency of Syms, which held substantial real estate assets.</p>
United Retail Group d/b/a Avenue Stores (12-10405) (S.D.N.Y.)	363 Sale	2/1/2012	4/3/2012 <sup>47</sup>	62 days	9.2-11% <sup>48</sup>	<p>Purchaser of the Debtors' assets was chosen as stalking horse bidder prepetition and received \$20 million "parent contribution" from the Debtors' prepetition owner to facilitate the sale.</p>

<sup>44</sup> Technically, Syms/Filene's Bankruptcy did emerge from bankruptcy, but it did so as a real estate company, with no retail operations.

<sup>45</sup> *Findings of Fact, Conclusions of Law and Order Confirming the Modified Second Amended Joint Chapter 11 Plan of Reorganization of Syms Corp. and its Subsidiaries* (Docket No. 1983), entered on August 30, 2012.

<sup>46</sup> *Disclosure Statement with Respect to the Second Amended Joint Chapter 11 Plan of Reorganization of Syms Corp. and Its Subsidiaries* (Docket No. 1641), dated July 13, 2012.

<sup>47</sup> *Order Authorizing the Sale of Substantially All of the Debtors' Assets Free and Clear of All Claims, Liens, Rights, Interests and Encumbrances* (Docket No. 496), entered on April 4, 2012.

<sup>48</sup> *Debtors' Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code* (Docket No. 619), dated June 14, 2012.