**Exhibit A**

**DIP Review Methodology**

**I. The Underlying Database.**

The data behind this study are an extension of the UCLA-LoPucki Bankruptcy Research Database. Wilmer Cutler Pickering Hale and Dorr (“WilmerHale”) relied on the version of that database available as of 5pm EDT on October 18, 2012. WilmerHale has relied on Professor LoPucki’s protocol except as explained below.[[1]](#footnote-1)

**II. The Universe of Data.**

This study employs a subset of LoPucki’s database comprised of chapter 11 cases filed since 2006 with reported assets of between $500 million and $10 billion. As explained further in section III, it includes five cases not in LoPucki’s database, but which are prior or subsequent filings by debtors in LoPucki’s database. There are 157 cases in this universe of data.

There are several important notes about the LoPucki database. First, the database included only “public companies,” which LoPucki defined as companies that have “[f]iled an annual report (Form 10-K) with the Securities and Exchange Commission, for a year ending not less than three years prior to the filing of the bankruptcy case” or a company that otherwise appears on the SEC list.[[2]](#footnote-2) Second, under LoPucki’s protocol, where several related entities, some public and some non-pubic, filed concurrently for chapter 11 relief and the bankruptcy court administered their cases jointly, they are included as a single case provided that at least one debtor is a public company or at least half of the assets of a non-debtor public company are held by an affiliate that has filed. For the sake of clarity, this methodology refers to these jointly-administered, multi-debtor cases as having a single debtor.

**III. Method of Collecting Additional Data.**

To collect the additional data needed for this study, WilmerHale attorneys reviewed dockets and documents available through PACER for each of the cases in the universe of data.

Using the debtor’s name and jurisdiction of filing, the attorneys found the lead docket using PACER’s “Case Locator” function. Bankruptcy cases of multi-entity debtors are typically administratively joined under one “lead” case. The lead docket is the docket that includes all of the filings in jointly administered cases. (Courts typically denote the lead docket with the word “lead” in the top right corner of the docket report.)

Having found the lead docket, the attorneys then reviewed the docket and documents filed on the docket to determine whether the debtor in possession received post-petition financing (“DIP Financing”), on what terms, and the ultimate result of the bankruptcy proceeding (i.e., reorganization, conversion to chapter 7, sale, or liquidation). Specifically, they looked to see whether the cases converted to chapter 7, led to the sale of substantially all of the debtor’s assets, or resulted in a liquidating plan.

Because every DIP Financing lending transaction is different, there was no single document in which to find the data for any given field. That said, most fields rely on the Docket, the Petition, the Interim Order Authorizing DIP Financing, the Final Order Authorizing DIP Financing, the DIP Agreement as approved by the court, and the Plan and/or Disclosure Statement as approved by the court. Wherever possible, the attorneys relied on the final order approving the DIP Financing.

In addition to gathering information about the original DIP Financing, the attorneys determined whether the debtor was able to refinance that facility and the terms of that refinancing.

Finally, the attorneys relied on PACER and media reports to determine whether a company had previously or subsequently filed for bankruptcy since appearing in LoPucki’s dataset. To find prior bankruptcy filings, we reviewed the petitions from cases in the LoPucki dataset to see if they disclosed any prior bankruptcies. While LoPucki's universe of data includes some re-filings, it did not capture those that did not meet its criteria—that is, filings made by companies that emerged from bankruptcy not as public companies or that had less than $500 million in assets at the time of their re-filing. Similarly, his protocol excluded the prior bankruptcies of debtors in his dataset if the debtor was not a public company or did not have at least $500 million in assets at the time of its prior filing. If order to gain a more complete picture of how DIP Financing affects both the bankruptcy process and the post-bankruptcy performance of large companies, the attorneys included in their review *any* filing made between 1/1/2006 and 11/15/2012 by a company that appeared in LoPucki’s data. This means that there are five cases in this dataset that are not in LoPucki’s dataset. Four of these cases are filings made subsequent to the debtor first appearing in LoPucki’s dataset, and one is a filing made prior to the debtor appearing in LoPucki’s dataset.

Each entry into the database has been reviewed for quality control by at least one other attorney. In addition, the data has been standardized and spot-checked to ensure consistency. Nevertheless, because entries in this database were collected manually, some inconsistency is to be expected.

**III. Definition of Fields**

**Company Name.** The name of the company as it appears in the “CommonName” field in the LoPucki database.

**District.** The district in which the lead case was filed according to the LoPucki database.

**Case Number.** The number assigned to the lead case in PACER.

**Judge.** The judge PACER denotes as handling the lead case.

**Filed as Chapter 11.** Was the case filed under chapter 11? Yes/No.

**Petition Date.** The date on which the Petition was filed.

**Case Pending.** Has the court marked the case as closed the case in PACER? Yes/No.

**Plan Confirmed.** Has the court entered an order confirming all aspects of a plan? Yes/No. Where a plan is confirmed in several phases, we did not code the field as “Yes” until all phases of the plan were confirmed.

**Date Confirmed.** The date noted on the bankruptcy court docket on which the bankruptcy court confirmed the plan. If the court confirmed the plan in phases, the date on which the court confirmed the final phase.

**Liquidating Plan.** Did the plan describe itself as a liquidating plan? Yes/No. This information was typically found in the docket or explicitly stated in the plan itself.

**Liquidating Trust.** Did the debtor form a liquidating trust, and was that information listed anywhere on the docket? Yes/No.

**363 Order re Substantially All Assets.** Were substantially all of the debtor’s assets sold pursuant to 11 U.S.C. § 363? If substantially all of the debtor’s assets were sold over several discrete 363 sales, the attorneys coded this field as “No.”

**Date of 363 Order re Substantially All Assets.** If there is an order authorizing the sale of substantially all of the debtor’s assets, what is the date of that order?

**Order Converting to Chapter 7.** Did the court enter an order converting the case to chapter 7? Yes/No.

**Date of Conversion Order.** If the court entered an order converting the case to chapter 7, on what date did it enter that order?

**DIP Financing.** Has the court authorized the debtor to incur post-petition debt? Yes/No.

**Date of Interim Order.** If the court authorized DIP Financing, on what date did the court enter an order authorizing it on an interim basis?

**Date of Final Order.** If the court authorized DIP Financing, on what date did the court enter an order authorizing it on an final basis?

**Initial Authorization.** How much post-petition financing did the court allow the debtor to borrow on an interim basis?

**Final Authorization.** How much post-petition financing did the court allow the debtor to borrow on a final basis?

**Interest Rate.** According to the DIP Agreement, what are the interest rates applicable to the DIP Financing? Due to the complexity with which DIP Agreements describe the interest rate, the reliance of the interest rate formula on other defined terms in the DIP Agreement, and the multitude of rates found in each agreement, it was impossible fully to standardize this field. As such, in certain cases, this field will not fully capture the actual interest rate in a readily understandable manner.

The most accurate information in this field is either a fixed-rate loan with the interest rate expressed as a percentage, or a variable-rate loan with the interest rate expressed as a margin over LIBOR (or another, widely understood benchmark interest rate), which, where available will provide a snapshot of the premium paid by the debtor.

**DIP Loan, but Subsequent 363 Sale of All Assets.** If there was DIP Financing, was there a later sale pursuant to 11 U.S.C. § 363 of substantially all of the debtor’s assets? Yes/No.

**DIP Loan, but Case subsequently converted to chapter 7.** If there was DIP Financing, did the court later convert the case to chapter 7? Yes/No.

**Milestone re Disclosure Statement, Filing and Approval.** If there was DIP Financing, was it an event of default under the DIP Agreement to not have a Disclosure Statement filed and approved by a certain date? Yes/No.

**Milestone re Plan, Filing and Approval.** If there was DIP Financing, was it an event of default under the DIP Agreement to not have a Plan filed and approved by a certain date? Yes/No.

**Milestone re Effective Plan.** If there was DIP Financing, was it an event of default under the DIP Agreement for the Plan not to be effective by a certain date? Yes/No.

**Milestone re Bidding Procedures Orders.** If there was DIP Financing, was it an event of default not to have an order approving the bidding procedures for a sale of substantially all of the debtor’s assets entered by a certain date? Yes/No.

**Milestone re Sale Orders.** If there was DIP Financing, was it an event of default not to have an order approving a sale of substantially all of the debtor’s assets entered by a certain date? Yes/No.

**Milestone re Closing a Sale.** If there was DIP Financing, was it an event of default not to have an order approving a sale of substantially all of the debtor’s assets entered by a certain date? Yes/No.

**Conditions for the Bidding Process for a 363 Sale.** If there was DIP Financing, did it control the process under which any auction of the debtor’s assets had to occur? Yes/No.

**Validity and Perfection of Pre-Petition Liens.** If there was DIP Financing, did the Final Order specify that some or all of the secured lenders’ pre-petition liens were thereby deemed valid and not subject to avoidance? Yes/No.

**Roll-Ups.** If there is DIP Financing, does it expressly or effectively roll-up pre-petition loans into the DIP loans? Yes/No. “Yes” includes cases where the proceeds of the DIP Financing must be applied first to certain pre-petition loans (and such lenders are also DIP lenders) as well as cases that described the DIP Financing as refinancing pre-petition loans and giving them the same priority and credit support as the post-petition loans.

**Waiver of Surcharge of Collateral/Equities of the Estate.** If there is DIP Financing, did the debtor waive any rights to surcharge the collateral under Bankruptcy Code section 506(c), any right under Bankruptcy Code section 552 or any similar equitable doctrine? Yes/No.

**Lien on Avoidance Actions or Proceeds.** If there is DIP Financing, does it put a lien on avoidance actions or the proceeds of actions brought under chapter 5 of the Bankruptcy Code (i.e., avoidance actions)? Yes/No?

**Priming Existing Secured Creditors.** If there is DIP Financing, does it prime the liens of any pre-petition lenders without their consent? Yes/No?

**CRO.** If there is DIP Financing, does it require the debtor to hire a chief restructuring officer or otherwise require that a certain person be included in the debtor’s management? Yes/No.

**Releases.** If there is DIP Financing, does it require that the debtor release any claims that it may have against the DIP Lenders. Yes/No? Yes includes cases in which the debtor has indemnified the DIP Lenders.

**Makewhole.** If there is DIP Financing, do the terms include any provision penalizing the prepayment of the DIP Facility. Yes/No?

1. The complete protocol for the LoPucki database are available at: <http://lopucki.law.ucla.edu/Protocols.pdf> [hereinafter LoPucki Protocol]. [↑](#footnote-ref-1)
2. LoPucki Protocol at 4. [↑](#footnote-ref-2)