**Exhibit C**

As explained in the written testimony, counsel for the Loan Syndications and Trading Association, Wilmer Cutler Pickering Hale and Dorr LLP (“WilmerHale”), conducted an empirical analysis of all chapter 11 cases of public companies since 2006 that had at least one bankruptcy filing in which the aggregate assets were listed at $500 million or greater.[[1]](#footnote-1) WilmerHale reviewed a total of 157 cases (including jointly-administered cases), involving 149 debtors, seven of which filed for bankruptcy more than once. Of the 157 total cases that WilmerHale reviewed, 102 accessed the DIP financing market. This Appendix provides further detail on the 26 cases that, subsequent to obtaining DIP financing, converted to chapter 7, involved a sale of substantially all of the debtors’ assets, or confirmed chapter 11 liquidating plans. Of these 26 cases, four cases converted to chapter 7, 15 involved subsequent section 363 sales (including one that converted to chapter 7), and 20 confirmed liquidating plans (including 11 that involved section 363 sales and one that later converted to chapter 7). The goal of this Exhibit C is to clarify the reasons for which each of these cases involved a conversion, a sale, or a liquidation, instead of a reorganization.

**I. *Cases Converting to Chapter 7***

Four cases out of the 157 cases reviewed accessed the DIP financing market and subsequently converted to chapter 7. The conversion motions in these cases explained the reasons for conversion. In only one case, *Pope & Talbot, Inc.*, did the conversion motion suggest that the terms of the DIP financing were a contributing factor in the Debtors’ decision to convert to chapter 7.

1. **HomeBanc Corp.** (DE 07-11079): The Debtors’ conversion motion [Dkt. 1303, at 3] states that the Debtors had been selling off assets and working to wind down business since the petition date and did not believe they could file feasible plan. The motion does not suggest that DIP financing was relevant in the decision to seek conversion.
2. **Linens ‘n Things, Inc.** (DE 08-10832): The Debtors’ conversion motion [Dkt. 5893, at 3-4] states that the Debtors lacked sufficient liquid assets to fund their confirmed chapter 11 plan, and believed that a chapter 7 liquidation was the only way to accomplish an orderly liquidation of their remaining assets. More than 6 months before confirmation, the Debtors already had closed all of their retail locations and liquidated their entire inventory. The Debtors had intended to fund their plan through preference action recoveries, but the process was “slower than expected” and the effective date deadline for the plan was extended several times before the motion to convert. The Debtors decided to convert after certain creditors objected to an attempted modification of the confirmed plan.
3. **Pope & Talbot, Inc.** (DE 07-11738): The Debtors’ conversion motion [Dkt. 706, at 2] states that the Debtors lacked sufficient liquid assets to continue operating their business after their DIP lenders declined to further extend the DIP facility or to permit more than a limited extension of the Debtors’ use of cash collateral. Without working capital to continue operations, the Debtors sought to convert to chapter 7.
4. **Milacron, Inc.** (OH SD 09-11235): The Debtors’ conversion motion [Dkt. 974, at 2-3] explains that the Debtors’ intent in filing for bankruptcy was to sell substantially all their assets. The Debtors conducted a section 363 sale of substantially all of their assets and disposed of other assets through another sale and a settlement, so that at the time of the conversion motion the Debtors’ only remaining assets were certain real property that the Debtors had been unable to sell and a potential cause of action against its former officers and directors that would benefit only the purchaser from the 363 sale. With such limited assets, the Debtors moved to convert to chapter 7 because they did not believe any additional benefit could be obtained from remaining in chapter 11.

**II. *Cases with Subsequent 363 Sales***

Fifteen of the 157 cases reviewed involved debtors that accessed the DIP financing market and involved a subsequent section 363 sale. One case involving a 363 sale, *Milacron, Inc.*, was discussed above in connection with cases converting to chapter 7. In 11[[2]](#footnote-2) of these cases, reorganization was not among the Debtors’ goals in the chapter 11 cases because the Debtors either had arranged a 363 transaction or begun marketing a sale prior to the petition date. In addition, the Debtors in several of these cases, including *Propex, Inc.*, and *Lehman Brothers*, obtained DIP financing because the stalking horse bidder at the proposed sale would be the DIP lender or an affiliate of the lender.

1. **Barzel Industries Inc.** (DE 09-13204): Prior to the petition date, the Debtors decided to sell their business as a going concern. The Debtors were provided DIP financing conditioned on milestones for consummating the intended sale. According to the disclosure statement approved by the court [Dkt. 910, at 11], the DIP lenders were to be paid in full out of the proceeds of the sale. There is no indication that they have not been paid in full. The Debtors chose a liquidating plan to provide an orderly liquidation of the Debtors’ assets remaining at the time of the plan confirmation.
2. **Blockbuster Inc.** (NY SD 10-14997): The motion for a 363 sale [Dkt. 947, at 4] states that the Debtors originally planned to reorganize, but that the Debtors determined that a reorganization plan was no longer feasible because, among other things, holiday sales were poor, business operations were deteriorating, and the Debtors could not reach agreement with the DIP lenders on the plan and failed to meet certain milestones relating to the DIP financing. The Debtors’ failure to meet the milestones was an event of default under the plan. The Debtors moved for a 363 sale to maximize the value of their assets.
3. **Champion Enterprises, Inc. (CEI Liquidation Estate)** (DE 09-14019): Prior to obtaining a final order authorizing DIP financing, the Debtors were looking for purchasers for a potential 363 sale. The Debtors moved for authorization for the sale and approval of the bidding procedures in December 2011, near the time of the interim DIP order and before the final DIP order. The second amended disclosure statement [Dkt. 1084; approved at Dkt. 1088] explains that the DIP lenders would be paid in full. There is no indication that the DIP lenders have not been paid in full.
4. **Chesapeake Corporation** (VA ED 08-36642): Prior to the petition date, the Debtors arranged a sale of substantially all of the Debtors’ assets after months of discussions with lenders regarding financial restructuring alternatives. In a declaration regarding the first day motions [Dkt. 3], the Debtors explained that the purpose of the chapter 11 was to consummate the arranged sale or a similar sale, while preserving assets and maximizing asset values for shareholders. The Debtors were provided DIP financing with milestones relating to the sale transaction. According to the disclosure statement [Dkt. 1252], the purchasers assumed all of the outstanding obligations concerning the DIP financing at the time of the closing.
5. **Circuit City Stores, Inc.** (VA ED 08-35653): Prior to the petition date, the Debtors had concluded that a sale of the Debtors’ assets would best maximize the value of the estates for creditors and parties in interest. The Debtors conducted a 363 auction as part of the bankruptcy, and after the auction the Debtors determined a chapter 11 liquidation would best preserve the value of the remaining assets. According to the disclosure statement [Dkt. 4614], following the conclusion of the liquidation sales in the bankruptcy, the Debtors no longer had any borrowings outstanding under the DIP agreement.
6. **Delta Petroleum Corporation** (DE 11-14006): Prior to the petition date, the Debtors were exploring restructuring alternatives, including a sale of some or all of their assets. The Debtors filed for chapter 11 after being unable to consummate an out-of-court transaction. Immediately after the petition date, the Debtors decided that a 363 sale would best maximize the value of their assets, and they received DIP financing with milestones relating to the sale. The Debtors’ business was sold as a going concern to the DIP lenders and other investors, and the amended disclosure statement [Dkt. 650; approved at Dkt. 693] indicates that the DIP lenders’ claims would be paid in full under the plan.
7. **EBHI Holdings, Inc.** (DE 09-12099): Prior to the petition date, the Debtors planned to sell their business as a going concern to the stalking horse bidder, CMMP Capital, and were provided DIP financing with milestones relating to the sale. According to the disclosure statement [Dkt. 1122, at 18; approved at Dkt. 1289], the DIP lenders’ claims were paid in full from the proceeds of the 363 sale.
8. **Fleetwood Enterprises, Inc.** (CA CD 09-14254): In its amended disclosure statement [Dkt. 2088; approved at Dkt. 2106], the Debtor explained that it filed for bankruptcy when it realized that shutting down its unprofitable travel trailer division would result in potentially significant liabilities. Another reason for the bankruptcy was to allow Fleetwood to preserve its ability to avoid an existing note exchange offer. Before the confirmation of the plan, the Debtors sold significant assets constituting business divisions and other assets.
9. **General Motors Corporation (Motors Liquidation Company)** (NY SD 09-50026): Prior to the petition date, the Debtors planned to sell the business as a going concern to Vehicle Acquisition Holdings LLC, a purchase sponsored by the U.S. Treasury, and they were provided DIP financing conditioned on the sale. The amended disclosure statement [Dkt. 8023, at 54, 64; approved at Dkt. 8043] states that the DIP lenders would have an allowed administrative expense claim that would be fully paid under the plan.
10. **Hartmarx Corp.** (IL ND 09-02046): The motion for an order authorizing a 363 sale [Dkt. 463, at 5] explains that the Debtors began marketing the sale of substantially all of their assets prior to the petition date. It is unclear whether the DIP lenders have been paid.
11. **Lehman Brothers Holdings Inc.** (NY SD 08-13555): As of the petition date, the Debtors were exploring options to sell all or part of their business. Contemporaneous with the motion for postpetition financing, the Debtors moved for an order approving the sale of substantially all of their assets to Barclays. According to the motion for postpetition financing [Dkt. 59], the interim DIP financing would be provided by Barclays to “enable the Debtor to preserve its business as a going concern for the time period necessary to get court approval of the Sale and effect a closing of the Sale.” The Debtors withdrew their motion for a final order authorizing postpetition financing when the sale was consummated. Section 2.17 of the DIP Agreement provides that the proceeds of the sale were to be used to pay off the DIP Credit Facility. There is no indication that the DIP lenders have not been paid in full.
12. **Propex, Inc.** (TN ED 08-10249): According to the first amended disclosure statement to the first amended joint plan of liquidation [Dkt. 1232; approved at Dkt. 1238], after filing a reorganization plan as required by its first DIP financing agreement and near the maturity date of the first DIP financing, the Debtors took out replacement DIP financing. The second DIP lender had been the proposed exit financing lender with respect to the reorganization plan. The second DIP financing required the Debtors to seek either confirmation of an amended chapter 11 plan incorporating a sale of substantially all of the Debtors’ assets or, absent a confirmed plan, a sale of substantially all of the assets. The stalking horse bidders and ultimate purchasers of substantially all of the Debtors’ assets were entities controlled by an affiliate of the second DIP agent. The bankruptcy court held that the Debtors should pay the second DIP lenders from the proceeds of the sale [Dkt. 1108], which decision was affirmed on appeal to the district court [Dkts. 1868, 1869, 1870].
13. **Seahawk Drilling, Inc.** (TX SD 11-20089): Prior to the petition date, the Debtors planned to sell their business as a going concern, and were provided DIP financing conditioned on milestones relating to the sale. The amended disclosure statement [Dkt. 961, at 23; approved at Dkt. 968] states that the DIP Lenders were paid in full from the proceeds of the sale.
14. **TerreStar Networks, Inc.** (NY SD 10-15446): The Debtors entered chapter 11 intending to reorganize, and received DIP financing conditioned on milestones relating to a plan of reorganization. The Debtors moved to sell their assets as a going concern approximately six months after the final DIP financing order and approximately two months after their plan of reorganization failed to receive sufficient votes for confirmation. The DIP Agreement milestones regarding the reorganization plan were amended while the Debtors unsuccessfully sought to negotiate a new plan. According to the disclosure statement [Dkt. 338, at 5], the DIP lenders were repaid in full prior to consummation of the plan.

**III. *Cases with Liquidating Plans***

Twenty cases of the 157 cases reviewed involved debtors that accessed the DIP financing market and confirmed a chapter 11 liquidating plan. One case confirming a liquidating plan, *Linens ‘n Things, Inc.*, was discussed above in connection with cases converting to chapter 7. Eleven cases[[3]](#footnote-3) confirming a liquidating plan were discussed above in connection with cases involving a 363 sale. In at least 12[[4]](#footnote-4) of these 20 cases, at the time of the bankruptcy filing the Debtors intended to sell substantially all of their assets or liquidate, and reorganization as a going-concern had never been a purpose of the bankruptcy.

1. **American Home Mortgage Investment Corp.** (DE 07-11047): According to the disclosure statement, [Dkt. 6627], the Debtors filed for chapter 11 and sought DIP financing with the express purpose of facilitating the orderly liquidation of their business. The DIP lenders’ claims will be paid in full pursuant to the plan, but had not been paid in full as of confirmation.
2. **Borders Group, Inc.** (NY SD 11-10614): The disclosure statement filed by the Debtors and the Official Committee of Unsecured Creditors [Dkt. 2110; approved at Dkt. 2122] explains that the Debtors failed to obtain the necessary financing required to complete their attempted out-of-court refinancing, which caused the Debtors to seek DIP financing. On or about the petition date, the Debtors filed a motion to start a store closing process for up to 275 stores. Several weeks after the completion of that first store-closing process, the Debtors moved for the authority to sell substantially all of their assets. As part of the sale process, the Debtors received no offers to sell the business as a going concern. Instead, the Debtors held separate sales for most of their large assets. The Debtors proposed a liquidating plan to achieve an orderly disposition of their remaining assets that would maximize the value of those assets and avoid a fire sale in chapter 7.
3. **Kimball Hill, Inc.** (IL ND 08-10095): When the Debtors commenced their chapter 11 cases, they were searching for a plan sponsor. According to the disclosure statement [Dkt. 926, at 33], they contacted approximately one hundred possible investors and explored a variety of options, “including an equity sponsor, a sale of the business as a going concern, and bulk asset sales in addition to a stand-alone reorganization.” Kimball Hill, Inc., the parent company of the Debtors, provided the DIP financing from its tax refund after it became clear that the Debtors were unlikely to obtain DIP financing from any other lenders. Under the terms of the liquidation plan as explained in the disclosure statement [Dkt. 926, at 48], the DIP obligations were to be satisfied by payment in full in cash to the liquidation trust.
4. **Neff Corp.** (NY SD 10-12610):In their amended disclosure statement [Dkt. 266; approved at Dkt. 267], the Debtors explain that they engaged in discussions with more than twenty parties regarding alternative restructuring proposals over the course of five months before filing. The chapter 11 plan [Dkt. 4; third amendment at Dkt. 443], filed the day after the petition date, was based on a proposal from some of the Debtors’ prepetition lenders and involved multiple restructuring transactions, including a sale of substantially all of the Debtors’ assets and liabilities. The bankruptcy court approved the sale as one “under” the plan and conducted the auction prior to the confirmation of the plan. The confirmed plan involved a wind-down of the Debtors’ remaining assets and liabilities.
5. **New Century Financial Corp.** (DE 07-10416): The Debtors’ motion to obtain DIP financing states that the sole purpose of the financing was to facilitate a sale of the Debtors’ assets, rather than to reorganize. To achieve this goal, the Debtors proposed a liquidating plan. The amended disclosure statement [Dkt. 5103; approved at Dkt. 5396] states that the claims relating to the DIP agreement were paid in full.
6. **Noble International, Ltd.** (MI ED 09-51720): According to the disclosure statement [Dkt. 706, at 10], the Debtors filed for chapter 11 because the economic conditions in late 2008 led to “lower levels of vehicle manufacturing” and many of the Debtors’ sales contracts expired and were not renewed in 2008. The Debtors obtained DIP financing from their customers, but were forced twice to obtain court orders increasing the authorized amount of this financing, once to satisfy certain prepetition obligations and once to maintain business operations. Ultimately, the Debtors concluded that a series of sales and liquidation would maximize the recovery of their creditors. The Liquidation Plan provided that on or before the effective date, the DIP lenders’ claims would be paid in full. There is no indication that the DIP lenders’ claims were not paid in full.
7. **Syntax-Brillian Corporation** (DE 08-11407): In its seconded amended disclosure statement [Dkt. 1017; approved at Dkt. 1020], the Debtors explained that they had sought to sell substantially all of their assets through a motion filed on the petition date. The Debtors pursued this course because they had determined that “reorganization was not a viable option due to the Debtors’ liquidity constraints and problematic business model.” The Debtors held an auction for substantially all of their assets, which the Stalking Horse Bidder won. However, after the auction, the Stalking Horse Bidder refused to close on the sale, resulting in a contempt order and an order to show cause for the failure to close against the bidder. The Debtors stated in the disclosure statement that they were continuing to pursue remedies against the bidder in an attempt to force it to close the sale. Per the initial and first amended disclosure statements [Dkt. 798; Dkt. 1005], the DIP Lenders were to be paid in full. The second amended disclosure statement [Dkt. 1017, at 37] contemplates that the liquidating trust’s assets may be exhausted before the DIP Lenders are paid in full. It is unclear from the docket whether the assets were sufficient to pay the DIP lenders.
8. **Trico Marine Services, Inc.** (DE 10-12653): This is a chapter 22; the Debtors filed in 2004 and 2010. According to *thedeal.com* and the disclosure statement [Dkt. 1283, at 6; approved at Dkt. 1286], the reasons for the second filing were “reduced spending across the offshore oil and gas sector and a decline in oil and gas prices, among other factors, drained its liquidity to the point it couldn’t cover its debts.” (*See* http://www.thedeal.com/knowledge/datasite-brazil-dealwire/trico-maps-out-liquidation-plan.php.) With respect to the second filing, the Debtors attempted to restructure outside of bankruptcy, but could not borrow enough cash to stay afloat while working out a consensual restructuring plan. The DIP facility essentially was a refinancing of some of its old debt with the same lender. The Debtors sold all of their vessels over the course of the bankruptcy, and filed the liquidating plan prior to auctioning of the last of their vessels in order to pay their creditors. Per the Second Amended disclosure statement, the DIP lenders have been paid in full.
9. **VeraSun Energy Corporation** (DE 08-12606): According to the disclosure statement [Dkt. 1641], the Debtors began discussions regarding how to maximize the value of their assets through a sale of substantially all of their assets or another transaction before the petition date. These discussions, as well as active marketing of the Debtors’ assets, continued after the Debtors filed for chapter 11. After selling substantially all of the Debtors’ assets through a series of sales, the Debtors fully repaid the DIP financing debts.
1. The list of cases was obtained from the UCLA-LoPucki Bankruptcy Research Database. Exhibit A is the methodology for this review and contains additional information on the dataset reviewed. [↑](#footnote-ref-1)
2. The eleven cases are: *Barzel Industries Inc.*; *Champion Enterprises, Inc. (CEI Liquidation Estate)*; *Chesapeake Corporation*; *Circuit City Stores, Inc.*; *Delta Petroleum Corporation*; *EBHI Holdings, Inc.*; *General Motors (Motors Liquidation Company)*; *Hartmarx Corp.*; *Lehman Brothers*; *Milacron, Inc.*; *Seahawk Drilling, Inc.* [↑](#footnote-ref-2)
3. The ten cases discussed above in connection with 363 sales are: *Barzel Industries, Inc.*; *Borders Group, Inc.*; *Champion Enterprises, Inc. (CEI Liquidation Estate)*; *Chesapeake Corporation*; *Circuit City Stores, Inc.*; *EBHI Holdings, Inc.*; *Fleetwood Enterprises Inc.*; *General Motors Corporation (Motors Liquidation Company)*; *Propex, Inc.*; *Seahawk Drilling, Inc.*; *TerreStar Networks, Inc.* [↑](#footnote-ref-3)
4. The twelve cases are: *American Home Mortgage Investment Corp.*; *Barzel Industries Inc.*; *Champion Enterprises, Inc. (CEI Liquidation Estate)*; *Chesapeake Corporation*; *Circuit City Stores, Inc.*; *EBHI Holdings, Inc.*; *General Motors Corporation (Motors Liquidation Company)*; *Neff Corp.*; *New Century Financial Corp.*; *Seahawk Drilling Inc.*; *Syntax-Brillian Corporation*; *VeraSun Energy Corporation*. [↑](#footnote-ref-4)