2006 Bankruptcy Litigation:
Advanced Pre-Trial Practice and Procedure Workshop
Top Cash Collateral/DIP Issues for the Litigator

University of Texas
February 2-3, 2006
Austin, TX

Where Are We Fishing Today, Inc. ("Fishing Sub")
(DO = Arkansas)
CO = Texas

Mega Shark
(DIP Lender)

Sharks & Us
("DIP Lender")

D&O Policy
National Fidelity
[$7.5M primary,
Union Central [$2.5M surplus]

Muddy Waters, Inc.
(Poison Non-Exclusive Service Contract)

Expert
A. Smith vs. B. Jones

State Bank of Fisherman
("Fish Bank")

Sharks & Us
("DIP Lender")

Fish Water Funding, Inc.
(the "Fresh ABL")

Poison Non-Exclusive Service
Contract

Fish and Cut Bait, Inc.
(the "Company" or the "Debtor")

Muddy Waters,
Inc. (Ex-Manager)

Mega Shark
(DIP Lender)

Sharks & Us
("DIP Lender")

State Bank of Fisherman
("Fish Bank")

Sharks & Us
("DIP Lender")

D&O Policy
National Fidelity
[$7.5M primary,
Union Central [$2.5M surplus]
Key DIP/Cash Collateral Issues

• DIP loans.
  • Bankruptcy Code § 364 for DIP loan.
    • Substantive requirements.
    • Levels of security.
  • Bankruptcy Rule 4001(c) for DIP loan.
    • Interim relief.
    • Final relief.

Key DIP/Cash Collateral Issues

• Cash collateral use.
  • Bankruptcy Code § 363(c)(2) for cash collateral use.
    • Substantive requirements.
    • Levels of security.
  • Bankruptcy Rule 4001(b) for cash collateral use.
    • Interim relief.
    • Final relief.
Key DIP/Cash Collateral Issues

- Adequate protection.
- Business operating margin?
- Coverage of existing collateral?
  - Method of valuation?
  - Trend of collateral value?
  - Depreciation from use?
  - Market forces?
- Replacement liens in unencumbered assets?
- What is lack of adequate protection?

Key DIP/Cash Collateral Issues

- Negotiation items in DIP/CC orders.
  - Replacement liens/lien on all estate property?
  - Replacement liens/lien on avoidance actions?
  - Replacement liens/lien on other causes of action?
  - Super-priority claims?
  - Cross collateralization?
  - Release of lender?
  - Surcharge Protection?
  - Carve-out for professionals?
  - Committee investigations and litigation?
Key DIP/Cash Collateral Issues

• Trying the DIP/CC case.
  • Outside expert testimony?
  • Debtor officer testimony?
    • Fact?
    • Expert?

• Appeals.
  • Interlocutory orders.
  • Final orders.
  • Statutory mootness in DIP orders.