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# The "Super Speedy Prepack" Has Arrived... Is That a Big Deal?

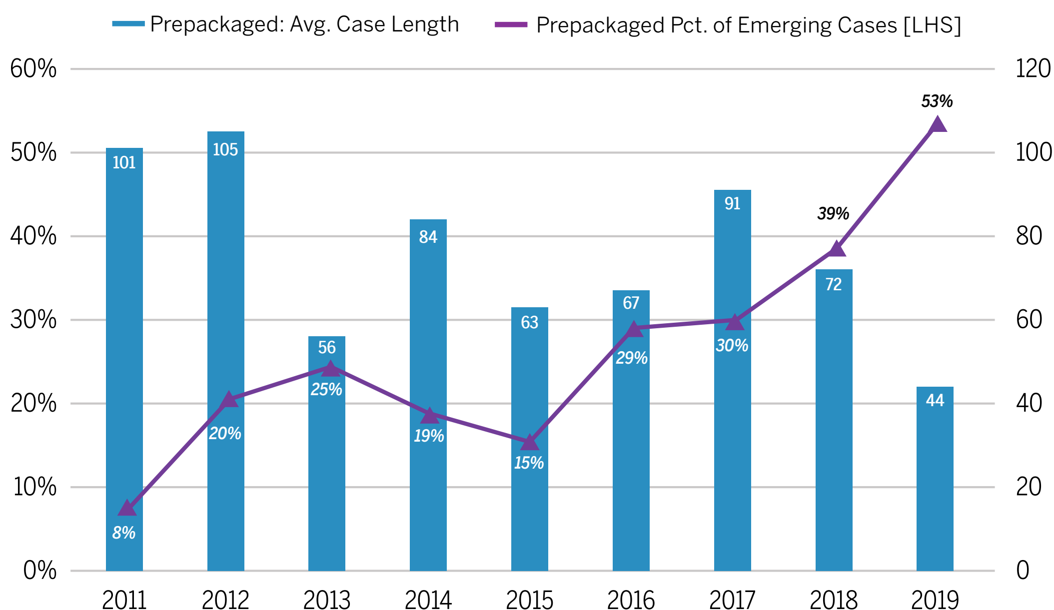
**By Michael Eisenband**

Prepackaged ("prepack") Chapter 11 filings have been prevalent in the last few years but it wasn't until this year that we saw the debut of the "super speedy prepack," that is, a prepackaged filing that runs the course of reorganization in Usain Bolt-like time — let's say a month or less from filing to emergence. It started in early February with FULLBEAUTY Brands, a prepack that had its plan confirmed within one day of filing and emerged from Chapter 11 three days later. If records were made to be broken, FULLBEAUTY didn't hold its place in the record books for very long. Sungard Availability Services filed a prepack on May 1 and had its plan of reorganization confirmed within 19 hours of filing — one hour faster than FULLBEAUTY — and emerged from bankruptcy in less than two days. It was strange to see business media stories that covered these cases measuring their duration in terms of hours.

Clearly these two cases were exceptional, but 2019 has also featured several other large reorganizations completed in a matter of days or a few short weeks. It is no longer noteworthy for a prepack to emerge from Chapter 11 within a month or so of filing compared to a typical 60 to 90-day timeframe in years past. Back in February, Arsenal Energy Holdings was in and out of Chapter 11 in ten days after having equitized over $850 million of notes, while Jones Energy was done with its reorganization about a month after filing. In all, eight of 15 filings that have exited Chapter 11 via a plan of reorganization so far in 2019 were prepacks that, on average, took just 44 days from filing to emergence (**Exhibit 1**). What conditions made these super speedy prepacks possible and what significance, if any, should be attached to them as harbingers of reorganizations to come in the next downturn?

EXHIBIT 1

## Prepackaged Filings Emerging via a Plan of Reorganization




**Note:** 2019 totals are YTD through May

**Source:** The Deal Pipeline and FTI Consulting

It could be argued that super speedy prepacks are nothing new or unique and merely reflect the consummation of all requisite preparation work and plan negotiation prior to filing with the overwhelming support of creditors — continuing a trend of shorter case lengths via prepacks that has been in place for a few years. However, that would be an oversimplification, as debtors implementing super speedy prepacks also had particular case attributes that facilitated these quick trips through Chapter 11.

Primarily, these cases, though large, featured relatively simple capital structures, with few creditor classes and an indisputable fulcrum security. For instance, FULLBEAUTY Brands, an online apparel retailer, had a pre-filing cap structure consisting of a small ABL and FILO loan, a $780 million 1L term loan and a $345 million 2L loan. Moreover, as an online retailer, it had no angry mob of landlords to contend with as it negotiated a consensual reorganization plan. Similarly, Sungard’s $1.3 billion pre-filing capital structure consisted of a small revolver, two 1L term loans totaling $800 million and a $425 million unsecured note issue, having just two impaired voting classes, while Jones Energy’s pre-filing capital stack of $1 billion largely consisted of a $450 million 1L senior secured note and two unsecured notes totaling $550 million. Triangle Petroleum Corp. recently filed Chapter 11 with a prepackaged plan having just one impaired creditor class and a 40-day timeline to emerge.

These plans had the overwhelming, sometimes near-unanimous consent of impaired creditors, often consisting of concentrated groups of distressed investors intent on owning the debtors post-emergence. Furthermore, these distressed investors often committed DIP or exit financing, or backstop support to these deals if needed, reducing the time, expense and uncertainty frequently encountered when negotiating such financing arrangements from conventional bank lenders.

The other hard-to-miss feature of these filings is the treatment of general unsecured creditors, who were treated as unimpaired in all instances, receiving either cash recoveries in full or reinstatement. For providers of non-funded unsecured credit, like suppliers of parts or merchandise, it’s as if these bankruptcy filings never occurred, which minimized any potential for business disruption resulting from loss of vendor support. (No need to get these critical creditors upset if it can be avoided.) General unsecured creditors were left unscathed, as these plans squarely took aim at funded junior debt.

Even so, in several of these prepacks, holders of junior debt securities received plan treatment that arguably provided superior recoveries to what they likely would have received under strict adherence to the absolute priority rule. Let’s recognize the quid pro quo in these instances. Senior creditors (mostly distressed investors with large positions bought at significant discounts to face value) who were first in line but still impaired and willing to be equitized, essentially gifted part of their recoveries to junior creditors in exchange for pre-filing plan consent and third-party releases or other exculpation provisions. Again, the practice of gifting is nothing new in bankruptcy, but by making a value-sharing concession upfront during pre-filing negotiations, senior creditors being equitized were much more likely to avoid the prospect of protracted and costly post-filing entanglements and litigation with dissatisfied junior creditors intent on getting a better recovery. In doing so, senior creditors greatly improved the likelihood of a fast and relatively conflict-free reorganization. Frankly, this approach is more pragmatic and predictable than the path that can ensue when highly impaired junior creditors are not assuaged and decide to kick up some dust once the proceeding is underway.

Are super speedy prepacks a sign of things to come as key constituents to a reorganization increasingly prioritize expedience above other considerations? It’s not likely. Debtors with complex capital structures, highly fragmented creditor groups or those in dire need of an operational turnaround won’t be able to go this route. Hence, it isn’t feasible for most reorganizations. However, for debtors with the attributes described earlier, it may be a template that continues to win the approval of the courts, as even those judges with some misgivings about the speed of these proceedings may be reluctant to stand in the way of an otherwise confirmable plan that enjoys the overwhelming support of diverse creditor groups.

The lingering question for all prepacks is whether they accomplish anything other than an expedited balance sheet restructuring. Proponents of prepacks will argue that business issues are addressed as well, mostly pertaining to the shedding of unfavorable executory contracts and unexpired leases, and that these bankruptcy remedies are availed in prepackaged cases, improving the business prospects of the reorganized debtor. Skeptics still tend to view prepacks as quick fixes that don’t adequately address the spectrum of a debtor’s restructuring needs. Eventually, we’ll know who’s right — but for now, it’s full speed ahead.

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