

---

***PE Pathways* — Leveraging Assignments for the Benefit of Creditors in Distressed Deals****Speakers: Evelyn Meltzer and Nick Stawasz****Recorded: 2/20/26****Aired: 3/24/26****Nick Stawasz (00:05):**

Welcome to *PE Pathways*, our podcast series where experienced deal makers share their thoughts on current private equity and M&A trends and developments. Today is the third episode of a series of discussions around private equity and distressed assets with our friends from our Bankruptcy + Restructuring practice group. The focus of this series will be ways to unlock value in distressed M&A. My name is Nick Stawasz and I'm a partner in the Private Equity practice of Troutman Pepper Locke. Joining me is my fellow partner, Evelyn Meltzer from our Wilmington, Delaware office in the Bankruptcy and Restructuring practice, who I've worked with in the past in some distressed matters. Evelyn, welcome and good to see you again. Can you please tell us a little about your practice?

**Evelyn Meltzer (00:47):**

Thank you, Nick. It's great to see you and I really appreciate being invited to join today. My practice focuses on corporate bankruptcy, insolvency, distressed M&A, and creditors' rights. I regularly represent sellers and purchasers in distressed M&A transactions, including Article 9 sales, sales conducted as part of an assignment for benefit of creditors, and sales conducted pursuant to section 363 of the Bankruptcy Code. With higher interest rates, tighter credit, and more sponsor-backed companies struggling to refinance, we're seeing assignment for benefit of creditors cases used more frequently as an alternative to Chapter 11.

**Nick Stawasz (01:28):**

Well that's a perfect segue into our topic today, which is the benefits and pitfalls of acquiring assets via an assignment for the benefit of creditors, also known as an ABC. Can we start off please by giving a brief explanation of the process of an ABC for our audience?

**Evelyn Meltzer (01:44):**

Sure. An ABC is a liquidation of a company under state law rather than under the federal bankruptcy code. In an ABC, the financially troubled company that we refer to as the assignor, transfers substantially all of its assets to a third-party fiduciary that we refer to as the assignee. And this transfer of assets is done via a contract. As a fiduciary, the assignee is responsible for liquidating assets and distributing the proceeds to creditors pursuant to the priorities established by applicable law. An ABC can be done either as an in-court process, such as in Delaware, where I practice, Florida, or New Jersey, or as an out-of-court process, such as in California.

Some states have very detailed statutes such as Florida and New Jersey, while other state statutes are less detailed like here in Delaware. In some states like California, an ABC is conducted pursuant to common law.

(02:53):

An ABC is initiated by the assignor, the financially troubled company, and not its creditors. Although board and shareholder consent is required to effect an ABC. In an ABC, the assets are transferred to the assignee subject to any liens. So secured creditor buy-in is critical to the success of an ABC. And often what you see in the context of a sale case is that the secured creditor will either be paid off in full at closing of the sale of the assets or the secured creditor will agree to have its liens attached to the sale proceeds at closing.

**Nick Stawasz (03:32):**

Thank you, Evelyn. That's very helpful. Why do you think ABCs have increased in popularity with companies in financial distress?

**Evelyn Meltzer (03:39):**

Well, I think from the company side, Nick, there are several key reasons. First, and I think this is critical, it costs less. Bankruptcy is very expensive. ABCs cost substantially less than a Chapter 11 case, and there are a number of reasons for this. First, there are fewer professionals. You don't have the United States trustee in an ABC case like you do in a Chapter 11 case, and the United States trustee is the government watchdog in bankruptcy cases. Additionally, unlike a Chapter 11 case, you don't have an official committee of unsecured creditors, and all these different professionals add up, meaning that Chapter 11 is a lot more expensive than an ABC case. Another reason that ABCs have increased in popularity from the perspective of a company is reputational considerations. Chapter 11 comes with a certain stigma. It means a company has failed. ABCs are seen as a clean way to shut down the business and monetize assets with limited publicity.

(04:45):

Chapter 11 cases make front page news. You don't see news reporting on a company filing for ABC. And as I mentioned a minute ago, in some states, ABCs are not even done under the purview of a court, so there is no docket for someone to go and find the fact that the company has effectuated the ABC. And a third reason I think that ABCs have grown in popularity from the perspective of a financially distressed company is because of reduced risk to directors and officers. When the ABC is effectuated, often the directors and officers resign as soon as the ABC is effectuated. It is the assignee then who is responsible for running the ABC process and selling the assets to the buyer, not the company itself. It is not the directors and officers who are going to make the decision regarding who ultimately acquires the assets or anything else that has to do with the ABC once it's effectuated.

(05:45):

As such, from the perspective of the directors and officers, this substantially reduces their ongoing fiduciary risk.

**Nick Stawasz (05:53):**

That's very helpful to understand the attractiveness to a company. From the perspective of a potential buyer, why do you think ABCs have increased in popularity?

**Evelyn Meltzer (06:03):**

I think, Nick, there are several reasons for this. First, I think buyers are looking to ABCs because of the speed of the sale process and how quickly they can acquire the assets. What we're seeing in ABCs nowadays is what I'm going to refer to as the pre-ABC planning trend. Unlike in a Chapter 7 case where the Chapter 7 trustee is appointed and you're basically on day one once the Chapter 7 case is filed, in an ABC, a lot of the planning can be done before the ABC is ever effectuated. Specifically, the assignee often comes into the case in the role of a consultant before the ABC has even been effectuated. They come in as a consultant and ultimately help and advise the company on what path forward makes the most sense. And if an ABC is decided, then they can step into the shoes as the assignee.

(06:59):

This enables the buyer and the company to negotiate the APA in principle and then effect the ABC. At that point, the assignee as the third-party fiduciary ultimately makes the decision regarding the buyer and the sale can close quickly. How quickly the sale can close is going to depend on whether it's a court supervised ABC or not. If it's a court supervised ABC, I would say you can expect the sale to close in a pre-ABC planning ABC 30 to 45 days after the ABC is effectuated, which is very similar to a Section 363 sale. So again, from the perspective of a buyer, the ABC sale process can work a lot like a Section 363 sale, which brings me to the second reason I think we've seen an increase in popularity with potential buyers in ABCs, and that's because like a Section 363 sale, potential buyers in an ABC sale are able to negotiate stalking horse protections.

(08:06):

A stalking horse in a sale is simply the person who comes in the beginning and kind of sets the floor against which other bidders have to bid. By being the stalking horse, a bidder can get certain protections such as a breakup fee, which is a fee paid to the buyer if they ultimately are not successful in acquiring the assets, an expense reimbursement, which covers their expenses for having been the stalking horse. And the reason that these protections are important is like a Section 363 sale, ABC sales are subject to marketing and higher and better offers because the assignee has to maximize value. A third reason that ABCs have increased in popularity with potential buyers has to do with reduced risk. And you'll remember a minute ago, I talked about the reduced risk factor being something that the company cares about. It also benefits the potential buyer, and I'm going to give you two examples.

(09:03):

First, buyers have reduced risk with respect to successor liability claims because they're only buying assets, they're not buying an ongoing operating business, and they're not even buying the assets directly from the company, they're buying the assets from the third-party fiduciary. Additionally, there is a reduced risk of fraudulent transfer claims because the assignee as a fiduciary determines that the sale price represents reasonably equivalent value. And finally, I would note that I think ABCs have increased in popularity with potential buyers because of the process for addressing the creditor claims of the assignor. Similar to a bankruptcy, the assignee will set a deadline for creditors to file claims, and then those claims will be discharged in the ABC, and this therefore reduces the risk of creditors of the assignor attempting to collect amounts from the buyer.

**Nick Stawasz (10:02):**

That's great. Well, clearly there are a number of advantages for a buyer to pursue an ABC, but what are some of the challenges that a buyer may face?

**Evelyn Meltzer (10:11):**

Thanks, Nick. I definitely think there are some challenges with respect to buying assets in an ABC sale, but I think that there are ways to address those challenges, which I will also highlight as we discuss these challenges. I think the first challenge is the fact that anti-assignment provisions are valid in an ABC sale, unlike in a Section 363 sale. I think the key here is for the potential buyer to start a dialogue with key contract parties as soon as possible in order to obtain their consent to have the contract assigned or to enter into a new contract with that party. And I think ABCs allow for creativity, which is again, one of the reasons that I think you're seeing their growth in popularity. I recently had a deal where the buyer agreed to step into the shoes of a key contract party's claim in the ABC case.

(11:14):

This allowed the contract party to get paid immediately, which is what it wanted. The buyer was ultimately going to get a distribution back on that claim, but the buyer had to wait for the ABC process to play out, which took a while. But this allowed both parties to get what they wanted, buyer got the contract, contract party got paid. So it's just an example how parties can use creative ideas in ABC cases. A second challenge of buying assets in an ABC sale is the fact that there is less uniformity and predictability in an ABC case compared to a bankruptcy. In Chapter 11, there are clear rules regarding how the sale process works. In an ABC, the procedures and court involvement may vary significantly by state, and even in states where there is court supervision, it can also depend on which judge you get. The solution here is that a potential buyer needs to work with the assignor and the assignee in the pre-planning ABC stage to think about what venue to file the ABC in, and also to ensure that there are clear expectations on timing, court involvement, and the overall creditor process.

(12:36):

A third challenge of buying assets in an ABC has to do with the fact that there is limited free and clear comfort compared to a Section 363 sale. In a bankruptcy sale, a buyer will obtain a sale order from the bankruptcy court that they are purchasing the assets free and clear of liens, claims, and interests. And there is a well-developed body of case law with respect to Section 363. In an ABC sale, the buyer will get limited reps and warranties, and the sale is as is, where is. The assignee is often a special purpose entity form to hold the assets of the assignor, so there won't be any real recourse for the buyer if the sale turns out not to be what the buyer thought it was getting. Additionally, there will be limited judicial blessings if at all, obviously depending whether or not you're in a jurisdiction that has court supervision or not.

(13:38):

Even here in Delaware where ABCs are done under the purview of the Court of Chancery, it is unusual to get a sale order from the court. However, before closing a sale here in Delaware, you are required to give notice to the court and parties in interest regarding the sale, which I think brings us therefore to kind of the solution to all of this, which is that diligence and notice to parties in interest is key. With an ABC, the comfort comes from the process, notice, and diligence rather than from a single sweeping sale order.

**Nick Stawasz (14:16):**

Thank you, Evelyn. I'd like to spend a little more time if we can on one of the items you talked about, and that specifically is less uniformity and predictability. I think as attorneys, we're always looking for predictability to properly advise our clients. So is there anything being done with respect to that uniformity and predictability?

**Evelyn Meltzer (14:37):**

Yes, there is. On October 20th of 2025, the Uniform Law Commission approved the Uniform Assignment for Benefit of Creditors Act. Individual states now need to adopt the Uniform ABC Act, and to my knowledge, no state has currently adopted it. Here in Delaware, I served on the ABC Committee of the commercial law section of the Delaware State Bar Association. We reviewed the act and provided recommendations to the Executive Committee of the Delaware State Bar Association, which unanimously approved it. It is now making its way through the Delaware legislative body and hopefully will be adopted this year. From the perspective of buyers, the ABC Uniform Act, as adopted by states, promises more consistency. It will provide for clearer roles on notice, creditor's rights, and the assignee's powers, which ultimately should reduce risk and cost with respect to ABCs.

**Nick Stawasz (15:37):**

That's some positive developments there. Thank you. What are some of the hot issues and topics currently with respect to ABCs?

---

**Evelyn Meltzer (15:45):**

So I'd like to point out three today that I think are really interesting and what we're seeing a lot of with respect to ABCs. And I think the first has to do with what type of companies are filing for ABCs. We are seeing a substantial number of ABCs in the tech and biotech space where the main value is the intellectual property and the people rather than hard assets. These companies have limited cash to fund an ABC, but they also have a manageable creditor group making them an ideal fit for an ABC. Often with these type of venture-backed early stage companies, you might have a few trade vendors, a landlord or two, some employees, and maybe a secured creditor. But again, having a smaller group and limited assets and the type of assets really makes this ideal for an ABC and for being able to effectuate a sale to a third party.

(16:39):

Additionally, we're seeing an increase in the role of the senior lender and specifically the fact that senior lenders are increasingly steering borrowers into ABCs because of all the positive reasons I discussed earlier, that they're faster, that they're less expensive. And as I discussed earlier, we're seeing the lender wanting to do the pre-ABC planning in which a buyer is identified before the ABC is effectuated, which enables the process to move quickly and benefits all of the constituencies. And finally, another trend that we're seeing in ABCs has to do with cross-border complexities. For companies with foreign subs or assets, ABCs are being combined with foreign liquidations or the sale of equity in the foreign subsidiaries, which can create both opportunities and structuring challenges for buyers.

**Nick Stawasz (17:35):**

Thank you. Before we conclude, Evelyn, is there one last takeaway you would want to share with our private equity clients who may be interested in acquiring assets through an ABC?

**Evelyn Meltzer (17:46):**

Absolutely. I think it's important to note that a buyer that wants to get a leg up in an assignment for benefit case should consider buying the secure debt at a discount or providing dip equivalent funding for the ABC. This gives the buyer, as lender, significant influence over things such as the choice of the assignee and the overall sale process. It also allows the buyer to credit bid the full face amount of the debt, even if it purchased it at a discount, effectively increasing its bidding power relative to cash bidders as part of the ABC sale process.

**Nick Stawasz (18:27):**

Thank you, Evelyn. This has been a great discussion, and I'm looking forward to future installments in our series of private equity and distressed assets podcasts. Future episodes in this series will cover topics such as debt for equity and loan to own strategies, which Evelyn, you just touched on, and potential traps for the unwary in distressed M&A transactions. Thank you to our audience for listening today. Please keep your eyes open for future episodes of PE Pathways, where we bring experienced deal makers on to share their thoughts on current private equity and M&A trends and developments. You can find the latest episodes of *PE*

---

*Pathways*, including the first two episodes of this distrust asset series, wherever you get your podcasts.

Copyright, Troutman Pepper Locke LLP. These recorded materials are designed for educational purposes only. This podcast is not legal advice and does not create an attorney-client relationship. The views and opinions expressed in this podcast are solely those of the individual participants. Troutman does not make any representations or warranties, express or implied, regarding the contents of this podcast. Information on previous case results does not guarantee a similar future result. Users of this podcast may save and use the podcast only for personal or other non-commercial, educational purposes. No other use, including, without limitation, reproduction, retransmission or editing of this podcast may be made without the prior written permission of Troutman Pepper Locke. If you have any questions, please contact us at [troutman.com](http://troutman.com).

-----

*DISCLAIMER: This transcript was generated using artificial intelligence technology and may contain inaccuracies or errors. The transcript is provided "as is," with no warranty as to the accuracy or reliability. Please listen to the podcast for complete and accurate content. You may [contact us](#) to ask questions or to provide feedback if you believe that something is inaccurately transcribed.*