Evolution of Valuation in Bankruptcy

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Valuation, solvency, and adequate capitalization analysis are central to corporate reorganization and bankruptcy.

- **Allowance of claims**
  - Claim relative to value of collateral determines secured vs. unsecured.
  - Some property tax claims disallowed if greater than value of property.

- **Adequate protection**
  - Debtor has no equity.
  - Or value of collateral likely to decline.

- **Avoidance actions**
  - Fraudulent transfer → “insolvent” or inadequately capitalized.
  - Preference → “insolvent”
Valuation, solvency, and adequate capitalization analysis are central to corporate reorganization and bankruptcy

- **Rejection of collective bargaining agreements**
  - Rejection must be necessary for successful reorganization
  - Financial status of debtor relevant

- **Plan confirmation**
  - Because of priority, valuation helps determine allocation among claimants and extent of discharge
  - Plan must be feasible

- **363 sales**
  - Sales price considered relative to expected recovery under alternate sale or reorganization plan
Judicial valuation methods evolved gradually, generally trailing the financial community.

Frequency of valuation terms in books
1900-2006

Source: Google Books Ngram viewer; Consolidated Rock; Blum, .
Market-based solvency analysis has many advantages over the traditional accounting-based approach

**Improved accuracy & consistency**

Market prices are a historical record of professional investor opinion at a specific point in time and prices therefore cannot exhibit hindsight bias.

Precedent is more valuable if it is based on a unitary, consistent metric.

Market-based measures of solvency historically have been more accurate than rating agency, analyst, and accounting based measures.

**Faster, cheaper, and more nuanced**

Market-based analysis is faster and cheaper—the financial markets have already done most of the work.

Courts can shift from a binary view focused on a single point in time to a probabilistic point of view that acknowledges changes over time.

**Risk management and prevention**

Clear ex-ante liability empowers risk managers at investment banks to block imprudent transactions before they are completed.

Commitments explicitly contingent on solvency / adequate capitalization?

Easier to prevent a bad transaction than to make stakeholders whole after the fact.
Caesars risk-neutral market-implied probability of default: Comparison of CDS and bond spreads

Market participants’ view of probability of Caesars Entertainment Operating Company default within 5 years, assuming 30% recovery

Percent, Nov. 2006 – Jan. 2015*

*Caeasars Entertainment Operating Company filed bankruptcy in January of 2015.

CDS probabilities of default based on 5-year CDS spread from Bloomberg CBIN and 5-year swap rate. Bond probabilities based on spread between yield of CEOC 6 ½ percent 6/1/2016 Senior Unsecured Bullet Bond and U.S. Treasury with similar maturity date.
Key cases in the history of valuation

- Consolidated Rock Products Co. v. Du Bois, 312 U.S. 510, 526-527 (1941)
- Group of Investors v. Milwaukee R. Co., 318 U.S. 523 (1943)
- Basic v. Levinson, 485 U.S. 224, 244 (1988)
- In re Iridium Operating LLC, 373 B.R. 283, 352 (Bankr. S.D.N.Y. 2007)
From this record it is apparent that little, if any, effort was made to value the whole enterprise by a capitalization of prospective earnings.

The criterion of earning capacity is the essential one if the enterprise is to be freed from the heavy hand of past errors, miscalculations or disaster, and if the allocation of securities among the various claimants is to be fair and equitable.

Since its application requires a prediction as to what will occur in the future, an estimate, as distinguished from mathematical certitude, is all that can be made. But that estimate must be based on an informed judgment which embraces all facts relevant to future earning capacity and hence to present worth…

But in practice multiples analysis was routinely used for decades

- The usual valuation process involves making a projection of earnings . . . and then capitalizing earnings at an appropriate rate. Capitalization establishes the relationship between projected earnings and total present value. . . . For example, if the annual earnings of the business are deemed to constitute 20 percent of its worth, the earnings would be said to be capitalized at a 20 percent rate or on a five times earnings basis. . . . Some guidance may be found in comparisons with rules of thumb frequently used in the valuation of businesses and in the price-earnings ratios of securities traded in the public market.


- In . . . Jade Oil and Gas Co. under Chapter X of the Bankruptcy Act, the Securities and Exchange Commission for the first time in over a decade discussed and applied a projected cash flow method of arriving at value for reorganization purposes.

Shortly after Delaware courts embraced DCF for corporate appraisals, bankruptcy courts started to use it more regularly

- “The so-called "Delaware block" or weighted average method . . . has been in use for decades. . .

- However, to the extent it excludes other generally accepted techniques used in the financial community and the courts, it is now clearly outmoded. [The] weighted average method of valuation . . . shall no longer exclusively control such proceedings.

- We believe that a more liberal approach must include proof of value by any techniques or methods which are generally considered acceptable in the financial community and otherwise admissible in court . . .

DCF became popular with bankruptcy courts starting in the late 1980s

Debtors' and Creditors' use of DCF valuation models, 1982-1998

Percent of Bankruptcy cases

Note: Missing data for 1983 and 1996 interpolated by averaging previous and following years' data.
Comparables continue to be used for decades, and only faded gradually with the rise of DCF

Debtors' and Creditors' use of Comparables valuation models, 1982-1998

Percent of Bankruptcy cases

Note: Missing data for 1983 and 1996 interpolated by averaging previous and following years' data.
Source: Trujillo (2005), figures 15 and 16.
### DCF and multiples are subjective and easily manipulated

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Delaware and New York Courts have started to use market prices to limit reliance on experts and avoid hindsight bias

**Basic v. Levinson (1988)**
- U.S. Supreme Court embraces the efficient market hypothesis and the ability of well informed, well regulated securities markets to value securities

**VFB (2005-2007)**
- Delaware District Court and Third Circuit use security market prices to value an entire firm for fraudulent transfer analysis
- Court considers stock prices, bond prices (par), and access to credit
- Misinformation cured by checking market price after truth was disclosed
- Expert opinion a distant second to market valuation

**Iridium (2007)**
- S.D.N.Y. Bankruptcy Court approvingly cites VFB
- Stock market prices and access to credit as signs of valuation
- Notes in dicta that a sharp stock price decline may suggest a slide into the zone of insolvency
SCOTUS has embraced market-based valuation:

“[T]he best way to determine value is exposure to a market,” not through a “determination . . . made by a judge in bankruptcy court.”


“[T]he market . . . ideally transmits information to the investor in the processed form of a market price. Thus the market is performing a substantial part of the valuation process performed by the investor in a face-to-face transaction. The market is acting as the unpaid agent of the investor, informing him that given all the information available to it, the value of the stock is worth the market price.”

“In an open and developed market . . . purchasers generally rely on the price of the stock as a reflection of its value.”

Delaware and Third Circuit Courts have embraced market-based solutions:

“The district court regarded the hired expert valuations as a side-show to the disinterested evidence of VFI’s capitalization in ‘one of the most efficient capital markets in the world’:

‘... There is simply no credible evidence to justify setting aside VFI’s stock price and the other contemporaneous market evidence of VFI’s worth. Even if, as VFB implies, the market was suffering from some “irrational exuberance” in establishing VFI’s stock price, that gives me no basis for second-guessing the value that was fairly established in open and informed trading.’

New York Courts have embraced market-based solutions:

“The fact that Iridium failed in such a spectacular fashion stands out as a disturbing counterpoint to the market’s optimistic predictions of present and future value for Iridium, but in the end, the market evidence could not be denied.

The capital markets synthesized and distilled what all the smart people of the era knew or believed to be true about Iridium. Given the overwhelming weight of that market evidence, it may be that the burden of proving insolvency and unreasonably small capital simply could not be met under any circumstances, regardless of the evidence adduced, in the wake of the Third Circuit’s VFB decision . . . ”

-In re Iridium Operating LLC, 373 B.R. 283, 352 (Bankr. S.D.N.Y. 2007) (emphasis added)
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Market-based methods seem to be gradually gaining greater acceptance, with more nuanced understanding of limitations.

**American Classic Voyages (2008)**
- Delaware District Court
- Market-based methods are not mandatory under VFB
  - DCF and expert testimony remain acceptable methods of solvency analysis
  - Court nevertheless sides with defense experts whose analysis was more consistent with market-based measures
  - Debtor able to refinance debt and had access to revolving credit in spite of drop in equity value

**Tronox (2013)**
- S.D.N.Y. Bankruptcy Court
- When debtor did not disclose material liabilities to market, market assessment of debtor’s prospects unreliable
- Ability to raise secured debt provides less evidence of solvency than unsecured debt or equity
  - high recovery rate for secured debt → not sensitive to default risk

**Halliburton (2014)**
- SCOTUS hears challenge to *Basic v. Levinson*
  - Fraud-on-the-market theory of *Basic v. Levinson* is valid—market price presumed to be accurate and efficient
  - Party wishing to reject market valuation must prove that the markets are inefficient as a result of manipulation
Market-based solvency analysis has many advantages over the traditional accounting-based approach

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Some predictions

- Traditional methods will continue to be used alongside market-based methods for the foreseeable future.

- Courts will become more sophisticated in their understanding of market-based methods and eventually more reliant on these methods.
Backup

Backup slides
Using Credit Spreads for Adequate Capitalization and Solvency Analysis

- Legal background
- Problems with traditional methods of solvency analysis
- Courts in search of a market-based solution
- A better approach—credit spreads
Corporate debtor’s credit risk is legally relevant and often hotly contested

- Retrospective litigation
  - Constructive fraudulent transfer / voidable transactions litigation
  - Duty to creditors in the “zone of insolvency”
  - Preference litigation (maybe)

- Prospective transactional advice
  - Solvency opinions in anticipation of leveraging transactions
    - Leveraged buyouts
    - Dividend recapitalizations
    - Corporate spin-offs
    - Upstream or affiliate guarantees
Fraudulent transfer law limits transfers of risk from equity holders to creditors

Liens and obligations incurred within 2 to 6 years of bankruptcy can be avoided if:
Fraudulent transfer law limits transfers of risk from equity holders to creditors

Liens and obligations incurred within 2 to 6 years of bankruptcy can be avoided if:

1. **Transaction destroyed value for the debtor**
   - For less than reasonably equivalent value; OR
   - Without fair consideration;
Fraudulent transfer law calls for prospective credit analysis at time of transfer

Liens and obligations incurred within 2 to 6 years of bankruptcy can be avoided if:

1. **Transaction destroyed value for the debtor**
   - For less than reasonably equivalent value; OR
   - Without fair consideration;

   AND

2. **Debtor was insolvent or inadequately capitalized at the time of the transaction**
   - Already insolvent or became insolvent as a result; OR
   - Engaged in business with *unreasonably small capital (assets)*; OR
   - Intended or believed it was incurring debts that it could not repay as they matured
Leveraged buyout transactions frequently satisfy the “not for reasonably equivalent value” prong of fraudulent transfer liability.

Acquirer offers to buy equity at substantial premium to market price.

Firm borrows money from the bank and offers its assets as collateral.

Acquirer uses the borrowed funds to pay old shareholders for their equity.

New owner, less equity, less cash, more debt.
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Courts rely on the opinions of experts using methods of solvency analysis that are subjective and easily manipulated.

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Courts are supposed to make adequate capitalization determinations without hindsight

The court’s task is “not to examine what happened to the company but whether the projections employed prior the LBO were prudent. . . . [A] decision should not be made using hindsight.”


“We know, with hindsight, that the forecasts were not realized. But ‘[t]he question the court must decide is not whether [the] projection was correct, for it clearly was not, but whether it was reasonable and prudent when made.’”

Experimental evidence suggests that traditional methods lead to legally impermissible hindsight bias

- Real judges
  - 2 studies, collectively including hundreds of judges
- In a similar situation
  - Evaluating auditors’ reports for company that subsequently did poorly
- Show hindsight bias
  - Judges opinion of auditors depends on whether judges knew the ultimate outcome for the company
- Hard to de-bias
  - Instructions not to use hindsight don’t work
  - Risk of higher level review does not work
  - Deference to primary reviewer helps
Using Credit Spreads for Adequate Capitalization and Solvency Analysis

- Legal background

- Problems with traditional methods of solvency analysis

- Courts in search of a market-based solution

- A better approach—credit spreads
New York Courts have embraced market-based solutions:

“The fact that Iridium failed in such a spectacular fashion stands out as a disturbing counterpoint to the market’s optimistic predictions of present and future value for Iridium, but in the end, the market evidence could not be denied. The capital markets synthesized and distilled what all the smart people of the era knew or believed to be true about Iridium. Given the overwhelming weight of that market evidence, it may be that the burden of proving insolvency and unreasonably small capital simply could not be met under any circumstances, regardless of the evidence adduced, in the wake of the Third Circuit’s VFB decision . . . ”

Equity prices and bond prices are bad measures of solvency: Equity prices can go up while bond prices go down

Note: HCA buyout was announced July 24, 2006 and completed November 20, 2006
Source: Bloomberg
Bond prices are a bad measure of solvency: Many factors besides default risk affect bond prices.

As prevailing market interest rates go up...

...Bond prices go down (especially for bonds with high duration)
Using Credit Spreads for Adequate Capitalization and Solvency Analysis

- Legal background
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- A better approach—credit spreads
Credit spread $\approx$ Corporate bond yield $-$ risk free rate

Credit spread $\approx$ Credit Default Swap spread

Risk neutral probability of default $\approx \frac{\text{Credit spread}}{\text{Loss rate given default}}$
Mathematical model:
Estimating risk-neutral market-implied probabilities of default

Corporate bonds

\[
1 - \frac{1 + \text{Risk free rate}}{1 + \text{Corporate bond yield}} \approx \frac{\text{Credit spread}}{\text{Loss rate given default}}
\]

Credit default swaps

\[
1 - \frac{1 + \text{Risk free rate}}{1 + \text{CDS spread} + \text{Risk free rate}} = \frac{1 + \text{Risk free rate}}{\text{Loss rate given default}}
\]

Cumulative probability of default

\[
= 1 - (1 - \text{probability of default in 1 year})^{\text{number of years}}
\]
As number of years in reach-back period increase, cumulative probability of default increases.

**Modeled risk-neutral cumulative probability of default assuming 30 percent recovery**

**Percent**

\[
\frac{1 - \frac{1 + \text{Risk free rate}}{1 + \text{CDS spread} + \text{Risk free rate}}}{\text{Loss rate given default}}
\]

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<th>23%</th>
<th>28%</th>
<th>33%</th>
<th>38%</th>
<th>43%</th>
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Note: Assumes risk free rate = 3%; Loss rate given default = 70% (i.e., 30% recovery rate). 100 bps = 1 percent. Source: Equations.
As expected loss rate increases, probability of default decreases

Modeled risk-neutral cumulative probability of default within 5 years

\[
\text{Percent} = \frac{1 - \frac{1 + \text{Risk free rate}}{1 + \text{CDS spread} + \text{Risk free rate}}}{\text{Loss rate given default}}
\]

Loss = 20%
Loss = 50%
Loss = 80%

Corporate Bond Yield Equiv.:

| 4%  | 8%  | 13% | 18% | 23% | 28% | 33% | 38% | 43% |

Note: Assumes risk free rate = 3%; Loss rate given default = 1 - recovery rate. 100 bps = 1 percent.
Source: Equations.

CDS spreads (bps)
Example: Caesars Fraudulent Transfer Litigation

- TPG and Apollo Global Management purchase Harrah’s / Caesars in LBO;
  - $30.7 billion (including assumption of $12.4 billion in debt)
  - Deal agreed December 2006
  - Deal closed January 28, 2008


- Examiner’s report
  - Analyzes solvency at a few points in time and uses “retrojection” to fill in the times in between
  - Suggests that the LBO itself is probably not a constructive fraudulent transfer because Caesars was solvent at the time
  - But a series of transactions from 2009 forward may be constructive fraudulent transfers
Caesars risk-neutral CDS market-implied probability of default and selected transactions

CDS market participants’ view of probability of Caesars Entertainment Operating Company default within 5 years
Percent, Oct. 2007 – Nov. 2014*

Assuming 40% recovery
Assuming 20% recovery

* Caesars Entertainment Operating Company filed bankruptcy in January of 2015.

Probabilities of default based on 5-year CDS spread from Bloomberg CBIN (Intra-day NY). Transactions closing date showed as vertical lines. 5-year swap rate used as risk-free rate (results would have been similar with 5-year constant maturity treasury).
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Caesars risk-neutral bond market-implied probability of default and selected transactions

Bond market participants' view of probability of Caesars Entertainment Operating Company default within 5 years

Percent, Nov. 2006 – Jan. 2015*

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Probabilities of default based on spread between yield of Caesars Entertainment Operating Company 6 ½ percent 6/1/2016 Senior Unsecured Bullet Bond and U.S. Treasury with similar maturity date. Transactions closing date showed as vertical lines.
Caesars risk-neutral bond market-implied probability of default within 2, 4, and 6 years

Bond market participants' view of probability of Caesars Entertainment Operating Company default assuming 30 percent recovery

Percent, Nov. 2006 – Jan. 2015*

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Probabilities of default based on spread between yield of Caesars Entertainment Operating Company 6 ½ percent 6/1/2016 Senior Unsecured Bullet Bond and U.S. Treasury with similar maturity date. Transactions closing date showed as vertical lines.
Backup slides
Example: 
Lyondell Chemical Leverage Buyout Fraudulent Transfer Litigation

- Basell purchases Lyondell Chemical in LBO;
  - $21 billion in secured debt
  - $12.5 billion paid out to shareholders
  - Deal announced July 17, 2007
  - Deal closed December 21, 2007

- Lyondell files bankruptcy in SDNY January 6, 2009 (slightly more than a year later)
  - Many affiliates also file from January through May 2009

- Unsecured Creditors allege LBO was a constructive fraudulent transfer, file suit against
  - LBO lenders
  - Sponsors
  - Former shareholders

- Plaintiffs claim LBO doomed the company to bankruptcy
Lyondell Chemical’s market implied probability of default within 5 years was approximately 20 to 30 percent at the time of the leveraged buyout.

* Lyondell Chemical company filed bankruptcy in January of 2009. Probabilities of default based on 5 year CDS spreads.
Lyondell was more likely to default than comparable chemical companies

CDS market participants’ view of select chemical companies’ probability of defaulting assuming 30 percent recovery

Percent, Jan. 2006 – Jan. 2009*

* Lyondell Chemical company filed bankruptcy in January of 2009. Probabilities of default based on 5 year CDS spreads.
Lyondell’s market implied probability of default within 1, 2, 3, 4, and 5 years based on 5 year CDS spreads

CDS market participants’ view of probability of Lyondell Chemical default assuming 30 percent recovery

Percent, Jan. 2006 – Jan. 2009*

* Lyondell Chemical company filed bankruptcy in January of 2009. Probabilities of default based on 5 year CDS spreads.
Credit default swap markets may contain better information than equity or bond markets

CDS markets are a haven for insider trading
- CDS markets anticipate negative credit rating agency actions and bad news yet to be publicly released
- CDS markets react faster to negative news than either equities or bond markets
- Participants are large institutions with access to inside information; no “noise” traders
- The SEC has admitted it has difficulty policing derivatives markets

CDS market are more “complete” and facilitate shorting
- No need to source the bonds and find an owner willing to lend them to a short-seller
- Only need a counterparty willing to place a long bet on the bonds
- May reduce transactions costs
- May enhance liquidity

CDS markets offer more anonymity and lower risk of retaliation
- Transactional disclosures are greater in the bond market
- Cash trades in debt instruments may be reflected on the balance sheet; derivatives trades are not
- Easier to get ownership information for equities and bonds than derivatives positions information
Counterparty risk, data quality, liquidity, and market manipulation concerns can be addressed through the litigation process and financial reforms.

- **CDS traders take on counterparty risk**: Collateral provides some protection.
  - Financial reform bill largely guarantees CDS against counterparty risk.

- **CDS data is based on quotes collected by third parties (CMA, Markit)**: In bankruptcy, a judge can permit discovery of trading records.
  - Financial reform bill mandates greater disclosure of price & volume data.

- **Data on CDS liquidity has historically been unavailable**: Discovery (see above); DTCC has voluntary started disclosing limited volume data.
  - Financial reform (see above).

- **CDS markets may be more vulnerable to manipulation because of lax enforcement and opacity**: In bankruptcy, possible discovery of trading records and communication.
  - Can use bond market as a quick check for manipulation.
Markets predicted General Motors’ bankruptcy years in advance

CDS market participants’ view of probability of GM default within 5 years
Percent, June 2002 - Mar. 2009*

* General Motors filed bankruptcy in July of 2009.

Source: Bloomberg, CMA, Equations.
Lehman Brothers appeared solvent until shortly before bankruptcy

CDS markets' view of probability of Lehman default within 5 years
Percent, Sept. 2001 - Sept. 2008*

* Lehman Brothers filed bankruptcy in September of 2008.

Source: Bloomberg, CMA, Equations.
Strong companies such as Coca-Cola remain unlikely to default, even during times of financial distress in the US economy.

CDS markets' view of probability of Coca-Cola default within 5 years


Source: Bloomberg, CMA, Equations.
HCA’s market-implied probability of default more than doubled after its LBO was announced

CDS markets' view of probability of HCA default within 5 years

Note: HCA buyout was announced July 24, 2006 and completed November 20, 2006
Source: Bloomberg, CMA, Equations.
Equity investors and creditors often have opposing interests.

**Upside values (p=25%)**
USD, billions

- **High Risk**: Debt: $10, Equity: $35
- **Medium Risk**: Debt: $10, Equity: $20
- **Low Risk**: Debt: $10, Equity: $5

**Downside values (p=75%)**
USD, billions

- **High Risk**: Debt: $0, Equity: $0
- **Medium Risk**: Debt: $5, Equity: $0
- **Low Risk**: Debt: $10, Equity: $0

**Expected values**
USD, billions

- **High Risk**: Debt: $2.5, Equity: $8.75
- **Medium Risk**: Debt: $6.25, Equity: $5.00
- **Low Risk**: Debt: $10.00, Equity: $1.25

**Equity prices can increase either because of increased risk to debt holders or because of improved performance.**
Credit default swap fees should theoretically be equal to the difference between corporate bond yields and the risk free rate.

**Investor A**
Low risk portfolio, wants to take more risk

- **Initial portfolio:**
  Risk free instrument yielding 5%

  - **Option 1:** Cash Market
    Sell risk free instrument, buy corporate bonds
  - **Option 2:** Derivatives Market
    Sell CDS Protection for 3% extra yield

**Investor B**
Risky portfolio, wants to reduce risk

- **Initial portfolio:**
  Corporate bond yielding 8%

  - **Option 1:** Cash Market
    Sell corporate bond, buy risk free instrument
  - **Option 2:** Derivatives Market
    Buy CDS protection for a 3% fee

* In practice, will often not be precisely equal because of taxes, liquidity, regulation, market fragmentation, transaction fees, and counterparty risk at derivatives dealers.
Basell was the riskiest LyondellBasell Industries entity, followed by Lyondell, Millennium, and Equistar

CDS market participants’ view of Lyondell entities’ probability of defaulting assuming 30 percent recovery
Percent, Jan. 2006 – Jan. 2009*

* Lyondell Chemical company filed bankruptcy in January of 2009. Probabilities of default based on 5 year CDS spreads.
Lyondell was more likely to default than comparable refining companies

CDS market participants’ view of refining companies’ probability of defaulting assuming 30 percent recovery

Percent, Jan. 2006 – Jan. 2009*

* Lyondell Chemical company filed bankruptcy in January of 2009. Probabilities of default based on 5 year CDS spreads.
New UVTA provision clarifies that plaintiffs bear the burden of persuasion of financial condition in constructive fraud

UVTA § 4(c)

(c) A creditor making a claim for relief under subsection (a) has the burden of proving the elements of the claim for relief by a preponderance of the evidence.

Comment 11

Subsection (c) [newly added in 2014] allocates to the party making a claim for relief under § 4 the burden of persuasion as to the elements of the claim. Courts should not apply nonstatutory presumptions that reverse that allocation, and should be wary of nonstatutory presumptions that would dilute it.

An example of a nonstatutory presumption that should be rejected is a presumption that the transferee bears the burden of persuasion as to the debtor’s compliance with the financial condition tests in § 4(a)(2) and § 5, in an action under those provisions, if the transfer was for less than reasonably equivalent value (or, as another example, if the debtor was merely in debt at the time of the transfer). See *Fidelity Bond & Mtg. Co. v. Brand*, 371 B.R. 708, 716-22 (E.D. Pa. 2007) (rejecting such a presumption previously applied in Pennsylvania).
Although insolvency is narrowly defined under the bankruptcy code as balance sheet insolvency . . .

The term “insolvent” means . . .

[a] financial condition such that

the sum of such entity’s debts

is greater than all of such entity’s property,

■ at a fair valuation,
■ exclusive of—

○ (i) property transferred, concealed, or removed with intent to hinder, delay, or defraud such entity’s creditors;
   AND
○ (ii) property that may be exempted from property of the estate . . .
Transfer from the debtor is voidable if no reasonably equivalent value and debtor:

- (I) was insolvent
  - on the date
    - that such transfer was made or such obligation was incurred,
      
      OR
    
  - became insolvent
    - as a result of such transfer or obligation;

  [OR]

- (II) was engaged in business or a transaction,
  - or was about to engage in business or a transaction,
  - for which any property remaining with the debtor was an **unreasonably small capital**;

  [OR]

- (III) intended to incur, or believed that the debtor would incur, **debts that would be beyond the debtor’s ability to pay** as such debts matured . . .
Some notable fraudulent transfer cases


- In re TOUSA,
  - 422 B.R. 783 (Bankr. S.D. Fla. 2009)
  - 444 B.R. 613 (S.D. Fla 2011)
  - 680 F. 3d 1298 (11th Cir. 2012)