

## STATE CAPITAL GROUP

*In re: Pasta Prima, Inc.*

Pasta Prima Inc. is the country's largest manufacturer and distributor of Italian labeled grocery products, including pastas, sauces, roast peppers, packaged olives and dry grated cheeses. Over the last century Pasta Prima grew into a nationwide company by the acquisition of small regional Italian grocery product companies, each of which served a unique geographic region and operated under unique geographic trademarks, in addition to manufacturing facilities located in different regions. Pasta Prima finds itself with excess manufacturing capacities, burdensome union work rules, high union wages and declining sales. It has also failed to introduce a gluten free line of product which would require substantial changes to its manufacturing processes. Further, its primary competitors are either large non-union competitors (with manufacturing facilities in the southern states) or niche competitors. Further its markets have been traditionally urban and blue collar but its products have failed to capture the attention of the millennial, who are flocking to live in its traditional markets.

In addition to the manufacturing assets and the trademarks, other assets of the Company include customer lists, distribution contracts and a series of patents relating to the design of the machinery for pasta production. It also has trade secret assets such as certain recipes and its process patent for the manufacture of its dried cheese product.

As a result of its financial difficulties the company has decided to file for bankruptcy and the Company's counsel and Creditor's Committee counsel are meeting to discuss how to "monetize"

the Company's intellectual property assets. Mary Lane represents the Unsecured Creditors Committee and Kitt Turner will represent the Debtor to discuss the assets.

### Initial Discussion

What is the nature of the Company's ownership interest in trademarks. [Are some of the trademarks licensed from third parties].

### Next Question

Do the Secured Creditors have properly effected security interests in any of the assets. [NOTE copyright issue, whether patents have been assigned in a patent office and whether the security interests in trademarks is separate and distinct from goodwill.]

### Next Topic

What assets can the Debtors assume and then assign in the bankruptcy proceeding.

[Discuss actual versus hypothetical test for assumption.]

[Discuss what rights the licensors might have for the trademarks as to which the Debtor is only a licensee.]

[Discuss the fact that the company has licensed some of its patents to equipment manufacturers who are selling equipment based on those patents.]

[Discuss how would one go about assuming and assigning different types of intellectual property.] [Introductory discussion to Section 365.]

[Discussion of Section 365(n).]

[The exclusion of trademarks from 365(n) why and what it means.]

[Back to the Lubrizol discussion. How does a buyer who is going to buy trademarks from this Debtor protect itself from the risks.]

[Non-executory trademark licenses, is that possible under the Eighth Circuit case law.]

[Acquiring the goodwill.]