

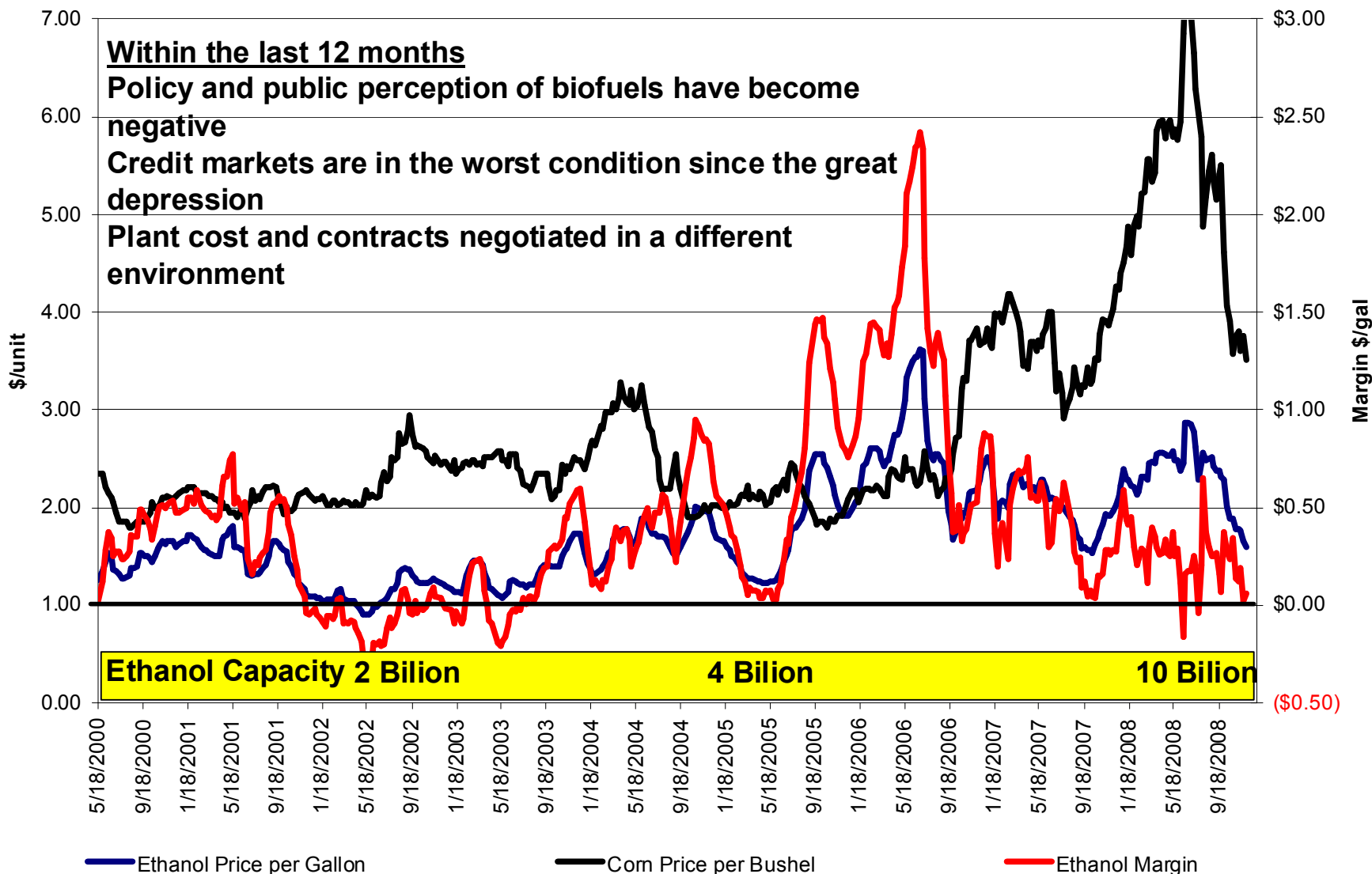
***Protecting Shareholder Value Through
the Strategic Use of Chapter 11
Bankruptcy
January 8, 2009***

Agenda

- **Market Dynamics and Implications**
- **Critical Issues for Boards & Management**
- **Understanding Your Options for Preserving Shareholder Value**
- **Ch 11 Process Overview**
- **Questions Discussion**

Market Dynamics & Implications

Ethanol Margin Analysis (Chicago)



The Implications

- **Plants facing declining margins, illiquidity, and/or reduced production**
 - Many having to do cash calls to investors
 - Some plants idling operations to protect cash
- **Reduced plant values**
 - Plant values below replacement costs
 - Creditors may be less well collateralized than have thought
 - Blood in the water attracting sharks
- **Insolvency**
 - As asset values fall below debt values and cash reserves are drained, relationships become strained and options become limited
- **Many plants now seeking to refinance, recapitalize and/or find themselves filing for chapter 11 bankruptcy**
 - For those plants unable to restructure or recapitalize in this environment there is typically nothing left for shareholders

Current State of the Ethanol Industry

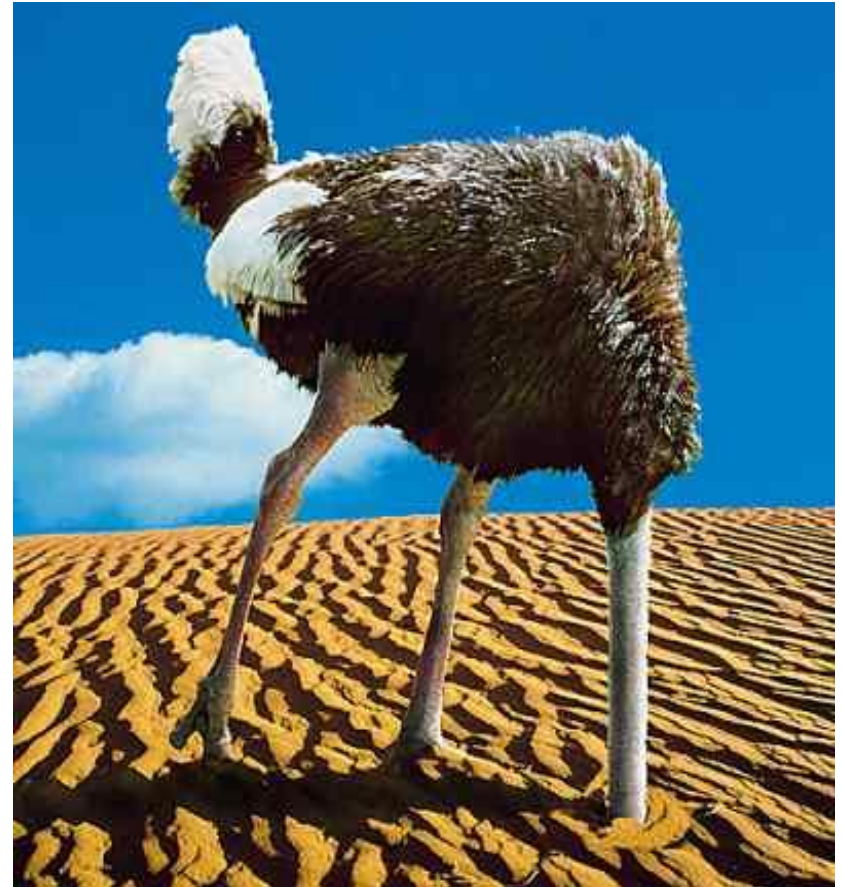
- **The Tragedy and the Hope...**
 - You may not control the realities of the market, but you do control how you respond to them
 - Too often companies seem to view Chapter 11 bankruptcy as the end...as something that happens when the money runs out and all else is lost
 - The fact is that managed effectively, C11 or the threat of C11 can represent a powerful tool to protect shareholder value and provide the time to realign the business to better fit with the market environment
 - That said, the process is not without its risks and challenges

Critical Issues for Boards and Management

- **Boards and management must be sure to work closely together to understand risk and devise plans to cope**
- **Management is the “eyes and ears” and will be the first to see signs of increased risk**
- **Management must communicate increased risk to the board**
- **The board must ask probing questions of management**
- **Ultimately, the board needs to set a strategy**
- **Management needs to execute the strategy**

Duty of Care: Basic Obligations

- Must identify problems and make decisions – may not be an “ostrich”
- Educate oneself regarding facts and issues
- Seek appropriate professional advice
- Make decision based on an informed analysis and evaluation
- *It is directors that fail to do this that get sued and lose*



Duty of Care: Common Breaches

- Failure to act when action by the board is necessary
- Failure to provide proper management oversight
- Failure to manage risks
- Failure to attend board meetings and be prepared
- Failure to investigate further after becoming aware of “red flags”

Notice that most breaches are “failures” to do something. When a board acts in good faith, there is less likelihood for liability. It is when boards fail to act that there are problems.

Business Judgment Rule

- **Good faith**
- **Reasonable**
- **Care of an ordinarily prudent person**
- **Codifies fiduciary duties**
- **Limits liability**
- **Focus on Process as opposed to Results**
- **Significant protection, but not absolute**
- **Assumes no conflicts of interests or self-serving by board members**

Overview of Basic Director Duties with Distressed Companies

- Directors have heightened duties when the company is facing a serious crisis
- In the Zone of Insolvency, directors owe a fiduciary duty to creditors as well as shareholders
- There is no hard and fast rule for when these duties begin, but if the board believes that there is a strong likelihood that the company may be unable to pay its debts when they become due in the near future, the company should consider itself in the Zone.
- Companies enter the Zone long before missing payments or declaring bankruptcy

Zone of Insolvency

- **Once you are in the Zone, Board must be aware of additional duties**
- **Must now balance these duties, may need to avoid taking riskier actions that have big payoffs but also big risk.**
- **Does not mean duties are owed ONLY to creditors, but now must consider them as well.**
- **Duty of care is owed to Creditors as well as the Shareholders**
 - Directors must maximize the value of assets for payment to creditors
 - Board may NOT favor Shareholders over Creditors when making decisions while in the Zone of Insolvency
 - Under the Absolute Priority Rule – secured and unsecured creditors claims trump claims of Shareholders to the capital of the company

Understanding the Pros and Cons of C11

Consider the Pros

- Leverage
- Time
- Contract renegotiation
- Ability to secure working capital and restructure credit terms
- Ability to reorganize for long term success

Consider the Cons

- Expensive
- Time consuming and intensive/painful process
- Loss of control
- Business disruption
- The stigma
- Risk

Improving Your Odds for C11 Success

- **Avoid Denial**
 - Remember you can hope for the best but make sure you're prepared for the worst
- **Position the Company to Have Options**
 - Covet thy working capital
 - Ensure adequate financial reporting and monitoring
 - Mark-to-market discipline (know your risk exposure)
 - Ensure leadership is prepared and aligned
- **Do Your Homework**
 - Understand bank and other stakeholder risks and perspectives
 - Define your options and the concessions required to succeed
- **Put Together Your Team**
 - Make sure team has direct experience
- **Assemble your 'war' plan**
- **Execute and adapt**

Strategic Options

- **Out of Court Restructuring**
 - Rehabilitation
 - Refinancing
 - Equity Infusion
 - Reamortize Debt
 - Going Concern Sale
 - Liquidation
- **Chapter 11**
 - 363 Sale
 - Plan

Financial Analysis

- **Develop and understand 13 week cash flow projection/budget**
 - Cash is king – critical operating expenses only
 - Understand and evaluate collateral base
- **Complete an assessment of the situation beyond basic financial reports**
- **Evaluate all strategic options**

The Out of Court Restructuring

- **Negotiate with all constituents**
- **Establish and earn credibility with all constituent groups**
 - No secrets/no surprises
 - Do what you communicated to do
- **Present plan against the backdrop of alternatives**
- **Proposed plan vs. Chapter 11 alternatives**

Advantages of Chapter 11

- **Breathing spell to renegotiate and reorganize**
- **Vehicle to implement a transaction (e.g. Sale or Plan)**
- **Single forum for resolution of all disputes**
- **Bind hold out creditors**
- **Suspend debt payments**
- **Obtain additional credit**

Contracts & Leases

- **Reject undesirable contracts and leases**
- **Advantageous environment to renegotiate**
- **Special rules for commodity and forward contracts**
 - Counter-party can terminate or accelerate
 - Counter-party can “net” rights
 - Payments exempt from avoidance including as a preferential transfer

363 Sale

- **Sale of all or part of assets**
- **Maximize value because sell free & clear if**
 - Lienholder consents
 - Property sells for more than value of liens
 - Bona fide dispute
- **Liens attach to proceeds**
- **Auction process**

Plan of Reorganization

- **Exclusivity**
- **Classification of claims**
 - Write down secured debt to collateral value
 - Restructure payment terms
 - Negotiations
 - Class voting – 2/3 in dollars and 1/2 in number
 - Binding effect

For more information, contact:

Fredrikson & Byron

Todd Taylor

ttaylor@fredlaw.com

612-492-7355

or

Ryan Murphy

rmurphy@fredlaw.com

612-492-7310

Ascendant Partners

Kirk Martin

kmartin@ascendantpartners.com

303-221-4700

or

Scott McDermott

mcdermotts@ascendantpartners.com

303-221-4700

Thank You

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