

Global Restructuring Review

# The Art of the Pre-Pack

**Editors**

Yushan Ng and Jacqueline Ingram



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Yushan Ng and Jacqueline Ingram

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## Publisher's Note

'Pre-packs' are a hot topic in the world of restructuring and insolvency – wherever you are. But – until now – there hasn't been a thematic overview that sets out the essentials of different jurisdictions while also drawing out what they have in common. This guide changes that.

It draws on the wisdom of 18 pre-eminent practitioners to help the reader become more adept at completing a pre-pack deal, through a series of overviews, country chapters and case studies. *The Art of the Pre-Pack* is GRR's second such guide, joining *The Art of the Ad Hoc* in our library. We hope you enjoy the volume, which will be revised and expanded regularly. If you have feedback, or would like to participate, don't hesitate to get in touch. Please write to us at [insight@globalrestructuringreview.com](mailto:insight@globalrestructuringreview.com)

The publisher would like to thank the editors of this guide for their energy and vision, without which the book wouldn't have been possible.

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# Part II

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## Pre-Packs in the United States



# 5

## Seeing the Future: The Case of Seegrid Corporation

**Robert J Dehney and Matthew B Harvey<sup>1</sup>**

### **Introduction**

Seegrid Corporation is an artificial intelligence and robotics company based in Pittsburgh, Pennsylvania that produces self-driving vehicles for materials handling. By 2014, after years of raising capital to support product development and business growth, the company was faced with a convoluted capital structure and overburdened balance sheet that hampered its ability to raise new capital. To make matters worse, the second-largest investor of Seegrid threatened to block new investment and commenced litigation against the company's directors and the company's largest investor related to their efforts to restructure the company.

Following failed efforts to break the deadlock and recapitalise the company, Seegrid's only option was to pursue a restructuring in Chapter 11. To minimise disruption to its business and mitigate execution risk, Seegrid pursued its restructuring through a pre-packaged Chapter 11 plan. Though the dissident investor forcefully opposed the plan, Seegrid obtained a key court ruling that neutered the investor's leverage, and the bankruptcy court ultimately confirmed the plan, allowing Seegrid to restructure and emerge from Chapter 11 in just three months.

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<sup>1</sup> Robert J Dehney is a partner and Matthew B Harvey is a partner-elect at Morris, Nichols, Arsht & Tunnell LLP. The authors would like to thank Jennifer M McNally and Brett S Turlington for their assistance in writing this chapter.

## **Background**

Seegrid was founded in 2003 by Dr Hans Moravec and Dr Scott Friedman to bring automation to high-volume commercial vehicles.<sup>2</sup> Seegrid provides automation solutions for high-volume commercial vehicles, including pallet trucks and tow trucks.<sup>3</sup>

As of its Chapter 11 filing, Seegrid's corporate headquarters, located in Pittsburgh, housed Seegrid's research and development, engineering, technical support, global sales and marketing, and corporate functions.<sup>4</sup> Seegrid also maintained an engineering facility in Lowell, Massachusetts.<sup>5</sup> In mid 2014, Seegrid had 41 full-time employees, two interns and one part-time employee.<sup>6</sup>

From its inception in 2003 until its Chapter 11 filing in 2014, Seegrid developed the first automation system focused on seamlessly converting commercial industrial vehicles (pallet trucks and tow tractors) into low-cost robotic industrial vehicles that do not require additional infrastructure.<sup>7</sup> Robotic industrial vehicles improve the economics and operations of an existing industry through reduced labour costs and improved efficiency and safety.<sup>8</sup> Unlike previous attempts at vehicle automation, Seegrid's robotic industrial vehicles leverage the existing manufacturing, sales and field service operations of original equipment manufacturers.<sup>9</sup>

Seegrid's automation system integrates a proprietary and patented software technology to 'see' its environment, map it in a virtual 'grid' and guide the vehicle – thus the company's name, 'Seegrid'.<sup>10</sup> The technology is state-of-the-art yet simple to use, as it does not require additional infrastructure or a specialised team of engineers to instal, support or operate the robotic industrial vehicles.<sup>11</sup> Seegrid's software technology was designed by its team of engineers, including holders of five PhDs, and features sophisticated, state-of-the-art 'evidence grid' software technology, stereo camera technology, user interface or sliding autonomy interaction architecture, motion control technology, and enterprise and fleet information software technology.<sup>12</sup>

At the time of its Chapter 11 filing, Seegrid held 31 issued or allowed patents and over 40 patents in process on over 20 matters.<sup>13</sup> The patents and patent applications generally covered the automation of materials handling processes and the underlying robot perception technology.<sup>14</sup>

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2 'Declaration of David Heilman in Support of Debtor's Voluntary Chapter 11 Petition & First Day Motions' ¶ 26, *In re Seegrid Corp.*, No. 14-12391 (BLS) (Bankr. D. Del. 21 October 2014), ECF No. 3 (First Day Declaration).

3 id.

4 id. ¶ 38.

5 id.

6 id.

7 id. ¶ 39.

8 id.

9 id.

10 id. ¶ 40.

11 id.

12 id.

13 id.

14 id.

From its inception to 2014, Seegrid invested over US\$15 million in research and development costs to develop its technology, commercialise its product and refine the core software and probabilistic volumetric sensing approaches.<sup>15</sup>

By 2014, Seegrid was using its automation systems to fundamentally change the materials handling industry by automating pallet trucks, tow tractors, and other industrial vehicles.<sup>16</sup> Through automating materials handling, Seegrid's technology addressed one of the biggest challenges historically facing the industry: managing labour and controlling the associated labour costs.<sup>17</sup>

Seegrid's next phase of market development was to partner with top original equipment manufacturers (OEMs).<sup>18</sup> By 2014, Seegrid had secured agreements with three of the top-four OEMs in the industrial truck industry.<sup>19</sup>

By 2014, Seegrid was generating revenue from the sale of Seegrid-branded robotic industrial vehicles to dealers and end users, the sale of 'Guided by Seegrid<sup>®</sup>' automation systems (sometimes referred to by Seegrid as 'S-Kits') used by OEMs to convert their product into robotic industrial vehicles, and the sale of parts and services.<sup>20</sup> Seegrid continued to pursue raising capital because the company's revenue could not support expenditures including continued funding of product development and marketing.<sup>21</sup>

### **Pre-restructuring capital structure**

From its inception to its Chapter 11 filing, Seegrid raised approximately US\$61.4 million in funding from investors including its founders and financial investors.<sup>22</sup> By 2014, Seegrid had two classes of shares authorised: common stock and preferred stock.<sup>23</sup> Preferred stock comprised six series: Series A Preferred Share Interests, Series A-1 Preferred Share Interests, Series B Preferred Share Interests, Series C Preferred Share Interests, Series C-1 Preferred Share Interests, and Series D Preferred Share Interests.<sup>24</sup> At the time of its Chapter 11 filing, Seegrid's most recent equity financing was completed in 2009 and raised US\$7 million in proceeds from the sale of Series C-1 Preferred Share Interests.<sup>25</sup>

Seegrid also had approximately US\$45 million in funded debt outstanding, borrowed primarily from its two largest investors.<sup>26</sup> Through much of its existence, Seegrid was able to raise funds through unsecured convertible loans from its investors.<sup>27</sup> By late 2012, however, investors required enhanced terms for new or additional unsecured debt.<sup>28</sup> By early 2013,

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15 *id.*

16 *id.* ¶ 41.

17 *id.* ¶ 42.

18 *id.* ¶ 45.

19 *id.* ¶ 46.

20 *id.* ¶ 48.

21 *id.* ¶¶ 48–84.

22 *id.* ¶ 27.

23 *id.* ¶ 28.

24 *id.*

25 *id.*

26 *id.* ¶ 29.

27 *id.* ¶ 31.

28 *id.*

Seegrid was unable to raise capital on an unsecured basis and began issuing debt secured by substantially all of its assets.<sup>29</sup> Seegrid doubled the amount of secured debt financing by mid 2013.<sup>30</sup> Thereafter, through the middle of 2014, Seegrid's largest investors funded operational losses on a senior secured basis.<sup>31</sup>

At the time of its Chapter 11 filing, Seegrid's funded debt included over US\$15 million in secured debt issued in three separate priority tranches over a series of issuances.<sup>32</sup> Additionally, the company had over US\$39 million in outstanding unsecured debt issued in patchwork fashion over several years, much of which was convertible to equity on varying terms and conditions.<sup>33</sup> Finally, Seegrid had outstanding trade debt of approximately US\$2.6 million.<sup>34</sup>

### **Reasons for restructuring**

Seegrid's convoluted capital structure developed over time out of necessity, rather than by design.<sup>35</sup> Much of Seegrid's equity and funded debt were intended to serve as short-term solutions against a longer-term financing alternative or sale that never materialised.<sup>36</sup> As a result, Seegrid's equity and debt required consents and presented other restrictions to raising new capital or pursuing a transaction.<sup>37</sup> These restrictions dissuaded new outside investors, and Seegrid desperately needed to clean up its capital structure to attract new capital.<sup>38</sup>

Additionally, Seegrid had begun to experience deadlock among its two largest investors. Its largest investor, which held approximately 32 per cent of Seegrid's outstanding shares and had loaned Seegrid in excess of US\$34 million,<sup>39</sup> remained supportive, advancing funds as needed.<sup>40</sup> However, Seegrid's second-largest investor, which held approximately 21 per cent of Seegrid's outstanding shares and had loaned Seegrid in excess of US\$7 million,<sup>41</sup> ceased advancing funds in 2014 and began agitating against the efforts of the company and the larger investor to formulate and implement a long-term solution for the company's capital structure and financing needs.<sup>42</sup>

Throughout early and middle 2014, Seegrid's largest investor made a series of proposals to defer debt maturities, infuse new capital and simplify Seegrid's capital structure.<sup>43</sup> The investor also agreed to allow a full marketing process to seek outside investors or purchasers,

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29 id. ¶ 32.

30 id. ¶ 33.

31 id. ¶ 36.

32 'Disclosure Statement for Prepackaged Plan of Reorganization of Seegrid Corp. Pursuant to Chapter 11 of the United States Bankruptcy Code' at 22–24, *In re Seegrid Corp.*, No. 14-12391 (BLS) (Bankr. D. Del. 21 October 2014), ECF No. 11 (Disclosure Statement).

33 id. at 24.

34 id.

35 id. at 10.

36 id.

37 id. at 14–15.

38 id. at 11–12.

39 First Day Declaration, *supra* note 2, ¶ 9.

40 id. ¶¶ 65–84.

41 id. ¶ 9.

42 id. ¶¶ 65–84.

43 id. ¶¶ 72–83.

and even solicited the active involvement of the dissident investor.<sup>44</sup> All stockholders and debt holders would have been given the opportunity to participate in any transaction.<sup>45</sup> Furthermore, because these proposals were dilutive of existing investments, each proposal required unanimous consent of existing investors.<sup>46</sup> Investors were generally receptive to these proposals, but the dissident investor refused to consent.<sup>47</sup>

### **Triggers**

By mid 2014, Seegrid was running out of cash and needed to raise additional capital to fund operations.<sup>48</sup> Even more urgently, Seegrid was facing a looming debt maturity on 30 September 2014, when nearly all of its US\$45 million in funded indebtedness matured.<sup>49</sup> Seegrid did not have sufficient cash or access to capital to address these looming debt maturities.<sup>50</sup>

Although most of the debt holders would have been willing to extend the maturity date, the dissident investor group refused to do so.<sup>51</sup> Moreover, because the dissident investor's consent was required to extend the maturity date of any debt, and the dissident investor withheld its consent, Seegrid could not simply seek to satisfy the dissident investor's debt while extending other maturities.<sup>52</sup>

Compounding the issues facing the company, the dissident investor also commenced multiple litigations against Seegrid's directors and Seegrid's largest investor, alleging that they conspired in a 'malicious scheme to appropriate for themselves the entire value of Seegrid' at the expense of the dissident investor.<sup>53</sup> The complaints alleged that the directors and the supportive investor conspired to undercapitalise Seegrid so that the investor could increase its stake in the company at the dissident investor's expense.<sup>54</sup>

### **Overview of restructuring process**

By 2014, Seegrid was a promising company, with a compelling story and a ground-breaking product. But its convoluted capital structure stood in the way of attracting the new and continued investment necessary to see the company's progress to fruition. Accordingly, the primary goal of the restructuring was to simplify Seegrid's capital structure and pave the way for additional rounds of investments.<sup>55</sup>

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44 *id.*

45 *id.*

46 *id.* ¶ 76.

47 *id.* ¶ 83–84.

48 *id.* ¶ 7.

49 *id.* ¶ 11.

50 *id.*

51 *id.*

52 *id.*

53 'Verified Derivative Complaint' at 2, No. 10023-VCL (Del. Ch. 8 August 2014) (Complaint).

54 *id.* at 2–3.

55 See First Day Declaration, *supra* note 2, ¶ 107.

## Implementation options

To create the cleaned-up capital structure necessary to attract new investment while preserving as much value for existing investors as possible, Seegrid's largest investor proposed that Seegrid create a new operating subsidiary to which it would contribute substantially all of its assets.<sup>56</sup> New equity and debt financing would then flow into the operating subsidiary.<sup>57</sup>

This operating subsidiary proposal was first presented as an out-of-court restructuring proposal in July 2014 and refined multiple times over the ensuing weeks.<sup>58</sup> Owing to opposition from the dissident investor, however, the proposal could not be adopted and implemented.<sup>59</sup>

With an out-of-court solution out of reach, Seegrid focused its attention on potential in-court solutions. Chapter 11 presented the most feasible option because of the ability to bind hold-outs in the capital structure, such as Seegrid's dissident investor, while avoiding the need to liquidate the company's business or engage in expensive and lengthy non-bankruptcy litigation over control of the company.<sup>60</sup> Moreover, while Seegrid's largest investor was unwilling to continue to lend without a solution in sight, it was willing to fund a Chapter 11 case that addressed the company's capital structure.<sup>61</sup>

Among the options in Chapter 11, pursuing a Chapter 11 pre-packaged plan was more attractive than a Section 363 sale.<sup>62</sup> Unlike a Section 363 sale, the plan option had the potential to allow existing investors to remain in the company's capital structure.<sup>63</sup> Furthermore, a pre-packaged plan would allow the company to secure the required votes to approve its restructuring in advance of 'crossing the Rubicon' into Chapter 11, thereby assuring, at a minimum, that it would have the minimum level of stakeholder support necessary to exit Chapter 11.<sup>64</sup> Additionally, the pre-packaged nature of the Chapter 11 filing would shorten the company's stay in Chapter 11, thereby reducing costs and execution risk, and minimising disruption to the company's employees, vendors, customers and other stakeholders.<sup>65</sup>

For these reasons, Seegrid elected to pursue a pre-packaged Chapter 11 plan.<sup>66</sup>

## Key stakeholders

Seegrid's key stakeholders included its largest investor who would be providing critically necessary financing during and upon exit from its Chapter 11 case.<sup>67</sup> Other key stakeholders included Seegrid's remaining equity and debt holders who (apart from the dissident investor) recognised the need to address the company's capital structure and attract new investment.<sup>68</sup>

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56 *id.* ¶ 16.

57 *id.*

58 *id.* ¶¶ 74–83.

59 *id.* ¶¶ 83–84.

60 Disclosure Statement, *supra* note 32, at 16.

61 *id.*

62 See First Day Declaration, *supra* note 2, ¶ 82 (indicating that the Seegrid Board considered a proposal that would have involved pursuing a Section 363 sale).

63 *id.* ¶ 32 n.2.

64 Disclosure Statement, *supra* note 32, at 5.

65 *id.* at 16.

66 *id.*

67 First Day Declaration, *supra* note 2, ¶¶ 17–18.

68 *id.* ¶ 23.

These investors would also be offered the opportunity to participate in the new capital structure.<sup>69</sup> Seegrid's employees, trade creditors and customers (including the OEMs) were also key stakeholders.<sup>70</sup> Seegrid was keenly focused on ensuring that the process did not negatively impact its relationship with these stakeholders.<sup>71</sup>

Finally, the dissident investor was also a key stakeholder. Although a transaction through a Chapter 11 plan would not need the dissident investor's consent, the dissident investor had already shown its willingness to disrupt the company's restructuring efforts.<sup>72</sup> And, by this point, the dissident investor had commenced multiple litigations, including against Seegrid's directors and largest investor, related to efforts to address the company's capital structure.<sup>73</sup>

## **Negotiations and path to consensus with key groups**

Negotiations over a pre-packaged plan coalesced around the operating subsidiary structure that was previously considered as part of an out-of-court restructuring.<sup>74</sup> A key negotiating point was how to divide ownership of the operating subsidiary (which would be referred to as 'New Seegrid') between the company, new investment and employees.<sup>75</sup>

Seegrid viewed providing equity to employees as key to the success of the business because their existing equity interests had been diluted significantly through the multiple rounds of financing over the years.<sup>76</sup> Seegrid also needed to balance the need to attract new and continuing investment with the desire to preserve, to the greatest extent possible, the investments of existing stock and debt holders.<sup>77</sup> Additionally, Seegrid needed to assure debt holders and trade creditors of payment in full over time to make palatable its pre-packaged plan that preserved value for existing equity holders.<sup>78</sup> Therefore, Seegrid had to convince its debt holders and trade creditors to accept deferred payment in whole or in part.<sup>79</sup>

At the same time, Seegrid engaged in extensive negotiations with its largest investor over the terms of debtor-in-possession financing for its Chapter 11 case as well as exit financing to be used by New Seegrid.<sup>80</sup>

## **Implementation**

After extensive negotiations and input from key stakeholders, Seegrid was able to formulate a pre-packaged plan.<sup>81</sup> Additionally, Seegrid secured access to debtor-in-possession financing and an exit financing commitment, each premised on acceptance of the plan.<sup>82</sup>

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69 *id.*

70 *id.* ¶¶ 92–95.

71 *id.* ¶ 95.

72 *id.* ¶¶ 75–84.

73 See, e.g., Complaint, *supra* note 53, at 1–4.

74 Disclosure Statement, *supra* note 32, at 2.

75 See *id.* at 26–27.

76 *id.* at 14.

77 See *id.*

78 See *id.* at 24–25.

79 See *id.*

80 *id.* at 2.

81 *id.* at 1–2.

82 *id.*

## Structure of the pre-packaged transaction

The primary component of Seegrid's plan was a restructuring transaction in which substantially all of Seegrid's assets would be contributed to the newly created subsidiary, New Seegrid, free and clear of all claims and encumbrances.<sup>83</sup> In addition to the assets transferred by Seegrid, New Seegrid would be further capitalised with the proceeds of the issuance of preferred stock in New Seegrid.<sup>84</sup>

As part of its exit financing commitment, Seegrid's largest investor agreed to effectively backstop the issuance of preferred stock in New Seegrid by agreeing to subscribe to at least US\$10 million of the preferred stock.<sup>85</sup> Seegrid's other stockholders and convertible debt holders would also have the opportunity to purchase preferred stock in New Seegrid.<sup>86</sup> Additionally, Seegrid's secured debt would be converted to preferred stock of New Seegrid.<sup>87</sup> In the aggregate, preferred stock issued under the plan would amount to a 40 per cent stake in New Seegrid.<sup>88</sup>

In exchange for contributing substantially all of its assets to New Seegrid under the plan, Seegrid would receive a 45 per cent stake in New Seegrid in the form of common stock.<sup>89</sup> In this way, Seegrid's existing stakeholders would maintain their interests in Seegrid (and its assets) in existing ratios – albeit indirectly. This also meant that Seegrid's existing equity interests were 'unimpaired' under the Chapter 11 plan and therefore deemed to accept the plan.<sup>90</sup>

The final 15 per cent stake in New Seegrid was reserved for issuance to management and employees and directors of New Seegrid in accordance with an incentive and compensation plan to be adopted by New Seegrid's board.<sup>91</sup>

The plan also proposed that all of Seegrid's unsecured debt obligations be deferred in whole or in part.<sup>92</sup> The more than US\$39 million of unsecured note claims would be reinstated by Seegrid, and their maturity date would be extended to the fifth anniversary of the effective date of the plan.<sup>93</sup> The holders of trade debt, approximating US\$2.6 million in the aggregate, would receive, at their election, either: (1) cash equal to 50 per cent of the amount of their claim and a non-interest bearing promissory note issued by New Seegrid for the remaining 50 per cent of their claim; or (2) cash equal to 75 per cent of the amount of their claim at the plan effective date.<sup>94</sup>

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83 First Day Declaration, *supra* note 2, ¶ 16.

84 *id.*

85 *id.* ¶ 17.

86 *id.* ¶ 108.

87 *id.*

88 *id.* ¶ 90.

89 *id.*

90 'Debtor's Memorandum of Law in Support of Its Request for an Order (I) Approving the (A) Disclosure Statement Pursuant to Sections 1125 & 1126(B) of the Bankruptcy Code, (B) Solicitation of Votes & Voting Procedures & (C) Forms of Ballots & (II) Confirming the Prepackaged Plan of Reorganization Under Chapter 11 of the Bankruptcy Code' at 34, *In re Seegrid Corp.*, No. 14-12391 (BLS) (Bankr. D. Del. 17 December 2014), ECF No. 235 (Plan Memorandum).

91 First Day Declaration, *supra* note 2, ¶¶ 89–90.

92 See Disclosure Statement, *supra* note 32, at 24–25.

93 *id.* at 24.

94 *id.* at 25.



Seegrid received the requisite level of acceptance of its proposed plan from each impaired class prior to commencing its Chapter 11 case.<sup>95</sup> These acceptances, coupled with the deemed acceptance of Seegrid's equity holders, meant that Seegrid's plan had been accepted by all classes of claims and equity interests.<sup>96</sup>

## Challenges

Although Seegrid's plan achieved the requisite acceptance to avoid having to cramdown a class of claims or equity interests, the Chapter 11 case still faced great challenges. From the first day of the case, the dissident investor opposed Seegrid's Chapter 11 process, including objecting to its financing, opposing the Chapter 11 process timetable, and telegraphing its intent to litigate any and all issues the case.<sup>97</sup>

The dissident investor hired multiple law firms and financial professionals to mount an aggressive litigation campaign and oppose the pre-packaged plan.<sup>98</sup> Central to the dissident investor's opposition was the allegation that the pre-packaged plan undervalued Seegrid and its assets, and thus allowed the company's largest investor to capture an outsized portion of New Seegrid at too low a price.<sup>99</sup>

To prove its case, the dissident investor retained multiple valuation experts, including an expert on business valuation and an expert on intellectual property valuation, and planned to turn confirmation of Seegrid's pre-packaged plan into multi-week trial on valuation.<sup>100</sup> The cost and delay of this potential litigation threatened to imperil the pre-packaged plan, and, at a minimum, would give the dissident investor outsized leverage.

Through a key pretrial ruling on an issue of first impression, Seegrid and its professionals were able to neuter the dissident investor's efforts and greatly streamline the case. Seegrid successfully moved to exclude as irrelevant all evidence of Seegrid's value.<sup>101</sup> Seegrid argued that, because the pre-packaged plan had been accepted (or deemed accepted) by all classes of claims and interests, the bankruptcy court need not engage in valuing the company as would be required to satisfy the 'fair and equitable' requirement for a plan that not all classes of claims or interests had accepted.<sup>102</sup> Seegrid also argued that the legal requirement that a plan be 'proposed . . . not by any means forbidden by law'<sup>103</sup> did not require the bankruptcy court to evaluate the plan under the state-law doctrine of 'entire fairness',<sup>104</sup> that requires

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95 Plan Memorandum, *supra* note 90, at 47 (citing 'Declaration of Kathleen M Logan Certifying Voting on, & Tabulation of, Ballots Accepting & Rejecting Prepackaged Plan of Reorganization for Seegrid Corp.', *In re Seegrid Corp.*, No. 14-12391 (BLS) (Bankr. D. Del. 21 October 2014), ECF No. 12 (Voting Report)).

96 Plan Memorandum, *supra* note 90, at 17 (citing Voting Report).

97 Transcript of 'First Day' Hearing Before the Honorable Brendan L Shannon Chief United States Bankruptcy Judge at 19–20, 51–52, 62, *In re Seegrid Corp.*, No. 14-12391 (BLS) (Bankr. D. Del. 5 November 2014), ECF No. 72 (First Day Transcript).

98 Plan Memorandum, *supra* note 90, at 1.

99 Complaint, *supra* note 53, at 2–3.

100 First Day Transcript, *supra* note 97, at 64 (raising the possibility of a 'full on valuation trial').

101 Order Excluding Evidence . . . Related to Enterprise Valuation, *In re Seegrid Corp.*, No. 14-12391 (BLS) (Bankr. D. Del. Dec. 18, 2014), ECF No. 242 (Exclusion Order).

102 Debtor's Motion in Limine to Exclude Evidence . . . Related to Enterprise Valuation, *In re Seegrid Corp.*, No. 14-12391 (BLS) (Bankr. D. Del. 26 November 2014), ECF No. 87.

103 *id.* ¶ 27 (alteration in original) (quoting 11 U.S.C. § 1129(a)(3) (2018)).

104 *id.* ¶ 32 (quoting *In re Zenith Elecs. Corp.*, 241 B.R. 92, 108 (Bankr. D. Del. 1999)).

demonstrating, among other things, that the transaction resulted in a ‘fair price’ for the company’s assets.<sup>105</sup>

In its pretrial ruling, the bankruptcy court agreed with Seegrid and excluded evidence of Seegrid’s enterprise value at the hearing on plan confirmation.<sup>106</sup> This ruling drastically reduced the amount and cost of discovery and shortened what would have been a multi-week confirmation trial into just a couple of days.<sup>107</sup> It also significantly reduced, if not eliminated completely, the hold-out leverage of the dissident investor.<sup>108</sup>

The bankruptcy court subsequently confirmed Seegrid’s pre-packaged plan, finding that the plan was proposed in good faith and not by any means forbidden by law.<sup>109</sup> The plan went effective shortly thereafter.

Furthermore, as direct result of the findings of fact and legal conclusions the bankruptcy court made in connection with confirming Seegrid’s pre-packaged plan, Seegrid was able to obtain the summary dismissal of the dissident investor’s litigation against Seegrid’s directors and its largest investor.<sup>110</sup> Relying on the bankruptcy court’s findings of good faith in connection with the restructuring transactions in the pre-packaged plan, the state trial court determined that the directors and the largest investor could not be accused of breaching any duties or acting in bad faith, and therefore dismissed the dissident investor’s complaint.<sup>111</sup>

### **Final post-restructuring structure**

As a result of the pre-packaged plan, Seegrid was able to create New Seegrid to hold its assets with a fresh capital structure.<sup>112</sup> Whereas Seegrid’s capital structure comprised common stock, six series of preferred stock, multiple issuances of unsecured convertible notes, and multiple layers of secured debt, New Seegrid emerged with only two types of equity interests – common stock and a single series of preferred stock – and zero funded indebtedness, allowing New Seegrid to attract new and additional investment in a way that Seegrid could not, owing to its convoluted capital structure.<sup>113</sup>

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105 *id.*

106 Exclusion Order, *supra* note 101, at 2.

107 Curtis S Miller and William Alleman Jr, ‘Delaware Bankruptcy Court Reins in Hold-Out Leverage’, 34 *Am.*

*Bankr. Inst. J.* 12, 50 (2015) (providing additional information on this issue and the bankruptcy court’s ruling).

108 *id.*

109 ‘Findings of Fact, Conclusions of Law & Order (I) Approving the Debtor’s (A) Disclosure Statement Pursuant to Sections 1125 & 1126(B) of the Bankruptcy Code, (B) Solicitation of Votes & Voting Procedures & (C) Forms of Ballots & (II) Confirming the Prepackaged Plan of Reorganization of Seegrid Corp. Under Chapter 11 of the Bankruptcy Code’, *In re Seegrid Corp.*, No. 14-12391 (BLS) (Bankr. D. Del. 20 January 2015), ECF No. 337.

110 Transcript of Oral Argument on Nominal Defendant’s Motion to Substitute Plaintiff & Rulings of the Court at 79, No. 10023-VCL (Del. Ch. 14 July 2015).

111 *id.* at 75–79.

112 See ‘Reorganized Debtor’s Motion for Entry of a Final Decree Closing the Chapter 11 Case’ ¶ 8, *In re Seegrid Corp.*, No. 14-12391 (BLS) (Bankr. D. Del. 21 October 2016), ECF No. 445.

113 Disclosure Statement, *supra* note 32, at 18–19.

## **Conclusion**

Seegrid's restructuring was a resounding success. The pre-packaged implementation of its restructuring allowed the company to secure the necessary support before commencing Chapter 11, thereby providing a clear path to exiting Chapter 11 and minimising execution risk.

Moreover, by securing the accepting vote of all classes of its claims and interests, Seegrid was able to obtain a first-of-its-kind ruling from the bankruptcy court excluding valuation evidence, thereby drastically reducing the cost and delay associated with litigating confirmation of the plan and reducing the hold-out leverage of the dissident investor.

In the end, Seegrid was able to free its business from the existing convoluted capital structure through the 'drop down' transaction to New Seegrid, allowing the business to attract new investment. And, as an added benefit, Seegrid was able to leverage the bankruptcy court's ruling on the plan to obtain dismissal of the dissident investor's litigation against Seegrid's directors in another court.

# Appendix 1

## About the Authors

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For more than 20 years, Rob has focused on corporate restructuring, reorganisation and counselling. Rob's substantial experience extends to representations of debtors and creditors in all facets of pre- and post-Chapter 11 filings that include out-of-court reorganisation and restructuring, acquisitions and complex lending arrangements. He also provides corporate governance, fiduciary duty and strategic advice to boards of directors, special committees and executives.

Rob regularly works with inside and outside counsel, turnaround professionals, crisis management firms, investment and non-investment bank professionals, and debtors-in-possession (DIP) and exit financing lenders.

Rob's representative engagements span diverse industry segments that include health companies, retail, airline, housing, steel manufacturing, insurance, mortgage brokerage and consumer finance. He has worked on behalf of distressed companies, boards of directors, special committees and individual members, and other parties such as official equity committees and ad hoc committees in insolvency-related matters.

A frequent speaker before business and professional audiences, Rob has spoken at conferences coordinated by the *ABI Journal*, the *Norton Annual Survey of Bankruptcy Law*, *Global Restructuring Practice* and *The Journal of Private Equity*. Rob is ranked Band 1 among Delaware bankruptcy and restructuring attorneys by *Chambers USA*, listed in *The Best Lawyers in America* and selected for inclusion in *Delaware Super Lawyers*.

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Matt focuses on Chapter 11 business bankruptcy, bankruptcy litigation, reorganisation, and restructuring. He represents international, national and regional clients, including debtors, official and ad hoc committees, asset purchasers, debtor-in-possession (DIP) lenders, secured and unsecured creditors, petitioning creditors in involuntary bankruptcy filings and other parties in interest.

His experience includes in- and out-of-court restructuring transactions for publicly traded and private companies, and he has represented clients in bankruptcy litigation and appeals, as well as commercial litigation. Matt also has substantial experience representing debtors, foreign representatives, and others in cross-border cases.

Matt devotes a portion of his time to *pro bono* matters, such as serving as an attorney guardian *ad litem* in the Family Court for the State of Delaware. He is also a volunteer attorney for the Federal Civil Panel of the US District Court for the District of Delaware.

In 2017, Matt participated in the renowned National Conference of Bankruptcy Judges (NCBJ) Next Generation Program. Matt also was also one of eight attorneys selected for the Bankruptcy Trial Practice Seminar of the Delaware Chapter of the Federal Bar Association in 2017.

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