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Twenty Top Transactions

BANKRUPTCY

Even in an improving economy, corporations—and yes, cities—found themselves in over their heads.

A Texas Company's Twofer

TEXAS GIANT ENERGY FUTURE Holdings Corp. (EFH) is no stranger to superlatives. Eight years ago, the buyout that created EFH from the former TXU Corp. was the largest LBO ever. And when it filed for Chapter 11 with more than $45 billion in liabilities last year, it was the year's largest corporate bankruptcy (and the eighth-largest ever).

Linda Myers
Kirkland & Ellis
THE DEAL: Energy Future Holdings

Or was that two bankruptcies? Though there was only one filing, Kirkland & Ellis finance expert Linda Myers, whom EFH had brought on months before, had to negotiate funding terms—known as a debtor in possession, or DIP, financing—for EFH's two distinct business lines. The first, Texas Competitive Electric Holdings, a power conglomerate, was an easy sell: New loans could be secured by bricks-and-mortar plants, real estate and other assets of an operating business. The second DIP, for Energy Future Intermediate Holding Company (EFIH), would be harder: Its main asset was an equity interest in a transmission utility, Oncor Electric Delivery Holdings.

In late 2013, Myers negotiated a $4.48 billion DIP for EFH's first subsidiary with a group led by Citigroup Inc. that would be activated in the event of a filing. While default loomed, Kirkland bankruptcy advisers struggled to negotiate a deal with major bondholders to take over a restructured EFH in exchange for debt forgiveness. With no deal in sight, Myers was dispatched to work on the DIP for the second subsidiary, with Deutsche Bank tapped as lead arranger.

Myers needed to address two obstacles: EFIH's heavy debt servicing burden, and a dispute with bondholders who said they were owed a premium "make-whole" payment as part of their claims. Hundreds of millions of dollars were at stake in their potential suit.

With EFH's investment bankers and management, Myers devised a plan that both reduced the company's debt burden and its litigation risk. The facility she drafted offered bondholders the chance

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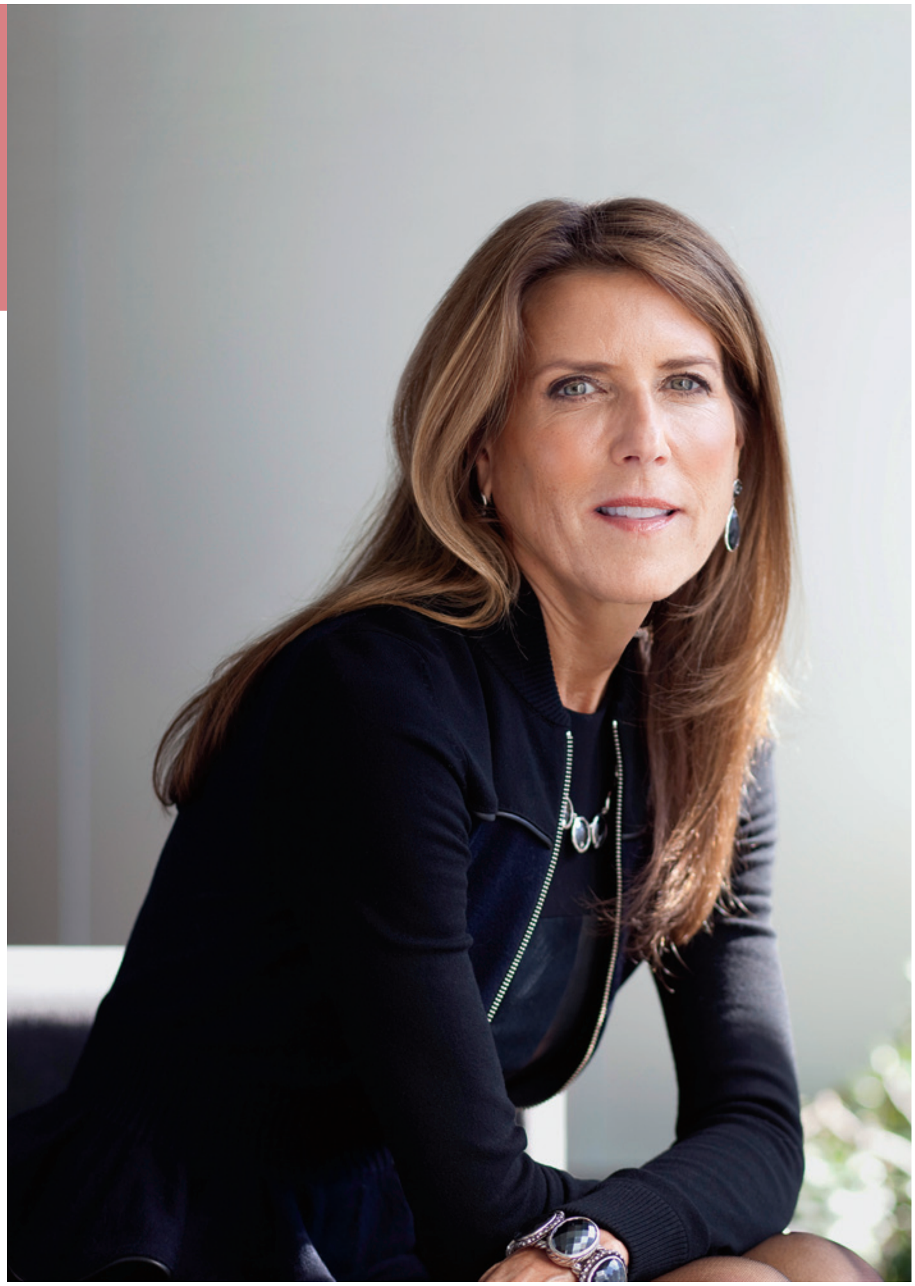
DEALMAKERS
AND THEIR DEALS

Completed bankruptcy and distressed debt activity rose

12% in 2014

Source: Thomson Reuters



KEVIN MIYAZAKI

to exchange their bonds for lower-rate DIP loans while dropping their make-whole claims.

But a tender offer conducted outside of the U.S. Securities and Exchange Commission approval process had little precedent, and required bankruptcy court approval. Some creditors objected that the offer was invalid, alleging that prior approval was necessary and that if it were allowed, all bondholders should get the same terms. In an early-inning win for the debtor June 6, U.S. Bankruptcy Judge Christopher Sontchi approved EFIH's $5.4 billion DIP. He also approved the tender offer and settlement, a decision upheld by the district court Feb. 19.

By the bankruptcy's second month, about a third of the first-lien bondholders converted their pre-bankruptcy loans into the lower-interest DIP debt and dropped the make-whole claims. The two DIP loans represented the second-largest DIP financing in history (another superlative)—but more important for Myers' client, they reduced debt payments and injected some certainty into the otherwise uncertain bankruptcy process.

KIRKLAND & ELLIS LLP