The Bankruptcy of General Growth Properties

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Introduction

General Growth Properties, Inc. ("GGP") is a commercial real estate investment company founded in 1954 in Cedar Rapids, Iowa. Its roots and long-running investment focus are regional retail mall properties, but it also invests in other commercial real estate such as office and multi-purpose properties. In 1993, in order to give itself better access to the public markets for an acquisition-heavy environment, GGP went public for the second time as a REIT with subsidiary special-purpose entities ("SPEs") set up as direct owners of its properties and retained this structure going forward.1 The company saw tepid growth over the 15 years following its IPO, as it acquired and developed properties mostly financed by securitized commercial mortgages. It became a real estate giant worth around $35 billion in enterprise value at its peak in 2007, but famously was unable to weather the financial crisis and became the largest real estate bankruptcy ever in April 2009.2 This paper discusses what strategies and events led to GGP filing for Chapter 11 bankruptcy, the nuances of its bankruptcy, the intense bidding for its assets, and its eventual emergence from reorganization.

GGP’s Pre-Petition Structure

GGP had a complex holding and operating structure, which complicated its eventual bankruptcy and is helpful to be understood before getting into the company’s story. It conducted all of its business through its wholly-owned subsidiary GGP Limited Partnership ("the Operating Partnership" or "GGPLP"). The parent company (GGP Inc., operating through GGPLP) made all key strategic decisions for properties that it owned completely or had a majority or controlling interest in. It also acted as the asset manager for its properties by executing strategic decisions and overseeing day-to-day management operations. These management activities were conducted through GGP’s taxable REIT Subsidiaries ("TRS").3

One of these TRSs, GGPLP LLC, had ownership of the majority of the company’s Consolidated Properties. Another TRS, The Rouse Company LP ("TRCLP"), had ownership of both Consolidated Properties and Unconsolidated Properties. As defined by GGP’s 10-K, the company referred to its “ownership interests in majority-owned or controlled properties as ‘Consolidated Properties,’ to joint ventures in which it held a non-controlling interest as ‘Unconsolidated Real Estate Affiliates’ and properties owned by such joint ventures as the ‘Unconsolidated Properties.’”4 GGP’s Chapter 11 filing included a 25 page exhibit outlining the complex structure of the firm; Exhibit 1 shows a simplified version.

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2 GGP 10-K Filings and finance.google.com
3 GGP 10-K Filings
4 Ibid.
GGP’s Path to Bankruptcy

Effects of Growth Strategies

By 2003, GGP’s success in an acquisition-focused environment had grown it into a $13.5 billion enterprise value company, second in size to Simon Property Group among United States shopping mall REITs. In 2004, the CEO of GGP, John Bucksbaum said, “For 40 years, Martin and Matthew Bucksbaum helped define the retail landscape in this country by developing regional shopping malls throughout America. We recognized in 1990 that our business was going to be changing from one of development to one of acquisition, given that most of the needed development had already taken place.” This statement by Bucksbaum was made near the end of 2004, which was GGP’s most substantial acquisition year yet; it purchased around $15 billion worth of properties and entities during the year, including Rouse Company for $12.7 billion.

The acquisition of Rouse Company grew GGP substantially and gave it an additional 37 top-rated shopping malls throughout the country, but it also was a permanently transformative transaction for the company. First, the leverage ratio for the firm jumped substantially from 54% to 71% because the acquisition was made using almost 100% debt financing. As shown in Exhibits 2 and 3, the leverage ratio and GGP’s total debt as a multiple of earnings before interest, taxes, depreciation and amortization (EBITDA) jumped well above the industry medians

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5 GGP Debtors Memorandum of Law in Opposition of the Motion
7 Transcript of conference call discussing the acquisition of Rouse Company in 2004
8 General Growth Properties, December 31, 2004 Quarterly Supplementary Financial Information Report
9 General Growth Properties, 2004 Annual Report
10 Ibid.
after the transaction and stayed there for several years.\textsuperscript{11} Second, GGP picked up several non-shopping mall properties through the acquisition; Rouse also held over 9 million square feet of office space and was developing over 26,000 acres of master planned communities, giving GGP a much broader real estate portfolio.\textsuperscript{12}

Both of the transformations from the Rouse acquisition, the jump in leverage and broadened portfolio, were not supposed to be permanent. The firm planned to sell off non-core assets and focus on boosting net operating income in its core shopping mall properties, allowing it to deleverage and refocus its portfolio.\textsuperscript{13} GGP CFO Bernie Freibaum said, “Our transaction financing will allow us to reduce our initial and temporarily higher debt levels in a gradual and orderly manner. Despite reduced estimated interest coverage of approximately 1.6 times for the first full year after closing, we will work diligently to bring our coverage ratio back to our long term goal of over 2 times, as soon as possible.”\textsuperscript{14} However, as can be seen in Exhibits 2-5, GGP’s leverage levels and interest coverage never bounced back to pre-acquisition levels, as management focused on debt-financed growth rather than deleveraging and refocusing.

Sources: Self calculations from GGP 10-K filings, S&P Capital IQ; "General Growth Properties: To the Brink and Back" (see works cited)

\textsuperscript{11} Industry median includes statistics from Simon Property Group, Macerich, DDR, Kimco, Taubman Centers, and CBL & Associates
\textsuperscript{12} General Growth Properties, 2004 Annual Report
\textsuperscript{14} Ibid.
In response to still-elevated leverage, during GGP’s first quarter earnings call in 2005, Freibaum stated that there was too much development and redevelopment opportunity to use excess cash flow to pay down debt and that the firm planned to de-lever its ratios by increasing net operating income relative to its debt balance.\textsuperscript{15} However, the debt balance grew largely in sync with the net operating income over the next few years as GGP financed a large amount of development activity with debt. By 2007, GGP had a $2 billion development pool including five new malls and 13 redevelopment projects that added lifestyle components to existing properties.\textsuperscript{16} In 2007, CEO John Buckbaum said, “Coming off an era of growth by acquisition, we are now in a period of organic growth.”\textsuperscript{17}

**Debt Strategies**

Since GGP’s rapid growth was being funded with above average levels of debt, its strategies in structuring this debt became very important for the company’s earnings. In order to reduce interest payments, the company used mostly secured debt, some unsecured bank debt, and a smaller amount of unsecured bonds. Specifically, it used large amounts of commercial mortgage backed securities (“CMBS”) at the SPE level and unsecured debt at holding companies, with typically no more than 30\% of the total debt being unsecured at any time between 2003 and 2008.\textsuperscript{18} Additionally, when compared with its major competitors, GGP’s debt was shorter term on average and was more regularly refinanced, both strategies to keep interest payments low and increase cash flows to shareholders.\textsuperscript{19} In the mid-2000s, CMBS were viewed as well-engineered, safe securities and thus were priced well for the borrowers, improving GGP’s bottom line. GGP was proudly the largest user of CMBS during this time.\textsuperscript{20} On top of these strategies, GGP pushed for low amortizing loans and balloon-type payments to improve cash flows. This structuring, put together with a very high amount of leverage, left GGP very reliant on a well-functioning and fluid CMBS market and relatively stable real estate prices so that it could constantly refinance its large, short-term secured debt. In 2007-2009, these dependencies became a problem. The complexity of the CMBS structure proved to be a death knell when trying to restructure with so many parties during times of distress.

**Actions during the Financial Crisis**

Starting in 2007, worries started surrounding real estate and, specifically, residential mortgage backed securities (RMBS) when subprime mortgage delinquencies rose, housing prices weakened, and Bear Stearns began showing RMBS-related failures. A financial crisis of the size eventually seen was likely not predictable at this point, but a slowdown in mortgage issuance and a correction in both residential and commercial real estate prices was likely predictable, as both markets had become frothy and the commercial market was likely to feel the fear effects of a pullback in the more extreme residential market. GGP, however, remained confident that the main issues and foreseeable slowdown would be confined to the residential real estate market and that commercial real estate and CMBS would not see much of a dip.

\textsuperscript{15} General Growth Properties, First Quarter Earnings Conference Call, May 5, 2005
\textsuperscript{17} General Growth Properties, First Quarter Earnings Conference Call, May 1, 2007
\textsuperscript{18} GGP 10-K filings
\textsuperscript{20} Ibid. Page 102
GGP’s confidence in commercial real estate prices and CMBS at the time was shown through its actions during 2007. In July, the New York State Common Retirement Fund exercised its option to have GGP purchase its half of a joint venture called Homart I, which was a $5.5 billion portfolio of 22 malls. GGP had the option to pay with its own shares or with cash and chose to raise mostly one-year debt to pay in cash because it believed its stock was undervalued due to the fears surrounding real estate.\(^{21}\) As CMBS spreads continued to widen and issuance dropped as 2007 went on, GGP management remained confident that spreads would tighten again, so they also pushed off longer term refinancing.\(^{22}\) Freibaum said, “At some point in the first half of 2008 we will see an improvement in the historical CMBS market and much more competitive spreads.”\(^{23}\) Rather than refinance in the high-spread, albeit still functioning, CMBS market, GGP turned to traditional lenders for shorter term loans. It borrowed $700 million from MetLife and $900 million from a consortium of banks in late 2007 and early 2008, with the majority being due in less than one year – when management thought the CMBS market would normalize. The $900 million credit facility ended up being the first default for GGP in November 2008.\(^{24}\)

The financial downturn affected GGP in three main ways. Most blatant of the effects was that related to the CMBS market. When Lehman Brothers went bankrupt in September 2008, the credit markets froze and CMBS went from high-spread and slow to non-existent. Spreads over 10-year treasuries on existing AAA-rated CMBS jumped to almost 1500 basis points.\(^{25}\) GGP’s expectation that CMBS would bounce back in 2008 blew up at this point and it was left with no way to refinance its short-term debt. Secondly, the weakness of the economy and consumer spending put additional pressure on GGP; occupancy rates took a slight dip in 2008 and the company had to write-off many of its in-process developments.\(^{26}\) Last of all, the drop in real estate prices weakened GGP’s ability to raise cash from sale or financing. Many competitors were seeking to raise cash as well, so the market was flooded and had few buyers for the large illiquid assets.\(^{27}\)

GGP’s efforts to turn around its distressed situation mostly ran on the assumption that it would be able to access the credit markets in the short term. Its 9-month to 3-year debt from MetLife and various banks raised in late 2007 and the first half of 2008 temporarily helped short-term liquidity, but the actions implied too much optimism about the market and did not fix the underlying duration mismatch between GGP’s assets and liabilities. Additionally, GGP issued $822 million in equity in March of 2008, but it again only solved short-term issues and the company never utilized the equity markets again after that before filing for bankruptcy.\(^{28}\) Management discussed other solutions in 2008, such as selling high quality assets and issuing bonds at its Rouse subsidiary, but those transactions were never able to materialize as market conditions worsened.\(^{29}\)

21 GGP 2007 10-K
23 General Growth Properties, Third Quarter Earnings Conference Call, November 1, 2007
24 GGP 2007 and 2008 Annual Reports
26 GGP 2007 and 2008 Annual Reports
28 Ibid
29 Ibid
GGP was able to close on eight separate loans with Teachers Insurance and Annuity Association in December 2008, totaling $896 million and secured by eight properties. The proceeds were used to retire $58 million of debt and to refinance $838 million in loans that would mature in 2009. However, GGP needed to raise additional capital to address other maturing debt obligations.

GGP contacted CMBS master servicers in January 2009 in an attempt to renegotiate loan terms, but had no success. One month later, GGP unsuccessfully attempted to hold a “summit” of special servicers to discuss CMBS loans with maturities through January 2010. Had GGP’s debt been mostly non-securitized mortgages, the ultimate result of bankruptcy may have been avoided, as restructuring would have come much easier. GGP’s inability to renegotiate the terms of its CMBS debt revolved around the rigidity, complexity, and size of the structures, causing coordination problems.

The Las Vegas Properties and the Defaults

In January of 2008, GGP was faced with the need to refinance loans on its Fashion Show (Fashion Show Mall LLC) and The Shoppes at the Palazzo (Phase II Mall Subsidiary, LLC and Grand Canal Shops II, LLC) properties. At the time, GGP had the ability to refinance the Fashion Show property long-term at relatively attractive rates due to its longer-termed leases, but did not have the same ability with The Shoppes at the Palazzo because it was a newer property that had not yet reach stabilized occupancy. GGP opted to refinance both properties through a short-term cross-collateralized $900 million loan package. The loan was provided by a syndicate of five banks and had a nine month term, due at the end of November 2008. GGP planned to refinance the two properties with a long term loan once occupancy at The Shoppes at the Palazzo stabilized and liquidity returned to the CMBS markets.

Market conditions continued to worsen as the November 2008 maturity date on the short term loan neared. In an attempt to raise capital, GGP marketed the properties for sale but did not receive any acceptable offers, with few willing buyers available given the market distress. Unable to raise capital, GGP negotiated an extension on the maturity date of the loan to February 2009. However, in February 2009, GGP was not able to raise capital nor was it able to negotiate another extension with lenders, and it defaulted on the debt. The default of the Las Vegas properties led to the default of a 2006 Credit Facility and the default of a 2008 Credit Facility due to cross-default provisions.

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32 Debtor’s Memorandum of Law in Opposition to the Motions of ING Clarion Capital Loan Services LLC and Wells Fargo Bank, N.A., as Trustee, Et AL, to Dismiss the Cases of Certain Debtors and Debtors in Possession, Pages 2, 6, 10-15
33 A 2006 Credit Facility included a cross-default provision tying it to the default of the Las Vegas properties. Both GGP, GGPLP and Rouse LLC were the borrowers and guarantors of the $2.85 billion loan agreement that had a maturity date of February 24, 2010 while GGPLP was a borrower. Rouse LLC promised to secure its loan obligations with GGPLP pledging its equity interest in GGPLP LLC, TRCLP and Rouse LLC and Rouse LLC pledging its general partnership interest in TRCLP. This loan was known as the “2006 Credit Facility.”
34 As credit markets seized in 2008, GGP hired an investment bank to approach major banks, life insurance companies and pension funds for alternative sources of financing. In July 2008, GGP successfully received a loan of $1.51 billion that was secured against 24 properties, known as the “2008 Credit Facility.” GGP, GGPLP, and GGPLP LLC were guarantors of the secured debt. Borrowers of the debt included holding companies throughout GGP’s corporate structure. The 2008 Credit Facility was due to mature on July 11, 2011 but included a cross-default provision linked to the 2006 Credit Facility.
With the Las Vegas properties, 2006 Credit Facility, and 2008 Credit Facility already in default, GGP was faced with the March 16, 2009 maturity of $400 million of Rouse bonds. GGP needed 90% of Rouse bondholders to agree on forbearance in order to forbear the debt to the end of 2009. At the same time, GGP had negotiated for the forbearance of the 2006 Credit Facility until the end of 2009 contingent on Rouse bondholders agreeing to forbear the Rouse bonds. However, only 41% of Rouse bondholders voted to forbear the Rouse bonds.35

On March 17, 2009, GGP announced that it would stop paying interest payments on its Rouse bonds and 2006 Credit Facility. Then, on March 19, 2009, Citibank and two other lenders foreclosed on the Oakwood Center property, which secured a $95 million loan guaranteed by GGP LP, GGP and TRCLP36.

The defaults on these credit facilities are what broke the back of GGP and eventually sent the firm into bankruptcy.

Unsecured Bond Covenants

Even before the events that eventually led to GGP’s bankruptcy filing, holders of unsecured GGP debt were impacted negatively through (1) the acquisition of The Rouse Company and its outstanding debt, and (2) through loose covenants on its existing unsecured debt.

Rouse Acquisition by GGP Hurts Rouse Bond Holders

In 2004, holders of Rouse unsecured bonds were negatively impacted when GGP acquired The Rouse Company. GGP agreed to purchase Rouse for $12.7 billion and the deal was funded 96% by debt, including the assumption of over $5.1 billion in Rouse debt by GGP37. Some Rouse bonds fell 4% the day that the announcement of the acquisition was made (see Exhibit 6). Pre-acquisition, Rouse’s cash flows38 covered 2.8 times its interest obligations, but post acquisition cash flows would only cover 1.6 times interest, which would have violated covenants on the Rouse bonds requiring a coverage ratio of 1.7 or greater. To prevent the violation of existing covenants, the Rouse bonds and properties were placed in their own subsidiary, named The Rouse Company LP (TRCLP). Even though the debt was placed in its own subsidiary to prevent it from being mixed with other GGP liabilities, many investors feared that the Rouse entity might take on more leverage later and that rating agencies would downgrade the bonds to below investment grade39. GGP, which was in charge of driving strategy at its operating company, holding company, and subsidiaries, was known to utilize high amounts of leverage to drive growth. The existing Rouse bonds lacked sufficiently tight covenants to prevent TRCLP from taking on additional leverage.

35 Chicago Booth Paper, Page 49
36 Hudson, Kris. “Citi Moves to Foreclose on Mall.”
37 Farrel, Andrew, Pages 9-11.
38 “Cash flows” here defined by Rouse 2003 Notes Prospectus Supplement as EBDT plus consolidated interest expense
39 Hancock, Jay. “Rouse bondholders take hit as value falls after deal.”
GGP Bondholders’ Lack of Strong Covenants Hurt Them in Years Leading Up to Bankruptcy

Holders of GGP unsecured debt were also hurt because of having weak protections in their bonds. These lenders were powerless to prevent GGP from raising additional debt secured by unencumbered assets due to loose and sometimes non-existent covenants. Some limitations on the incurrence of debt were included in the covenants of unsecured bonds (like the previously mentioned interest coverage covenant), but exceptions existed to allow GGP to raise additional debt in certain circumstances. (For example, exceptions existed for “Debt Securities issued under the indenture not … exceed[ing] an aggregate issue price of $150,000,000,” intercompany debt, third party debt of a subsidiary, and debt used only for working capital.40)

Because of its structure (see Exhibit 7), the majority of GGP’s debt was incurred by its subsidiaries. Creditors of the subsidiaries had priority over the holding company creditors in claims to assets and earnings of the subsidiary. A decrease in unencumbered assets meant that the creditors of the holding company may be subject to a smaller recovery in the event of a bankruptcy or liquidation.

Unlike debt issued by its competitor Simon, some GGP unsecured debt (ex. The Rouse Company $400 million 3.625% Notes due 2009) lacked a covenant for maintenance of total unencumbered assets. For example, the Simon Property Group LP $900 million 3.375% Notes due 2024 included a covenant that stated “as of each Reporting Date, our Unencumbered Assets will not be less than 125% of our outstanding Unsecured Debt.” Pre-existing unsecured debt, like the Rouse 2002 bonds and 2006 Credit Facility, also lacked minimum unencumbered interest coverage (unencumbered NOI/Interest Expense), minimum unencumbered debt service coverage, and minimum fixed charge (recurring EBITDA/Interest + Preferred Dividends) covenants.41

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Relative to its competitors, GGP had fewer unencumbered assets to raise additional unsecured debt on. Once the CMBS markets collapsed, GGP was unable to renegotiate its loans, did not have enough cash on hand to retire its annual maturing debt, and could not liquidate any of its property holdings at an attractive price, which lead to a steady decline in the price of GGP bonds in the months before its Chapter 11 (see Exhibit 8).

Exhibit 7

Exhibit 8

Source: REIT 101 by Milos Milosevic

Source: Bloomberg
Predictability of Default

During GGP’s high growth era and through its initial distress, the high quality of its assets was clear and was often used by management as a sign that everything was fine with the company. Exhibit 9 shows that through 2008, the rent per square foot at GGP properties continued to rise, with occupancy rates only dipping slightly. The company had solid operations and good investments, but the extreme market conditions and the company’s aggressive financial strategies had left it in a poor liquidity position. As mentioned previously, GGP focused on issuing CMBS with shorter terms than competitors and constantly refinancing them; it had other sources of financing, but the majority of its financing came from this source. There was no problem with this strategy to achieve lower interest expenses as long as refinancing was available and real estate prices were relatively stable. If this was ever not the case, GGP would need a large cushion of unencumbered assets in order to maintain liquidity. Management did not leave this cushion, as it pushed its leverage ratio well above the industry average with its acquisition of Rouse Company.

Exhibit 9

![GGP Property Performance](source: GGP 10-K filings)

By the end of 2007, when the real estate market was showing considerable weakness, GGP had obligations due over the next five years almost equivalent to 100% of current invested capital and almost 40% of current invested capital over the next two years (see Exhibit 10). A liquidity crunch could be foreseen if the credit markets did not bounce back for GGP.

However, if we look to Z-Score and Z”-Score as a predictor of bankruptcy, we can see trouble for GGP much earlier than 2007 by looking at the pattern of the scores and them in relation to the industry averages (see Exhibits 11 and 12). GGP’s Z-Score and Z”-Score dropped well below the industry median in 2004 after its acquisition of Rouse and kept that distance until bankruptcy. As Z-Score and Z”-Score trended down, the stock price trended up after a temporary drop (see Exhibit 13), perhaps showing a misjudgment of safety by the general market.

(To be continued...)

Exhibit 10

![Liabilities Due as a Percentage of Invested Capital as of 12/31/2007](source: GGP 2007 10-K)
EBITDA, or net operating income are more appropriate measures of income for REITs. Also, both calculations include retained earnings as a factor of financial health. Since REITs have a requirement to distribute 90% of their income, this makes retained earnings low and thus results in lower scores on average.)

Exhibit 11

![Z-Score Chart]

Source: Self calculations from GGP 10-K filings and S&P Capital IQ

Exhibit 12

![Z-Score Chart]

Exhibit 13

![GGP Stock Price Chart]

Source: finance.google.com

If one was to focus on GGP’s operations, its properties, the upward trend of the market, and the perceived risk-reduction in its capital structure created by CMBS and the SPE structure, the increased amount of leverage taken by GGP may have seemed like no problem. On the other hand, when focusing on the risky debt strategies of the firm, its relative leverage and financial risk to competitors, its potential for problems in the event of a liquidity crunch, its exposure to a market slowdown, and the frothiness of the CMBS market, it could easily be seen that if the credit market tightened GGP would be in big trouble. It probably cannot be said that a financial crisis of the size seen was predictable, but it is fair to say that GGP left itself very exposed to one of any kind, and, in that sense, the bankruptcy can be seen as somewhat predictable. It should be noted, though, that GGP’s failure was financial and not operational.
The Bankruptcy Filing

Due to its inability to raise capital or renegotiate outstanding debt with its creditors, 360 debtors within the GGP group filed for Chapter 11 bankruptcy on April 16, 2009 and an additional 28 debtors filed for bankruptcy protection on April 22, 2009. At the time of filing, GGP reported $29.6 billion in assets and $27.3 billion in liabilities, making it the largest real estate bankruptcy filing in history.

GGP filed for bankruptcy protection with the United States Bankruptcy Court for the Southern District of New York. Judge Allan Gropper was assigned to the case.

The Bankruptcy Code enacted by Congress in 1987 allows a person or entity to file bankruptcy in the district “in which the domicile, residence, principal place of business in the United States, or principal assets in the United States” have been located for the 180 days immediately preceding the filing. Thus, GGP was able to file with the United States Bankruptcy Court for the Southern District of New York because it had significant operations, including malls, in the state. Reasons to file there included the sophistication of that jurisdiction and the popular belief that it is debtor friendly.

GGP hired investment bank Miller Buckfire, turnaround consulting firm Alix Partners and law firms Weil, Gotshal & Manges LLP and Kirkland & Ellis LLP as advisors.

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42 Declaration of James A. Mesterharm pursuant to Local Bankruptcy Rule 1007-2 in Support of First Day Motions, Page 7.
43 Professor Stuart Kovensky lecture slides & GGP Debtors Memorandum of Law in Opposition of the Motion
44 Debtors Memorandum of Law in Opposition to the Motions of ING Clarion Capital Loan Services LLC and Wells Fargo Bank, N.A., As Trustee, Et. Al., to Dismiss the cases of Certain Debtors and Debtors in Possession, Page 1.
Hauer & Feld advised the Counsel for the Official Committee of Unsecured Creditors while certain other lenders were advised by Kilpatrick Stockton LLP, Zeichner Ellman & Krause LLP and Greenberg Traurig LLP.45

Debtor-in Possession (DIP) Financing

GGP’s bankruptcy filing on April 16, 2009 included a first day motion that outlined a proposed debtor-in-possession (“DIP”) financing. The original proposed DIP financing was in the amount of $375 million at LIBOR + 12% with a 3% LIBOR floor, to be provided by Pershing Square.46 The financing terms also included commitment fees of $15 million going to Pershing Square along with some exit fees.47 The DIP financing placed first lien on cash flows from property-level entities and second liens on each entity.

GGP sought to improve the terms of its original DIP financing proposal and was able to get approval from Judge Gropper on May 13, 2009 to enter a new DIP loan financed by Farallon Capital Management LLC. The new loan for $400 million carried a rate of LIBOR + 12%48 with an exit fee of 3.75% 49 and gave GGP the ability to convert up to all of the outstanding DIP loan into equity or debt when the company emerged from bankruptcy. This DIP loan was used to pay off a $215 million revolving credit facility provided by Goldman Sachs in 2008, and the property that served as collateral for the Goldman Sachs loan became collateral for the DIP loan.50 The DIP plan also provided the DIP lender with a lien on the centralized cash management account of GGP junior to the lien of the secured creditors.

GGP continued to seek DIP financing with better terms and filed a motion seeking approval for a new DIP financing to be provided by Barclays on July 8, 2010. This DIP loan carried a fixed interest rate of 5.5%, carried many of the same terms as the Farallon DIP financing, and had a maturity date of May 16, 2011 or the date of GGP’s emergence from bankruptcy, whichever came earlier. The DIP loan was funded by Barclays and assigned to Brookfield Retail Holdings after closing.51

Increase in Bond Prices Immediately After Filing

Surprisingly, bond prices increased directly after GGP’s bankruptcy filing (see Exhibit 15). This increase could possibly be attributed to confidence in GGP’s disclosures showing that the company owned many high grade assets, leading investors to believe that they would be able to receive a greater payout on the bonds than they had previously anticipated. In a declaration filed on April 15, 2009, CEO Adam Metz emphasized that GGP had “a portfolio of retail centers with sound, stable and profitable operations that, on the whole, perform well even when the general

45 Memorandum of Opinion, Pages 1-2.
46 Hunter, “Distressed Debt News: GGP Files for Bankruptcy.”
47 Ritter, Brad, Page 1.
48 Final Order Authorizing Debtors to (A) Obtain Postpetition Secured Financing Pursuant to Bankruptcy Code Sections 105(a), 362, and 364, (B) Use Cash Collateral and Grant Adequate Protection Pursuant to Bankruptcy Code Sections 361 and 363 and (C) Repay in Full Amounts Owed Under Certain Prepetition Secured Loan Agreement, Page 71.
49 Final Order Authorizing Debtors to (A) Obtain Postpetition Secured Financing Pursuant to Bankruptcy Code Sections 105(a), 362, and 364, (B) Use Cash Collateral and Grant Adequate Protection Pursuant to Bankruptcy Code Sections 361 and 363 and (C) Repay in Full Amounts Owed Under Certain Prepetition Secured Loan Agreement, Page 72.
50 Ritter, Brad, Page 1.
economy does not.” He stressed that net operating income (NOI) increased 4.5% from 2007 to 2008 to $2.59 billion. Mr. Metz stated that “GGP did not commence these Chapter 11 cases because its operational model is flawed or because its properties are undesirable or performing poorly. Rather, it was the unprecedented disruption in the real estate finance markets specifically, as well as the credit crisis generally.”

In addition to a possible uptick in confidence in the performance of the underlying assets, holders of unsecured bonds were helped when GGP included 166 solvent SPEs in their filing. Judge Gropper’s ruling that the SPEs were not bankruptcy remote and that cash flows in excess of debt payments would flow to the parent company meant further prospects of additional recovery for unsecured debt holders.

Exhibit 15

![GGP Historical Bond Prices 6/27/2008 to 4/27/2011](image)

*Source: Bloomberg data*

Legal Issues and Disputes Related to the Bankruptcy

When GGP and its operating partnership subsidiary, GGP LP, filed for protection under Chapter 11 of the Bankruptcy Code, 388 of its property-level subsidiaries also filed voluntary petitions for the same. GGP filed motions seeking approvals to continue with the group’s centralized cash management system during the bankruptcy period and to obtain DIP financing of $375 million to fund the reorganization and the bankruptcy case. The bankruptcy filings by the SPEs (especially the solvent SPEs), and the appeal to continue to upstream the cash they generated, conflicted with key premises of the SPE structure and were opposed by their lenders, as we will discuss below.

The commercial real estate sector had long relied on the SPE structure for borrowing money, which in theory provided protection by ring fencing the assets supporting a loan from the risk of

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52 Declaration of Adam Metz, Page 4.
default of the parent entity. The SPE structure was construed to provide, inter alia, (i) “separateness”, implying non-consolidation of a SPE’s estate with the parent or other bankrupt SPEs, (ii) “bankruptcy remoteness”, implying immunity from bankruptcy filing due to financial condition of the parent, (iii) independent managers who would act in the best interest of the SPE, and (iv) restrictions on permitted activities and indebtedness beyond the first lien mortgages. When many “healthy” SPEs filed for bankruptcy along with the parent company, market participants were forced to revisit and question the common practices followed in the structured finance domain.\(^5\)

Six motions (one subsequently withdrawn) challenging the bankruptcy petitions of some of the SPEs were filed by some of the lenders to dismiss the cases on the grounds of them being in “bad faith”. The lenders argued that the SPEs were neither insolvent nor in danger of becoming so (as they were not facing the imminent maturity of their facilities) and did not directly benefit from Chapter 11 bankruptcy protection.\(^4\)

A brief summary of the objections raised by the lenders and the court’s assessment of each (subjective and objective) is given below.

**Argument I**

**The Discharge of the Independent Managers** - Shortly before the bankruptcy filing, GGP replaced many of the independent managers of its SPEs with new people (who would presumably be more inclined than the previous people to approve the bankruptcy filing), a move that was seen as unfair by SPE creditors. As per the operating documents of the SPEs, authorization by the independent managers of the SPE was mandatory for a SPE to file for bankruptcy, with the interest of that entity and its creditors being the sole consideration. The lenders argued that the replacement of the independent managers by GGP in over 90% of the SPEs, shortly before the filing without any prior notification to either the lenders or the managers, was in bad faith.

**Court’s Assessment** - The court rejected the argument of the creditors that the firing of the managers was improper. Per the court, the replaced managers had relevant real estate restructuring experience and it was construed as a well-intentioned move to ensure that the managers were capable of contributing to the reorganization process.\(^5\) While the court acknowledged that the lenders were not notified about the replacement, the governing and the operating documents did not require such notice.

Moreover, the SPE creditor complainants were probably wrong to assume that the old independent managers would have voted differently on the bankruptcy filing. Certainly, the new managers may have been quicker to approve the bankruptcy than the old ones would have been (otherwise it’s unclear why GGP would have replaced so many of them pre-filing, rather than post-filing). But even the old SPE managers were under an obligation to act in the best interest of the GGP parent company, not in the interest of the SPE creditors. The SPE governing documents

\(^{53}\) Brian M. Resnick, Steven C. Krause Not So Bankruptcy-Remote SPEs and In re General Growth Properties Inc.


\(^{55}\) And James Gadsden Carter Ledyard & Milburn LLP, General Growth Properties and its aftermath hot topics in Structured Finance New York City Bar
required the independent managers to have the fiduciary duties equivalent to those of a director of a Delaware corporation. As per the Delaware corporate law, the directors of a solvent Delaware corporation have a fiduciary responsibility to execute their duties in the best interest of the shareholders and not creditors. While the directors of an insolvent corporation have fiduciary duty to a creditor, when a business is in distress or the “Zone of Insolvency” the directors must still act in the best interest of the corporation for the benefit of its shareholder owners. In the present case, the parent entity, which was the shareholder in the SPEs, was in a lot of financial distress, which supported the SPEs decision to file for bankruptcy.

**Argument II**

**Prematurity of Filing** - The lenders of the solvent SPEs argued that bankruptcy was filed prematurely, as enough cash flows were being generated to service the debt at the property level.

**Court’s Assessment** - The court held that the Bankruptcy Act did not require any particular degree of financial distress as a condition precedent to a petition seeking bankruptcy protection. It would have been inappropriate for GGP SPEs to file for bankruptcy as solvent corporations if the filings were done in a speculative manner (that is, to gain an upper hand on creditors without evidence that the debt burden might soon become problematic for the debtor). However, that was not the case here. Here, the debt maturity was neither speculative nor contingent; although the SPEs had not yet experienced financial distress, it was foreseeable that they were likely to in the not too distant future. The court accepted the arguments given by GGP suggesting that the tightened status of the credit markets - the near closure of the CMBS market and the reluctance of the institutional lenders – meant that the borrower SPEs would not be able to refinance the loans as they became due in the coming years. The court also acknowledged that while the SPE structure relied on bankruptcy remoteness and separateness, it was important to consider the financial distress of the group as a whole. Due to the group’s functional and operational integration (with respect to development, operation and management of properties, centralized leasing, marketing, management, cash management, property maintenance and construction management), distress at the parent level would have certainly impacted the SPEs. This integration had been in place for long and had benefitted the creditors by enhancing the financial and operational efficiency of the property-level debtors.

**Argument III**

**Failure to Negotiate before Filing** - The lenders argued that the filings were in bad faith as the SPEs failed to negotiate with the lenders prior to filing for the bankruptcy.

**Court’s Assessment** - The court highlighted that the Bankruptcy Code does not require a borrower to negotiate with its creditors before filing a Chapter 11 petition. The court pointed out that there was no evidence that the lenders would have been willing to work with the debtors in the form of additional funding or extension of maturities of the existing loans. The court also highlighted the inflexibility of the CMBS structure, which would not have permitted a resolution.

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56 Brian M. Resnick, Steven C. Krause, “Not So Bankruptcy-Remote SPEs” and “In re General Growth Properties Inc.”
58 Ibid.
59 Ibid.
in the first place. Under the structured finance arrangement, the Master Servicer responsible for managing the collections on behalf of the CMBS lenders did not have the authority to restructure the terms of the loans. That authority vested with the Special Servicer, who took over for the Master Servicer only after the borrower defaulted. This implied that the CMBS debt could not have been successfully restructured without either a default or a bankruptcy filing.

**Argument IV**

**Inability to Confirm a Plan and Futility of Reorganization** – The lenders argued that there was no reasonable likelihood that the debtor intended to reorganize and that there was no reasonable probability that a reorganization plan will ever be confirmed over the lenders’ opposition.

**Court’s Assessment** – The Court held that there was no requirement in the Bankruptcy Code that a debtor must prove that a plan is confirmable in order to file a petition. With respect to the objective futility of the reorganization, the court held that it was appropriate to consider the circumstances of the GGP group as a whole when assessing whether the individual SPE filed in bad faith. In the present case, most of the SPEs of the group were far from insolvency and were generating enough cash flows to service their debt and accumulate surpluses. The troubles of the group were due to its inability to refinance the maturing debt and not due to operational mismanagement on any count. The court held that a reasonable amount of analytical process had been applied to ascertain whether to or not to include a SPE in the bankruptcy filing instead of including all of them. (Indeed, many SPEs were not included in the bankruptcy.) Since the operations and the subsequent income were generated from these SPEs, no reasonable reorganization plan could be drawn unless the SPEs were included. The court did not dismiss a petition for relief since the debtor had a legitimate rehabilitation objective.

**Centralized Cash Management and DIP Financing**

SPE creditors also objected to GGP’s proposal to continue to upstream the cash generated by the SPEs to fund central operations. While GGP proposed providing the SPE lenders with adequate protection, the SPE lenders believed that such use of the cash management system violated the covenant of separateness and would be dilutive for them.

The prepetition ‘Cash Management Mechanism’ included a centralized commingled account to upstream the funds generated by all the SPEs. Out of this account disbursements were made to subsidiaries for debt expenses, operating expenses and intercompany loans to subsidiaries facing liquidity shortfalls. GGP argued that they were providing adequate protection to SPE lenders by replacing those lenders’ liens on the cash generated at the project level with administrative expense claims on the intercompany transfers made from healthy SPEs to the cash strapped ones.

While the initial proposal was to make these claims junior to those of the DIP lender’s claims, the court ended up giving the secured lenders the first claim on cash streamed up from the respective debtors and approved the continuation of the centralized cash management. The decision to permit the group to use the centralized cash management was important to continue

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60 James Gadsden Carter Ledyard & Milburn LLP, General Growth Properties and its aftermath: hot topics in Structured Finance New York City Bar

61 Case and White - Chapter 11 Ruling Calls into Question Basic Tenets of Securitization Structures, May 2009
operations without compromising the claims of the secured lenders. It offered adequate protection for the secured lenders, which included payment of interest at the non-default rate, continued maintenance of the properties, a replacement lien (explained above), and a second priority lien on certain other properties.

The eventual DIP financing from Farallon, and then Barclays, ended up being secured against a junior claim on the centralized cash account and a senior lien on certain unencumbered assets without any guarantee or claim on the assets of the SPEs. This contrasts to the initial proposal of providing the DIP lender a first priority administrative expense claim on the centralized cash account.

**Impact of Legal Decisions**

While the decision of the court to not dismiss petitions filed for protection under Chapter 11 were viewed as a challenge to the bankruptcy remoteness of the SPE structure, the principal of separateness came out not only unharmed but also strengthened. The court emphasized that the estates of the SPEs were not substantively consolidated with other group concerns, which was the key premise of the SPE structure. Furthermore, the plan included a waiver of the automatic stay if there ever were a future bankruptcy of GGP\(^2\). Nonetheless, the SPE lenders had to suffer the delays, expense and uncertainty of a bankruptcy case despite the fact that their debtors generally were meeting their obligations. The course of the bankruptcy filings was largely determined by the underlying deficiencies of the constitutive documents and was a lesson for the structured finance industry to make transaction structures and organizational documents tighter and to sufficiently insulate SPEs from their parents’ financial problems.

In hindsight, one can fairly say that the inclusion of the SPEs in the bankruptcy was both wise and fair. There was plenty of value in the business, so none of the SPE loans ended up being impaired. Meanwhile, the restructuring of mortgage debt within bankruptcy ended up being more efficient and orderly than would have been possible outside of bankruptcy. Additionally, had none of the “healthy” SPEs been included in the filing, the GGP parent company (the health of which was crucial to the health of the SPEs) would not have exited bankruptcy in nearly as healthy of a state as it did.

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The Bidding War

Debate over Value

There ended up being fierce bidding war for GGP. With the benefit of hindsight this may seem unsurprising, as the firm had a strong portfolio of assets earning steady income and was troubled more by liquidity problems than operating problems. However, it was hardly obvious that there would be a bidding war when you look back to the beginning of the case. At the time of the filing in April 2009, there was great uncertainty about whether the equity was worth anything; the stock traded around $1, and even some of the bank debt and unsecured bonds were trading at 20 cents on the dollar.

Even as late as December 2009, a fierce public debate raged over whether GGP had any equity value, featuring two notable voices. Arguing the bear case most publicly was Hovde Capital, a money management firm with a short position in the stock, whose argument was twofold. First, they believed that GGP’s operating income was likely to continue declining on account of powerful macro forces. The consumer saving rate was rising, retail sales were falling, internet sales were growing, and mall occupancy and lease rates would, accordingly, continue to worsen. Second, Hovde argued that GGP’s mall assets warranted a capitalization rate above 9%, pointing to rising industry cap rates, recent sales of higher-quality malls at 7.5%-8.5% cap rates, and the fact that GGP’s competitors at the time had cap rates averaging 8.3% while employing far less leverage than GGP. (Capitalization rate is the most common method for valuing commercial real estate assets and represents the net operating income divided by the asset value.)

Arguing the bull case, meanwhile, was Bill Ackman of Pershing Square, an asset manager who had begun accumulating a long position in the stock before the bankruptcy began. Ackman argued that GGP’s mall income would be resistant to decline and gradually increase over time due to long-term leases, automatic rent increases, and a general economic recovery supporting demand for mall space. He believed that the firm’s development assets (most notably the Master Planned Communities) had substantial value, and that the firm’s substantial mortgage debt could be renegotiated in bankruptcy on favorable terms. He also argued that a cap rate at or below 8% was appropriate based on third party estimates, historical norms, and an in-depth analysis of the quality of GGP’s assets. The cap rate was the biggest question in the debate; because GGP had such high leverage, even small variations in the cap rate (and thus, estimates of enterprise value) yielded large differences in equity value.

By the spring of 2010, the bull case began to look more compelling. Several key economic indicators had started improving, and the cloud over the commercial real estate sector had lifted a bit. Moreover, in the intervening months since the filing, several key questions surrounding the case had been settled—notably, which subsidiaries would be included in the filing and how the


66 For example, the University of Michigan’s Consumer Sentiment Index had risen, and CMBS spreads had continued to trend down in through the second half of 2009 and early 2010.
mortgage debt would be restructured. It became increasingly clear that the debt holders would be paid off in full and that there would be value left over for equity. This was reflected in the price of GGP unsecured bonds, which rose from ~40-60 cents on the dollar to 100 cents on the dollar from July 2009 to January 2010 (see Exhibit 15).

Three Key Players

While quite a few firms participated in the bidding war in some manner, three players were particularly important. First was Pershing Square Capital Management, a hedge fund run by prominent activist investor Bill Ackman. Ackman saw GGP as a company with great assets facing a temporary liquidity problem. Foreseeing that GGP would eventually end up with significant equity value, he began buying GGP debt and equity well before the bankruptcy filing, accumulating a 25% equity stake and $434 million in unsecured debt. Ackman joined GGP’s Board of Directors in June 2009, a position he stepped down from when joining the bidding war in March 2010.  

The second key player was Brookfield Asset Management (BAM), a Canadian asset management firm then managing over $100B in assets, including substantial real estate holdings (notably office space). Brookfield had, for some time, been looking to move substantially into U.S. mall real estate. In early 2007, for example, it made a $1.35B offer to acquire Mills Corporation, a large U.S. mall REIT, but was outbid. 

The third key player was Simon Property Group (SPG), the largest mall operator in United States at the time (right ahead of GGP). SPG saw GGP’s bankruptcy as a rare opportunity to acquire prime mall assets, with which they believed they could create significant synergy value as a strategic purchaser. From the outset of their involvement, people questioned whether the merger of the two largest mall property owners in the United States would raise anti-trust issues. However, Simon believed that the combined portfolio would avoid too much concentration in any given region or property class.

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70 Ibid.
Bidding process

There were seven formal proposals for GGP made by these key players between February 8 and May 6, 2010, which are portrayed in Exhibit 16. Below is a brief description of each stage of the bidding war.

Exhibit 16

Bid #1: SPG

SPG’s first offer was an unsolicited, hostile bid to acquire 100% of GGP’s existing equity. The $10 billion cash offer would provide $7 billion for unsecured creditors and the remaining $3 billion for equity. Shareholders would receive $9/share, comprising $6 in cash and a distribution of GGP’s ownership interest in the Master Planned Community assets worth $3. Full payment in cash (100 cents on the dollar plus accrued interest and dividends) would be made to all holders of GGP unsecured debt, trust preferred securities, credit facility loans, exchangeable senior notes, and Rouse bonds. Simon was also willing to provide Simon equity shares instead of the

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cash consideration as payment to GGP shareholders or creditors who desired that option instead. The payment was to be financed with Simon’s cash on hand and by unspecified outsiders.  

This first offer was supported by GGP’s Official Unsecured Creditor Committee, who for the first time had the option of being paid cash in full. However, the offer was rejected by GGP management, who might have been worried about losing their jobs in a hostile takeover, notwithstanding Simon’s assurances of keeping GGP largely intact. Management asserted that Simon’s offer was too low.

**Exhibit 17**

![GGP: Daily Stock Price](image)

**Bid #2: BAM**

SPG’s bid put BAM on the clock. BAM had been buying up GGP’s unsecured debt with the original hope that it would be the fulcrum security and that BAM could achieve a take-over through debt-for-equity conversion. This option was taken away when SPG offered to pay the unsecured debt holders in full with cash.

Accordingly, on February 24, BAM put forth a plan to recapitalize GGP. The plan would split GGP into two companies - General Growth Properties, comprised of core properties (mostly malls), and General Growth Opportunities (SPINCO), which would hold land and other development opportunities (notably the MPCs). GGP shareholders would receive one share of GGP (valued at $10) and one share of SPINCO (valued at $5) for a total consideration of $15 a

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share. BAM would inject $2.63 billion in cash for new equity, and GGP would raise an additional $5.8 billion of new capital (both equity and unsecured debt).  

Advantages of this plan over SPG’s first bid included (1) the $6/share premium to be received by equity holders and (2) the fact that, as a friendly offer, it would not be subject to due diligence. However, it also had some disadvantages. As part of the plan, Brookfield was demanding 7-year warrants for 60 million shares of existing GGP common stock at $15. Also, while GGP’s unsecured creditors would be paid in full, they would not receive 100% cash. (Rather, part of the payment would be newly issued GGP stock.) Finally, some considered the plan to be risky because it would require GGP to raise $5.8 billion of fresh capital in the uncertain capital markets.

**Bid #3: BFP Consortium**

BAM, recognizing some of the weaknesses of its first bid, sought to bolster it with a second proposal a couple weeks later. The modifications were as follows. Fairholme Capital Management and Pershing Square Capital Management joined as capital partners, offering to invest $3.8 billion of additional new equity capital in GGP (with Fairholme and Pershing providing 71% and 29%, respectively). Fairholme and Pershing also promised capital to backstop at $125 million common stock rights offering for SPINCO. This additional capital improved the bid in several ways. First, it reduced the execution risk associated with raising new equity. Second, it allowed their plan to now match the unsecured debt repayment terms in SPG’s initial bid, thus earning the blessing of the Official Unsecured Creditor Committee. Third, the bid included a provision allowing GGP to claw back 50% of the new GGP shares from Pershing and Fairholme at $10/share, an attractive option that could allow the company to raise cheaper equity in the future. (That is, if the GGP stock price rises significantly, GGP would be able to buy back shares from Pershing and Fairholme for $10/share post-emergence, while paying a relatively meager financial fee, and issue new stock at the higher price.)

The only unattractive element of the proposed Fairholme and Pershing capital injection, from GGP’s perspective, was that Fairholme and Pershing Square were (like BAM) demanding 7-year warrants, details of which are shown in the table below.

<table>
<thead>
<tr>
<th></th>
<th>Brookfield</th>
<th>Fairholme</th>
<th>Pershing Square</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>New GGP Warrants</strong></td>
<td>Warrants to purchase 60 million shares of New GGP Common Stock with an initial exercise price of $10.75</td>
<td>Warrants to purchase 42,857,143 shares of New GGP Common Stock with an initial exercise price of $10.50</td>
<td>Warrants to purchase 17,142,857 shares of New GGP Common Stock with an initial exercise price of $10.50</td>
</tr>
<tr>
<td><strong>Spinco Warrants</strong></td>
<td>Warrants to purchase 4 million shares of Spinco Common Stock with an initial exercise price of $30.00</td>
<td>Warrants to purchase 2 million shares of Spinco Common Stock with an initial exercise price of $50.00</td>
<td>Warrants to purchase 2 million shares of Spinco Common Stock with an initial exercise price of $50.00</td>
</tr>
</tbody>
</table>

*Source: GGP Disclosure Statement, August 27 2010*

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79 GGP Disclosure Statement, August 27 2010
**Bid #4: SPG**

On April 14, Simon came back with a recapitalization proposal that matched the BFP consortium’s offer on most of the major terms, including the share price and the offer to backstop the SPINCO rights offering.

Unlike the BFP proposal, however, Simon stated that it would not demand equity warrants or similar fees in return for its commitment to invest in GGP. This concession was significant; the ultimate value of the warrants being demanded by BAM, Pershing, and Fairholme was estimated at the time to be ultimately between $300 and $650 million. Simon also offered to backstop a $1.5 billion credit facility necessary for GGP to close and emerge from bankruptcy.\(^{80}\)

In this second offer, SPG additionally said it would add co-investment partners.\(^{81}\) Indeed, about a week later Simon announced that it had received $1.1 billion in capital commitments from several institutional investors to support its recapitalization. These commitments, together with the $2.5 billion proposed investment by SPG and a $1 billion co-investment commitment by Paulson & Co., brought Simon's proposal to the same level as the BFP offer (but without a demand for warrants).\(^{82}\)

Finally, to address concerns by GGP’s management and anti-trust regulators, Simon promised to limit its governance rights of GGP, including a cap on its voting rights at 20%.\(^{83}\)

**Bid #5: BFP Consortium (final)**

On May 3, the BFP group made its final offer, which included only a few modifications to its previous plan. First, it included an additional $2.25 billion of capital to be raised at closing, including $1.5 billion of debt, a $500 million GGP rights offering, and a $250 SPINCO rights offering, all for which BFP would provide backstop commitments.\(^{84}\) Second, it included a change in the vesting period for the equity warrants.\(^{85}\)

**Bids #6 & 7: SPG (final)**

On May 6, Simon came back with two final offers. The first offer was to acquire GGP for $6.5 billion, or $20/share. Existing equity holders would receive $5 in cash, $10 in shares of SPG stock and $5 in shares of SPINCO, and unsecured creditors would still receive full cash recovery. Blackstone Real Estate Advisors and all of the previous capital partners (Paulson, ING, etc.) were on board as a capital partner for this option. As a second alternative, SPG was also willing to sponsor the equity recapitalization of GGP at a slightly higher valuation than the final.

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\(^{83}\) Ibid.

\(^{84}\) Ibid.

BFP offer, namely an improved investment price for GGP stock ($11/share, rather than $10/share) and no demand for equity warrants (just as in their previous recapitalization offer).  However, in this offer they lost many of their capital partners and withdrew their backstop commitment. SPG stated that these offers were best and final, and they saw both to be superior to the best BFP offer. While believing that antitrust or control issues weren’t really that significant for either offer, they offered conciliations under both deals (e.g., selling assets, limiting voting rights and board seats, etc.) to appease regulators.

The Judge’s Decision

On May 7, the judge awarded stalking horse status to the final BFP bid. This triggered the issuance of warrants to BAM, Fairholme, and Pershing Square as a break-up fee, which in turn led to SPG withdrawing their final bid and ended the bidding process.

Was this decision in the best interest of GGP shareholders? Probably. On the one hand, the final SPG buyout and recapitalization offers were at significantly higher valuations, and without dilutive warrants. The Simon buyout offer might have made the most economic sense as well; Green Street Advisors (an independent third-party firm) estimated the probable synergies from a merger to be roughly $11/share.

On the other hand, the bankruptcy court had legitimate reasons to worry about the final SPG plans. The 67% stock component in Simon’s final buyout offer added a little uncertainty, and the lack of a backstop in the recapitalization plan added some risk. The biggest problem was that FTC anti-trust investigations introduced uncertainty and could delay the bankruptcy case. From the perspective of GGP’s creditors, BFP’s offer provided cash sooner and with a higher degree of certainty. The BFP offer also offered some attractive flexibility to GGP shareholders; due to the claw-back provision, GGP could reduce the equity amount from Fairholme and Pershing Square by up to 50% in the event the Company was able to raise equity at a lower cost of capital.

## The Final Plan, and Exit from Bankruptcy

On October 21, 2010, Judge Groper officially approved the company’s reorganization plan as outlined in the final BFP proposal. The actual contribution of new equity capital ended up differing slightly from the final BFP plan offered on May 3. In July, the Teacher Retirement System of Texas stepped in to provide an additional $500 million in new equity. Also, in August it was announced that $500 million of the $6.3 billion in new equity pledged by BAM, Pershing, and Fairholme would instead be provided by Blackstone (reportedly a concession to deter Blackstone from making a competing bid for all of GGP). A diagram of the new capital structure under the reorganization plan is shown in Exhibit 18.

### Exhibit 18

<table>
<thead>
<tr>
<th>Old GGP</th>
<th>New GGP</th>
<th>New GGP Claveback Scenario</th>
<th>New GGP Sources of Funds</th>
<th>New GGP Uses of Funds</th>
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<tbody>
<tr>
<td>Existing Equity (109m shares)</td>
<td>Texas Teachers ($500M)</td>
<td>$2.7B from Fairholme</td>
<td>$800m: fund working capital</td>
<td></td>
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<tr>
<td>Corporate Debt ($6.6B)</td>
<td>Pershing Sq. ($1.1B)</td>
<td>$2.5B from Brookfield</td>
<td>$400m: pay off accrued</td>
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<tr>
<td>Secured Debt ($20.0B)</td>
<td>Fairholme ($2.7B)</td>
<td>$1.5B from new unsecured debt issuance</td>
<td>$6.6B pay down existing unsecured corporate debt</td>
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<td></td>
<td>Brookfield ($2.5B)</td>
<td>$1.1B from Pershing</td>
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<td></td>
<td>Special Consideration Properties Debt ($750m)</td>
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<td></td>
<td>Corporate Debt ($1.7B)</td>
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<td></td>
<td>Special Consideration Properties Debt ($750m)</td>
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General Growth Properties, Inc. finally emerged from bankruptcy on November 9, 2010. Many of the regional shopping centers owned by GGP and certain other subsidiaries, which had also filed for Chapter 11, emerged prior to the corporate-level emergence.

The proposed spin-off company that was referred to above as “SPINCO” did end up being created, under the name Howard Hughes Corporation (HHC). The spinoff was effected on

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November 9, the day of GGP’s emergence. The decision to spin off these assets arguably was wise: the two resulting corporations were more “pure” plays; it allowed new GGP to focus on its strengths in commercial real estate; and it removed from GGP the taint of residential and in-development real estate assets at a time when those were still out of favor among investors.

**Fair and Equitable?**

The GGP case was highly unusual in that, in the final plan, all claimants received substantial value. Accordingly, there is little debate that the plan was fair and equitable. All administrative claims, trade loans, intercompany loans, DIP financing, tax claims, and bank loans were fully repaid. Nearly all of the mortgage debt (108 loans covering ~$15 billion) was successfully restructured through a standardized process, with an average extension of five years at an average interest rate of 5.24%. Holders of GGPLP exchangeable notes, Rouse bonds, and all unsecured claims received 100% recovery in cash. GGP’s equity interest in subsidiaries was left intact, and holders of GGP equity retained their stake, which was now valued (post-money) at $10/share, plus ownership interest in Howard Hughes Corporation valued at $5/share.

**Feasible?**

The plan also seems like it was feasible. GGP (on a consolidated basis) would emerge with roughly 70% leverage, which was still fairly high; however, the maturity and other terms on the mortgage debt provided a much more stable funding structure than prior to bankruptcy. Additionally, total corporate debt was reduced from $6.6 billion to $1.7 billion. With the benefit of hindsight, we can see that the company’s plan was indeed achievable. Total revenue and cash flow from operations have both grown since their emergence, albeit slowly. Also, net debt has contracted significantly, albeit much less than laid out in the plan. Due to the 2011 spin-off of a major portion of GGP’s assets into a separate company (Rouse Properties), most of the financial projections provided in the company’s Disclosure Statement cannot be compared with actual results. However, one can see in Exhibit 19 that NOI margin improvement has actually exceeded what was projected in the plan. Occupancy rates are also significantly higher than pre-bankruptcy. In general, the core theses behind the company’s expected growth laid out in the plan—high quality properties, strong relationships with vendors, solid management, and a return to normal in the economy—have borne out to be true.

Given the company’s current status, the chances of a return to bankruptcy appear small. The biggest cause of its first bankruptcy—an extreme reliance on CMBS markets, which became completely illiquid—is no longer a threat to the same extent.

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Exhibit 19

Exhibit 20

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97 GGP Disclosure Statement. August 27 2010


99 GGP Disclosure Statement. August 27 2010

100 Ibid.

Denouement for Key Investors

The GGP bankruptcy provided one of the most successful outcomes for shareholders in any U.S. bankruptcy. Each of the major investors in the BFP consortium did very well on their investment, as did many other hedge funds who bought the equity and debt shortly before or early after the filing. Pershing Square was rewarded the most for being early and aggressive; in all, Ackman reports turning “$60 million into $1.6 billion”. (Clearly Pershing purchased more than $60m of GGP securities throughout the entire process, but not knowing the leverage they employed, we must rely on his statements about returns.) Fairholme reportedly earned ~20% profit on the $1.8b of unsecured bond they held and over $1 billion profit on the equity and warrants. Finally, BAM also made a significant profit, both on its equity stake and on the ~$1 billion of bonds it bought during bankruptcy. BAM still owns a large stake in GGP (>30%).

Interestingly, just two years after the bankruptcy exit, Ackman was actively pressing for GGP to be sold to SPG. By then, Ackman was concerned about a creeping takeover by former ally BAM,
which would bring a loss of control and, in his mind, hurt the stock price. At the same time, he touted the great synergies that could be captured by SPG as a strategic buyer.106 (Brookfield successfully fought off this effort.) It just goes to show how quickly one’s enemy can become one’s bedfellow, and vice versa.

Exhibit 23

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Source: GGP 10-K filings, S&P Capital IQ, and Bloomberg Terminal
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Source: GGP Disclosure Statement, August 27 2010
Bibliography


Debtor's Memorandum of Law in Opposition to the Motions of ING Clarion Capital Loan Services LLC and Wells Fargo Bank, N.A., as Trustee, Et Al., to Dismiss the Cases of Certain Debtors and Debtors in Possession. United States Bankruptcy Court Southern District of New York. 8 June 2009. Print.

Debtor's Memorandum of Law in Opposition to the Motions of ING Clarion Capital Loan Services LLC and Wells Fargo Bank, N.A., as Trustee, Et Al., to Dismiss the Cases of Certain Debtors and Debtors in Possession. Web. https://www.kccllc.net/documents/0911977/0911977090702000000000004.pdf


