

## **DISCUSSION HYPOS**

### ***HYPO 1***

30 Rock Bank signs a \$500 million financing agreement on June 15, 2004 with Resolution Steel, Inc. for the construction of a steel plant in New York. Under the terms of the agreement, all outstanding debt comes due in five years (June 15, 2009). The parties do not include any provisions for force majeure or material adverse changes.

In January 2009, Resolution Steel has \$400 million outstanding on the loan, but as a result of the global economic crisis, demand for steel has fallen sharply. The facility recently began production, but its earnings have been well below expected. Moreover, banks are reluctant to lend because of the global financial crisis: the facility is unable to obtain new financing without a guaranty of all obligations from Resolution's corporate parent, RSC Industries, Inc., and covenants to delay construction of an anticipated "Phase II" section of the facility that would increase the facility's output by 50% until the facility shows a profit in four consecutive quarters.

Resolution Steel and its president, Ronald Remington, files suit against 30 Rock Bank, arguing that the unfavorable market conditions caused by a general economic crisis amount to force majeure. The plaintiffs seek a court order to postpone payment of the debt until "a reasonable time after the cessation of the current crisis in the financial markets."

## ***HYPO 2***

Same transaction as (1), only the June 15, 2004 financing agreement has a force majeure clause, which defines force majeure events as:

(i) acts of declared or undeclared war by a foreign enemy or terrorist acts; (ii) riots, civil commotion, or insurrection; (iii) casualty or condemnation; (iv) fire, floods, hurricane, or other casualty; (v) earthquakes; ... **(xi) any other event or circumstance not within the reasonable control of Resolution Steel or any Trade Contractor. . . .**

If Resolution Steel claims a Force Majeure Event, Resolution Steel shall provide 30 Rock Bank with notice of such Force Majeure Event properly following Resolution Steel obtaining knowledge of the same and Resolution Steel shall provide notice to 30 Rock Bank promptly following the end of such Force Majeure Event.

### ***HYPO 3***

Resolution Steel signs a merger agreement on June 1, 2008 with Quality Copper, Inc., a copper supplier, to form Heavy Metals Amalgamated. The closing is expected in June 2009. As part of the agreement, Quality Copper warrants that it has not suffered a material adverse change ("MAC") since January 1, 2008. The merger agreement defines a MAC as:

any event, occurrence or development of a state of circumstances or facts which has had or reasonably could be expected to result in a Material Adverse Change . . . in the condition (financial or otherwise), business, assets, liabilities or results of operations of Quality Copper taken as a whole . . .

In the first quarter of 2009, Quality Copper's historic earnings declined 64% and its projected earnings declined 33% as a result of higher energy costs and reduced demand. In addition, news breaks in February 2009 that Professor William Ramsay of the University of London has discovered an inexpensive means of producing a synthetic copper. Resolution Steel notifies Quality Copper that it will not close the transaction, and Quality Copper files suit seeking specific performance of an acquisition under the agreement.