

The Eurotunnel Safeguard Proceedings

Updated May 2009

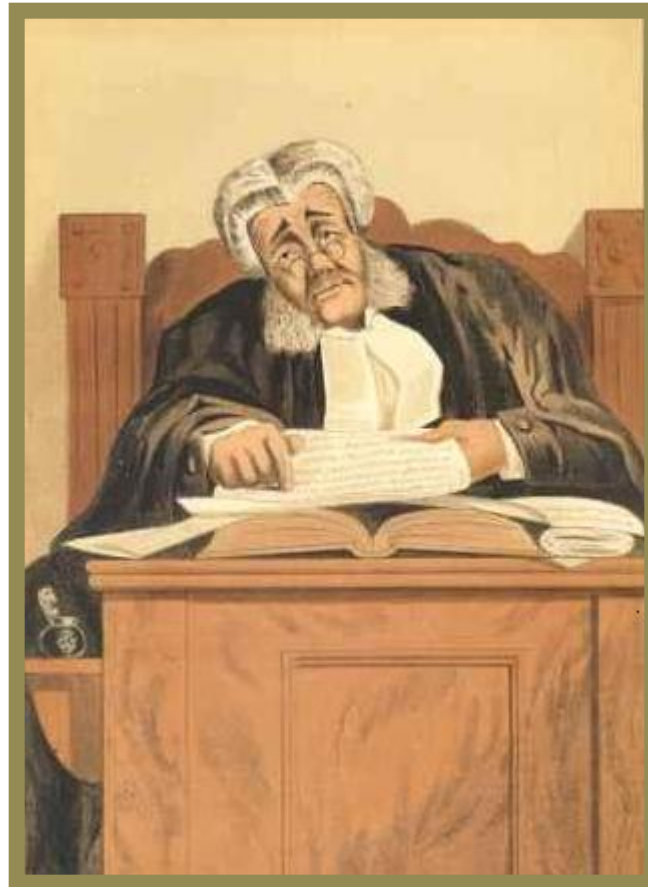
Speakers : Me Vincent Gladel, Bankruptcy Administrator
Me Laurent Le Guernev , Bankruptcy Administrator

Why Safeguard for Eurotunnel ?

Because Eurotunnel particular!

- A special structure: **1 Group (17 companies)** located in **6 European countries)** operating **1 business**:
 - The management of the infrastructure of the Channel Tunnel,
 - The operation of Truck Shuttle and Passenger Shuttle Services between Folkestone, UK and Calais, France,
 - The management of Eurostar passenger train and Railfreight Services traffic through the tunnel
- A financial **debt of € 9 billion** that the group couldn't pay with available cash flows
 - **owed by two companies** (French /English)
 - Jointly and severally **guaranteed** by all 17 companies of Group
- Many legal constraints :
 - the **Treaty of Canterbury** signed 12 February 1986 (ban on requesting government funds)
 - the **Concession Agreement** signed 14 March 1986 (also organising the Substitutions)
 - the **Debt Agreements**
(Senior Debt, Junior Debt, Stabilisation Notes, Participating Loan Notes, Resettable Bonds).

What a conundrum!



[BACON The Rt. Hon Sir James](#)

Vice Chancellor and Chief Judge in
bankruptcy / circa 1873 /
Vanity Fair Cartoon

Key Milestones in negotiations between Eurotunnel and creditors

- 31 January 2006 - MOU signed between Eurotunnel and Ad Hoc Committee of creditors representing more than 50% of the debt.
- A second waiver period (16 February-31 March 2006) was organised to inform non-signatory creditors of the outline proposal on restructuring
 - The junior and subordinated creditors grouped themselves into a single committee holding a significant amount of debt.
- A third waiver period to the 12th July 2006 was allowed to enable all creditors to reach agreement on a financial restructuring plan.
- 24th May 2006 - Preliminary binding agreement on financial restructuring signed between Eurotunnel and Ad hoc Committee
- 12th July 2006 - Presentation by Eurotunnel of a final proposal
 - Rejected by the subordinated creditors led by Deutsche Bank.

Opportunity knocks !

- After months of negotiations with the banks, Eurotunnel was seeking alternative ways to relaunch the **restructuring talks** despite the following complications:
 - The Group's operations / offices were split between France and the UK,
 - The unicity / interconnectedness of the business operating the Channel Tunnel
- Given the organisational structure of the group, Eurotunnel required a **single legal framework / system for the 17 companies**, whether in France or in the UK
- EC Council Regulation of 29 May 2000 on Insolvency Proceedings allows the opening of all proceedings in one Member State if the **Centre of Main Interests** of the affiliate companies is also located in that one Member State
- There had been a prior application of the **European Regulation COMI in France**, which permitted the opening of 11 separate Insolvency Proceedings , for 3 French and 8 foreign companies, on French territory / EMTEC Reorganisation Proceedings / Head offices located in other States
- A new French legal environment : The **Safeguard* procedure** had just come into force on 1st January 2006 / no case-law available
 - *Listed in EC Council Regulation 1346/ 2000 on Insolvency Proceedings – May 2006.

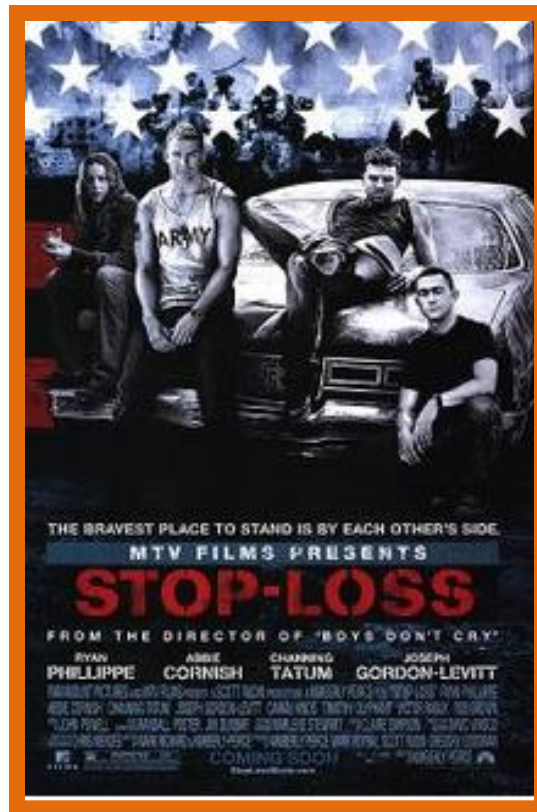
The Bravest Place to stand is by each other's side



of the
CHANNEL!

Things go better
with
SAFEGUARD!

STOP-LOSS
KEEP YOUR
COMPANY
SAFE!



From the director of
"BOYS DON'T CRY"
Nor do Frenchmen!

Preventive and Insolvency proceedings :

No payment default

**Ad hoc mandate
/
Conciliation**



**Arrangement between the company
and its main creditors**

**Judgment of the Court
(Court-registered)/**

Order of the President of the Court

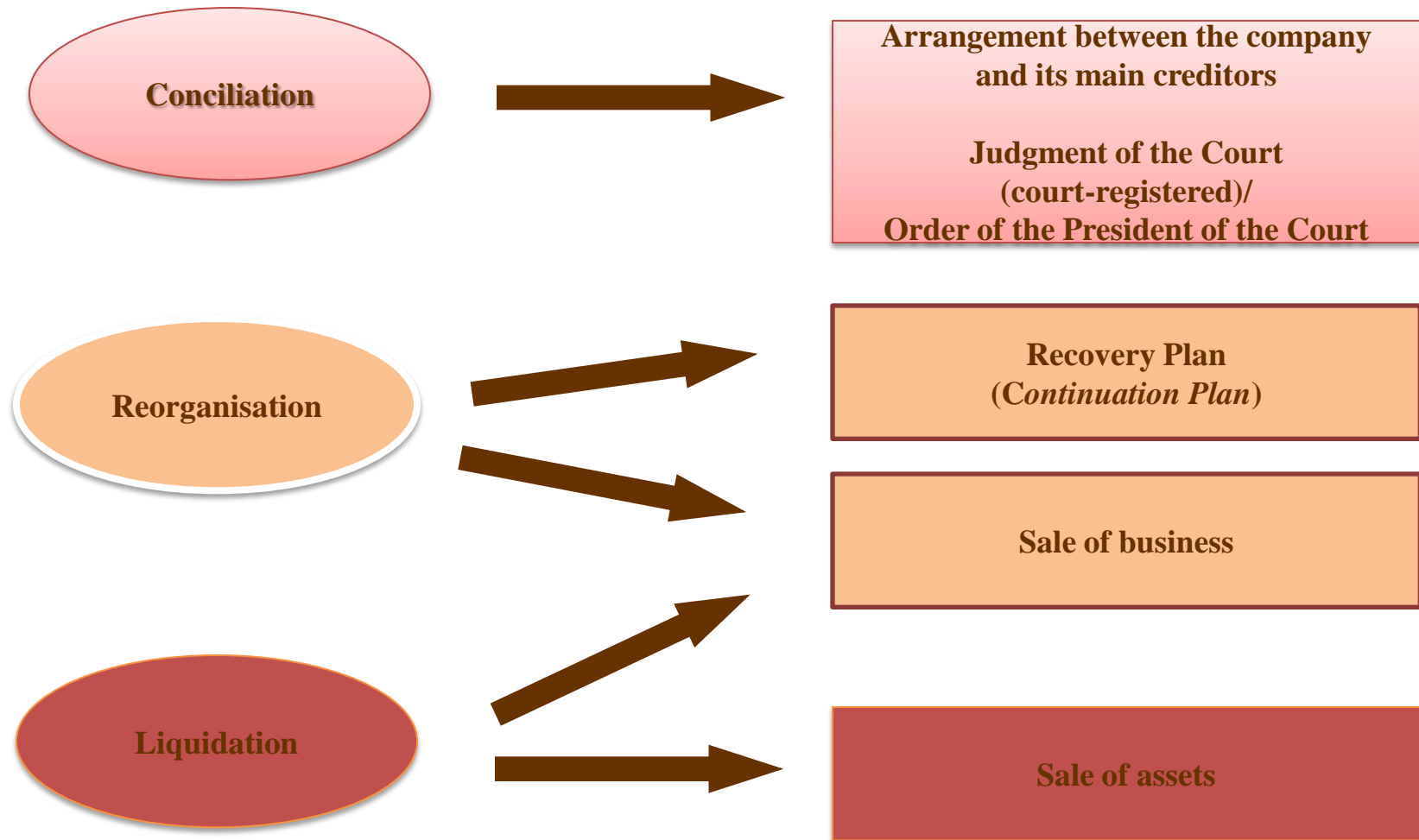
Safeguard



**Safeguard Plan:
Rescheduling / Renegotiation of debt**

**Proposals to creditors or
Negotiated by committees**

Preventive and Insolvency proceedings : Payment default



Safeguard, Version 2009

- Originally designed to attract debtors to petition early on when they could prove problems would likely lead to insolvency.
With the Dec 2008 Amendments, debtors may now apply for Safeguard when able to justify the existence of difficulties which they are not able to overcome.
 - Only on petition of the debtor;
 - The management keeps a certain degree of autonomy and independence;
 - **The debtor can now suggest his own Administrator**
- Safeguard's raison-d'être is to facilitate the reorganization of a business in order to pursue economic activity, maintain jobs and pay off debt.
- The company undergoes an observation period (6 to 12 months) during which the debtor's financial situation is assessed.
- It is a collective procedure with a stay on debts, and an automatic stay of all lawsuits pending. It usually entails a major reorganization of the business.

Safeguard (cont'd)

- Observation period culminates in drafting and approval of Safeguard Plan designed to allow debtor to keep business going, or at least part of it
- Details discounts and rescheduling of debt negotiated via:
 - **For companies attaining threshold of 150 employees & € 20 million turnover**
 - Two creditors' committees
 1. A Financial Institutions' Committee including any entity having consented to a credit transaction or lending operation, i.e., hedge funds
 2. A Suppliers' Committee (major suppliers represented)
 - Majority carries with **2/3 of the value** of the claims **participating in the vote** / Regardless of the number of members voting (cram down)
 - Both committees must approve the plan
 - **For companies below threshold**
 - The creditors' representative for each creditor not part of a committee or for creditors absent from committees.
 - Debt cannot be reduced without consent of creditor
- If any **bondholders**, they are called to vote at a general meeting / 2/3 majority rule
- **In all cases**, the plan may not exceed 10 years. Beginning 3rd year, payment instalments cannot be less than 5% per year of debt remaining

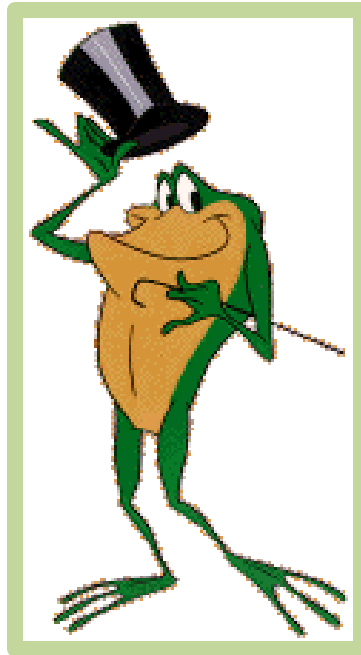
Safeguard (cont'd)

- Plan reviewed by Court – approved if Safeguard feasible and chances for recovery are strong . **As at February 2009, Court can no longer impose replacement of mgmt as condition of adopting a Safeguard Plan.**
- If proposal includes a debt equity swap – approval required by shareholders
- If company defaults on obligations during the life of Safeguard Plan, the Court cancels Plan and converts proceedings into liquidation

Conversion to Reorganisation

- If during the Observation period payment default occurs, the procedure is converted into reorganisation proceedings.
- The Debtor can only request the conversion of Safeguard into Reorganisation proceedings if the adoption of the Safeguard plan is obviously impossible and if the closing of the proceedings would most certainly lead to payment default in a very short time.

On with the show, this is it!



Overture,
Curtain, Lights!



EUROTUNNEL – NOT A "SHAFT" STORY!

4 March 2009

2008 Results

View the documents:

- Press release
- Full presentation
- Financial notice
(as published in the UK press)

A photograph of a high-speed train in motion, blurred to show speed. The train is blue and white, traveling on a track with overhead power lines. The background shows a clear blue sky and some greenery.

What's up IP?

Walt Disney **public domain**,

No compromise on **Rosé**,

And EUROTUNNEL made a **profit!**

SAFEGUARD – A Timely Opportunity for EUROTUNNEL

- Risk of creditors approaching UK to open Administration proceedings or Scheme of arrangement
- Problem was that **no UK procedure offered a workable solution** for both investors and Eurotunnel.
- The French **Safeguard procedure** was the only viable option given the Tunnel's current state of affairs and its search for solutions (No payment default, and cram down as method).
- Safeguard **froze all the debts**, provided an **automatic stay** of all recovery suits against the Company, and employed **cram-down in the committees**.
- Despite the Group being split between France and the UK, Eurotunnel was able to demonstrate that the Group's **COMI** was situated in **Paris, France**.

EUROTUNNEL SAFEGUARD PROCEEDINGS

Key Milestones

- **13th July 2006** Audience before Commercial Court of Paris on petitions by the 17 companies
- **2nd August 2006** Paris Commercial Court Judgment opens 17 separate proceedings on behalf of the Eurotunnel Group
 - French law applies / Company Safeguard Law of 26 July 2005 in force on 1 January 2006
 - European Community Council Regulation 1346/2000 on Insolvency Proceedings applies
- **26th October 2006** Draft plan on restructuring is approved by the Board
 - Negotiated by Eurotunnel, judicial administrator assisting
 - Active participation by Creditors' representatives, main financial creditors
- **31st October 2006** Draft Plan sent to each creditor of all 17 companies for vote
- **26th November 2006**
Citigroup and Goldman Sachs/Deutsche Bank submit binding proposals to finance Eurotunnel Restructuring Plan

EUROTUNNEL SAFEGUARD PROCEEDINGS

Key Milestones (cont'd)

- **27th November 2006**
 - Meeting of the Financial Institutions Committee on the draft Safeguard Plan.
 - Favourable vote by 28 creditors, out of 35 present or represented (72% of the Senior/Junior Debt)
 - Hedge funds abstained to contest their inclusion in Financial Institutions Cttee
 - Meeting of Suppliers Committee
 - Unanimous vote in favour by suppliers present or represented
- **14th December 2006**
 - General meeting of Bondholders convened by Judicial administrators
 - Voted in favour:
 - 102 bondholders representing 82.17% of the bond value issued in Euros by France Manche SA
 - 88 bondholders representing 69.22% of the bond value issued in pounds sterling by Eurotunnel Finance Limited.
- **15th January 2007** : Paris Commercial Court pronounces judgment adopting the Safeguard Plan

EUROTUNNEL SAFEGUARD PROCEEDINGS

Effects of Opening Judgment

Main effects of Safeguard proceedings on Eurotunnel Group

Freezing of the debt

- Automatic stay on payments* and on any lawsuits pending
 - *Incidentally, the majority of Eurotunnel's suppliers were paid in advance.

Reorganisation begins

- Renegotiating of the debt and facilities
- Downsizing, centralising, economies of scale, streamlining, production strategy, etc....

Handling of the risks associated with the French securities provided to Lenders

- Pledge of the bank account balances
- Assignment of commercial receivables (Dailly) which represent 40% of the Group's turnover
- Substitutions

EUROTUNNEL SAFEGUARD PROCEEDINGS

Handling of the risk of substitutions

The Concession Agreement provides that the Lenders, approved as such by the States, may request that substitution be made in favour of entities controlled by them if:

- The Operators (France Manche and Channel Tunnel Group) fail to pay, within any contractual grace period, any sum due and payable under the terms of the financial documents;
- The Operators do not have and cannot procure sufficient funds to finance the forecast operating costs of the Fixed Link, and the related finance charges;
- It appears that the date of full and final payment of all lender claims must be postponed for a significant length of time;
- The Fixed Link is abandoned, or other events transpire such as payment default, liquidation, enforcement of security by other creditors , etc.....

The substitute entities must prove to the States, at the time of the substitution, that they have sufficient technical and financial capacity to continue performance of the Concession Agreement.

EUROTUNNEL SAFEGUARD PROCEEDINGS

Creditor Committees - General

Safeguard Law provides for 2 creditor committees

- Suppliers Committee consisting of main suppliers of goods or services holding at least 5% of the total suppliers' debt . **As at 15 Feb 2009, only 3% of the debt and all taxes included.**
- Financial Institutions Committee composed of credit institutions as defined by article L 511-1 of the Monetary and Financial Code

Both committees provide input and participate in the elaboration of the Safeguard Plan.

In 2006 (under 26 July 2005 law) the Plan had to be approved with a double majority:

- more than 50% of members
- accounting for at least 2/3 of the total amount of the claims of that committee

For proceedings opened on 15 Feb 2009 and later:

The new 2/3 majority rule applies: Only those votes participating carries regardless of abstentions.

EUROTUNNEL SAFEGUARD PROCEEDINGS

Creditor Committees - Eurotunnel Issues

- A theoretical total of 34 committees arrived at based on 17 companies required to set up and manage 2 creditor committees each



Decision to group the 17 Suppliers Committees and the 17 Financial Institution Committees **into 2 distinct “amalgamated committees”** with separate votes

- Suppliers Committee: Few members and very little at stake
- Financial Institutions Committee:
 - Reference date required to **identify creditors** considering multiple debt transfers (*Date of Opening judgment, Date of appointment of the committee or date of vote ???*)
 - **Situation of hedge funds** who are not credit institutions under French law

EUROTUNNEL SAFEGUARD PROCEEDINGS

Bondholder issues

- French law provided for a general body of bondholders / excluded from the 2 Committees
- French law made no provision for multiple issuance bonds or for bonds governed by a Foreign law

Solution adopted

A general meeting of bondholders convened by the Judicial Administrators

- Application of the rules the committees for the votes : the **double majority**

EUROTUNNEL SAFEGUARD PROCEEDINGS

Safeguard Plan – Key provisions

Safeguard Plan dated 15 January 2007 approved by the Paris Commercial court provided for:

- A new parent company – Groupe Eurotunnel SA
 - Shares to be listed in both Paris and London
- An English law mirror company* – Groupe Eurotunnel UK
 - Issued hybrid Notes Redeemable in shares (NRS)
- Groupe Eurotunnel SA launched an Exchange Tender Offer (ETO) to acquire (all ???) shares from the Eurotunnel PLC (UK) and Eurotunnel SA (UK) companies

* London Stock Exchange Alternative Investment Market / considered best market for new ventures as market large and many international companies listed. Time shorter to achieve a listing.

EUROTUNNEL SAFEGUARD PROCEEDINGS

Eurotunnel – The rest of the story

- **Safeguard Plan** was **successfully implemented** along with financial restructuring
 - Listing finalised in July 2007
- **All Judgments and Orders** were **confirmed** by the Court of Appeal of Paris.
- Eurotunnel proceedings led to **numerous disputes and claims**
 - Third party appeal against Opening Judgment : Rejected by Court of Appeal
 - Objection to composition of creditor committees: Dropped
 - Objection to the Order recording the absence of bondholders' representative and organizing the vote of bondholders: Pending
 - Third party appeal against the Paris Commercial Court Order adopting the Safeguard Plan Pending

Eurotunnel – Setting precedent

The strategies adopted by the Court and the Insolvency Practitioners in **the Eurotunnel case** have been treated **as relevant case-law** in the matter.

The Eurotunnel solutions acted as catalyst and inspired the recent reform of the Safeguard Laws, the main changes being:

- Membership in the Financial Institutions and Suppliers Committees is now based on the **nature of the debt on the day of opening of the proceedings** / and not on the class of holder. This way buyers of debt can recover the rights of the previous creditor including their voting privileges.
- All bondholders are now grouped together in one single General Meeting, **regardless of the geographic location of the issuance of the bonds.**



That's all folks!



Victorious
And just **out of the tunnel**,
PDG JACQUES GOUNON
....with a little help from



The French Corporation of
Insolvency Practitioners and
the French Bar