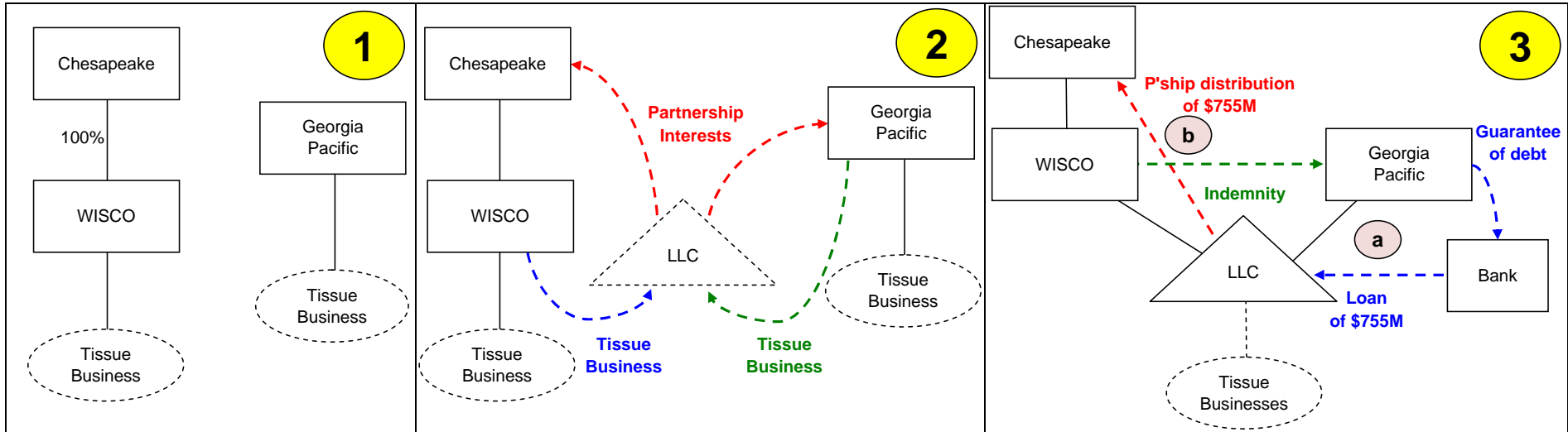


Initial Structure

Joint Venture

Debt Financing



The issue was whether Chesapeake's subsidiary's contribution of its assets and most of its liabilities to a newly formed limited liability company and the simultaneous receipt of a \$755 million distribution should be characterized as a disguised sale.

Georgia Pacific ("GP") and WISCO formed Georgia-Pacific Tissue LLC (LLC) as the vehicle for a joint venture. GP and WISCO treated the LLC as a partnership for tax purposes. Both partners contributed the assets of their respective tissue businesses to the LLC. GP transferred to the LLC its tissue business assets with an agreed value of \$376.4 million in exchange for a 95-percent interest in the LLC. WISCO contributed to the LLC all of the assets of its tissue business with an agreed value of \$775 million in exchange for a 5-percent interest in the LLC. The LLC borrowed \$755.2 million from Bank of America (BOA) on the same day it received the contributions from GP and WISCO. The LLC immediately transferred the loan proceeds to Chesapeake's bank account as a special cash distribution. The court held, that the transaction was a disguised sale of property. See sec. 707(a)(2)(B).

In assessing whether PwC's advice was reasonable, Chesapeake contended that it relied on legal analysis prescribed in PwC's "should" opinion. The court held that PwC crossed over the line from trusted adviser for prior accounting purposes to advocate for a position with no authority that was based on an opinion with a high price tag—\$800,000. The advice Chesapeake received from PwC was tainted by an inherent conflict of interest. PwC's opinion looked more like a quid pro quo arrangement than a true tax advisory opinion. PwC lacked the independence necessary for Chesapeake to establish good faith reliance.

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