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Year in Review

by Christopher Patalinghug

Commercial Chapter 11 bankruptcy filings for the first 11 months of this year rose 22% compared to calendar year 2019, according to data from American Bankruptcy Institute and Epiq Systems, Inc. In addition, commercial Chapter 11 filings through November are already up 23% from calendar year 2018 and 17% from three years ago. Data refined by *Troubled Company Reporter* editors, to exclude contemporaneously filed cases being jointly administered, show that about 1,764 of the corporate Chapter 11 cases filed through December 20, 2020, involved debtors with more than $1 million in assets. According to TCR, there were 1,914 corporate Chapter 11 filings by debtors with more than $1 million

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Virtual-Centric Environment Here to Stay?

by Sarah Link Schultz and Rachel Biblo Block

This year has tested the restructuring industry in unprecedented ways, and the typically rigid industry has responded with unexpected but necessary elasticity that should be a guiding light for other specialties in the legal field. Courtroom and restructuring professionals have embraced change while also recognizing that the goals have not changed but have perhaps become more challenging in the new virtual-centric environment. The authors explore these changes—in the courtroom, the office, and the restructuring industry—resulting from the global pandemic

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in assets in 2019, 1,719 in 2018 and 1,836 three years ago.

Year	Total Commercial Chapter 11 Filings
2020 (YTD)	6,723
2019	5,518
2018	5,518
2017	5,762

Source: ABI

In contrast, through November 2020, total U.S. bankruptcies are down 35% compared to calendar year 2019, a steep drop from total filings in each of the past three years. After declining for eight consecutive years, total bankruptcy filings for 2019 slightly increased 0.28% from 2018. According to ABI, the 494,756 total bankruptcies through November are on pace to result in the lowest annual filing total since the 617,660 filings recorded in calendar year 2006, the year after the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 went into effect and placed new requirements on filers.

Year	Total US Bankruptcies
2020 (YTD)	494,756
2019	757,497
2018	755,353
2017	766,761

Source: ABI

ABI Executive Director Amy Quackenboss explains government relief programs, moratoriums and lender deferments have helped families and businesses weather surging COVID-19 cases, elevated unemployment rates and growing debt loads to this point of the pandemic. "Unless renewed by Congress, the expiration of the stabilization programs will leave struggling consumers and businesses in a challenging and uncertain position. Bankruptcy provides a proven shield to companies and consumers facing mounting financial distress," she says.

Statistics released in late October by the Administrative Office of the U.S. Courts affirms this downward trend. Despite continued high unemployment related to the COVID-19 pandemic, personal and business bankruptcy filings fell 21.1% for the 12-month period ending Sept. 30, 2020, falling sharply for the second straight quarter. Bankruptcy filings totaled 612,561, compared with 776,674 cases in the year ending Sept. 30, 2019, according to the Judiciary report. Bankruptcy filings fell 11.8% for the 12-month period ending June 30, 2020. The months of April to June this year coincided with the first wave of COVID-19 in the United States, as well as a spike in unemployment claims.

The Judiciary report, however, notes bankruptcy filings tend to escalate gradually after an economic downturn begins. Following the Great Recession that began in 2007, new filings escalated over a two-year period until they peaked in 2010. Some filing activity also may have been affected by pandemic-related disruptions to bankruptcy courts, many of which have had limited public building access since mid-March.

Beyond the numbers, how was the restructuring activity this year, especially against the backdrop of the COVID-19 pandemic that has now claimed over a million lives worldwide and continues to disrupt economies? We ask several restructuring experts to reflect on the significant events in the past year: the **Hon. Melanie L. Cyganowski** (Ret.), E.D.N.Y. Chief Bankruptcy Judge and now Chair of the Restructuring Department at Otterbourg P.C.; Kirkland & Ellis restructuring partners **Aparna Yenamandra** and **Ryan Blaine Bennett**; **Jonathan Carson** and **Eric Kurtzman**, Co-CEOs of bankruptcy administration and technology firm Stretto; **Morris S. Bauer** and **Melissa A. Peña**, Members at Norris McLaughlin; **Allen Wilen**, the National Director of EisnerAmper's Financial Advisory Services Group; **Kate McGlynn** and **David Orlofsky**, Managing Directors at AlixPartners' Turnaround & Restructuring Practice; **Dan Dooley**, Principal and CEO at MorrisAnderson; and **Paul Leake**, global head of corporate restructuring practice at Skadden, Arps, Slate, Meagher & Flom LLP, and partners **Shana Elberg**, **Lisa Laukitis** and **Christine Okike**.

The COVID-19 pandemic is probably the single most important story of 2020. How has your firm

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adjusted to this major health crisis? What's the new normal like for you and your firm?

Hon. Melanie L. Cyganowski (Ret.): COVID-19 is the most important story of 2020 bar none, and most likely in 2021. The contours and timing of a return to normalcy continue to develop. Fortunately, Otterbourg has adjusted to the challenges posed by the pandemic. We have successfully shifted from an office-centered practice to working online from our respective individual locations. The Firm has been fortunate to have a strong, adaptive, and responsive leadership at its helm. Just as important is the behind the scenes work of the firm's IT department and frequent technology upgrades to adapt to the multi-fold increase in remote access during the pandemic. Effective leadership and infrastructure make a huge difference for clients and lawyers alike.

Aparna Yenamandra, Kirkland: We went from being an office where most partners and associates (and support staff) came in every day unless they were traveling on business, to suddenly all being at home virtually overnight. The first hurdle was working to stay in contact with each other in the same way and to the same extent as we did pre-COVID, and we addressed that through regular group-wide and small-group Zoom sessions. The second hurdle was definitely negotiating significant (and complicated) restructuring transactions without ever having in-person meetings, and then subsequently prepping and filing cases remotely but we quickly got the hang of all of that as well. The third hurdle was having court hearings and depositions remotely, and learning how to use the new remote technology. By the end of the summer we had found our new normal on interacting with each other, other advisors, our clients, and the court remotely.

Eric Kurtzman, Stretto: The COVID-19 pandemic brought Stretto both expansion opportunities and business challenges. As an administrative services and bankruptcy technology partner to fiduciaries across the industry, the company's operating model was designed to maintain business continuity. While our case-management experts utilized cloud-based technology, the uptick in Chapter 11 filings fueled the growth of this service line. We quickly scaled our corporate restructuring services by adding personnel capable of working from home across the country. As more law firms turned to Stretto to fulfill their print-production and legal noticing needs due to their own remote working conditions, we leveraged our in-house facilities designed specifically for bankruptcy cases.

On the Chapter 7 side of the business, we're managing dueling headwinds due to decreased consumer-bankruptcy filings and a low interest-rate environment for the entirety of 2020. For the tens of thousands of bankruptcy attorneys who utilize our case-preparation and filing software, we've expanded our suite of administrative services to meet their needs during the pandemic such as offering temporary administrative staff support, eliminating the need for them to scale their own personnel to meet the ebb and flow of their practices during these uncertain times.

Morris S. Bauer and **Melissa A. Peña, Norris McLaughlin:** Our attorneys and staff exhibited a great deal of resilience this year. We have learned to work remotely and have done so effectively. While there were concerns on how we would manage in March of 2020, we have successfully transferred our practice to a remote practice and have continued to service our clients. The firm has performed better than expected in the early days of the pandemic. The pandemic has not hindered our strategic efforts to grow. Firmwide, we have hired five new lateral partners since the pandemic started and continue to interview prospects.

As with all firms, we are continuing to monitor the economic impact caused by the pandemic so that we may strengthen our presence in certain practice areas. We have seen an uptick in litigation, employment, real estate, mergers & acquisition, and trust and estate work. We anticipate legal work in the mid-market to small market bankruptcy/workout/creditors rights arena to increase significantly by the

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second quarter of 2021.

Our management team has positioned us to be ready, willing, and able to serve, support and satisfy the legal needs of our clients.

Dan Dooley, MorrisAnderson: We re-started consultant travel to client sites in June although some clients are partially working remotely. For consultants travelling, we pay for COVID tests weekly or bi-weekly as appropriate at a cost of $100/test.

Referral source marketing has ground to a halt as almost no one wants to meet in person.

Allen Wilen, EisnerAmper: When companies are in crisis, restructuring professionals travel to wherever we're needed. So for us, the new normal is working remotely rather than being on site for a restructuring. Our team has responded rather nimbly, and we have traded hopping on a plane for our home offices and working on a virtual basis. We have become proficient with video conferencing—the ballooning use of Zoom and Microsoft Teams has changed the way we interact with clients and staff. My biggest concern, once the health crisis is over, is whether remote work will become permanent or if we'll go back to working across the table from each other. We've already seen major companies choose to remain working remotely to increase efficiencies and reduce rent expense, so my concern is will clients come back to their offices. And, will restructuring professionals be willing to travel when norms permit? The challenge will be helping both staff and clients navigate these changes.

Kate McGlynn and David Orlofsky, AlixPartners: While we didn't have much choice regarding remote work and remote client engagements everyone quickly adapted to the new normal seamlessly. Both internally at AlixPartners and externally with our clients everyone has stepped up and shown true leadership through uncertainty and chaos. Many of us wondered how we would be able to effectively work remotely and still provide significant value to our clients. Over the last several months, we have helped clients stabilize business operations, successfully started new engagements without ever meeting the client in person, prepared and filed companies for bankruptcy, attended and participated in virtual bankruptcy hearings and sale auctions, assisted with M&A diligence, and onboarded new colleagues virtually. All this work has been done using video conferencing software that pre-pandemic we seldom felt the need to use.

Although we are still evaluating what the new normal will look like, we have now proven that we can effectively perform some of our work remotely. This will allow us to continue delivering excellent results for our clients but also give our people some flexibility.

In-person meetings won't go away, and in some cases, we think certain aspects of our work is done more efficiently and effectively in person. There will be a certain amount of travel for business but likely less than before and we think that applies to the entire restructuring industry.

Shana Elberg, Skadden: Skadden has done a great job all-around adjusting to the new (albeit, hopefully temporary) norm. Technology (software and hardware) resources were mostly in place to work fully remotely, but certain features were rarely used (Webex, Zoom, etc.) prior to the pandemic and the firm quickly made sure everyone had what they needed to fully function outside of their traditional offices. More importantly, I think, the firm has been making sure we all remain connected to each other on a regular basis, that everyone feels informed of happenings around the firm and, most importantly, making sure individuals are able to balance work/life in an entirely new way.

Overall, what did the restructuring activity look like this year?

Cyganowski: Our responsive and client-focused attorneys have enabled the Firm to be involved in a large number of high-profile cases, particularly in the retail, mass torts, health care, and construction sectors. Otterbourg's representations included secured lenders in a busy restructuring market, which led to participating in household-name bankruptcies, such as JCPenny, Modell's, Stein Mart, RTW Retailwinds (aka Lerner New York / New York & Company), and Le Tote

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(aka Lord & Taylor). Additionally, we saw an increase in our activity in representing key constituents in national mass tort and health care bankruptcies. We served as Co-Counsel to the Ad Hoc Committee of Governmental and Other Contingent Litigation Claimants in the Purdue Pharma bankruptcy.

Yenamandra: This was a super busy, active year. We saw a lot of movement and activity in the E&P space, as commodity prices continued to fluctuate wildly in the wake of the pandemic. We obviously saw a lot of retail filings, as companies complied with governmental closure orders after already battling the Amazon effect for years. We saw a lot of activity in the gym/movie theater/hospitality/entertainment space, as it became clear that we were looking at closures for a significant period of time. Finally, we saw a lot of activity (and will continue to see activity) with respect to consumer-facing businesses, given the uncertainty around the volume of consumer activity this year and next. Ultimately, there were not many industries that didn't at least contemplate needing to do some kind of in-court or out-of-court restructuring as a result of the pandemic.

Jonathan Carson, Stretto: Compared to 2019, Q1 2020 was a continuation of last year's tepid pace of corporate restructurings. Once the pandemic took hold in March of this year, it became the catalyst for over-leveraged companies to fail which resulted in an uptick of Chapter 11 filings. More major retailers and restaurant chains filed for bankruptcy in the first nine months of 2020 than all of 2019.

Professional-service providers such as Stretto also saw a marked difference in business resulting from the pandemic-induced restructurings this year. For example, Stretto managed 20 cases in Q2 2020, compared to five cases in Q2 2019. The increased year-over-year pace continued into Q3 as we handled more than double the number of cases in 2020 from 2019.

Bauer/Peña: Prior to the COVID-19 pandemic, large retailers were already in distress as a result of growing competition from ecommerce retailers like Amazon. Prior to the pandemic, Modell's Sporting Goods and Pier 1 Imports filed liquidating Chapter 11 cases. The pandemic accelerated filings by other distressed retailers because of the forced shopping mall closures impact on revenues. Those that survived changed owners. In some instances, the new owners are the lenders through a debt for equity swap or a consortium that included the mall owners. Under both scenarios, the surviving locations are those that were profitable before the pandemic with the Chapter 11 being used to terminate leases at those locations that were not profitable and to effectuate the new ownership with a clean balance sheet.

As with the retail cases, prior to the COVID-19 pandemic, there was already financial distress in the gas, oil and energy industry. Energy commodity prices were declining and energy prices were slumping. Both required the use of Chapter 11 to infuse cash and restructure top level debt.

The middle-market and small company filings have been stagnant. The need to file for bankruptcy has been delayed due to the following: state court moratoriums; the government providing various loans; landlords and lenders making certain concessions; and businesses reducing their workforce and analyzing future revenues and expenditures. In each instance, counsel is being used as a sounding board exploring legal rights and remedies that can be used down the road and the possible outcomes. These discussions include business viability, the hypothetical outcome of a liquidation, possible sale or merger of the business, restructuring loan and lease terms, the utilization of the new Subchapter V and when to take that step. In a closely held business, these discussions have also involved the resulting implications to the principal of the business, who may have guaranteed the company's loans and leases.

At a certain point, financial institutions and landlords will be free to pursue deferred obligations. Those businesses with sustained revenues, cash, or access to cash by way of equity capital or a new lender will survive. Those without will require a merger partner or be liquidated. The mid-market to small market

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company's management is being tested as to their ability to manage cash through one of the most trying times in economic history. At some point in the future, when businesses return to a "new" normal, a formal restructuring will likely be required.

Dooley: Strong thru Q2 and then deal flow dried up in Q3 and Q4 with PPP loans, 6-month bank loan downgrade moratoriums and bank's reluctance to be aggressive against PPP loan recipients.

Wilen: Our firm has continued to be exceptionally active in the marketplace and we have benefited from several large engagements with longer engagement lengths than usual. In recent years, many restructuring engagements were of a shorter duration and practice leaders were dedicating more of their time to prospecting to keep existing staff busy. We have also benefited from our leading middle-market position where client engagements are typically longer. Lastly, our focus has been on healthcare and nonprofits as major components of our work and there is no end in sight for the growth of restructuring for either industry.

McGlynn/Orlofsky: Two industries that stood out this year were retail and oil & gas. In these and other sectors, disruption was occurring long before the pandemic. Then, COVID-19 hit, which exposed and magnified the disruptive forces that were impacting these industries. In addition, we saw companies that were outside these troubled sectors and were generally viewed as healthy before the pandemic. These companies were acutely impacted by COVID-19 and are now trying to outlast the crisis. Depending on how long the pandemic lasts, some of them are likely to run out of liquidity. For many of these companies, limited operations and forced shutdowns have had a severe impact. These industries include hospitality, entertainment, travel & leisure, retail, and certain parts of the real estate sector to name a few.

Paul Leake, Skadden: While this year definitely saw a significant uptick in restructuring work, the overall number of bankruptcy filings, especially on the consumer side, did not meet the end-of-days forecasts that some expected back in March. Two reasons may be attributable to the less-than-anticipated restructuring activity.

First, the unprecedented level of support from Congress and the Federal Reserve. The CARES Act authorized more than $2 trillion to battle the economic effects of COVID, and the Federal Reserve agreed to buy up to $500 billion in bonds issued by large companies. Second, many companies actively sought to shore up their balance sheets and proactively address their potential liquidity shortfalls given the pandemic. In that vein, companies maxed out their revolvers and aggressively accessed the capital markets for additional liquidity. Indeed, Skadden's capital markets group had one of its busiest years ever in 2020.

Even with the government's vital lifelines and the various liquidity management strategies employed by many companies, this year still saw a sizable increase in Chapter 11 cases. Chapter 11 filings were up 26% through the first half of the year, and, as of September, billion-dollar bankruptcy cases are up 171% over last year. Included among these Chapter 11 filings were many household name companies, such as Pier 1 Imports, Brooke Brothers, Chesapeake Energy, CEC Entertainment (Chuck E. Cheese), Hertz, Gold's Gym, JCPenney, J. Crew, Neiman Marcus, and Tailor Brands (parent company of Men's Wearhouse and JoS. A. Bank).

Which sectors remain vulnerable right now?

Cyganowski: Brick-and-mortar retail, real estate, travel and leisure sectors strike me as particularly vulnerable. COVID-19 exacerbated the already existing trend toward online shopping. The spate of bankruptcy filings by leading name brand retailers demonstrates the sector's vulnerabilities. As for real estate, both residential and commercial real estate remain in flux, with increased evictions and defaults realistic possibilities. As more employers and employees become comfortable with working remotely, we may see a permanent change in the office working structure, which would have a long term impact on office rentals. We also may be witnessing

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long term structural unemployment being a sad and lingering result of the pandemic. Regardless, until people feel safe and secure, hospitality and travel will likely continue to lag.

Yenamandra: Retail, E&P, hospitality, and travel remain vulnerable, among others. Certainly if the pandemic continues or there are delays in widespread distribution of a vaccine (or the efficacy of such a vaccine), a lot of companies that got through 2020 will be facing serious liquidity crunches in 2021. With other industries, like airline and hospitality, the name of the game will really be about staying power—companies that can survive a sustained downturn without facing traumatic liquidity crunches or loss of profit are the ones that will survive.

Carson: Due to the operating restrictions regional and local governments have implemented on businesses across the country to combat the rise of COVID-19 cases, certain consumer-based companies such as tourism, hospitality, travel, along with food and beverage establishments, face a great deal of uncertainty. If business restrictions remain in place for extended periods of time or become stricter, smaller businesses, and retail companies who rely more on brick-and-mortar locations versus ecommerce, may be vulnerable as well.

Bauer/Peña: Hospitality—hotels, restaurants and travel. Many of these businesses are highly leveraged and each have taken a significant revenue hit as a result of the pandemic. Debt restructuring, mergers, and closures are all conceivable future outcomes. Hotels and restaurants are franchised with large obligations paid to the franchisor. Many restaurants are closely held.

Airline industry—How long can an airline business manage its cash before a stimulus infusion, a merger or shut-down?

Retail—Retail falls into the following two categories: (i) the "big box" "big name" conglomerates like JC Penney, Macy's, Target, Kohl's, and (ii) the small retail business found on Main Street USA. The former will survive by evaluating on a store-by-store basis and restructuring top level debt. The latter's survival is more dependent on its ability to sustain revenue and obtain concessions and deferrals from their lenders and landlords. Surprisingly, revenue is coming back with the consumer being penned up by the pandemic and breaking out with a spending spree. Will it be sustainable?

Fitness Centers—Another predominately franchised-driven operation or closely held business. Its revenue is dependent upon members, many may be leery of using a gym while the pandemic persists. Survival will be dependent upon lender and landlord forgiveness and deferral. Even with concessions from their major creditors, the revenue may remain flat as members have replaced the gym with at home fitness equipment.

Transportation—Commuter trains and bus services have significantly dropped over the last year. Companies finding that "teleworking" works may not require employees to return to the office. Zoom has replaced the need for office face time. Other employees still wary of the pandemic may take private transportation. Even as the workforce returns to work, the industry will be forced to heighten cleaning procedures and reduce capacity for social distancing which comes at a cost. The future of this industry may be dependent on further government assistance.

Sports, performing arts, movie theaters and other leisure (amusements parks and casinos)—All of these sectors are driven by consumer attendance. In the short term, revenues are significantly down and this may lead to closures or immediate mergers. AMC theaters has just announced that it needs cash to survive and a competitor is already looking at the AMC locations as part of an acquisition. The first season after we return to the "new" normal will be determinative of the future survival or the need for a merger.

Office Real Estate and Shopping Centers—Similar to transportation, with teleworking and the increased on-line sales, both the office real estate and shopping centers will suffer. Companies will be reducing their office real estate and attempting to negotiate reduced rent. Some companies will cease to exist and vacate their office space. All of this will result in more office building

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foreclosures and make available discounted real estate. Similarly, shopping centers, which already were feeling the pain from on-line shopping, will continue to lose revenue, be subjected to foreclosures and discounted sales. Optimally located shopping centers may be able sustain their value by repositioning as warehouse space for the online retailers.

Dooley: The obvious ones—restaurants, hotels, retail, travel, aerospace.

Wilen: We feel there is great opportunity for restructuring in the healthcare, non-profit, retail, hospitality, and commercial real estate industries.

McGlynn/Orlofsky: Commercial real estate, in large cities like New York, is a sector with a lot of issues. You've already started to see some companies move to lower cost areas and that trend could continue. Also, many municipalities have a significant amount of debt and pension liabilities, and they will need to identify how to modify their operations in the new normal.

It will be interesting to see how behavior changes in the new normal and how much of the changes caused by the pandemic remain post crisis, which could have a long term effect on certain industries. For example, will people go back to gyms or will home fitness maintain its popularity, will people want to go to movie theaters or will they prefer to watch new releases at home, and when will people be allowed and/or feel comfortable eating inside a restaurant again?

Christine Okike, Skadden: No surprises here. The sectors that were particularly impacted by COVID are vulnerable right now, including leisure, travel, hospitality, tourism, energy, and brick-and-mortar retail. Those sectors that were already in distress pre-COVID, such as oil & gas and retail, may now be in extremis.

Was there any court decision, case or transaction this year that might set off a trend or may influence how restructurings are done in the future? Or, were there cases that took an unexpected or surprising turn last year? How?

Cyganowski: The Second Circuit's *Tribune II* decision (decided on the eve of 2020) will likely have a significant impact on how leveraged finance transactions and fraudulent conveyance litigation proceed in the future. See *In re Tribune Co. Fraudulent Conveyance Litig.*, 818 F.3d 98 (2d Cir. 2016), *as amended*, 946 F.3d 66 (2019) ("Tribune II"). In *Tribune II*, the Second Circuit found that the statutory safe harbor provision contained in Section 546(e) of the Bankruptcy Code protected the Tribune shareholder payments from a fraudulent transfer attack because a financial institution was acting as an agent for Tribune as its customer in connection with the transaction. In other words, a party structuring a transaction may be able to protect itself and the transaction from attack when a financial institution is used as an agent. To be sure, the matter remains unsettled outside the circuit and a petition for a writ of certiorari is pending before the Supreme Court.

Yenamandra: There were a number of interesting developments in the retail space post-COVID. First, there was suddenly a lot of spotlight on the bankruptcy provisions that provide a debtor-tenant relief from paying rent in the ordinary course for the first 60 days post filing. This provision hadn't been used that actively pre-COVID and over the last 9 months or so, several major retailers have sought relief under this provision. Second, there was a newfound focus on the value of unencumbered property. No one had ever had to reckon with how to value real property during a pandemic of unknown duration, or how to discount prior valuations. And, relatedly, there was certainly a flurry of activity on the valuation front itself, across many industries, as parties worked to evaluate whether the impact of COVID should be taken into account when assessing long-term value.

Carson: The Small Business Reorganization Act (SBRA) may offer a lifeline to regional and local businesses impacted by the COVID-19 pandemic, buying them time as they negotiate with lenders, landlords, and other creditors until resuming normal business operations. The caveat here is currently we don't know when that will be so there may also be an increase in the number of

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Subchapter V filings along with an uptick in Chapter 7 and 11 filings. Of the approximately 250 recently appointed Subchapter V Trustees, Stretto partners with a fifth of these fiduciaries to manage their steadily growing caseloads.

Bauer/Peña: Many would answer this question by citing the *In re: Modell Sporting Goods* decision. In such case, the Bankruptcy Court, District of New Jersey suspended the sporting good retailer's case, which afforded the retailer additional time to liquidate its assets. The court recognized that it was an unprecedented time as liquidation sales were halted due to COVID-19 closure orders as well as widespread social unrest following the May 25 death of George Floyd. After the pause on the *Modell's* bankruptcy case, *Modell's* successfully re-engaged the liquidation process with the sales achieving better than expected results.

By pressing "pause" in *Modell's* bankruptcy case, the debtors were not required to pay post-petition rent obligations in the short term and then negotiated a reduced amount relating to the time period that was subject to the closure orders. Other bankruptcy courts followed suit. See *In re: Pier 1 Imports*, Case No. 20-30805 (Bankr. E.D. Va. May 10, 2020); *In re: Brooks Brothers, Group, Inc.*, (Case No. 20-11785 July 8, 2020). Post-petition rent obligations have been excused or reduced in the restaurant industry as well. See *In re: Hitz Restaurant Group*, 2020 WL 2924523 (Bankr. D. Ill. June 2, 2020) where the Bankruptcy Court reduced the debtor's obligation to pay rent in proportion to its ability to generate revenue under an Illinois executive order, which suspended on premises consumption of food and beverages in restaurants.

The aforementioned cases show a willingness by bankruptcy courts to take into consideration the drastic impact the pandemic has had on debtors and will result in debtors requesting creative relief.

Dooley: Not really. [Bankruptcy] Courts are courts of equity and numerous decisions invoked common sense relative to contractual lease terms as I would have expected.

Wilen: While no decisions or cases come to mind, the closure of courtrooms due to COVID-19 has been a major factor this year. Closures have adversely affected the speed at which cases are administered—it has slowed the restructuring process, hindered our ability to get hearing dates, and eliminated some of the opportunity for sidebar negotiations in the hallways of the courthouse. Conversely, more mediation sessions have been held via Zoom rather than traveling to mediate in person. We have been involved in a number of mediations this year that have been highly effective and efficient—the related time and cost savings are significant.

Lisa Laukitis, Skadden: There were a few noteworthy decisions and transactions that may impact restructurings in 2021 and beyond. On October 22, 2020, the New York Court of Appeals in *CNH Diversified Opportunities Master Account, L.P. v. Cleveland Unlimited, Inc.*, 2020 WL 6163305 (NY Oct. 22, 2020) issued a decision that could provide minority noteholders with additional negotiating leverage in the context of attempted nonconsensual out-of-court restructurings. The court held that the strict foreclosure that occurred in the case improperly deprived minority noteholders of their legal right under the indenture to seek full payment of principal and interest on the notes (and to bring suit for such payment), absent their consent to modify such right. In so holding, the decision could result in an increase in in-court restructurings and prepackaged bankruptcy cases to effectuate transactions that previously may have been more efficiently accomplished in an out-of-court setting. The ultimate impact of the decision, however, may be tempered given that the type of strict foreclosure at issue in Cleveland is not the most common method of implementing restructuring transactions.

On October 26, 2020, the U.S. Bankruptcy Court for the Southern District of Texas issued a notable decision that could have significant economic repercussions on debtors and creditors alike. In *In re Ultra Petroleum Corp.*, No. 17-20793, 2020 WL 6276712 (Bankr. S.D. Tex. Oct. 26, 2020), the court held that (1) a make-whole premium constituted liquidated damages, not unmatured interest, and must be paid under the Bankruptcy Code and (2) the solvent-

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debtor exception continues to exist and requires the payment of post-petition interest at the contractual default rate. While the latter holding will be of limited import given the rarity of solvent-debtor cases, the court's conclusion that the make-whole premium was not interest could have more far reaching effects, especially with respect to whether the Southern District of Texas is an optimal choice of venue for a debtor that may owe a make-whole premium. Based on the reasoning in the decision, a debtor will unlikely be able to take refuge under Bankruptcy Code section 502(b)(2), which disallows claims for unmatured interest, to avoid paying a make-whole premium.

In what seemingly is becoming a trend in E&P Chapter 11 cases where a debtor seeks to reject burdensome midstream contracts under Section 365 of the Bankruptcy Code, the U.S. Bankruptcy Court for the Southern District of Texas, the leading forum in the country for oil and gas bankruptcies, held in *In re Chesapeake Energy Corporation*, No. 20-33233, 2020 WL 6325535 (Bankr. S.D. Tex. Oct. 28, 2020) that the debtor could reject a gas purchase agreement because the agreement did not create enforceable covenants that ran with the land. Interestingly, breaking from how courts and practitioners have traditionally understood midstream contracts in the context of bankruptcy, the court, in dicta, observed that it may be possible for a midstream contract to be both executory and contain covenants that run with the land. Such observations will likely impact how courts and litigants approach the ability-to-reject question in future Chapter 11 cases.

Early this year, Serta Simmons kicked off what soon became a developing trend in the lending community when it obtained $200 million of fresh capital from certain existing lenders while priming non-participating minority lenders. In short, a majority of Serta's first-lien lenders amended the credit agreement to permit the issuance of super-priority debt, which effectively subordinated the minority first-lien lenders. Since Serta, many other companies have sought to effectuate similar "creditor-on-creditor violence" transactions, such as Boardriders, Inc., and TriMark. Unsurprisingly, these financing transactions have resulted in litigation. And with the "covenant-lite" debt agreements that have become pervasive over the last few years due to, among other things, lenders chasing higher returns in an ultra-low interest rate environment, there are sure to be many other companies that seek to employ similar creative capital structure solutions to bridge the pandemic.

What presented as your greatest challenge in the past year?

Cyganowski: [Otterbourg] prides itself in a successful track record of withstanding challenges in the marketplace for over a century, and the Firm's performance in 2020 was a testament to its ability to adapt to external challenges while meeting our clients' needs. Our greatest challenge was adjusting from an office-based practice to a decentralized one. Practically speaking, that required an increased team-effort and technological innovation and cooperation. Preparing for meetings meant additional coordination. Lawyers needed to go that extra-mile as far as communication and responsiveness went—and they did. We focused on how our clients' needs shifted during this year and what we needed to do to fulfill their needs not just for this year, but for years into the future. We kept our summer associate program in place, albeit digitally, which was a challenge logistically, but was ultimately an important and successful effort in fortifying our bench and adjusting to new working environments. To be sure, we did not know how our practice would develop in this period. But in the end, our strong team pulled together to excel during a challenging time.

Ryan Blaine Bennett, Kirkland: The heart of any restructuring is the value of the go-forward company. That's what incentivizes existing creditors to take equity and incentivizes banks to provide loans. In the past year, in the face of an unprecedented pandemic, companies, creditors, and financing sources alike struggled with differing views on go-forward valuation. The extent to which the pandemic lasted also impacted valuation work, as the

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landscape kept shifting, and there was no real precedent to look to for guidance.

Likewise, in March, we had some companies that immediately went from being extremely profitable to zero revenue when corporate travel and entertainment halted. Unlike typical distressed clients who encounter a more gradual decline, these clients were completely blind-sided and required a lot more guidance on issues like proper corporate governance and creditor dynamics than the typical client who would have already been through multiple amendments and forbearances.

Kurtzman: Stretto's primary challenge was rapidly scaling our business in an unstable environment. Over the last several months we've on-boarded a large number of staff members and managed increasing caseloads while overcoming divergent challenges related to multiple service lines. With financial markets and industry regulations in flux, we've been able to effectively support the company's growth by expanding our shared service offerings to our broader client base.

Bauer/Peña: Adapting to the new normal. Prior to the pandemic, partners, associates and legal assistants worked from the office. Court hearings, mediations and networking events were all held in-person.

Working parents have been asked to play the role of attorney and teacher with homeschooling.

While we have learned that all of what we do can be done remotely, we all miss the personal contact and camaraderie of working in-person with a team or even adversaries. At times, we all experience Zoom fatigue.

Dooley: We brought on several new consultants in Q3 and Q4 expecting a surge in distressed consulting work and many banks proactively added workout officers. Since the surge never came, it's been hard keeping the new consultants busy so they could learn and develop restructuring skills quickly.

Wilen: Without being able to meet in person, my greatest challenges were keeping my team focused and together during the pandemic, and developing younger professionals virtually. As a young professional, I learned so much by simply observing senior professionals in court or meetings and all of that is difficult to do via a video conference or phone call. We had to get creative to keep people engaged and foster the next generation.

McGlynn/Orlofsky: Any of our challenges pale in comparison to those who have lost friends or family to this terrible disease. Our challenges are manageable. We think the greatest challenge this year was the constant uncertainty in so many aspects of our lives. Many things that we never think about became a major concern, such as should we visit family for holidays, should kids go to school in person, will the stores in my town survive, etc. The stress and anxiety this caused was palpable.

Not surprisingly, this uncertainty created a lot of work for the restructuring industry. Restructuring professionals live with uncertainty in many [of] our engagements so work almost felt easy compared to the everything else that was happening.

The lack of social interaction was also a challenge. So much of the restructuring community is based on personal relationships, much of which is developed through in person working and social events. While the restructuring community had a great year, it was not as much fun as normal.

Laukitis: Adjusting to the uncertainty and ever-changing circumstances. The start of the pandemic found most of us with an onslaught of clients in crisis while we adjusted to working from home (requiring some quick home office upgrades), managing family life with little or no help and, for some of us, home-schooling our kids. The spring seemed largely about keeping one's head above water. Once the summer arrived and things were more stabilized, it became important to find new ways to keep in touch with colleagues and clients, all of whom are equally strapped for time. Now, the challenge seems to be braving the months ahead, as this has gone on so much longer than anyone expected and we still have quite a ways to go. ¤

Research Report

Who's Who in Mallinckrodt plc's Bankruptcy Cases

by Carlo Fernandez

Mallinckrodt plc (OTCMKTS: MNKKQ) is a global business consisting of multiple wholly owned subsidiaries that develop, manufacture, market and distribute specialty pharmaceutical products and therapies.

The Debtors are a global specialty biopharmaceutical company that operates two separate and fundamentally distinct businesses—branded and generic products.

"Specialty Brands" involves innovative specialty pharmaceutical brands, which had net sales of $2.4 billion in 2019. Specialty Brands' product INOmax is used to treat hypoxic respiratory failure in newborns. Acthar Gel is used in the treatment of infantile spasms, lupus, rheumatoid arthritis, and certain ophthalmic conditions such as uveitis.

"Specialty Generics" involves niche specialty generic drugs and active pharmaceutical ingredients, which had 2019 net sales of $739 million. Specialty Generics (SpecGx), operated by debtors Mallinckrodt LLC, Mallinckrodt Enterprises LLC, SpecGx Holdings LLC, SpecGX LLC, and Mallinckrodt APAP LLC, offers a portfolio of over 20 specialty generic product families, including hydrocodone, oxycodone and acetaminophen. SpecGx historically had the largest market share for domestic production of opioids, producing 38% of available opioids or nearly 29 billion pills.

Certain Mallinckrodt entities, primarily associated with the SpecGx business, have been named as defendants in thousands of lawsuits filed in the state and federal courts as a result of their role in the ongoing opioid epidemic. As of Oct. 7, 2020, more than 3,000 opioid-related cases had been filed against the Debtors, 2,700 of which are part of the federal multi-district litigation captioned *In re National Prescription Opiate Litigation*, Case No. 17-md-02804, MDL No. 2804 (N.D. Ohio). Around 250 additional cases are pending in state courts.

Before filing for bankruptcy, Mallinckrodt negotiated with the governmental plaintiff ad hoc committee and an ad hoc group of the Debtors' noteholders and each of their advisors terms of a comprehensive opioid settlement.

On Oct. 12, 2020, Mallinckrodt plc and certain of its affiliates sought Chapter 11 protection in Delaware (Bankr. D. Del. Lead Case No. 20-12522) to seek approval of a restructuring that would reduce total debt by $1.3 billion and resolve opioid-related claims against the Company.

On Oct. 16, 2020, Mallinckrodt Canada ULC, applied under Part IV of the Companies' Creditors Arrangement Act RSC 1985 c C-36, to the Ontario Superior Court of Justice (Commercial List) for recognition of the Chapter 11 proceedings.

Mallinckrodt plc disclosed $9.585 billion in assets and $8.648 billion in liabilities as of Sept. 25, 2020. As of the Petition Date, the Debtors had funded debt of $5.283 billion, including $2.804 billion outstanding under first lien revolving credit facility and term loans, $495 million in first lien secured notes, and over $1.6 billion in guaranteed unsecured note liabilities set to come due in mid-2022 and beyond.

The Company is taking important actions to strengthen its financial position and resolve a range of legal liabilities, enabling it to focus on achieving its long-term strategic plans, and has entered into several key agreements, including:

- A restructuring support agreement with key creditors and litigation parties outlining the terms of a financial restructuring designed to strengthen the Company's balance sheet, reduce its debt by $1.3 billion, improve its financial position and allow the Company to continue driving its strategic priorities and investing in the business to develop and

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commercialize therapies to improve health outcomes for patients;

- An agreement in principle on an amended proposed opioid settlement that would resolve opioid-related claims against Mallinckrodt and its subsidiaries; and
- An agreement in principle with the certain governmental parties to resolve various Acthar Gel related matters, including the CMS Medicaid rebate dispute.

The Reorganization Plan will cancel, release and extinguish 84.6 million shares of common stock held by thousands of individuals.

The RSA contemplates that the Court shall have entered an order confirming the Plan no later than 11 months after the Petition Date [Sept. 12, 2021] and that the Debtors will have emerged from bankruptcy no later than 15 months after the Petition Date [Jan. 12, 2022], among other stated deadlines.

Mallinckrodt PLC and three creditor groups are fighting a push by shareholders for a court-appointed committee to represent their interests in the bankruptcy case. The Company said that a formal committee would only reduce recoveries for general unsecured creditors.

Shareholders have sought an equity committee, citing that the company's management abandoned equity holders by negotiating a deal that extinguishes all existing equity interests but provides for the issuance to the management 10 percent ownership in the restructured company.

First lien lenders and the U.S. Trustee have opposed a proposal by Mallinckrodt to pay off fees and expenses of RSA party professionals. The first lien term lenders said that the payment of the unsecured creditor groups' professional fees should only be considered once a Chapter 11 plan is confirmed.

Holders of the $3.5 billion of funded secured debt claims have so far not pledged to support for the RSA.

DEBTORS

Latham & Watkins LLP is serving as the Debtors' lead bankruptcy counsel. Restructuring & Special Situations Practice co-chair **George A. Davis**; partners **George Klidonas** and **Jeffrey Bjork**; counsels **Andrew Sorkin** and **Anupama Yerramalli**; and associate **Jason Gott** are the principal attorneys working on the engagement.

Guggenheim Securities, LLC, is serving as the Debtors' investment banker. **Brendan Hayes** is the senior managing director responsible for the overall engagement. Co-chairman **James Millstein** and senior managing director **Punit Mehta** are also involved in the case.

AlixPartners, LLP, is serving as the Debtors' financial advisor. **Randall S. Eisenberg** and **Scott Winn** are the managing directors responsible for the overall engagement.

Richards, Layton & Finger, P.A., is the co-counsel to the Debtors. The principal professionals designated to represent the Debtors are **Mark D. Collins**, **Michael J. Merchant**, **Robert J. Stearn, Jr.**, **Amanda R. Steele**, **Robert C. Maddox**, **Brendan J. Schlauch, Sarah E. Silveira, Garrett S. Eggen**, and **M. Lynzy McGee**.

Wachtell, Lipton, Rosen & Katz is serving as corporate, finance, tax, and litigation counsel. Wachtell Lipton professionals primarily responsible for providing professional services to the Debtors are of counsel **Philip Mindlin**; partners **Adam O. Emmerich**, **Rachelle Silverberg**, **Emil A. Kleinhaus**, **Victor Goldfeld**, **Tijana Dvornic**, and **John R. Sobolewski**; counsels **S. Christopher Szczerban** and **Neil M. Snyder;** and associates **Swift S.O. Edgar**, **Corey J. Banks**, **Sahand Moarefy**, **Kisho Wantanabe**, and **Michael H. Cassel**.

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Long-time counsel **Ropes & Gray LLP**, led by **Brien T. O'Connor**, is serving as special litigation counsel, advising the Debtors in connection with national prescription opiate litigation, the U.S. Department of Justice and U.S. Attorney's Office criminal investigations, price-fixing litigation, and the Opioid Settlement.

Hogan Lovells US LLP, led by partners **E. Desmond Hogan** and **Alice Valder Curran**, is serving as counsel with respect to Acthar Gel matters. **Arnold & Porter Kaye Scholer LLP**, led by partner **Michael B. Bernstein**; **Skadden, Arps, Slate, Meagher & Flom LLP**, led by **John T. Bentivoglio**; **Allen, Summers, Simpson, Lillie, & Gresham, PLLC**; and **WilliamsMcCarthy LLP**, are also involved in cases involving the Acthar plaintiffs.

Torys LLP is the Debtors' CCAA counsel.

Arthur Cox is the Debtor's corporate and finance counsel.

Deloitte & Touche LLP is the Company's independent auditor. **Melissa Cloniger**, a partner at Deloitte, heads the engagement.

Prime Clerk LLC is the claims agent and administrative advisor.

Katten Muchin Rosenman LLP, led by partner **Steven J. Reisman**, is serving as counsel to Marc Beilinson and Sherman Edmiston III, the disinterested managers of the board of managers or directors of the Specialty Generics Debtors, comprised of Mallinckrodt Equinox Finance Inc., Mallinckrodt Enterprises Holdings, Inc., Mallinckrodt ARD Finance LLC, Mallinckrodt Enterprises LLC, Mallinckrodt LLC, SpecGx LLC, SpecGx Holdings LLC, and Mallinckrodt APAP LLC.

SECURED TERM LENDERS

Gibson, Dunn & Crutcher LLP, led by partners **Scott J. Greenberg**, **Michael J. Cohen**, **Mark A. Kirsch**, and **Matthew L. Biben**; and **Troutman Pepper Hamilton Sanders LLP**, led by Delaware partner **David M. Fournier**, and associate **Kenneth A. Listwak**, are representing the Ad Hoc First Lien Term Lender Group, which collectively holds over $1.3 billion of the $1.905 billion in term loans outstanding.

As of Nov. 10, 2020, members of the Ad Hoc First Lien Term Lender Group are **Apollo Capital Management, L.P.**, **Benefit Street Partners LLC**, **Blackrock Financial Management, Inc.**, **Canyon Capital Advisors LLC**, **Canyon CLO Advisors LLC**, **CCP Credit Master Lux S.a r.l.**, **CIFC Asset Management LLC**, **Contrarian Capital Management, L.L.C.**, **CSCP III Master Lux S.a r.l.**, **Eaton Vance Management and Boston Management and Research**, **First Eagle Alternative Credit, LLC**, **First Trust Advisors**, **Glendon Capital Management, L.P.**, **Marathon Asset Management, LP**, **Neuberger Berman Investment Advisers LLC and Neuberger Berman Loan Advisers LLC**; **Octagon Credit Investors, LLC**; **PGIM, Inc.**; **Redwood Capital Management, LLC**; **Silver Point Capital, LP**; **Symphony Asset Management LLC**; **TIAA-CREF Investment Management, LLC** and **Teachers Advisors, LLC**; and **Trimaran Advisors, L.L.C.** and **Trimaran Advisors Management, L.L.C.**

White & Case LLP, led by counsel **Michele J. Meises**; and **Fox Rothschild LLP**, led by partner **Jeffrey M. Schlerf**, are representing **Deutsche Bank AG New York Branch**, the administrative agent under the Debtors' existing first lien credit facility.

SECURED NOTEHOLDERS

The law firms of **Robbins, Russell, Englert, Orseck, Untereiner & Sauber LLP**, led by attorneys **Lawrence S. Robbins**, **Michael L. Waldman**, **Donald Burke, and Jason A. Shaffer**; and **Sullivan Hazeltine Allinson LLC**, led

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by founding partner **William D. Sullivan**, are representing the Ad Hoc First Lien Notes Group. The Group is comprised of only two members, **Aurelius Capital Management, LP**, and **Capital Research and Management Company**, which as of Nov. 17, 2020, collectively held $220.5 million of the $495 million outstanding 10.00% first lien senior secured notes due 2025.

UNSECURED BONDHOLDERS

Paul, Weiss, Rifkind, Wharton & Garrison LLP, led by Restructuring Department co-chair **Andrew N. Rosenberg**, partner **Alice Belisle Eaton**, counsel **Claudia R. Tobler** and associate **Neal Paul Donnelly**, and **Landis Rath & Cobb LLP**, led by founding partner **Richard S. Cobb**, are representing the Unsecured Notes Ad Hoc Group, formed by holders of $1.207 billion of the $1.6 billion in principal amount of unsecured notes. **Perella Weinberg Partners LP**, is financial advisor to the Unsecured Notes Ad Hoc Group. **Matheson LLP**, led by partner **Brendan Colgan**, is the Irish counsel to the noteholders. **Reed Smith LLP**, led by **Joseph W. Metro**, is providing bondholders regulatory advice concerning the Medicaid rebate program and related government pricing issues.

The bondholders are parties to the RSA. As of Oct. 19, 2020, members of the Unsecured Notes Ad Hoc Group are **Aristeia Capital, L.L.C.**, **Aurelius Capital Management, LP**, **Capital Research and Management Company**, **Catalur Capital Management, LP**, **Cedarview Capital Management, LP**, **Cetus Capital LLC**, **Columbus Hill Overseas Master Fund, Ltd.**, **Columbus Hill Partners, L.P.**, **Credit Suisse Securities (USA) LLC**, **Diameter Capital Partners LP**, **Farmstead Capital Management, LLC**, **Federated Investment Management Company**, **FFI Fund, Ltd.**, **JPMorgan Investment Management Inc.**, **Livello Capital Management LP**, **New Generation Advisors, LLC**, **North America Credit Trading Group** of **J.P. Morgan Securities LLC**, **Oaktree Capital Management, L.P.**, **Pacific Investment Management Company LLC**, **Scoggin International Fund Ltd**, **Scoggin Worldwide Fund Ltd**, **Third Point LLC**, **Wells Fargo Securities LLC**, and **Whitebox Advisors LLC.**

STATES AND TERRITORIES

Kramer Levin Naftalis & Frankel LLP, **Brown Rudnick LLP**, **Gilbert LLP** and **Morris James LLP** are representing the Governmental Plaintiff Ad Hoc Committee in connection with a global resolution of opioid-related claims against the Debtors. **Houlihan Lokey Capital, Inc.**, is the investment banker and financial advisor to the Governmental Plaintiff Ad Hoc Committee. **William Fry** is the Irish counsel to the Committee.

Kramer Levin attorneys involved in the representation are Bankruptcy and Restructuring co-chair **Kenneth H. Eckstein**, partner **Daniel M. Eggermann**, and associate **Megan M. Wasson**. Morris James attorneys leading the engagement are partners **Jeffrey R. Waxman** and **Eric J. Monzo**, and counsel **Brya M. Keilson**. Gilbert attorneys assigned to the case include partners **Scott D. Gilbert** and **Kami E. Quinn**, and associate **Emily P. Grim**. Brown Rudnick attorneys include partners **David J. Molton**, **Steven D. Pohl** and **Eric R. Goodman**; and associate **Gerard T. Cicero**.

Certain members of the Governmental Plaintiff Ad Hoc Committee previously filed complaints against the Debtors, collectively asserting billions of dollars in damages. Members of the Governmental Plaintiff Ad Hoc Committee, along with 43 other states and territories, negotiated and have signed on to the RSA.

As of Nov. 13, 2020, the

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Governmental Plaintiff Ad Hoc Committee members are The Commonwealth of Kentucky, The State of New York, The State of North Carolina, The Commonwealth of Pennsylvania, The State of Tennessee, The State of Texas, and The State of Wisconsin. The Plaintiffs' Executive Committee, as a member of the Governmental Plaintiff Ad Hoc Committee, will recommend that the more than 1,000 plaintiffs that they represent in the MDL support the Opioid Settlement, the RSA and the Plan. The Attorneys General for 50 U.S. States and Territories have committed to vote to accept the Plan.

Caplin & Drysdale, Chartered, led by members **Kevin C. Maclay** and **Todd E. Phillips**, of counsel **Ann Weber Langley**, and associate **George M. O'Connor**, is serving as bankruptcy counsel to another group of entities, the Multi-State Governmental Entities Group. **Seitz, Van Ogtrop & Green, P.A.**, led by **R. Karl Hill, James S. Green, Jr.**, and **Jared T. Green**, is group's Delaware counsel. **FTI Consulting** is the financial advisor to the MSGE Group.

The MSGE Group consists of 1,318 entities—1,245 counties, cities and other municipal entities, 9 tribal nations, 13 hospital districts, 16 independent public school districts, 33 medical groups, and 2 funds—across 38 states and territories and collectively represents a constituency of more than 60 million individuals across the United States. These entities hold claims based on, arising from, or attributable to opioid products manufactured or sold by one or more of the Debtors. The MSGE Group joined the RSA in November, after making a determination that the RSA provides the best path forward to fairly and expeditiously resolve this proceeding and compensate affected opioid victims.

Harris Beach PLLC, led by members **David M. Capriotti** and **Wendy A. Kinsella**, is serving as bankruptcy counsel, and **Ferry Joseph, P.A.**, led by of counsel **John D. McLaughlin, Jr.**, is the Delaware counsel to a group of municipalities that consist of 17 counties, cities and other municipal entities in New York, Pennsylvania and Kentucky.

OPIOID CLAIMANTS' COMMITTEE

On October 27, 2020, the United States Trustee for Region 3 appointed seven opioid claimants to serve on an official Opioid Claimants Committee. The Opioid Claimants Committee currently comprises: (1) wrongful death claimant Brendan Berthold; (2) healthcare coverage provider Blue Cross and Blue Shield Association; (3) Lyda Haag, who filed a class action on behalf of children born dependent to opioids; (4) former opioid addict Garret Hade; (5) 89-hospital health system Life Point Health System; (6) ER physician Michael Masiowski, M.D.; and (7) Kathy Strain, an advocate for grandparents raising grandchildren born with Neonatal Abstinence Syndrome ("NAS").

Akin Gump Strauss Hauer & Feld LLP is serving as lead counsel to the Opioid Claimants Committee. Lawyers who have primary responsibility for providing services to the OCC are partners **Arik Preis**, **Mitchell Hurley**, and **Sara Brauner**; senior counsel **Roxanne Tizravesh**; counsel **Edan Lisovicz**; and associates **Caitlin Griffin, James Salwen, Brooks Barker**, and **Jess Coleman**.

Jefferies LLC is the OCC's investment banker. **Leon Szlezinger**, a managing director and joint global head of Debt Advisory & Restructuring at Jefferies, leads the engagement.

Province, Inc., is serving as the OCC's financial advisor. **Michael Atkinson**, a principal with the firm, heads the engagement.

Cole Schotz P.C. is the OCC's Delaware and efficiency co-counsel. **Justin R. Alberto**, a member of the law firm of Cole Schotz, heads the

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engagement. Other professionals involved in the representation of the OCC are members **Seth Van Aalten**, **Stuart Komrower** and **Patrick J. Reilley**; and associates **Sarah Carnes**, **Anthony De Leo, Andrew Roth-Moore, Shelby Nace**, and **Adam Garrastegui**.

Cassels Brock & Blackwell LLP is the OCC's Canadian counsel. The lawyers who have primary responsibility for providing services to the OCC are partners **Ryan C. Jacobs, John N. Birch** and **Natalie E. Levine**, and associates **Sophie Moher** and **Kieran May**.

CREDITORS' COMMITTEE

The U.S. Trustee appointed a committee to represent unsecured creditors—other than opioid claimants—in the Chapter 11 cases. The committee members are New PharmaTop LP, Acument Global Technologies, Inc., Commodore Bowens, Jr., U.S. Bank Trust National Association, and AFSCME District Council 47 Health and Welfare Fund.

Cooley LLP is serving as counsel to the Committee. **Cullen D. Speckhart**, a partner, is the attorney having primary responsibility on the engagement. Partner **Cathy Hershcopf**, special counsel **Michael Klein**, and associate **Lauren A. Reichardt** are also involved in the case.

Robinson & Cole LLP is the Delaware counsel to the Committee. The primary R&C attorneys representing the Committee are partners **Natalie D. Ramsey**, **Jamie L. Edmonson**, **Mark A. Fink**, **Michael R. Enright**, **Patrick M. Birney**, **Michael J. Kearney, Jr.**, and **John D. Cordani**; counsel **Katherine M. Fix**; and associates **James F. Lathrop** and **Annecca H. Smith**.

Alvarez & Marsal North America, LLC, is the Committee's financial advisor. **Richard Newman** is the managing director leading the engagement.

Dundon Advisers is the Committee's co-financial advisor. Leadership is provided by principal **Matthew Dundon**, a 20+ year veteran restructuring and distressed investing leader. Other professionals providing services are **Alex Mazier**, **Ammar Alyemany**, **April Kimm**, **Colin Breeze**, **Demetri Xistris**, **Eric Reubel**, **Harry Tucker**, **Heather Barlow**, **HeJing Cui**, **Irina Zavina-Tare**, **Kevin Posner**, **Laurence Pelosi**, **Lee Rooney**, **Michael Garbe**, **Peter Hurwitz**, **Phillip Preis** and **Tabish Rizvi**.

FUTURE CLAIMANTS' REPRESENTATIVE

Mallinckrodt has sought an order appointing Frankel Wyron LLP co-founder **Roger Frankel** as the Future Claimants' Representative ("FCR") to represent individuals who may assert in the United States a claim or claims in the future against a Debtor for harm arising out of the use of opioid products prior to the effective date of the Debtors' plan or plans of reorganization. The Debtors intend to establish for future claimants a trust to assume the liabilities of the Debtors for damages allegedly caused by the use of opioid products.

Frankel Wyron LLP is serving as the FCR's counsel in the case. **Richard H. Wyron**, the firm's co-founding partner, leads the engagement.

Young Conaway Stargatt & Taylor, LLP, is also a counsel to the FCR. Partners **James L. Patton, Jr.**, **Edwin J. Harron**, **Robert S. Brady**, and **James P. Hughes**, and associate **Jaclyn C. Marasco** comprise the team handling the engagement.

Ducera Partners LLC is the FCR's investment banker. **Agnes K. Tang**, a partner, heads the engagement.

Marsh & McLennan Companies, Inc.'s NERA Economic Consulting is the FCR's consultant to assist the FCR with respect to matters involving present and future opioid-related personal injury claims against the Debtors. The professionals that comprise the team handling the

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engagement are **Denise Martin, Stephanie Plancich**, and **Janeen McIntosh**.

Laurence M. Westreich, M.D., is serving as a medical consultant to assist the FCR with medical issues relating to opioid use.

Greenberg Traurig, LLP, is serving as special counsel to the FCR. The firm provides special litigation, transactional, and regulatory services which may include, but are not limited to, any estimation proceedings in the Chapter 11 cases. **Nancy A. Peterman**, a shareholder at Greenberg Traurig, leads the engagement.

PI CLAIMANTS

ASK LLP, led by **Edward E. Neiger** and **Jennifer A. Christian**; and **A.M. Sacculo Legal, LLC**, led by **Anthony M. Sacculo**, and **Mary E. Augustine**, are representing the Ad Hoc Group of Personal Injury Claimants, comprised of individuals asserting unsecured claims on the basis of personal injury or wrongful death. The Ad Hoc Group members are Julie Strickler, Will Allphin, Kay Scarpone, Crystal Arnold, Eric Rogers, Rosamond Ricca, and Darin Zabor.

NAS CHILDREN

The law firms of **Bielli & Klauder, LLC**, led by **David M. Klauder**; **Martzell, Bickford & Centola**, led by **Scott R. Bickford**, and **Spencer R. Doody**; and **Law Offices of Kent Harrison Robbins, P.A.**, are representing the Ad Hoc Committee of NAS Children, comprised of guardians of children who at birth were diagnosed with NAS due to opioid exposure.

ACTHAR GROUP CLAIMANTS

Ciardi Ciardi & Astin, led by **Daniel K. Astin, Albert A. Ciardi, III**, and **Walter W. Gouldsbury III**, is serving as bankruptcy counsel and **Haviland Hughes**, led by **Donald E. Haviland, Jr.**, is Delaware counsel to the Acthar Group Claimants,

The Acthar Group Claimants are comprised of entities that have been damaged by, inter alia, the Debtors' conduct and practices with respect to the distribution, marketing and sale of the prescription drug, H.P. Acthar Gel sold by debtor Mallinckrodt ARD, LLC.. The Achtar Group Claimants are the City of Rockford, Illinois, Steamfitters Local Union No. 420, International Union of Operating Engineers Local 542,United Association Local Union No. 322 of Southern New Jersey, Acument Global Technologies, Inc., American National Life Insurance Company of Texas, Board of Education of Washington County, Maryland, County of Dakota, Nebraska, Sheet Metal Workers' Local No. 40, Tomlinson Management, LLC/ Dustin's Bar-B-Q, Inc., MacLellan Integrated Services, and Harlem School District No. 122.

SHAREHOLDERS

Fishman Haygood, LLP, **Smith Katzenstein & Jenkins, LLP** and **Bragar Eagel & Squire, P.C.** are representing the Ad Hoc Group of Equity Holders. **Kathleen M. Miller** and **Robert K. Beste** are the Smith Katzenstein attorneys involved in the case. Bragar Eagel's engagement is led by partner **Lawrence P. Eagel**. Fishman Haygood attorneys involved in the case are partners **Brent B. Barriere** and **Tristan Manthey**. Members of the Ad Hoc Group are Amit Arad, Rick Barry, Peter Hoferek, Vinoth Balasubramani, Lee Rodgers, and Nguyenson Sean Yo.

The largest shareholders are **Dimensional Fund Advisors LP**, **Morgan Stanley & Co. LLC**, and **Creative Planning LLC**, which collectively hold 12.28% of the shares.

JUDGE

The **Honorable John T. Dorsey** is the case judge. ¤

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and hypothesize whether some may become the new norm.

Short-Term Changes Making Immediate Impact and New Questions

Beginning in March of this year, we have seen certain short-term changes make an immediate impact. Bankruptcy courts and judges have gone to new lengths and granted new relief, in an effort to help already distressed companies during an unprecedented financial crisis. For example, in Pier 1 Imports, Inc.'s bankruptcy case in the Eastern District of Virginia, the debtors sought extraordinary relief after realizing their anticipated ninety-day stay in bankruptcy would be much longer as a result of the pandemic. The debtors asked the court for authority to delay the payment of certain rent obligations, despite Bankruptcy Code section 365(d)(3)'s contrary mandate that "[t]he trustee shall timely perform all the obligations of the debtor . . . under any unexpired lease of nonresidential real property". The court "recognize[d] the extraordinary nature of the relief it was asked to provide" and relied on its "broad equitable power" under Bankruptcy Code section 105 during an "unprecedented financial crisis" to provide that relief. See Case No. 20-30805, Docket No. 637 at p. 7, n.7.

The Pier 1 Imports debtors were not alone. Similar relief was sought and granted in, among other cases, Modell's Sporting Goods, Inc.'s bankruptcy case in the District of New Jersey, where the court granted an emergency motion to suspend temporarily the debtors' Chapter 11 cases (Case No. 20-14179, Docket Nos. 115, 116) and CraftWorks Parent, LLC's bankruptcy case in the District of Delaware, where the court approved the debtors' seven-week budget that did not include rent payments (Case No. 20-10475, Docket Nos. 206, 247).

In addition to granting extraordinary relief, courts have extended their workdays and workweeks to accommodate debtors and their stakeholders. On May 16, 2020, the Honorable Judge David R. Jones held a first day hearing in J.C. Penney Company, Inc.'s bankruptcy case in the Southern District of Texas, which the debtors' counsel regarded as "mak[ing] history" and "probably the first time that there's a first day hearing on Saturday." Case No. 20-20182, Docket No. 130 at 10:14, 15-16. To which Judge Jones acknowledged the gravity of the circumstances and responded that "[t]here are 97,000 people that need our attention or thereabouts." *Id.* at 10:19-20.

While courts and restructuring professionals alike have gone above and beyond during this pandemic, both face novel questions that cannot be readily answered. One such question relates to feasibility. Bankruptcy Code Section 1129(a)(11) provides that a court "shall confirm a plan only if . . . (11) [c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor". In the midst of a global pandemic, restructuring professionals face a quandary with this confirmation requirement. Their usual asymmetrical information advantage has largely disappeared and accurately predicting the future seems more difficult than ever. In many cases, this uncertainty means companies need more time to restructuring effectively and wait out the pandemic. There is money in the market to be deployed to distressed companies, but how much time will lenders and other stakeholders give any particular company to reorganize? To answer this question, distressed companies, lenders, and other stakeholders must confront (earlier and more directly) an existential question: Is there a defensible business behind the debtor? These questions with only imperfect answers and rough predictions are generally making restructuring more difficult.

Long-Term Changes Accelerated by Pandemic

The retail industry seems to be confronting these questions to a heightened degree during this pandemic, as everyone tries to determine where the bottom is and when business and consumer activity will stabilize. Brick-and-mortar retailers faced real financial issues before the pandemic with the increasing prominence and dominance of online shopping. But lenders and other stakeholders seemed more willing to throw one last lifeline to a distressed retailer. Those lifelines are harder to come by during the pandemic. While the pandemic may not have fundamentally shifted consumer behavior, the pandemic has accelerated existing trends that have forced retailers with significant retail footprints—J. Crew, Neiman Marcus, JCPenney, Brooks Brothers, and Century 21, to name a few—to seek the shield of Chapter 11. In these cases, landlords have become key stakeholders whose fate is uniquely tied to each debtor's fate. When the scale tips from reorganization to liquidation, landlords are particularly affected, and they have responded with new perspectives. Landlords have

Changes, *from page 19*

started rethinking and restructuring leases, favoring a flat rate over rates tied to revenue, and re-envisioning malls as showrooms instead of shops.

While restructuring professionals are generally predicting greater consolidation, noting that big businesses and mom and pops alike are struggling to outlive the pandemic, they also remember the general resilience of businesses and consumers after past crises with similar uncertainties. The uncertainties that mark this year, however, are compounded by new challenges brought about by restructuring companies virtually. The pandemic has changed the primary means by which restructuring professionals work with their clients, transforming face-to-face interactions into virtual interactions. A new level of intentionality has been injected into the client relationship and legal strategy. Building a rapport with, and earning the trust of, clients virtually requires video conferencing, more frequent calls, and corresponding schedules. Having the tough conversations, and making the tough decisions, with clients must be more carefully crafted and deliberately staged. On the other hand, building consensus with adversaries has generally become more difficult because parties are not humanized by sitting in one room at one table together and are not able to negotiate a last-minute deal on the physical courthouse steps.

Pandemic Has Affected the System

The new virtual environment, while peppered with challenges, has presented the industry with valuable opportunities to increase access to, and reduce the costs of, the system. Parties located far away from the physical courtroom are now participating because of the courts' use of video conferencing for hearings. These parties are participating as witnesses, observers, learners, and everything in between, and clients and the restructuring industry as a whole are benefitting. This increased access to the court and the restructuring process as a result of technology and decreased costs is a welcome development, and restructuring professionals and bankruptcy judges have indicated a desire to continue this, in some fashion, going forward when courtrooms reopen.

This new environment has also accelerated workforce changes and pushed an industry generally resistant to change to move towards the inevitable future of legal practice. The restructuring industry's elder statesmen, particularly those who remember a world of law firm libraries full of hard copy books and sleeping at the office for days on end, have been forced to acknowledge that, while maybe not the ideal, working remotely can work. The days of spending months at the client's offices leading up to a filing and flying to first day hearings on two days' notice may be gone or at least different after the pandemic. This is in large part because during this pandemic, companies are restructuring; attorneys, financial advisors, and investment bankers are facilitating those restructurings; and courts are blessing those restructurings.

With this new environment comes new opportunities to welcome diverse talent previously deterred by the endless work-related travel required of restructuring professionals but also new responsibilities, particularly for the industry's leaders. Just as client interactions during this time require increased intentionality, so do inter-office interactions. This demands new creativity to build team cohesion, to mentor, and to find opportunities for junior attorneys with clients, in the courtroom, and to develop business. Leaders must lead now more than ever.

Lasting Systemic Change in a Traditional Industry

And while being in the trenches of restructuring during this pandemic has meant experiencing change and uncertainty, past financial crises have shown us the real likelihood of an eventual return to normalization. With all the pain experienced this year, that is reassuring. We have to ponder, however, whether it is best for the restructuring industry to return completely to pre-pandemic times. We miss face-to-face interactions with clients and colleagues and the veneration of actually appearing in the courtroom. Those are highlights of the job. But the flexibility, compassion, increased participation, and creativity that have marked the restructuring industry this year should stay and facilitate systemic change that brings greater access, diversity, understanding, and ultimately, success to the industry. ¤

About The Authors

Sarah Link Schultz *is a partner and* ***Rachel Biblo Block*** *is counsel in the financial restructuring practice at Akin Gump Strauss Hauer & Feld LLP.*

Research Report

Who's Who in Ruby Tuesday's Bankruptcy Cases

by Carlo Fernandez

Founded in 1972 in Knoxville, Tennessee, Ruby Tuesday, Inc., is dedicated to delighting guests with exceptional casual dining experiences that offer uncompromising quality paired with passionate service every time they visit.

From signature handcrafted burgers to the farm-grown goodness of the Endless Garden Bar, Ruby Tuesday is proud of its long-standing history as an American classic and international favorite for nearly 50 years.

The Company currently owns, operates and franchises casual dining restaurants in the United States, Guam, and five foreign countries under the Ruby Tuesday brand. The company-owned and operated restaurants (i.e., non-franchise) are concentrated primarily in the Southeast, Northeast, Mid-Atlantic and Midwest regions of the United States.

The casual-dining favorite has gone through a half-dozen CEOs since early 2017.

It was acquired for $335 million by NRD Capital, the private-equity firm of franchise veteran Aziz Hashim, in October 2017. At the time, the Ruby Tuesday chain consisted of 541 restaurants, down from 840 units at its peak.

Ruby Tuesday has been struggling for much of the past decade. It pursued Chapter 11 bankruptcy after the pandemic wiped out dining room sales. From 420 U.S. locations pre-pandemic, the Debtors only had 236 company-owned dining rooms that remained open when the company sought bankruptcy protection. The Company had 7,300 employees as of the bankruptcy filing.

On Oct. 7, 2020, Ruby Tuesday, Inc., and 50 affiliates sought Chapter 11 protection. The lead case is In re RTI Holding Company, LLC (Bankr. D. Del. Lead Case No. 20-12456).

Ruby Tuesday was estimated to have $100 million to $500 million in assets as of the bankruptcy filing. As of the Petition Date, about $42.7 million was outstanding under the senior secured credit facility from entities affiliated with Goldman Sachs and the TCW Group.

Ruby Tuesday arranged $18.5 million debtor-in-possession loan from secured lenders to fund its operations as it pursues a Chapter 11 reorganization.

The company said it intends to restructure its debt through a debt-for-equity swap with its secured lenders, but it will also explore a sale of its operating assets with those same lenders potentially serving as a stalking horse bidder. Ruby Tuesday has reached agreement with secured creditors to follow a dual path whereby the Debtors will either reorganize via a consensual transaction that would provide for the Debtors to emerge from the chapter 11 proceedings under new ownership by the prepetition secured creditors or sell their assets as a going concern.

Ruby Tuesday decided to permanently close 71 restaurants in April 2020 and is seeking to further shutter 185 locations with an eye toward emerging from bankruptcy with between 175 and 200 restaurants.

Ruby Tuesday has been given a go-ahead by the bankruptcy court to commence an auction for the sale of the company or its parts, with bids due by Jan. 14, 2020.

Research Report

Who's Who in Ruby Tuesday's Bankruptcy Cases

Continued from page 21

Secured lenders Golden Sachs Group and The TCW Group will take over the business if no buyer emerges.

Amid disputes over the Bankruptcy Code's reach, rules and precedents, Judge John T. Dorsey in November 2020, granted final approval to Ruby Tuesday's plan to defer rent payments for the first 60 days of its case, and potentially beyond. While nearly all its restaurants have reopened, all of them are under some kind of capacity restriction. Despite efforts to promote takeout, dining revenues remain down 30%.

Ruby Tuesday also obtained approval to liquidate the nearly $22.5 million "Rabbi" trust fund established in 1992 as part of two so-called "top hat" deferred compensation plans. The company argued that the trust agreement calls for the trust to be treated as an estate asset in bankruptcy.

DEBTORS

Pachulski Stang Ziehl & Jones LLP is serving as the Debtors' legal counsel. **James E. O'Neill, Richard M. Pachulski, Malhar S. Pagay**, and **Victoria A. Newmark** are the attorneys involved in the case.

FocalPoint Securities, LLC, is Ruby Tuesday's investment banker. **Richard F. NeJame** is the managing director heading the engagement.

CR3 Partners, LLC, is the Debtors' financial advisor. The firm's professionals primarily responsible for the completion of the engagement are partners **William K. Snyder, Sugi Hadiwijaya** and **David Tiffany**, and manager **Alex Boerema**.

Hilco Real Estate, LLC, is the real estate advisor.

Baker, Donelson, Bearman, Caldwell & Berkowitz P.C. is serving as special counsel, providing legal advice on real estate lease, ERISA, labor and employment matters. The attorneys who will primarily be responsible for the engagement are partners **D. Keith Andress, Steven F. Griffith, Jr., Andrea Bailey Powers**, and **Eve A. Cann**; of counsel **Ross N. Cohen**, and associate **Jackson Cates**.

Cheng Cohen LLC is the Debtors' corporate counsel. **Amy Cheng**, a name partner, heads the engagement.

Johnson Associates, Inc., is the compensation advisor to the Debtors. President and managing director **Alan M. Johnson** and vice president **Prasuna Tanchuk** are leading the engagement.

E**piq Corporate Restructuring, LLC**, is the claims agent and administrative advisor.

SECURED LENDERS

Cleary Gottlieb Steen & Hamilton LLP, led by partners **Sean A. O'Neal** and **Jane VanLare**; and **Abrams & Bayliss LLP**, led by partner **John M. Seaman**, are representing lender **Goldman Sachs Bank USA**, and **Goldman Sachs Specialty Lending Group, L.P.**, the administrative agent and collateral agent under the DIP Facility.

Paul Hastings LLP, led by partner **Justin Rawlins**, is representing secured creditors **TCW Direct Lending LLC**, TCW Skyline Lending, L.P., and TCW Brazos Fund, LLC.

Research Report

Who's Who in Ruby Tuesday's Bankruptcy Cases

Continued from page 22

CREDITORS' COMMITTEE

On Oct. 26, 2020, the U.S. Trustee for the District of Delaware appointed an official committee of unsecured creditors. The committee members are **National Retail Properties, L.P.**, **Wendover ZS LLC, Denny Kagasoff**, **Performance Food Group, Inc.**, and **Strategic Equipment, LLC**.

Kramer Levin Naftalis & Frankel LLP is serving as the Committee's counsel. **Robert T. Schmidt, Adam C. Rogoff**, and **Jennifer R. Sharret** are the attorneys involved in the case.

Cole Schotz P.C. is the Delaware co-counsel and conflicts counsel to the Committee. Members **David Dean** and **Justin Alberto** and associate **Andrew Roth-Moore** are the professionals responsible for representing the Committee.

FTI Consulting, Inc., is the Committee's financial advisor. **Samuel Star** is the senior managing director responsible for the overall engagement.

LANDLORDS

Ballard Spahr LLP, led by partner **Craig Solomon Ganz** and associate **Katherine Anderson Sanchez**, in Phoenix, Los Angeles partner **Dustin P. Branch**, and partner **Leslie C. Heilman** and associate **Laurel D. Roglen** in Delaware, is serving as attorneys for **Bennett Partners, L.L.L.P.**, **Brixmor Operating Partnership**, LP, CGI 3, LP, Federal Realty In-vestment Trust, RCLAN-RT, LLC/JENORA-RT, LLC, SCF RD Funding IV, LLC, Michael L. Shular, STORE Master Funding XIII, LLC, STORE Master Funding XIV, LLC, STORE SPE Ruby Tuesday 2017-8, LLC, and **The Macerich Company**, the landlords for around 65 locations.

Kelley Drye & Warren LLP, led by partner **Robert L. LeHane**, and associate **Sean T. Wilson**, and the **Law Office of Susan E. Kaufman, LLC**, led by founder **Susan E. Kaufman**, are representing **National Retail Property, LP; Aston Properties, Inc.**; **Benderson Development Company, LLC**; **Brookfield Properties Retail, Inc.; Regency Centers, LP**; and **Realty Income Corp.**, the landlords for at least 50 locations leased by the Debtors.

The Law Office of Susan E. Kaufman is also representing **Simon Property Group**, which has only two leases with the Debtors.

Allen Matkins Leck Gamble Mallory & Natsis LLP, led by partner **Michael S. Greger**, and **Ballard Spahr LLP**, led by **Laurel D. Roglen**, **Leslie C. Heilman**, and **Laurel D. Roglen** are representing **Meeker Family Limited Partnership** and William V. Meeker, the landlords for 9 restaurant locations.

PLAN PARTICIPANTS

Gibbons P.C., led by Financial Restructuring & Creditors' Rights chair **Robert K. Malone** and director **Howard A. Cohen**; and **Holifield & Janich, PLLC**, led by founding partner **Al Holifield**, are representing the ad hoc group of plan participants, comprised of individuals who are participants in one or more of the Debtors' non-qualified retirement plans.

JUDGE

The Honorable **John T. Dorsey** is the case judge. ¤

Special Report

Sources of Debtor-in-Possession Financing

Company	Amount	Lenders
LATAM AIRLINES GROUP S.A. Santiago, Chile	$2,450,000,000	Oaktree Capital Management LP, Knighthead Capital, Qatar Airways, the Cueto Group and the Eblen Group
FRONTIER COMMUNICATIONS CORPORATION Norwalk, Conn.	$2,275,000,000	JPMorgan Chase, Goldman Sachs, Deutsche Bank Securities, Barclays, Morgan Stanley Senior Funding and Credit Suisse
AVIANCA HOLDINGS S.A. Panama City, Panama	$1,992,191,000	Goldman Sachs Lending Partners LLC and JPMorgan Chase Bank, N.A.
HERTZ CORPORATION Estero, Fla.	$1,650,000,000	Apollo Global Management
CALIFORNIA RESOURCES CORPORATION Santa Clarita, Calif.	$1,133,010,000	JPMorgan Chase Bank, N.A., Bank of America , N.A. and Citibank, N.A.
INTELSAT S.A. Luxembourg	$1,000,000,000	Bank of America NA
GRUPO AEROMEXICO, S.A.B. DE C.V. Mexico City, Mexico	$1,000,000,000	Apollo Management Holdings, L.P.
CHESAPEAKE ENERGY CORPORATION Oklahoma City	$925,000,000	MUFG Union Bank, N.A.
J.C. PENNEY COMPANY, INC. Plano, Texas	$900,000,000	GLAS USA, LLC and GLAS Americas, LLC
ASCENA RETAIL GROUP, INC. Mahwah, N.J.	$712,000,000	JPMorgan Chase Bank, N.A.
AMERICAN COMMERCIAL LINES INC. Jeffersonville, Ind.	$690,000,000	Wells Fargo Capital Finance, LLC and Cortland Capital Market Services, LLC
BRIGGS & STRATTON CORPORATION Wauwatosa, Wis.	$677,500,000	KPS Capital Partners, LP
NEIMAN MARCUS GROUP LTD LLC Dallas	$675,000,000	CortlandProducts Corp.
DENBURY RESOURCES INC. Plano, Texas	$615,000,000	JPMorgan Chase Bank, N.A.
VALARIS PLC London	$520,000,000	Wilmington Savings Fund Society, FSB

Special Report

Sources of Debtor-in-Possession Financing

Continued from page 24

Company	Amount	Lenders
TAILORED BRANDS, INC. Fremont, Calif.	$500,000,000	JPMorgan Chase Bank, N.A.
STAGE STORES, INC. Houston	$450,000,000	Citicorp USA Inc.
OASIS PETROLEUM INC. Houston	$450,000,000	Wells Fargo Bank, National Association
CENTRIC BRANDS INC. New York	$435,000,000	Blackstone, Ares Management Corporation and HPS Investment Partners
J CREW GROUP, INC. New York	$400,000,000	Anchorage Capital Group, L.L.C., GSO Capital Partners and Davidson Kempner Capital Management LP
GUITAR CENTER, INC. Westlake Village, Calif.	$375,000,000	Delaware Trust Company
LAKELAND TOURS, LLC Charlottesville, Va.	$366,000,000	Goldman Sachs Bank USA
ONEWEB GLOBAL LIMITED London	$300,000,000	SoftBank Group Corp
SPEEDCAST INTERNATIONAL LIMITED Botany, Australia	$285,000,000	Centerbridge Partners and Black Diamond
PIER 1 IMPORTS, INC. Fort Worth, Texas	$265,000,000	Bank of America N.A., Wells Fargo National Association, and Pathlight Capital LP
GULFPORT ENERGY CORPORATION Oklahoma City	$262,500,000	The Bank of Nova Scotia
24 HOUR FITNESS WORLDWIDE, INC. San Ramon, Calif.	$250,000,000	Wilmington Trust, National Association
GARRETT MOTION INC. Rolle, Switzerland	$250,000,000	Citibank, N.A.
BRUIN E&P PARTNERS, LLC Houston	$230,000,000	Bank of Montreal
PYXUS INTERNATIONAL INCORPORATED Morrisville, N.C.	$206,700,000	Cortland Capital Market Services LLC

Special Report

Sources of Debtor-in-Possession Financing

Continued from page 25

Company	Amount	Lenders
FORESIGHT ENERGY L.P. St. Louis	$175,000,000	Cortland Capital Market Services LLC
PACE INDUSTRIES, LLC Fayetteville, Ark.	$175,000,000	TCW Asset Management Company LLC
LIBBEY GLASS INC. Toledo, Ohio	$160,000,000	Cortland Capital Market Services LLC
APC AUTOMOTIVE TECHNOLOGIES INTERMEDIATE HOLDINGS, LLC Goldsboro, N.C.	$140,000,000	Wells Fargo Bank, N.A.
IQOR HOLDINGS INC. St. Petersburg, Fla.	$130,000,000	Wells Fargo Bank, National Association
BLUESTEM BRANDS, INC. Eden Prairie, Minn.	$125,000,000	Cerberus Business Finance, LLC
EXTRACTION OIL & GAS, INC. Denver	$125,000,000	Wells Fargo Bank, N.A.
SHILOH INDUSTRIES, INC. Valley City, Ohio	$123,500,000	Bank of America, N.A.
SUPERIOR ENERGY SERVICES INCORPORATED Houston	$120,000,000	JPMorgan Chase Bank, N.A.
TECHNIPLAS, LLC Nashotah, Wis.	$107,000,000	Wilmington Savings Fund Society, FSB
CALIFORNIA PIZZA KITCHEN, INC. Playa Vista, Calif.	$107,000,000	Jefferies Finance LLC, Coöperatieve Rabobank U.A., New York Branch, as sole lead arranger, The Bank of New York Mellon Trust Company, N.A.
QUORUM HEALTH CORPORATION Brentwood, Tenn.	$100,000,000	GLAS USA, LLC and GLAS Americas, LLC
LSC COMMUNICATIONS, INC. Chicago	$100,000,000	Bank of America NA
GNC HOLDINGS, INC. Pittsburgh	$100,000,000	JPMorgan Chase Bank, N.A.
REMINGTON OUTDOOR COMPANY, INC. Huntsville, Ala.	$100,000,000	Bank of America and Wells Fargo

Special Report

Sources of Debtor-in-Possession Financing

Continued from page 26

Company	Amount	Lenders
FIELDWOOD ENERGY LLC Houston	$100,000,000	Goldman Sachs Bank USA and Cantor Fitzgerald Securities
CRAFTWORKS PARENT, LLC Nashville, Tenn.	$93,000,000	Fortress Credit Co LLC
BROOKS BROTHERS GROUP, INC. New York	$80,000,000	WHP Global
GLOBAL EAGLE ENTERTAINMENT INC. Los Angeles	$80,000,000	Citibank, N.A.
PIONEER ENERGY SERVICES CORP. San Antonio	$75,000,000	PNC Bank, N.A.
HORNBECK OFFSHORE SERVICES, INC. Covington, La.	$75,000,000	Wilmington Trust, National Association
RENTPATH HOLDINGS, INC. Atlanta	$74,100,000	Royal Bank of Canada
SOUTHLAND ROYALTY COMPANY LLC Fort Worth, Texas	$70,000,000	Citigroup Global Markets Inc. and Barclays plc
MURRAY METALLURGICAL COAL HOLDINGS, LLC St. Clairsville, Ohio	$68,600,000	Javelin Global
HI-CRUSH INC. Houston	$65,000,000	JPMorgan Chase Bank, N.A.
AAC HOLDINGS, INC. Brentwood, Tenn.	$62,500,000	Ankura Trust Company, LLC
SKILLSOFT CORPORATION Nashua, N.H.	$60,000,000	Wilmington Savings Fund Society, FSB
BOUCHARD TRANSPORTATION CO., INC. Melville, N.Y.	$60,000,000	Hartree Partners, LP
MCCLATCHY COMPANY Sacramento, Calif.	$50,000,000	Encina Business Credit
TNT CRANE AND RIGGING, INC. Houston	$45,000,000	Wilmington Savings Fund Society, FSB

Special Report

Sources of Debtor-in-Possession Financing

Continued from page 27

Company	Amount	Lenders
EXIDE HOLDINGS, INC. Milton, Ga.	$40,000,000	BTC Holdings Fund I, LLC and Blue Torch Finance LLC
NORTHEAST GAS GENERATION, LLC Woodlands, Texas	$39,033,000	CLMG Corp., Beal Bank USA and Beal Bank, SSB
UNIT CORPORATION Tulsa, Okla.	$36,000,000	BOKF NA, BBVA USA and Bank of America NA
VIP CINEMA HOLDINGS, INC. New Albany, Miss.	$33,000,000	Wilmington Savings Fund Society, FSB and Oaktree Fund Administration, LLC
ENDOLOGIX, INC. Irvine, Calif.	$30,800,000	Deerfield Partners
AKORN, INC. Lake Forest, Ill.	$30,000,000	Wilmington Savings Fund Society, FSB
BJ SERVICES, LLC Tomball, Texas	$30,000,000	CSL Capital Management
BENEVIS CORP. Marietta, Ga.	$30,000,000	New Mountain Finance
TRUE RELIGION APPAREL, INC. Manhattan Beach, Calif.	$29,000,000	Crystal Financial LLC
MCDERMOTT INTERNATIONAL, INC. Houston	$28,100,000	Credit Agricole Corporate and Investment Bank and Barclays Bank Plc
FAIRWAY GROUP HOLDINGS CORP. New York, N.Y.	$25,000,000	Ankura Trust Company, LLC
ULTRA PETROLEUM CORP. Englewood, Colo.	$25,000,000	Wilmington Trust, National Association
TUESDAY MORNING CORPORATION Dallas	$25,000,000	Franchise Group, Inc.
TEMPLAR ENERGY LLC Oklahoma City	$25,000,000	Bank of America NA
UTEX INDUSTRIES, INC. Houston	$25,000,000	Alter Domus (US) LLC
FRANCESCA'S HOLDINGS CORPORATION Houston	$25,000,000	Tiger Finance, LLC

Special Report

Sources of Debtor-in-Possession Financing

Continued from page 28

Company	Amount	Lenders
AMERICAN BLUE RIBBON HOLDINGS, LLC Nashville, Tenn.	$20,000,000	Cannae Holdings, Inc.
KB US HOLDINGS, INC. Parsippany, N.J.	$20,000,000	Whitehorse Capital Management, LLC
ROSEHILL RESOURCES INC. Houston	$17,500,000	U.S. Bank National Association
LUCKY'S MARKET PARENT COMPANY, LLC Niwot, Colo.	$15,600,000	SPARC Group LLC
CARBO CERAMICS INC. Houston	$15,000,000	Wilks Brothers LLC
TOWN SPORTS INTERNATIONAL, LLC Elmsford, N.Y.	$15,000,000	Tacit Capital LLC
WHITE STALLION ENERGY, LLC Evansville, Ind.	$12,600,000	Riverstone Credit Partners L.P., Summit Partners Credit Fund II, L.P., Summit Partners Credit Fund B-2, L.P., Summit Partners Credit Offshore Intermediate Fund II, L.P., Summit Investors Credit II, LLC and Summit Investors Credit II (UK), L.P.
RAVN AIR GROUP, INC. Anchorage, Alaska	$12,000,000	BNP Paribas
CB THEATER EXPERIENCE LLC Miami	$11,600,000	Grupo Cinemex
IMH FINANCIAL CORPORATION Scottsdale, Ariz.	$10,150,000	JPMorgan Chase Funding Inc.
GENCANNA GLOBAL, INC. Winchester, Ky.	$10,000,000	MGG Investment Group LP
URSA PICEANCE HOLDINGS LLC Denver	$10,000,000	Wells Fargo Bank, National Association

Worth Reading

Jacob Fugger the Rich: Merchant and Banker of Augsburg, 1459-1525

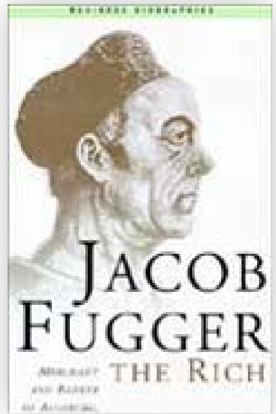
Author: Jacob Streider

Publisher: Beard Books

Hardcover: 227 pages

List Price: $34.95

Order This Book Online Now »



Quick, can you work out how much $75 million in sixteenth century dollars would be worth today? Well, move over Croesus, Gates, Rockefeller, and Getty, because that's what Jacob Fugger was worth.

Jacob Fugger was the chief embodiment of early German capitalistic enterprise and rose to a great position of power in European economic life. Jacob Fugger the Rich is more than just a fascinating biography of a powerful and successful businessman, however. It is an economic history of a golden age in German commercial history that began in the fifteenth century. When the book was first published, in 1931, The Boston Transcript said that the author "has not tried to make an exhaustive biography of his subject but rather has aimed to let the story of Jacob Fugger the Rich illustrate the early sixteenth century development of economic history in which he was a leader."

Jacob Fugger's family was one of the foremost family in Augsburg when he was born in 1459. They got their start by importing raw cotton, by mule, from Mediterranean ports. They later moved into silk and herbs and, for a long while, controlled much of Europe's pepper market.

Jacob Fugger diversified into copper mining in Hungary and transported the product to English Channel and North Sea ports in his own ships. A stroke of luck led to increased mining opportunities. Fugger lent money to the Holy Roman Emperor Maximilian I to help fund a war with France and Italy. Mining concessions were put up as collateral. The war dragged on, the Emperor defaulted, and Fugger found himself with a European monopoly on copper.

Fugger used his extensive business network in service of the Pope. His branches all over Europe collected payments due the Vatican and issued letters of credit that were taken to Rome by papal agents. Fugger is credited with creating the first business newsletter. He collected news of evolving business climate as well as current events from his agents all across Europe and distributed them to all his branches.

Fugger's endeavors were not universally applauded. The sin of usury was still hotly debated, and Fugger committed it wholesale. He was sued over his monopoly on copper. He was involved in some messy bribes in bringing Charles V to the throne. And, his lucrative role as banker in the sale of indulgences, those chits that absolve the buyer of sin, raised the ire of Martin Luther himself. Luther referred to Fugger specifically in his Open Letter to the Christian Nobility of the German nation Concerning the Reform of the Christian Estate just before being excommunicated in 1521. Fugger went on, however, to fund Charles V's war on Protestanism and became even richer. Fugger built many churches and buildings in Augsburg. He was generous to the poor and designed the world's first housing project. These buildings and lovely gardens, called the Fuggerei, are still in use today.

A New York Times reviewer said that Jacob Fugger the Rich, a book "concerned with the most famous, most capable, and most interesting of all [the members of the Fugger family] will be as interesting for the general reader as for the special student of business history." This observation is just as true today as in 1931, when first made. ¤

About The Author

Jacob Streider was born in 1877 and died in 1936. He was a professor of economic history at the University of Munich and the University of Chicago. He had a law degree from De Paul University.

Special Report

Outstanding Restructuring Lawyers 2020

SCOTT ALBERINO Akin Gump Strauss Hauer & Feld LLP Washington, D.C. salberino@akingump.com	Co-led team representing FirstEnergy Solutions Corp. in its $5B debt restructuring, winning confirmation of a Chapter 11 plan supported by the largest creditor constituencies. Co-leading the representation of an ad hoc group of creditors of Intelsat Jackson Holdings S.A. in the $14.7B Chapter 11 cases of Intelsat S.A. Assisted Millennium Health, LLC in its out-of-court restructuring and reorganization completed May 2020 via a strict foreclosure on its equity by its lenders under the term loan facility, with the lenders becoming the ultimate owners of Millennium Holdco's equity. Advised Perkins and Marie Callender's in its $115.2M Chapter 11 cases. Co-leads representation of LifeCare Holdings in its $227.5M Chapter 11 proceedings.
JEFF BJORK Latham & Watkins Los Angeles ejeff.bjork@lw.com	Leads team representing Mallinckrodt in connection with efforts to comprehensively address its liabilities, including about 3,000 litigation claims relating to the sale and marketing of prescription opioid products, and over $5B in funded debt; Paddock Enterprises, the successor by merger to glass container manufacturer Owens-Illinois Inc., in connection with its pending Chapter 11 case to address its historical asbestos liability; Sable Permian Resources in a 2019 out-of-court recapitalization and in chapter 11 bankruptcy commenced in June 2020 to restructure more than $1.3B in funded debt; Imerys Talc America in Chapter 11 to address current and future talc-related liabilities through a section 524(g) plan; and Neiman Marcus Group Inc., the non-debtor parent, in the Chapter 11 bankruptcy of its flagship, Dallas-based luxury retailer with $5.5B in funded debt. Lead counsel in various out-of-court balance sheet restructurings, including Sendero Midstream and Airbus OneWeb. Represents The Church of Latter Day Saints in the Boy Scouts of America bankruptcy. Also advised PIMCO, Ares, Autonomy Capital and other investment funds; and clients in connection with distressed municipal situations, including in Puerto Rico and the US Virgin Islands, among others.
JULIA FROST-DAVIES Morgan Lewis & Bockius LLP Boston julia.frost-davies@morganlewis.com	Serves as lead bankruptcy counsel to agent in $400M DIP financing revolving facility in Ascena Group; agent in $500M DIP financing facility in Tailored Brands; JPMorgan Chase as agent for revolving lenders in $275M DIP loan to Forever 21; term loan lender in Stein Mart Inc.; Ares Commercial Finance as revolver lender in Centric Brands; agent for ABL lenders in connection with consensual use of cash collateral and pursuit of secured creditor rights in Century 21; Bank of America as revolver administrative agent in connection with both of Gymboree Group's Chapter 11 cases, including $272.5M DIP credit facility and debt-to-equity exchange of term debt in the first case and a sale/liquidating plan and related discovery/litigation in the second; and administrative agent and "first-in-last-out" agent in $187.5M secured exit facility in Nine West, including defense of Committee's investigation of potential fraudulent conveyance claims. Representing groups of lenders in the restructurings of two power projects: one a wood-fueled biomass project and the other a cross-border combined cycle gas turbine plant.

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JAYME GOLDSTEIN Stroock & Stroock & Lavan LLP New York jgoldstein@stroock.com	Represents ad hoc group holding Diamond Sports' unsecured notes (Total Matter Value: $5.7B); ad hoc group holding Harland Clarke secured notes (Total Matter Value: $3.2B); ad hoc group holding Envision Healthcare unsecured notes (Total Matter Value: $8.1B); ad hoc group holding Revlon senior notes (Total Matter Value: $3.3B); prepetition lender, DIP lender and co-owner of stalking horse bidder in Murray Metallurgical Coal's Chapter 11 case (Total Matter Value: ~ $450M); ad hoc group holding California Pizza Kitchen second lien loan (Total Matter Value: ~ $650M); ad hoc group holding Permian Production Partners first lien term loans (Total Matter Value: $410M). Advised ad hoc crossover group holding Ultra Petroleum's $966M first lien term loans of and $584M second lien notes (Total Matter Value: $2.8B); ad hoc group holding FTS International term loans (Total Matter Value: $437M); ad hoc group holding J. Jill term loan (Total Matter Value: $640M); and group holding roughly 80% of Forum Energy Technologies unsecured notes (Total Matter Value: $575M).
NICOLE GREENBLATT Kirkland & Ellis New York nicole.greenblatt@kirkland.com	Played key role in the Chapter 11 cases of Murray Energy Holdings Co., saddled with more than $2.7B of funded debt and roughly $8B in legacy liabilities; Town Sports International, owner and operator of fitness clubs in the Northeast and Mid-Atlantic regions; Lakeland Tours d/b/a WorldStrides in prepack case to restructure more than $768M of funded debt following worldwide shutdown of travel due to COVID-19; and Akorn Inc., with $861.7M funded debt, which used the Chapter 11 sale process—supported by about 80% of term lenders—to address overhang of various litigation liabilities and pursue a going concern sale. Advised Associated Materials in its successful out-of-court comprehensive recapitalization that significantly de-levered the balance sheet to around 2x adjusted EBITDA and expanded the company's total liquidity; and ad hoc group of noteholders and DIP lenders of Quorum Health.
GARY T. HOLTZER Weil, Gotshal & Manges LLP New York gary.holtzer@weil.com	Led the Chapter 11 restructuring of Skillsoft, which eliminated $1.5B in debt and $100M in annual interest payments, paid vendors and other unsecured creditors in full; Speedcast International, which secured a uniquely creative $275M senior secured facility; opioid manufacturer Insys Therapeutics; cloud computing provider Fusion Connect that eliminated about $400M in debt and secured $115M of exit financing; Halcón Resources, which eliminated more than $750M in debt and more than $40M of annual interest expense, raised more than $150M and paid allowed general unsecured claims in full; and helicopter leasing company Waypoint Holdings Ltd., which executed a $650M sale of the business to Macquarie Group. Senior advisor in the Chapter 11 cases of Brooks Brothers Group, securing an interest-free, fee-free, $80M new-money postpetition financing facility and executed the expedited sale the global business for $325M to Simon Properties and Authentic Brands Group in less than two months; and small-engine maker Briggs & Stratton, executing a $550M sale to KPS Partners and shedding about $900M of legacy obligations. Advised Johnson & Johnson in talc supplier Imerys Talc's Chapter 11; Ambac Assurance UK Limited in both the Irish scheme of arrangement process and the related Chapter 15 case of Ballantyne Re plc; and Apollo Global Management as DIP lender to LATAM Airlines Group.

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DOUGLAS MANNAL Kramer Levin Naftalis & Frankel LLP New York dmannal@kramerlevin.com	Assisted the Unsecured Creditors' Committee in Frontier Communications' $17+ B debt restructuring, including in talks that ultimately facilitated confirmation of a Chapter 11 plan that paid certain unsecured creditors in full and gave other unsecured creditors 100% of the equity of the reorganized company. Represented Brigade Capital in its $293M bid, together with Chatham Asset Management, to acquire McClatchy Co., including defeating the Creditors' Committee's motion for standing to bring fraudulent transfer claims challenging the validity of Brigade's first lien debt, eliminating the prospect of protracted litigation, and paving the way for Brigade and Chatham to credit bid the first lien debt for substantially all of McClatchy's assets, free and clear of more than $1B of asserted legacy pension obligations. Lead counsel to the Unsecured Creditors' Committee of California Resources Corporation, negotiating a creative global resolution that improved recoveries for certain unsecured creditors and ensured the unimpairment of trade creditors—prior to the final DIP facility hearing—paving the way for a consensual exit plan. Lead counsel to the Unsecured Creditors' Committee of Bristow Group, putting in place a revised Chapter 11 plan that provided for maximum value to unsecured creditors, well above that which they were receiving at the outset of the case. Advised UMB Bank, as successor indenture trustee for unsecured notes of Neiman Marcus.
DUSTON K. MCFAUL Sidley Austin LLP Houston dmcfaul@sidley.com	Led the firm's representation of Legacy Reserves in Chapter 11 ($2.5B funded and $4B total claims), implementing a restructuring support agreement through a prenegotiated plan that included over $250M of backstopped equity commitments, $500M in committed exit financing from existing lenders, and the equitization of $816M of prepetition debt. Advises MUFG Union Bank, as administrative and collateral agent on Chesapeake Energy's $3B senior secured reserve-based revolving credit facility, as lead arranger and administrative agent on $925M new money DIP financing, and as lead arranger of $2.5B exit financing. Represents Ursa Piceance Holdings in Chapter 11 ($300 million with a toggle equitization plan). Assisted prospective bidders or buyers in the Lilis Energy, Fieldwood Energy, Southland Royalties, Kingfisher Midstream, Templar Resources and MDC Energy cases; major interest owners, affiliates or creditors in the Sanchez Energy, Gavilan Resources, Echo Energy, Bruin E&P, and California Resources Chapter 11 cases; and an array of private deleveraging transactions consummated out of court.

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SEAN A. O'NEAL Cleary Gottlieb Steen & Hamilton LLP New York soneal@cgsh.com	Leads team representing ESL Investments in Sears Holdings' bankruptcy, including ESL's $5.2B acquisition of the Debtors' assets, and continuing to advise ESL affiliate, Transform Holdco, in litigation concerning the asset purchase agreement, adequate protection claims and the Chapter 11 plan and in the acquisition through a disputed foreclosure of the DieHard brand. Primary advisor to the Special Restructuring Committee of American Addiction Centers, a public company that operates rehabilitation centers. Advises Goldman Sachs as DIP Lender in Chapter 11 bankruptcies, including McDermott International, Chesapeake Energy and Ruby Tuesday, and in negotiating plan support agreements with multiple parties and various foreign exchange and commodities hedging programs and closeouts. Also assists Goldman Sachs as Hertz Corporation's lender. Advises Norton Rose, as historic counsel in Purdue Pharma's Chapter 11 proceedings. Co-led representation of Daniel Kamensky, a principal of Marble Ridge, who was arrested in connection with various matters relating to his conduct on the Official Creditors Committee in the Neiman Marcus bankruptcy case. Assists Wendy's in connection with the bankruptcy and restructuring of franchisee NPC International.
GEORGE N. PANAGAKIS Skadden, Arps, Slate, Meagher & Flom Chicago george.panagakis@skadden.com	Heads the comprehensive restructuring efforts of offshore drilling contractor Noble Corporation plc, with an exit plan that will eliminate more than $3.4B of outstanding debt and contemplates $875M in exit financing. Advising Eletson Holdings, a Greece-based shipping company, in its restructuring efforts. Represented two different large companies dealing with substantial tort liability claims around the world, a large Brazilian company in its out of court restructuring efforts, the holders of a multi-billion dollar minority interest in a utility company in its restructuring efforts, a pharmaceutical company facing various fronts of litigation resulting from a 10-year restatement of its financial statements and several potential purchasers of substantially all the assets out of their respective Chapter 11 bankruptcies.
FELICIA PERLMAN McDermott Will & Emery Chicago fperlman@mwe.com	Led the representation of Quorum Health, the largest healthcare bankruptcy of 2020, which confirmed a prepack plan supported by over 70% of senior secured lenders and over 95% of noteholders, and restructured roughly $1.5B of funded debt. Lead restructuring counsel to Amulet Capital, which partnered with Shady Grove Fertility, the largest independent fertility practice in the US, to form US Fertility and acquire non-clinical assets in IntegraMed's Chapter 7 bankruptcy. Advised Tema Oil and Gas Company with respect to the restructuring of Tema's equity interests and claims in Rosehill Resources and Rosehill Operating Company, an oil and natural gas company. Tema supported Rosehill's prepack plan, participated in the DIP facility, and received the negotiated equity interests in the reorganized entities following plan confirmation. US counsel for Dominion Diamond Mines, a Canada-based diamond mining company that filed for CCAA insolvency protection due to COVID-19–related trade and travel restrictions that froze $180M in inventory worldwide.

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SANDY QUSBA Simpson Thacher & Bartlett LLP New York squsba@stblaw.com	Advised Centerbridge Partners, GenNx360, the Wychwood Trust and affiliates as equityholders and the largest secured and unsecured creditors in the global financial restructuring of the syncreon Group, the first U.S.-based company to restructure its debt using English schemes of arrangement; global agricultural company Pyxus International on its prepackaged financial restructuring; the Board of Directors of PG&E; Goldman Sachs Lending Partners, Morgan Stanley Senior Funding, MUFG Union Bank and East West Bank as lenders in connection with Fusion Connect's Chapter 11 restructuring; Wells Fargo in Legacy Reserves' $1.5B exit facility. Also represented the joint lead arranger and joint bookrunner in Weatherford's exit facilities comprising $195M letter of credit facility and $450M ABL credit facility; Bank of Montreal, as administrative agent and lead arranger, in the $750M exit facility for Halcón Resources; Goldman Sachs Lending Partners and JPMorgan Chase Bank, as joint lead arrangers and joint bookrunners in $1.2B DIP financing for Avianca Holdings; and JPMorgan in California Resources Corporation's financial restructuring and emergence from chapter 11 bankruptcy.
DAMIAN SCHAIBLE Davis Polk & Wardwell LLP New York damian.schaible@davispolk.com	Lead counsel to Chaparral Energy; ad hoc noteholders group in Superior Energy Services; ad hoc group of Murray Energy's prepetition lenders; ad hoc group of prepetition secured term lenders and DIP term lenders to McDermott International; ad hoc group of secured first-lien, last-out term loan lenders to Chesapeake Energy; ad hoc group of Speedcast secured lenders; ad hoc lenders group in Philadelphia Energy Solutions Refining and Marketing; ad hoc secured noteholders group and DIP facility agent to Cloud Peak Energy; ad hoc secured noteholders group in Sable Permian Resources; ad hoc group of secured term loan lenders to California Resources Corporation; ad hoc group of FTS International senior secured noteholders; ad hoc group of Pioneer Energy Services prepetition senior unsecured noteholders; ad hoc secured lenders group in Fieldwood Energy; ad hoc group of lenders to Acosta; ad hoc noteholders group and Ankura Trust in Bristow Group, ad hoc group of prepetition lenders to Fusion Connect; ad hoc group of term loan lenders to Sheridan Holding Company I; term loan agent and DIP Agent to Sheridan Holding Company II; ad hoc lenders group in VIP Cinema; ad hoc group of Ultra Petroleum noteholders; and Alta Mesa Resources bondholders.

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ROGER SCHWARTZ King & Spalding New York rschwartz@kslaw.com	Led team advising KKR Credit Advisors (US) LLC and certain affiliates and managed funds in connection with Borden Dairy's Chapter 11 bankruptcy; and in an out-of-court restructuring relating to its term loan facility with a company that provides cloud-based managed SaaS for monitoring chiller plants and refrigeration systems. Advised Monitronics International in connection with multiple liability management and restructuring transactions involving about $1.8B of indebtedness, winning confirmation of a prepackaged plan that slashed the debt load by roughly $885M. Assisted an ad hoc group of first-lien term loan lenders in connection with the recapitalization of Totes Isotoner's balance sheet. Advised a steering committee in consummating an out-of-court balance sheet restructuring of an entertainment and event technology company. Represented Brightwood Capital in an out-of-court restructuring relating to its term and revolver facility with a provider of substance abuse and addiction and behavioral health treatment services. Ongoing representation of an architecture and engineering firm in connection with potential out-of-court restructuring.
ROBERT J. STARK Brown Rudnick LLP New York rstark@brownrudnick.com	Served as lead counsel to the Official Committees of Unsecured Creditors in Chesapeake Energy, Briggs & Stratton, Libbey Glass, Philadelphia Energy Solutions, Alta Mesa Resources, RAVN Air Group, Ultra Petroleum, Legacy Reserves, and EdgeMarc Energy; Second Lien Noteholders of J.C. Penney, Secured Term Lenders of Pier 1 Imports, and Minority Secured Term Lenders of J.Crew; Envision Bondholders in Intelsat and Ad Hoc Unsecured Bondholders Committee in McDermott International; OnyxPoint Group (Shaia Hosseinzadeh) as private equity sponsor in Sable Permian Resources, and Extreme Horse as private equity sponsor in Northwest Textiles; and Millennium Labs Litigation Trust, Performance Sports Group Liquidation Trust and Green Field Energy Services Liquidation Trust.

Gnome de Plume

MLP Execs Whine While Investors Cry. MLP Kumbaya Anyone?

by Geoffrey Bailey

Quarter after quarter, executives at publicly traded master limited partnerships lament the low valuations that investors place on their enterprises. MLP executives say investors have unjustifiably soured on the structure, that their assets are worth more in the private market.

A few MLPs have called investors' bluff and sold assets to private buyers. The executives had reason to feel smug—the assets were monetized at a premium to investors' valuation.

Over the last year, MLPs have gotten religion. They have curtailed hope-based capital projects, reduced debt, slashed distributions and improved margins. The economic environment should be favorable for MLP valuations: low interest rates, potential increases in income taxes and low dividend yields at C-Corp competitors.

Despite internal improvements and favorable external conditions, MLP valuations remain sub-DCF and sub-private market values. Why?

In a word: betrayal. MLPs are managed by General Partners. Investors that own MLP units are Limited Partners. Corporate governance of MLP's is controlled by a Partnership Agreement. The PA outlines the respective rights of the GP and LPs. The PAs are over 100 pages long and exemplify lawyers' best efforts to confuse and bore. Buried in the PAs are provisions that give the GP rights to mistreat and disenfranchise LPs. Some examples: a) GPs define "good faith" arbitrarily; b) GPs may take action adverse to LPs and may ignore LP interests in conflict of interests situations; c) LPs are nearly powerless to remove a GP.

For many years, investors either ignored—or were not aware—of these trapdoors in MLP Partnership Agreements. Just three years ago, investors were so enamored of the structure, MLP cost of capital was lower than that of C-Corporations. Why have those positions reversed?

The oil crash of late 2018 was the catalyst. The rapid decline in the price of oil reduced activity in the energy sector—MLP's favorite stomping ground. As the MLP revenue model jammed and balance sheets stressed, MLP unit prices collapsed. "Nothing abnormal here. That's how oil works," our readers may muse. But now we return to the MLP Partnership Agreements.

Lodged in those diabolic PAs are provisions titled "Limited Call Option." They represent the worst GP predation of LPs. Limited Call Option clauses differ in nuance, but broadly provide that if the GP reaches a certain percentage of ownership of a class of units, the GP can unilaterally buy the entire class at some arbitrary trading formula. When MLP unit prices are way down—as they were post-oil crash 2018 and 2019—GPs can reap significant economic value at the expense of LPs by exercising the Limited Call Option and purchasing MLP units on the cheap. LPs suffer the loss of economic value.

In 2019 and 2020, GPs leveraged the Limited Call Options, buying entire classes of units—or entire MLPs—from LPs at basement prices and without LP consent. GPs captured economic value; LP investors took losses. A self-reinforcing cycle began: MLP units stayed low, giving GPs time to exercise Limited Call Options. As investors watched their partners in equity—the GPs—walk away with MLP assets at distressed prices, fear set in and MLP unit prices collapsed. The investor community finally saw the evil inherent in these PAs and ran the other way. But when the turbulence settled, GPs walked away with cheap

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MLP Execs Whine While Investors Cry. MLP Kumbaya Anyone?

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energy assets and LP unit holders too realized losses.

Lawyers didn't take long to respond. First, Bandera Partners, a small hedge fund in New York City, initiated a class action against Boardwalk GP and its sponsor Loews Corporation, in the Delaware Chancery Court. A. Thompson Bayliss of Abrams & Bayliss represents the plaintiffs, while Lawrence Portnoy of Davis, Polk & Wardwell argued the matter for Boardwalk/Loews.

Second, unitholders of CVR Refining LP, represented by Joel Friedlander of Friedlander & Gorris, sued CVR Energy, Carl Icahn, Icahn Enterprises LP, and the CVR Board of Directors. Srinivas Raju of Richards, Layton & Finger, argued the matter for the CVR defendants.

In both cases, the plaintiffs are aggrieved unit holders who allege GPs manipulated the Limited Call Option process in order to buy in the MLP at an artificially low price. Both suits have survived motions to dismiss and are in discovery.

An adverse judgment against the GPs would be economically harrowing for two reasons. First, the acquired MLP assets are currently worth about half of what the GP acquirers paid. Second, a ruling for the plaintiffs could force the GP acquirers to compensate unitholders with a higher purchase price. In the case of CVR, the GP could be forced to cough up an extra $300 million.

Blueknight LP represents a tortured twist on this theme. A private energy firm called Ergon, out of Jackson, Miss., runs the Blueknight GP. In a particularly unwise machination, Ergon made a low-ball bid for the Blueknight assets, but not pursuant to the Limited Call Option. Instead, Ergon relied on a hackneyed interpretation of the PA and a contrived reading of the terms of the preferred securities. We don't know why the deal was called off; some investors speculate that the Blueknight Conflicts Committee nixed it as a blatant opportunistic sham. Today, Ergon retains a unique infamy: it controls the only MLP for which an abusive unitholder deal was proposed but not completed, i.e. Blueknight still trades publicly. Kinda like asking your sister to dance at the family reunion and getting turned down.

Now readers understand why MLPs trade at a discount to their C-Corp brethren and why their assets are worth more in the private market. It's simple: the investor community doesn't trust the GPs anymore. Buying publicly traded equity in an MLP has become sleeping with the enemy. Investors perceive added risk and appropriately discount the value of the cash flows. It's Finance 101—risk/reward. We hope the whining and complaining by MLP executives ends soon. ¤

About The Author

***Geoffrey Bailey** is a special situations thought laggard. He currently studies and observes the results of progressive economic policies in Argentina.*

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- Who's Who in Tuesday Morning Corporation
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