

November 2020

# Collateral Disputes: Experts Weigh In on Recent Transactions

## Discussing:

The discussion will highlight real-life examples of collateral disputes between lenders and borrowers, look back on why the disputes are happening, review the options for lenders, and examine how to prevent disputes from happening in the future.

# Agenda

1. Panelist Introductions
2. What Are Collateral Disputes?
3. Transaction and Case Analysis
4. Options for Deal Parties
5. Current Trends
6. Questions for the Panel

# Panelist Introductions

# Presenters



**Gregg Batemen**

*Seward & Kissel*



**Lorie Beers**

*Cowen, Inc*



**Greg Berube**

*Evercore*



**Alex Cota**

*Stroock & Stroock & Lavan*



**Jayme Goldstein**

*Stroock & Stroock & Lavan*



**Seth Lieberman**

*Stroock & Stroock & Lavan*



**Eric McDonald**

*SRS Acquiom*

# What Are Collateral Disputes?

# What Are Collateral Disputes?

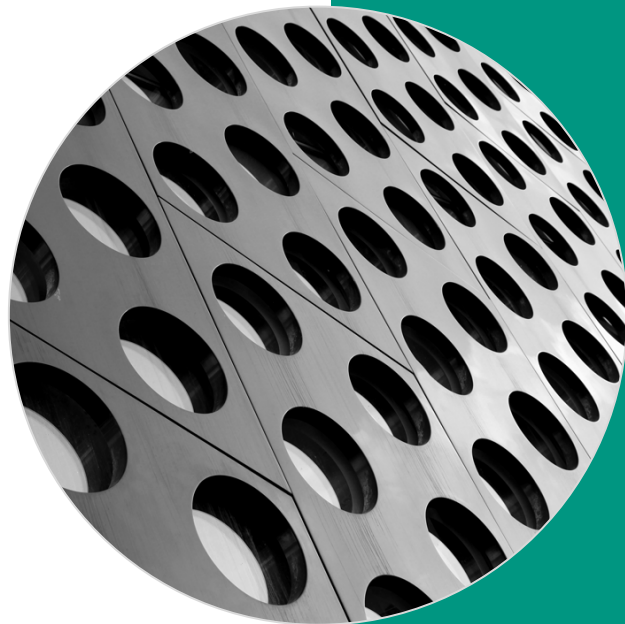
1. New senior debt created by moving collateral
2. Loopholes
3. Majority and minority lender clashes
4. Adjusting capital structures



# Transaction and Case Analysis

# Transaction and Case Analysis

1. Priming cases
2. Transactions with disputes
3. Recapitalizations
4. New tranches without full lender participation
5. History repeats itself





# Options for Deal Parties

# Options for Deal Parties

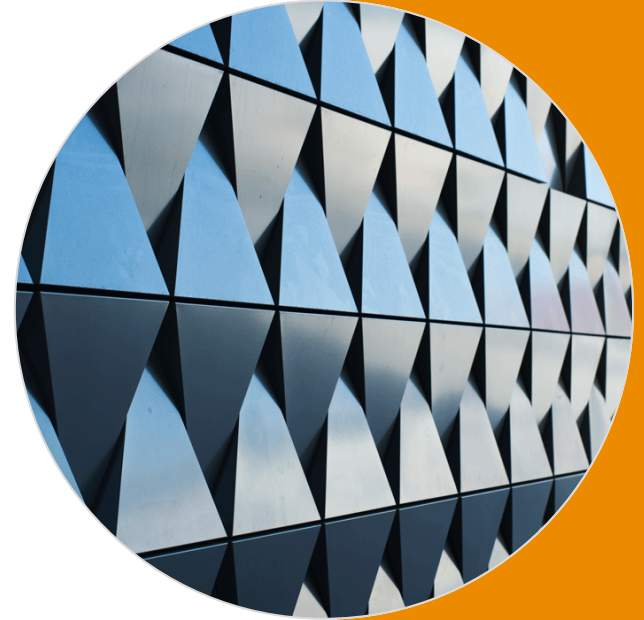
1. Document review. Close loopholes or leave them open?
2. Adjust lender thresholds
3. Debtor takes action to create new tranches
4. Protect investment
5. Issues on both sides



# Current Trends

# SRS Acquiom Barometer™ Results

1. Frequency of collateral priming events
2. Method of priming
3. Level of concern
4. Mitigation steps
5. Will this continue?



Thank you.  
Questions?

Additional Information from SRS Acquiom on this subject can be found at:

- / [SRS Acquiom Barometer™ on Collateral Priming](#)
- / [SRS Acquiom Loan Agency Insights](#)

Both are interactive sites.

## WEBINAR FACULTY

**Gregg S. Bateman** is a partner in Seward & Kissel LLP's Global Bank and Institutional Finance & Restructuring Group in New York and is a member of the Firm's Energy Finance Restructuring Team, LIBOR Transition Task Force and Blockchain and Cryptocurrency Group. He has experience representing banks and financial institutions in connection with various types of domestic and international financing transactions, including secured and unsecured debt transactions, asset-securitizations, structured finance, project finance transactions, American depositary receipt programs and global depositary receipt programs. Mr. Bateman regularly advises clients in connection with secured transactions involving both domestic and foreign collateral and highly complex intercreditor structures that include senior/subordinate or *pari passu* creditor relationships. Additionally, he has experience with securitization transactions involving an array of asset classes, including residential and commercial mortgages, motion picture royalties, medical and trade receivables, collateralized debt obligations, life insurance policies, life insurance premium loans, diversified payment rights, peer-to-peer loans, student loan receivables and equipment leases. He also regularly advises clients with respect to the structuring, execution and administration of exchange-traded products (ETPs) and exchange-traded funds (ETFs). In addition to origination work, Mr. Bateman has advised clients in connection with consent solicitations, exchange offers, tender offers, amalgamations and mergers of obligors, registration rights offerings, note redemptions, and resignations and successions. He also has experience representing trustees, administrative agents, collateral agents and ad hoc bondholder and lender groups in connection with complex corporate, sovereign and state-owned defaults, workouts, restructurings and liquidations. Mr. Bateman is a member of the American Bar Association, for which he serves on its Trust Indentures and Indenture Trustees Committee. He received his B.A. from the University of Michigan and his J.D. from Seton Hall University School of Law, where he was a Dean Merit Scholar and managing editor and co-founder of the *Seton Hall Circuit Review*.

**Lorie R. Beers** is a managing director with Cowen and Company in New York and heads its Special Situations Group. She has more than 12 years of investment banking experience and 28 years of corporate restructuring and insolvency transaction experience, and her practice spans a variety of industries and includes in- and out-of-court restructuring. She also helped develop ABI's Complex Financial Restructuring Program. Ms. Beers is a frequent speaker on valuation, solvency, distressed and "story" M&A transactions, and private placement in challenging environments. She was cited as a valuation authority by the Seventh Circuit Court of Appeals in *In the Matter of River Road Hotel Partners LLC*, et. al., which cited her *ABI Journal* article "Preparing the Distressed Company for Sale." Previously, Ms. Beers was a managing director with StormHarbour Securities, senior managing director with both Variant Capital Advisors and Conway MacKenzie, and a managing director and global co-head of Investment

Banking for Seabury Group in New York, where she was responsible for Seabury's middle-market and aerospace investment banking practice and was involved in numerous buy- and sell-side M&A engagements, private placements of debt and equity, and balance sheet recapitalizations across many industry segments, particularly aerospace. Ms. Beers is a former member of ABI's Board of Directors and is a member of the Turnaround Management Association. Most recently, she received the 2019 M&A Advisor Leadership Award. Ms. Beers received her J.D. from the University of Pittsburgh and her B.A. in economics from Dickinson College.

**Gregory Berube** is a senior managing director of Evercore's Restructuring and Debt Advisory Group in New York. Most recently, he was a managing director and head of Americas Restructuring Finance and Advisory at Goldman Sachs & Co. Mr. Berube started his career in Leverage Finance Capital Markets and Syndicate at Goldman, having spent time in both New York and London. He has worked on numerous restructuring assignments, advising companies, financial sponsors and other parties on refinancings, exchange offers, consent solicitations, amendments, out-of-court restructurings, chapter 11 bankruptcy reorganizations and distressed mergers and acquisitions. He has also advised on and executed various equity and debt financings, including DIP and exit financings, for companies in chapter 11 and several "rescue" financings for stressed and distressed clients. Mr. Berube has completed advisory and financing engagements across many industries, including those for Altegrity, Avaya, California Resources, Caesars Entertainment, Chesapeake Energy, Comverse Technologies, Foresight Energy, GenOn Energy, GNC, Gymboree, Greentown Casinos, Murray Energy, Peabody Energy, Six Flags, Syniverse Technologies, Toys "R" Us, Tronox Inc., Ultra Petroleum and WireCo, among others. He received his B.A. in psychology from Colgate University.

**Alex Cota** is a debt finance partner practicing in Stroock & Stroock & Lavan LLP's Financial Restructuring Group in New York, and serves as the leader of its Debt Finance Business Unit. He advises and represents banks, private-equity and hedge funds, business-development companies, alternative-capital providers, and other financial institutions and private companies on a variety of complex financing transactions across a broad variety of industries and in all levels of the capital structure, both lender-side and borrower-side (including administrative agent and arranger representations). Recent finance transactions on which Mr. Cota has worked include senior and subordinated revolving and term-loan credit facilities, split-collateral deals, first- and second-lien deals, acquisition financings, asset-based financings, unitranche, high-yield bonds, club deals, loan workouts and restructurings, debtor-in-possession financings, rescue financings and bankruptcy exit financings. He also has experience in the structuring, negotiation and documentation of intercreditor arrangements in connection with his representations. Mr. Cota received his B.A. with high honors from the University of Texas in 2002 and his J.D. from Stanford Law School in 2005.



**Jayme T. Goldstein** is a partner in the Financial Restructuring Group of Stroock & Stroock & Lavan LLP in New York and leads its Restructuring Business Unit. He has significant experience in advising ad hoc groups of hedge funds, private-equity funds, banks, large investment managers and other financial institutions in complex in-court and out-of-court restructurings and distressed M&A transactions across a variety of industry sectors. Mr. Goldstein is regularly listed in *Chambers USA* and has been hailed by clients as “easy to work with, proactive, thoughtful in coming up with solutions and responsive.” He was also selected by *Turnarounds & Workouts* in 2019 as one of its 12 “Outstanding Restructuring Lawyers” after previously being listed for three years in a row (2014-16) as one of its “Outstanding Young Restructuring Lawyers” under the age of 40. In addition, he was named by M&A Advisor as one of its “40 Under 40 Emerging Leaders” and as a “Leading Lawyer” by the *IFLR1000*, a “Future Star” by *Benchmark Litigation* and a “New York Super Lawyer” by *Super Lawyers* (after initially being named a “Rising Star”). Mr. Goldstein has played an integral role in some of the largest restructuring and bankruptcy matters in the country. He received his B.A. *magna cum laude* and *Phi Beta Kappa* from Brown University in 1999 and his J.D. from Cornell Law School in 2002, where he was associate editor of the *Cornell Law Review*.

**Seth H. Lieberman** is a partner with Pryor Cashman LLP in New York and co-chairs both its Bankruptcy, Reorganization + Creditors’ Rights Group and its Corporate Trust Practice. He is a restructuring attorney and litigator, and represents clients ranging from indenture trustees and agents to distressed-debt funds, trade creditors and landlords. He also helps lead one of the most well-known and highly regarded default-side corporate trust practices. Mr. Lieberman often writes on or speaks about the latest bankruptcy trends, including make-whole provisions, limitations on credit bidding, and bankruptcy court jurisdictional nuances. He received his B.A. *magna cum laude* in 1999 from James Madison University and his J.D. *cum laude* from Benjamin N. Cardozo School of Law at Yeshiva University in 2004.

**Eric McDonald** is the director of Loan Agency Business Development for SRS Acquiom in New Orleans. He works closely with lenders and outside counsel to provide education and guidance on the services offered by the SRS Acquiom Loan Agency team. Before joining SRS Acquiom, Mr. McDonald was an account services director for Aptify, where he sold enterprise software and related services to the largest nonprofit, member-based associations around the world. Before that, he provided analysis and recommendations for power-generation needs for Entergy New Orleans, and even had a stint as a radio show host for numerous stations across New England. Mr. McDonald received his B.A. in government from Dartmouth College and his M.B.A. with a finance specialization from Tulane University.