

# THE EVOLVING LANDSCAPE OF DISTRESSED M&A

**ABI Webinar**

**Hosted by the Asset Sales Committee**

**Wednesday, July 22, 2020**

**12:00 – 1:15 p.m. ET**

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# PRESENTERS

## **Rich Morgner**

- ▶ *Jefferies*  
*New York*

## **Jeff Marwil**

- ▶ *Proskauer*  
*Chicago*

## **Harold Bordwin**

- ▶ *Keen-Summit Capital Partners*  
*New York*

## **Moderator:**

**Dawn Cica - Co Chair ABI ASSET SALES COMMITTEE**

*Carlyon Cica Chtd.*

*Las Vegas*

# WEBINAR OVERVIEW

This webinar will highlight the current challenges facing insolvency professionals working on deals in the COVID-19 world and what to expect in the coming months.

# PART I

## **Best Practices**

Navigating a sale process and the challenges we are encountering

# DUE DILIGENCE

- ▶ On site diligence has become very hard to coordinate and is impossible in some cases.
- ▶ Will the level of “deal” travel ever return to pre-COVID levels?

# STALKING HORSE BIDDERS

- ▶ Situations where a stalking horse buyer was approved prior to the impact of COVID.
- ▶ The increased value of having a stalking horse bidder given the uncertainty surrounding sales.

# COVID SPECIFIC NEGOTIATIONS

- ▶ Creditors, especially landlords, are losing their negotiating leverage with tenants seeking concessions.

# LIVING IN THE WORLD OF ZOOM

- ▶ An inability to conduct site visits and auctions in person presents a new series of challenges.
- ▶ Cross examinations and evidentiary hearings conducted via Zoom create several potential conflicts.



# PART II

## **Changes in Valuation**

The Coronavirus Add-Back

## EBITDA- C(CORONAVIRUS)

- ▶ COVID has had a tangible impact on sales that were scheduled to close prior to the pandemic striking.
- ▶ While tracking the impact the virus is having on a business can be important, whether buyers are going to take this into account when valuing an opportunity remains to be seen.
- ▶ The calculation of enterprise value has evolved during the pandemic.

# TIME IS RARELY A GOOD THING

- ▶ Judges may be more sympathetic and accommodating in terms of giving a debtor more time to work things out.
- ▶ Through a short and efficient bankruptcy process, many debtors were able to maximize value. Without a streamlined bankruptcy process valuations may decline even further.

# PART III

## **Lending During and After COVID**

What can we expect from lenders as things progress, for better or for worse

# FINANCING CONCERNS

- ▶ Several debtors saw their cases derailed as their ability to access exit financing was restricted or in some cases, non-existent.
- ▶ With an increased potential for cases to liquidate, will lenders be hesitant to provide DIP financing?
- ▶ Mezzanine lenders and “vulture” lenders are increasing their leverage in the COVID world.

# THE WAVE IS COMING

- ▶ Banks are being incredibly patient with borrowers right now because no one wants to see their name in an article about foreclosure or shutting a business down.
- ▶ The free passes are ending soon and as the initial forbearance agreements expire, the pressure on struggling businesses will increase.

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# Q/A DISCUSSION



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**Harold J. Bordwin** is a principal and managing director with Keen Summit Capital Partners LLC in New York and is responsible for all aspects of business development and execution at the firm. He focuses on developing and implementing strategic real estate and corporate finance plans that involve real estate analysis, real estate acquisitions and dispositions, lease modifications and terminations, and corporate finance and capital market services. Mr. Bordwin has more than 25 years of real estate advisory and transactional experience, with particular expertise in workouts and restructurings, specializing in strategic planning, the sale of real estate assets and lease negotiations. He has represented financial, corporate and retail clients. Mr. Bordwin has testified before the Judiciary Committee of the U.S. House of Representatives on real estate restructuring issues. He has also been interviewed and quoted in numerous articles for *The Wall Street Journal*, *The New York Times*, *USA Today* and various trade publications. Mr. Bordwin received his undergraduate degree in government from Wesleyan University in 1982 and his J.D. from Georgetown University Law Center in 1985, where he was a staff member of *Law & Policy in International Business* and published articles in the *Ecology Law Quarterly* of the University of California at Berkeley Boalt Hall School of Law.

**Jeff J. Marwil** is a partner with Proskauer in Chicago and has held lead roles in some of the highest-profile chapter 11 bankruptcy cases in America. He is the U.S. co-head of the firm's Business Solutions, Governance, Restructuring & Bankruptcy Group, and head of the Chicago office. During his nearly 35 years of experience in bankruptcies, workouts and corporate restructurings, he has provided strategic advice to companies in distress and solved challenging legal and business issues. Mr. Marwil represents publicly traded and privately held companies in and out of court in the restructuring of complex capital structures and reorganizing their financial affairs and business operations. He regularly provides advice on issues of corporate governance and fiduciary duty related to companies in distress, their officers and directors, creditors and their shareholders. Mr. Marwil has served as lead counsel for debtors, official committees and trustees in some of the largest cases in America, including Energy Future Holdings Corp., the Official Committee of Unsecured Creditors of Caesars Entertainment Operating Co. Inc. and ITT Educational Services Inc. He also regularly provides strategic business solutions and restructuring advice to lenders, distressed investors and borrowers in distressed or nonperforming real estate loan situations. Mr. Marwil is a former ABI Board member and a member of the Turnaround Management Association. He received his B.A. from the University of Michigan in 1983 and his J.D. from DePaul University College of Law in 1986, where he was a member of its *Law Review*.

**Rich Morgner** is managing director and joint global head of Restructuring and Recapitalizations at Jefferies LLC in New York, where he specializes in middle-market mergers and acquisitions, restructurings, reorganizations, and distressed M&A valuation and financial opinions. Previously, he was a managing director and co-head of M&A at Miller Buckfire, and a managing director with Chanin Capital Partners and Prudential Securities. Mr. Morgner received his A.B. in history from Dartmouth College.