

# insolvency2020



Oct. 7, 2020, 2:30-4:00 p.m.

## ABI: How to Restructure an Industry that Has Been Shut Down, and How to Prove Feasibility When You're Starting from Ground Zero

Kevin Barrentine; FTI Consulting, Inc.

Chris Creger; CohnReznick LLP

David E. Gordon; Polsinelli PC

William H. Henrich; Getzler Henrich & Associates LLC

Samantha Martin; Stroock & Stroock & Lavan LLP

## Educational Materials



# insolvency2020

## Restructuring, Insolvency & Distressed Debt Virtual Summit

SEPTEMBER 16 - OCTOBER 27, 2020

### How to Restructure an Industry that Has Been Shut Down

Chris Creger CohnReznick LLP

David E. Gordon Polsinelli

Kevin Barrentine FTI Consulting, Inc.

Samantha Martin Stroock & Stroock & Lavan LLP

William H. Henrich Getzler Henrich & Associates LLC

---

insolvency2020

PRESENTED BY



## Relevant Industries

Retail	Hospitality
Restaurants	Healthcare
Travel	Energy
Entertainment	Municipalities

---

**insolvency2020**

PRESENTED BY



## How Companies Are Surviving Out of Bankruptcy

Depth of Destruction

Means of Survival

- Cost reductions
- Government subsidy programs
- Existing sources of capital
- Debt moratoriums

---

**insolvency2020**

PRESENTED BY



## Forecasting Working Capital Needs

Formulating COVID-19 Assumptions

Managing to Operating Margins

Sources of Capital

- Existing stakeholders
- New private sources of capital; banks; commercial lenders; PE funds; distressed funds
- Government assistance

---

**insolvency2020**

PRESENTED BY



## M&A Market

Current and Future Outlook

Velocity and Nature of Deal Flow

Prospects for Distressed Investing in  
Arena of Uncertainty

Analysis by Industry

---

**insolvency2020**

PRESENTED BY



## Bankruptcy – Contract Issues

- Force Majeure – French for “Superior Force”
- Contractual clause that forgives a party’s obligation to perform based on specified events such as acts of God, war, natural disaster, or national health emergencies
- Pre-COVID considered boilerplate language, now critically important

**insolvency2020**

PRESENTED BY



## Bankruptcy – Feasibility

### Section 1129(a)(11)

“Confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan.”

Courts consider whether the plan “offers a reasonable assurance of success. Success need not be guaranteed.” *In re Johns-Manville Corp.*, 68 BR 618 (Bankr. SDNY 1986), *aff’d*, 78 BR 407 (SDNY 1987), *aff’d sub nom. MacArthur v. Johns-Manville Corp.*, 837 F.2d 89 (2d Cir. 1988)

Debtors typically submit financial projections to demonstrate sufficient cash flow to fund the plan (i.e., pay administrative and priority claims) and maintain operations.

**insolvency2020**

PRESENTED BY



## Bankruptcy – Feasibility

Chapter 11 **plans of reorganization** have been denied for lack of feasibility

- Courts analyze adequacy of debtor's capital structure, earning power of its business, economic conditions, ability of management, probability of continuation of same management, and any other related matters

- Paragon Offshore plc

Bankr.D.Del., Case No. 16-10386 (CSS), Docket No. 890

- Las Vegas Monorail Company

Bankr. D. Nev., Case No. 10-10464 (BAM), Docket No. 1022

**insolvency2020**

PRESENTED BY



## Bankruptcy – Feasibility

How do you confirm a plan when the Debtor cannot meet the requirements of section 1129(a)(11)?

- 363 sale of substantially all assets prior to plan process
- Chapter 11 plan of liquidation (or plan of distribution)

**insolvency2020**

PRESENTED BY



## Bankruptcy – Feasibility

Chapter 11 **plans of liquidation** have been denied for lack of feasibility

- Courts analyze whether the liquidation itself is feasible, i.e., that it can accomplish what it proposes to do, in the time period allowed, on the terms set forth in the plan.
- In re: Two Streets

597 B.R. 309 (Bankr.S.D. Miss. Feb., 26, 2019)

---

**insolvency2020**

PRESENTED BY



## Bankruptcy – Feasibility

What is the alternative when a Debtor cannot demonstrate feasibility?

- Structured Dismissals
- Conversion to Chapter 7

---

**insolvency2020**

PRESENTED BY





## Bankruptcy – Treatment of PPP Loans

### Paycheck Protection Program

- PPP loan is forgiven if certain requirements are met
- If not forgiven, PPP loan is unsecured debt
- PPP loan proceeds provide liquidity that may be helpful in a feasibility analysis

**insolvency2020**

PRESENTED BY



## Chapter 11 vs Subchapter V

- Subchapter V, enacted in 2019 and set forth in sections 1181-1195 of the Bankruptcy Code, is designed to enable small businesses to reorganize in a more cost effective manner while retaining control of business operations
- The CARES Act temporarily increases the debt threshold for filing for relief under Subchapter V
- Prior to the CARES Act, the debt threshold was \$2,725,625
- Since the enactment of the CARES Act and until March 27, 2021, the debt threshold will be \$7,500,000
- After March 27, 2021, the debt threshold will revert to \$2,725,625

**insolvency2020**

PRESENTED BY



## Chapter 11 vs Subchapter V

- Why is a Subchapter V filing an attractive option?
  - The bankruptcy process is quicker
  - The bankruptcy process is more affordable
  - Plan confirmation is more likely
  - Debtors maintain control

**insolvency2020**

PRESENTED BY



## External Influences

COVID-19

- Vaccine development and distribution timeline
- Social distancing requirements
- Government subsidy program prospects
- Global economic and coronavirus impact

**insolvency2020**

PRESENTED BY



## Prospects for Restructuring/ Long Term Impacts

Retail	Hospitality
Restaurants	Healthcare
Travel	Energy
Entertainment	Municipalities

**insolvency2020**

PRESENTED BY





# Faculty

**Kevin Barrentine** is a senior managing director with FTI Consulting, Inc.'s Corporate Finance and Restructuring department in Atlanta and specializes in the revitalization of underperforming businesses. He has more than 30 years of experience advising senior management, boards of directors, sponsors and senior lenders in improving performance and revitalizing companies that are distressed. He also has deep restructuring and performance-improvement expertise across a variety of industries, from manufacturing and distribution to consumer products, industrial products, food, agriculture, automotive and building products. Mr. Barrentine has served as a trusted advisor to companies and secured creditors in out-of-court restructurings and in formal bankruptcy proceedings. His financial and operational advisory experience includes the development of detailed and actionable restructuring and performance improvement plans, including the renegotiation of financing arrangements, development and review of detailed financial and operational business turnaround plans, development and review of detailed 13-week cash flow projections, liquidity management, customer and product profitability analyses, cost-reduction initiatives and working-capital productivity. Mr. Barrentine has served in various roles over the years in both restructuring and performance improvement clients, including CRO. Prior to joining FTI Consulting, he was a senior managing director at Conway Mackenzie and a managing director at Deloitte in the restructuring practice prior to Conway. Mr. Barrentine is a member of the Academy of Industrial Engineering at the University of Arkansas, Turnaround Management Association, ABI, Association of Insolvency & Restructuring Advisors and Association for Corporate Growth. He received his B.S. in industrial engineering from the University of Arkansas.

**Chris Creger** is a principal of CohReznick Advisory's Restructuring & Dispute Resolution Practice in New York and provides financial advisory, business restructuring and transaction support services to corporations, debtors, bondholders, hedge funds, law firms, lending institutions, private-equity firms, secured lenders, unsecured creditors and other constituents. His industry experience includes media, consumer goods, distribution, retail, manufacturing, oil & gas, telecommunications, publications, textiles, health care, nonprofit and energy. Mr. Creger advises his clients on matters involving turnaround, bankruptcy, out-of-court workouts, litigation, lender and M&A due diligence, transactional support and profit improvement. His areas of expertise include liquidity/ vendor management, organizational and process reformation, capital-sourcing, and business and creditor workout/management/restructuring. Prior to joining CohnReznick, Mr. Creger built his career as a consultant with niche bankruptcy and turnaround consulting firms such as CR3 Partners, BDO Consulting and Epiq Systems. He has served the New York Turnaround Management Association in various roles, including chair of the NextGen Committee. He also was an integral part of the deal team that was recognized as M&A Advisor's 12th Annual Turnaround Award Winner "Chapter 11 Reorganization of the Year." Other engagement honors include the 2018 Turnaround Atlas Awards for the Corporate Turnaround of the Year, and separately for the Energy Restructuring of the Year. Mr. Creger received his B.S. in financial economics from Centre College and a degree in international business and managerial finance from the University of Nicosia (Intercollege), Lefkosia, Cyprus.

**David E. Gordon** is a shareholder with Polsinelli PC in Atlanta and counsels on business bankruptcies and insolvencies, with a distinct focus on health care industry restructuring. He has experience representing REITs, hospitals, lenders, landlords, health care systems, skilled-nursing and as-

sisted-living facilities, purchasers of distressed assets, secured and unsecured creditors, committees, and other parties-in-interest in chapter 11 reorganization proceedings, receiverships and workouts throughout the U.S. Mr. Gordon is experienced in nonbankruptcy transactional and litigation in both state and federal courts and routinely represents lenders in all areas of creditors' rights litigation. His transactional experience includes representing purchasers in § 363 sales and representing various parties in problem-loan workouts, bridge loans and other financings, forbearance agreements, and other distressed transactions. Prior to joining Polsinelli, Mr. Gordon taught as an adjunct professor of law at Emory University School of Law for over seven years. He received his B.A. in 2003 from Georgetown University and his J.D. with honors in 2006 from Emory University School of Law.

**William H. Henrich, CPA** is co-chair of Getzler Henrich & Associates LLC in New York and has nearly 30 years of experience in turnaround and crisis management, loan workout, bankruptcy consulting. He is experienced in helping debtors restructure their businesses, improve operations, boost cash flow and profitability, and maximize recovery for stakeholders. He also has expertise in advising secured and unsecured creditors during chapter 11 bankruptcy proceedings, including developing plans of reorganization and providing bankruptcy forensic analysis to support litigation. Prior to joining Getzler Henrich, Mr. Henrich was managing director of the New York practice of a prominent middle-market corporate restructuring firm. He also served in Arthur Andersen's corporate recovery services group, and in 1982 started its New York bankruptcy and restructuring practice. Mr. Henrich is a former president of the Turnaround Management Association's New York chapter and frequently lectures and writes on turnaround and bankruptcy issues, and he served as co-chair of ABI's Chapter 11 Reform Commission's Governance Committee. He holds a B.B.A. from Baruch College, City University of New York, and an M.B.A. from Harvard Business School.

**Samantha Martin** is special counsel in the Financial Restructuring Group in Stroock & Stroock & Lavan LLP's New York office. She has represented debtors, official committees of unsecured creditors, ad hoc groups of bondholders and lenders, individual creditors, purchasers and liquidating trustees in all aspects of complex corporate restructurings, including chapter 11 cases and out-of-court restructurings. She also has advised foreign representatives in chapter 15 recognition proceedings. Ms. Martin currently co-chairs the New York Chapter of the International Women's Insolvency & Restructuring Confederation (IWIRC NY) and the Stroock Women's Affinity Group. She also recently served as a member of the Executive Committee for the International Insolvency Institute NextGen Program and as a member of the Red Party Committee for Her Justice. Ms. Martin has been listed in *The Legal 500*, 2019 *Super Lawyers* and as a *Super Lawyers* "Rising Star" from 2014-18. She received her B.A. in 2004 from the University of Florida and her J.D. in 2007 from the Benjamin N. Cardozo School of Law at Yeshiva University, where she was a recipient of the Jacob Burns Medal and managing editor of the *Cardozo Law Review*.