insolvency2020

Sept. 24, 2020, 3:30-4:45 p.m.

Views from the Bench: Sales — Chapter 11 or § 363?

Hon. Rebecca B. Connelly; U.S. Bankruptcy Court (W.D. Va.)
Hon. Martin Glenn; U.S. Bankruptcy Court (S.D.N.Y.)
Thomas M. Horan; Cozen O'Connor P.C.
Lauren A. Moskowitz; Cravath, Swaine & Moore LLP
Hon. Brendan L. Shannon; U.S. Bankruptcy Court (D. Del.)
Hon. Mary F. Walrath; U.S. Bankruptcy Court (D. Del.)

Educational Materials

Materials for ABI Panel – § 363 Sales

September 12, 2020

TAB	DOCUMENT
1	ABI Panel - § 363 Sales During COVID-19 - Considerations and Observations
2	*In re Pier 1 Imports, Inc., et. al.,* (Bankr. E.D. VA 2020) – Memorandum Opinion [Dkt. No. 637]
3	Reuters – "On eve of bankruptcy, U.S. firms shower execs with bonuses"

ABI Panel – Views from the Bench

§ 363 Sales During COVID-19: Considerations and Observations

COVID-19 has caused widespread business disruption and resulted in an increasing number of insolvent or near-insolvent companies seeking protection under the United States Bankruptcy Code. A number of related issues have arisen in connection with asset sales under Section 363 of the Bankruptcy Code.

1. Previously unheard of requests for relief are increasingly common and approved as the "least bad option"

- Sales of businesses with little or no value
- Defensive DIPs / offensive DIPs ("loan to own")
  - *In re Patriot Well Solutions LLC,* Case No. 20-33642 (Bankr. S.D. Tex. 2020): Equityholder provided DIP financing with restructuring milestones and conditions, followed by asset sale to the lender-equityholder.
- Requests for stock issuances (the "bored gamblers")
- Confirming plans with administrative and priority classes only and which do not clearly provide better outcomes than chapter 7
- Credible threats that time is of the essence on asset bids and DIPs
  - *In re Lucky Brand Dungarees, LLC, et. al.,* Case No. 20-11768-CSS (Bankr. D. Del. 2020):
    - "While several parties expressed interest in acquiring the Company as a going concern, the difficulties posed by the ongoing COVID-19 pandemic have compounded the Company's limited liquidity and substantial lease and trade related obligations, and have negatively impacted the Company's ability to effectuate an out-of-court transaction that would address its liquidity challenges and position the Company for long-term success" *In re Lucky Brand Dungarees, LLC, et. al.* [Dkt. No. 15, p. 4].
    - "The Debtors believe that the auction process and time periods set forth in the Bidding Procedures, while admittedly expedited, are the only viable means to ensure a value maximizing sale...Due to the Debtors' scarce available resources given the sudden shift in retail demand resulting from the ongoing COVID-19 pandemic, the Debtors submit that the timeline...is reasonable under the circumstances and in light of the pre-petition marketing efforts, and provides viable bidders with sufficient time and information necessary to formulate a bid to purchase the Acquired Assets." *In re Lucky Brand Dungarees, LLC, et. al.* [Dkt. No. 15, p. 12].
- Creative change of control attempts outside of § 363 to avoid bid/auction process
- Concluding bankruptcy proceedings following a sale and related attempts to skirt *Jevic* and/or confirmation rules

2. Sale Process Challenges

- Valuations and due diligence difficult to conduct
    - Limitations on travel and on-site visits to property; limited access to employees (due to employee furloughs)
- Difficulty in evaluating business risk going forward (e.g., uncertain length of "quarantine" period and global economic slowdown, labor and workplace safety issues, changing customer preferences, supply chain risk, etc.)
- Logistics of virtual auctions
- Emergency filings, often without a stalking horse bidder already in place or with pre-petition lenders forced to take on a stalking horse role
    - *In re Akorn, Inc., et. al.,* Case No. 20-11177 (Bankr. D. Del. 2020): "As the Debtors' nearly four-month marketing process drew to a close in late March, a confluence of factors adversely impacted interested parties' valuation levels, including perceived operational risks associated with the Company's ongoing FDA remediation efforts, perceived risks around obtaining approvals for new products in their pipeline, and the impact of the COVID-19 pandemic on capital markets and the availability of financing. As a result, the Debtors did not receive any binding bids sufficient to fully pay the term loans. Consequently, on March 28, 2020, an immediate event of default under the term loan agreement occurred, and, as discussed further herein, the Debtors and an ad hoc group of their term lenders pivoted to a prenegotiated set of alternative milestones that contemplated a credit bid by the term loan lenders that will serve as the "stalking horse" for a further marketing process to be conducted inside the Debtors' chapter 11 cases." Declaration Of Duane Portwood In Support Of Chapter 11 Petitions and First Day Motions, *In re Akorn, Inc., et. al.* [Dkt. No. 15, p. 6].

3. Lease Issues

- Rent liabilities are accruing in the absence of operations and associated income (*e.g.*, retailers)
- Whether debtors should be allowed to put off rent payments amidst government-mandated closures (effectively requiring landlords to finance cases and absorb the risk of administrative insolvency)
    - Courts have deferred payment of post-petition rents beyond the first 60 days of a bankruptcy case due to COVID-19
        - *In re Pier 1 Imports, Inc., et. al.* (Bankr. E.D. VA 2020)
        - *In re Modell's Sporting Goods, Inc., etl al.* (Bankr. D.N.J. 2020)

4. Unexpected COVID-19 Casualties

- Retailers, hospitality (*e.g.*, restaurants) and travel-related companies (*e.g.*, hotels and airlines) have unsurprisingly been hit especially hard by the effects of COVID-19
- Companies in other industries, such as entertainment, real estate and professional sports, are also facing financial distress and may have to consider a sales process

5. Retention Bonuses

- Prepaid retention bonuses paid to executive shortly prior to bankruptcy filing, with limited repayment obligations
- Nearly one-third of more than 40 large companies seeking bankruptcy protection during COVID-19 awarded bonuses to executives within a month of filing their cases (*Reuters*)
    - *J.C. Penney*: awarded nearly $10 million in bonuses and incentives to four senior executives five days before its May 15, 2020 bankruptcy filing
    - *Hertz Corporation*: adopted a "Key Employee Retention Program" where it immediately paid out more than $16 million in cash bonuses to executives one week before its May 26, 2020 bankruptcy filing
        - CFO has since resigned and forfeited his $600K retention bonus (*WSJ*)
        - Hertz is seeking to hand out an addition ~$15 million in retention bonuses (*WSJ*)
- Debtors should be aware of risk of significant bad press
    - Some risk to executives that prepaid bonuses will be subject to fraudulent conveyance or avoidance claims, although relatively few challenges have been successful
    - Although few successful challenges, companies should have well-documented rationale with respect to amounts
- In contrast, standard ch. 11 retention bonuses are generally payable following the applicable retention period, and subject to judicial scrutiny

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

In re:	**Chapter 11**
PIER 1 IMPORTS, INC., *et al.*,	**Case No. 20-30805-KRH**
Debtors.	**Jointly Administered**

MEMORANDUM OPINION

This matter came before the Court upon the *Debtors' Emergency Motion for Entry of an Order (I) Approving Relief Related to the Interim Budget, (II) Temporarily Adjourning Certain Motions and Applications for Payment, and (III) Granting Related Relief* [ECF No. 438] (the "Motion") filed by Pier 1 Imports, Inc. and its affiliated debtors (collectively, the "Debtors"). The Court had previously approved the Motion by its *Order Granting (I) Relief Related to the Interim Budget, (II) Temporarily Adjourning Certain Motions and Applications for Payments, and (III) Granting Related Relief* [Docket No. 493] (the "Original Order"). After holding a subsequent hearing on the Motion as required by the Original Order, the Court entered the *First Supplemental Order Granting (I) Relief Related to the Interim Budget, (II) Temporarily Adjourning Certain Motions and Applications for Payments, and (III) Granting Related Relief* [Docket No. 629] (the "Supplemental Order") on May 5, 2020, thereby extending the relief provided by the Original Order, subject to certain modifications more fully detailed therein, through the earlier of (a) the date that the Debtors file a notice of their intent to reopen operations at some or all of their stores (in which case the Limited Operation Period will continue with respect to any stores that remain closed) (b) May 31, 2020, or (c) such date as the Court orders otherwise (such period, the "Limited Operation Period").

The Court issues this Memorandum Opinion in support of the Supplemental Order. This Memorandum Opinion sets forth the Court's findings of fact and conclusions of law pursuant to

Bankruptcy Rule 7052.[1] The Court has subject-matter jurisdiction over these jointly administered bankruptcy cases (the "Bankruptcy Cases") pursuant to 28 U.S.C. §§ 157 and 1334 and the General Order of Reference from the United States District Court for the Eastern District of Virginia dated August 15, 1984. This is a core proceeding under 28 U.S.C. § 157(b)(A) and (O). Venue is appropriate pursuant to 28 U.S.C. § 1409.

As the Debtors aptly stated in their Motion, "[t]he world has changed since the filing of these chapter 11 cases." Mot. ¶ 1, ECF No. 438 at 2. The Debtors filed their voluntary petitions under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") on February 17, 2020 (the "Petition Date"), ECF No. 1, with an agreed plan to either effectuate a sale or equitize term loan indebtedness on a stand-alone basis, Riesbeck Decl. ¶ 4, ECF No. 30 at 4. The Debtors expected to confirm their plan within sixty-six days from the Petition Date. *Id.*

On the Petition Date, the Debtors foresaw "potential disruptions from the COVID-19 virus (commonly referred to as Coronavirus) currently facing China and other parts of the world," but those disruptions were seen as temporary impacts on inventory shipped from China. *Id*. ¶ 45, ECF No. 30 at 22 ("While factories are beginning to reopen in China, this will likely have some effect on inventory levels for the foreseeable future."). These forecasted limited supply disruptions were nothing compared to what the next few months would bring. No constituency in these cases predicted that the world would effectively grind to a halt.

But, so it did. In the weeks and months that followed the Petition Date, this country has shuttered under mandatory stay-at-home orders and mandatory closures of "nonessential" retail

[1] Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. *See* Fed. R. Bankr. P. 7052.

businesses, like the Debtors.[2] As of March 31, 2020, "[a]t least 33 states, 89 counties, 29 cities, the District of Columbia, and Puerto Rico [had] issued 'stay at home' or 'shelter' in place' orders" effectively closing the Debtors' stores. Mot. ¶ 12, ECF No. 438 at 12. With their stores shuttered, revenue dried up overnight.[3] "[T]he Debtors' in-store sales compared to the prior year fell approximately 65% for the go-forward stores and approximately 55% for the closing stores during the week ending March 21." *Id.* Thus, the Debtors in the Bankruptcy Cases at bar, like other Chapter 11 debtors throughout the nation,[4] sought to find a way for their businesses to "shelter in place" for a short duration while they determined whether and how best to maximize value for their creditor constituents in light of a global pandemic. The Debtors took "actions to preserve liquidity, including furloughing employees, closing stores, decreasing salaries, and reaching out to every landlord to negotiate a consensual rent deferral." Mot. ¶ 3, ECF No. 438 at 3. But the Debtors found they needed additional relief from the Court to reduce outgoing expenses even further and to preserve the status quo during the pandemic crisis through Court-imposed efficiencies and order.[5]

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[2] On March 11, 2020, the World Health Organization characterized the COVID-19 outbreak as a pandemic. On March 13, 2020, the President of the United States declared a national emergency as a result of the COVID-19 outbreak. To combat the spread of COVID-19, public health officials urged all people to stay at home and to practice "social distancing" when engaging in essential tasks.

[3] Despite the Debtors' stores being closed, the Debtors' e-commerce business remains strong, trending close to the business plan. Mot. ¶ 13, ECF No. 438 a 7. Certain of the distribution centers supporting the e-commerce business are still operating, consistent with applicable law. *Id.*

[4] *See, e.g.,* Debtors' Verified Application in Support of Emergency Motion for Entry of an Order Temporarily Suspending Their Chapter 11 Cases Pursuant to 11 U.S.C. §§ 105 and 305, *In re Modell's Sporting Goods, Inc.*, Case No. 20-14179 (VFP) (Bankr. D.N.J., Mar. 23, 2020), ECF No. 115; Motion of Debtors for Entry of an Order (I) Establishing Temporary Procedures and (II) Granting Related Relief, *In re CraftWorks Parent, LLC*, Case No. 20-10475 (BLS) (Bankr. D. Del. Mar. 20, 2020), ECF No. 174.

[5] Without an organized, court-supervised bankruptcy process, a potentially destructive creditor grab race would occur because each creditor would pursue its own perceived self-interest in order to protect itself from being left without recourse to assets on the mere hope that the creditors would agree to act collectively. This dilemma of coordination presents the classic "collective action problem."

To that end, the Debtors filed the Motion. By the terms of the Motion, the Debtors proposed limited business operations for a short period of time, including paying only "critical expenses," meaning only those payments included on an interim budget attached to the Motion. That budget was further modified following the hearing as reflected in the attachments to the Supplemental Order (collectively, the "Interim Budget"). Notably, the Interim Budget does not contemplate rent payments to all landlords during the Limited Operations Period. Rather, in the exercise of the Debtors' business judgment, certain landlords would receive rent payments, which may vary from the normal contractual terms. The Debtors would also continue to pay

> insurance and utilities necessary to maintain the Debtors' leased premises to the extent the Debtors directly pay such insurance and utility costs to the insurers and utility providers in the ordinary course of business, as well as all monitored security systems to the extent such systems are in place in the ordinary course of business.

Suppl. Order ¶ 2, ECF No. 629 at 3. Thus, pursuant to the terms of the Supplemental Order, certain landlords will not be paid rent pursuant to the terms of their leases through the Limited Operations Period.

Numerous landlords (collectively, the "Lessors") objected to the relief sought in the Motion.[6] For the reasons stated herein, each of the substantive objections raised by the Lessors

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> [A]t its core, bankruptcy serves creditors as a group when it supplants individual creditor debt collection remedies with a collective debt-collection device. . . . [B]ankruptcy's collectivized proceeding is superior to individual creditor actions because individual creditors have perverse incentives to act in their own interests, even if those interests disserve the creditors' collective interest.

Barry E. Adler, *The Creditors' Bargain Revisited*, 166 U. Pa. L. Rev. 1853, 1855 (2018).

[6] The following objections were lodged in response to the Debtors' request for continued relief at the subsequent hearing on the Motion: *Request of KRG Cedar Hill Plaza, LP; KRG New Hill Place I, LLC; KRG Indian River, LLC; and KRG Port St. Lucie Landing, LLC for Adequate Protection and Joinder in Landlord Objections to Continuing Relief Requested Pursuant to the Debtors' Emergency Motion for Entry of an Order (I) Approving Relief Related to the Interim Budget, (II) Temporarily Adjourning Certain Motions and Applications for Payments, and (III) Granting Related Relief*, ECF No. 565; *Application to Modify and Objection of NC-White Oak Main Shopping Center, LLC, Lynchburg (Wards Crossing), LLC, IRC Baytowne Square, L.L.C., IRC*

Ravinia Plaza, L.L.C., IRC Rivertree Court, L.L.C., IRC University Crossings, L.L.C., Cole MT West Covina CA, LP, SunCor Development Company, LLC, Ramco Spring Meadows LLC, and RLV Winchester Center LP to (A) Debtors' Emergency Motion for Entry of an Order (I) Approving Relief Related to the Interim Budget, (II) Temporarily Adjourning Certain Motions and Applications for Payments, and (III) Granting Related Relief and (B) Order (I) Approving Relief Related to the Interim Budget, (II) Temporarily Adjourning Certain Motions and Applications for Payments, and (III) Granting Related Relief, ECF No. 567; *Objection to Debtors' Emergency Motion for Entry of an Order (I) Approving Relief Related to the Interim Budget, (II) Temporarily Adjourning Certain Motions and Applications for Payments, and (III) Granting Related Relief and Request to Continue Limited Operations Period Through May 31, 2020*, ECF No. 568; *Limited Objection of 5670 Savannah LLC, Acadia Realty Limited Partnership, ARC RGHCHRNC001, LLC, Brixmor Operating Partnership LP, C.E. John Company, Inc., Centercal Properties, LLC, DDR Deer Park Town Center, LLC, Deutsche Asset & Wealth Management, Durango Mall LLC, EDENS, Federal Realty Investment Trust, Heitman LLC, New Market Properties, LLC, Northington Hamden Investors, LLC, PGIM Real Estate, Retail Properties of America, Inc., Service Properties Trust, ShopOne Centers REIT, Inc., Spirit Realty Capital, Inc., ST Mall Owner, LLC, Starwood Retail Partners, LLC, UBS Realty Investors, LLC, Urban Edge Properties, L.P., and Weitzman to Debtors' Emergency Motion for Entry of an Order (I) Approving Relief Related to the Interim Budget, (II) Temporarily Adjourning Certain Motions and Applications for Payments, and (III) Granting Related Relief*, ECF No. 569; *Limited Objection and Response to (A) The Extension of the Relief Granted by the Order (I) Approving Relief Related to the Interim Budget, (II) Temporarily Adjourning Certain Motions and Applications for Payments, and (III) Granting Related Relief, and (B) For Adequate Protection Under Sections 363(e) and 361 of the Bankruptcy Code*, ECF No. 570; *Limited Objection and Joinder of EQYInvest Owner I, Ltd, LLP to Objections to Continuing Relief from Debtors Emergency Motion for Entry of an Order (Docket Entry # 493) (I) Approving Relief Relating to the Interim Budget (II) Temporarily Adjourning Certain Motions and Applications for Payments and (III) Granting Related Relief*, ECF No. 577; *Limited Objection, Joinder, Reservation of Rights Of JBGR/Stanford Frederick, L.L.C. and Frankel Market Square LLC to (A) To the Extension of the Relief Granted by the Order (I) Approving Relief Related to the Interim Budget, (II) Temporarily Adjourning Certain Motions and Applications for Payments, and (III) Granting Related Relief, and (B) For Adequate Protection Under Sections 363(e) and 361 of the Bankruptcy Code*, ECF No. 579; *Objection of AVR CPC Associates, LLC, Milrock, Inc., and S.A. Development Company L.P. to the Continuing Relief Requested Pursuant to the Debtors' Emergency Motion for Entry of an Order (I) Approving Relief Related To The Interim Budget, (II) Temporarily Adjourning Certain Motions and Applications for Payments and (III) Granting Related Relief, and Joinder in Landlord Objections and Requests for Adequate Protection*, ECF No. 580; *Joinder by Mcallen-83-Mccoll, Inc. to Certain Objections to Debtors' Emergency Motion for Entry of an Order (I) Approving Relief Related to the Interim Budget, (II) Temporarily Adjourning Certain Motions and Applications for Payments, and (III) Granting Related Relief*, ECF No. 581; *Concurrence and Joinder of Lormax Stern Fairplain, LLC to Various Landlords' (1) Objections to (A) Debtors' Emergency Motion for Entry of Order (I) Approving Relief Related to the Interim Budget, (II) Temporarily Adjourning Certain Motions and Applications for Payments, and (III) Granting Related Relief and (B) Order (I) Approving Relief Related to the Interim Budget, (II) Temporarily Adjourning Certain Motions and Applications for Payments, and (III) Granting Related Relief, and (2) Requests for Adequate Protection Payments*, ECF No. 582; *Joinder by Washington Prime Group Inc. to the Objections of Certain Landlords to the Relief Requested in the Debtors' Emergency Motion for Entry of an Order (I) Approving Relief Related to the Interim Budget, (II) Temporarily Adjourning Certain Motions and Applications for Payments and (III) Granting Related Relief*, ECF No. 583; *Continental's Objection to Debtors' (A) Emergency Motion for Entry of an Order (I) Approving Relief Related to the Interim Budget, (II) Temporarily Adjourning Certain Motions and Applications for Payments, and (III) Granting Related Relief and (B) Request in Status Update to Continue Limited Operations Period Through May 31, 2020 and Request for Adequate Protection*, ECF No. 584; *Objection of C&B Realty #2 LLC to the Continuing Relief Requested Pursuant to the Debtors' Emergency Motion for Entry of an Order (I) Approving Relief Related to the Interim Budget, (II) Temporarily Adjourning Certain Motions and Applications for Payments and (III) Granting Related Relief, and Joinder in Landlord Objections and Requests for Adequate Protection*, ECF No. 586; *Joinder by G&I IX Valley Bend Property LLC to Objections to Debtors' Emergency Motion for Entry of an Order (I) Approving Relief Related to the Interim Budget, (II) Temporarily Adjourning Certain Motions and Applications for Payments, and (III) Granting Related Relief*, ECF No. 587; *Joinder Heidi Real Estate, LLC to Certain Objections to Debtors' Emergency Motion for Entry of an Order (I) Approving Relief Related to the Interim Budget, (II) Temporarily Adjourning Certain Motions and*

fails. As such, the Court found that entry of the Supplemental Order was just and proper under the circumstances and granted the Motion on a further basis through the end of the Limited Operations Period. On May 29, 2020, the Court will consider any request to extend the Limited Operations Period beyond May 31, 2020 and any timely objections filed thereto. In the absence of further extension granted by the Court at the May 29 hearing, the relief provided by the Supplemental Order will expire no later than May 31, 2020.

It is important as a preliminary matter to note the exact relief sought by the Motion. The Debtors did not request that this Court abolish their obligation to pay rent. Rent will still accrue under the terms of the applicable lease as the same may be or has been modified by agreement of the parties. Rather, by their Motion, the Debtors sought only to delay the payment of certain accrued but unpaid rent obligations during the Limited Operations Period.

By granting the Motion, the Court made no determination as to the amount of rent that may be due from the Debtors under any applicable lease. The Court made no determination as to whether the government-mandated closures constitute a taking sufficient to merit the non-payment of rent. The Court also did not decide whether the Debtors' performance under the applicable lease has been excused due to impossibility, impracticability, or frustration of

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Applications for Payments, and (III) Granting Related Relief, ECF No. 589; *Kimco Landlords (I) Joinder in Objections Filed by Other Landlords to the Debtors' Emergency Motion and (II) Reservation of Rights*, ECF No. 591; *Request of Vestar DRM-Opco, LLC, Vestar Alderwood Parkway, LLC, Green Oak Phase II Owner, LLC, and Agree Limited Partnership for Adequate Protection and Joinder in Landlord Objections to Continuing Relief Requested Pursuant to the Debtors' Emergency Motion for Entry of an Order (I) Approving Relief Related to the Interim Budget, (II) Temporarily Adjourning Certain Motions and Applications for Payments, and (III) Granting Related Relief*, ECF No. 594; *Joinder of Charles River Bellingham II LLC and Bradley Fair Properties LLC to the Objections of Other Landlords to Debtors' Request to Extend Relief Provided Under Debtors' Emergency Motion Through May 31, 2020 and Reservation of Rights*, ECF No. 595; *Limited Objection and Joinder of Ridgeland Venture, LLC to Objections to Debtors' Motion for Entry of an Order (I) Approving Relief Related to the Interim Budget, (II) Temporarily Adjourning Certain Motions and Applications for Payments, and (III) Granting Related Relief and (B) Order (I) Approving Relief Related to the Interim Budget, (II) Temporarily Adjourning Certain Motions and Applications for Payments, and (III) Granting Related Relief*, ECF No. 596; *Commerce Limited Partnership #9305's Joinder in Objections to and Reservation of Rights in the Extension of the Relief Afforded the Debtors in the Order Dated April 6, 2020 (ECF #493), Which Granted the Debtors' Emergency Motion (ECF #436)*, ECF No. 597.

purpose. Those issues were not before the Court and all parties' rights and defenses in connection therewith are stayed.

The Court also did not find that the Debtors do not have to pay rent. The obligation to pay rent accrues in accordance with the terms of the applicable lease and state law. By granting the Motion, the Court only determined that the Debtors may defer such rent obligations as they accrue through the Limited Operations Period to be paid at a later date.[7]

Section 365(d)(3) of the Bankruptcy Code provides that a debtor-in-possession "shall timely perform all the obligations of the debtor, except those specified in section 365(b)(2), arising from and after the order for relief under any unexpired lease of nonresidential real property, until such lease is assumed or rejected, notwithstanding section 503(b)(1) of this title." 11 U.S.C. § 365(d)(3). As such, by the plain meaning of the statute, the Debtors must continue to "timely perform all the[ir] obligations" "under any unexpired lease of nonresidential real property." *Id.* As this Court previously explained in *In re Circuit City Stores, Inc.*, the "obligation to 'timely' perform that is referenced in § 365(d)(3) refers to the time for

[7] The Court recognizes the extraordinary nature of the relief it was asked to provide here. Section 105 of the Bankruptcy Code gives the bankruptcy court the broad equitable powers to do just that. *Davis v. Davis* (*In re Davis*), 170 F.3d 475, 492 (5th Cir. 1999) (citing 2 Lawrence P. King, *Collier on Bankruptcy* § 105.01, at 105–3 (1996) ("The basic purpose of § 105 is to assure the bankruptcy courts power to take whatever action is appropriate or necessary in aid of the exercise of its jurisdiction."). The relief that the Supplemental Order affords is entirely consistent with section 105's broad grant of equitable powers. For the reasons stated herein *infra*, entry of the Supplemental Order will not override any explicit mandate to the contrary set forth in the Bankruptcy Code. *See e.g.*, *Law v. Siegel*, 571 U.S. 415, 421 (2014). Deferring rental payments during an unprecedented financial crisis in order to provide a post-Petition Date "breathing spell" for the Debtors is not inconsistent with similar relief the bankruptcy process otherwise provides for pre-Petition Date obligations. *See, e.g., In re Banks*, 577 B.R. 659, 664–65 (Bankr. E.D. Va. 2017) (quoting *Budget Serv. Co. v. Better Homes of Va., Inc.*, 804 F.2d 289, 292 (4th Cir. 1986)) (noting that the automatic stay provides the debtor with a "breathing spell" from its creditors). While the automatic stay applies to pre-petition actions, Congress adopted section 105 explicitly to permit courts during extraordinary times such as these to extend (not contradict) the principles of the Bankruptcy Code to afford the relief that is "necessary or appropriate to carry out the provisions of [title 11]." *See* 11 U.S.C. § 105(a) ("The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall preclude the court from, *sua sponte*, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent the abuse of process.").

performance under the lease terms." 447 B.R. 475, 510 (Bankr. E.D. Va. 2009). Thus, the Debtors have an obligation to pay rent in accordance with the terms of the underlying leases.

By the Motion and the Supplemental Order, the Debtors sought to delay payment not in compliance with the terms of the underlying leases. Without more, it would seem that such relief would be in express contradiction of section 365(d)(3) of the Bankruptcy Code. However, as explained previously by this Court in *Circuit City*,

> Section 365(d)(3) does not provide a separate remedy to effect payment. If a debtor fails to perform its obligations under § 365(d)(3), all a Lessor has is an administrative expense claim under § 365(d)(3), not a claim entitled to superpriority.

Id. at 511 (citing *In re Va. Packaging Supply Co., Inc.*, 122 B.R. 491, 494 (Bankr. E.D. Va. 1990)). Thus, section 365(d)(3) does not give the Lessors a right to compel payment from the Debtors in accordance with the terms of the underlying leases. Rather, to the extent that the Debtors are obligated to pay rent and fail to timely pay such rent, the Lessors are entitled to an administrative expense claim. Administrative expense claims under sections 507(a)(2) and 503(b) of the Bankruptcy Code, such as post-petition date unpaid rent, must be paid "on the effective date of [a] plan . . . [in] cash equal to the allowed amount of such claim. 11 U.S.C. § 1129(a)(9)(A); *see also In re Circuit City Stores, Inc.*, 447 B.R. at 511. As such, any allowed claims for accrued but unpaid post-Petition Date rent must be paid by the Debtors on the effective date of any plan confirmed in these Bankruptcy Cases. To compel payment by the Debtors now would be to elevate payment of rent to the Lessors to superpriority status, i.e., a claim that would be paid before all other accrued but unpaid administrative expense claims. The Lessors are not entitled to such relief.

However, the Lessors may be entitled to adequate protection pursuant to sections 361 and 363 of the Bankruptcy Code. Under section 363(e) of the Bankruptcy Code, "at any time, on

request of an entity that has an interest in property . . . leased . . . by the trustee, the court . . . shall prohibit or condition such . . . lease as is necessary to provide adequate protection of such interest."[8] 11 U.S.C. § 363(e). When adequate protection is required, a debtor-in-possession may provide such adequate protection by:

> (1) requiring the trustee to make a cash payment or periodic cash payments to such entity, to the extent that the stay under section 362 of this title, use, sale, or lease under section 363 of this title, or any grant of a lien under section 364 of this title results in a decrease in the value of such entity's interest in such property;
>
> (2) providing to such entity an additional or replacement lien to the extent that such stay, use, sale, lease, or grant results in a decrease in the value of such entity's interest in such property; or
>
> (3) granting such other relief, other than entitling such entity to compensation allowable under section 503(b)(1) of this title as an administrative expense, as will result in the realization by such entity of the indubitable equivalent of such entity's interest in such property.

11 U.S.C. § 361. As defined by the statute, "adequate protection" is designed to compensate a non-debtor to the extent any proposed lease "results in a decrease in the value of such entity's interest in such property." *Id.* § 361(1), (2).

The Debtors' deferred payment of rent while they continue use of the leased premises, does not decrease the value of any Lessor's interest in the property. All insurance payments, security obligations, utility payments, and other similar obligations of the Debtors typically made in the ordinary course of business are continuing to be made by the Debtors. If the Debtors are able to reopen stores on June 1, the Debtors have represented that they will be able to make "catch-up rent payments in the middle of July." Reply Supp. Mot. ¶ 4 & n.6, ECF No. 590 at 3.

[8] A debtor-in-possession has the rights, powers and duties of a bankruptcy trustee. 11 U.S.C. § 1107(a).

The Court found that, to the extent adequate protection is required, the continued payment of the related non-rent payments and assurance of cure payment in July is sufficient to protect the Lessors against any perceived diminution in value.

COVD-19 presents a temporary, unforeseen, and unforeseeable glitch in the administration of the Debtors' Bankruptcy Cases. Absent further relief from this Court, the Limited Operations Period will expire no later than May 31, 2020. The Debtors have announced their plans to not only resume payment of ongoing rent obligations but to cure unpaid post-Petition Date obligations sooner than required by section 1129 of the Bankruptcy Code. Thus, the relief afforded by the Supplemental Order serves to pause the case in order to allow the Debtors an opportunity to make these Bankruptcy Cases succeed for the benefit of all creditors, including the Lessors.

There is no feasible alternative to the relief sought in the Motion. The Debtors cannot operate as a going concern and produce the revenue necessary to pay rent because they have been ordered to close their business. The Debtors cannot effectively liquidate the inventory while their stores remain closed. Unless and until the "stay at home" and "shelter in place" orders are relaxed, the Debtors are unable to open their stores to conduct the sales and customers are unable to come to the stores to buy the inventory marketed for sale.[9] Any liquidation efforts would be ineffective and potentially squander assets that could otherwise be administered for the benefit of all creditors in this case.

[9] While landlords may be able to take advantage of the funding recently made available under the Coronavirus Economic Stabilization Act of 2020 (the "CARES Act"), the Debtors are unable to obtain such funding due to certain eligibility and solvency requirements associated with receiving funding under the CARES Act promulgated by the Small Business Administration. *Roman Catholic Church of the Archdiocese of Santa Fe v. U.S. Small Bus. Admin.* (*In re Roman Catholic Church of Archdiocese of Santa Fe*), No. 18-13027 T11, 2020 WL 2096113, at *4, 2020 Bankr. LEXIS 1211, at *8 (Bankr. D.N.M. May 1, 2020); *see also Penobscot Valley Hosp. v. Carranza*, (*In re Penobscot Valley Hosp.*), No. 19-10034, 2020 WL 2201943, at *3-4, 2020 Bankr. LEXIS 1213, at *7-11 (Bankr. D. Me. May 1, 2020).

The Lessors are not the only creditors in this case, although they are the only creditors objecting to the Motion. The DIP Lenders[10] are estimated to advance an additional $26 million for May. Reply Supp. Mot. ¶¶ 2-3, ECF No. 590 at 2-3. On the Petition Date, the Debtors had approximately 17,000 employees. By March 24, the Debtors furloughed 9,400 of these employees.[11] Pay for the employees who remain has been cut by 20 to 50 percent. Mot. ¶ 15, ECF No. 438 at 8. The Debtors have delayed payment to vendors and suppliers for products and services deemed non-essential. *Id.* ¶ 21, ECF No. 438 at 10.

The unfortunate reality of the situation is that the Debtors have scarce resources currently available to them. The Motion, the Original Order, and the Supplemental Order present a short-term allocation of those scarce resources to meet immediate needs and preserve the value of the Debtors' estates for all creditor constituencies.[12] The severe cost reduction measures implemented by the Debtors allow them the best possible chance of effectuating a value-maximizing sale for the benefit of all creditors. The Lessors are merely one group among many

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[10] The term "DIP Lenders" refers to certain of the Debtors' pre-Petition Date lenders that provided a "senior secured asset-based credit facility financing on a superpriority basis . . . in the aggregate principal amount of up to $256 million" to fund post-Petition Date business operations and administration of these Bankruptcy Cases in accordance with an agreed-upon budget, Debtors' Mot. Entry Interim & Final Orders (I) Authorizing Debtors Obtain Postpetition Fin., (II) Authorizing Debtors Use Cash Collateral, (III) Granting Liens & Providing Superpriority Admin. Expense Status, (IV) Granting Adequate Prot. Prepetition Secured Parties, (V) Modifying Automatic Stay, (VI) Scheduling Final Hr'g, & (VII) Granting Related Relief ¶ 14, ECF No. 25 at 6, which facility included a refinance and/or rollup of various pre-Petition Date obligations owed to the DIP Lenders, Riesbeck Decl. ¶ 59, ECF No. 30 at 27-28. In light of the Debtors' extremely limited ability to generate revenue, the DIP Lenders are functionally funding the Limited Operations Period. Hr'g Tr. 5:6-12; 6:22-7:9, Apr. 28, 2020, ECF No. 610.

[11] Furloughed employees still are entitled to their healthcare benefits and the Debtors' obligations related thereto are included in the Interim Budget. Mot. ¶ 15 n.12, ECF No. 438 at 8.

[12] The Lessors complain that the Court needs to balance the interests of the debtor-tenants with those of the commercial landlords during these unprecedented times. The Court recognizes that the Debtors have made herculean efforts to do just that. The reality presented by the Debtors' available scarce resources suggests that if the Court were to afford greater relief to one creditor constituency (such as landlords) it must necessarily require that another creditor constituency (such as furloughed employees) forgo the limited relief accorded them.

that must make concessions in order to benefit all. Court approval of the Interim Budget was absolutely vital to enable the Debtors to maximize the value of their assets.

For the foregoing reasons, the Court found that the temporary relief sought in the Motion was in the best interest of the estates in these Bankruptcy Cases and entered the Supplemental Order in order to extend the relief provided by the Original Order through the Limited Operations Period.

Dated: May 10, 2020

/s/ Kevin R. Huennekens
UNITED STATES BANKRUPTCY JUDGE

Entered on Docket: May 10, 2020

BUSINESS NEWS JULY 17, 2020 / 7:05 AM / 2 MONTHS AGO

On eve of bankruptcy, U.S. firms shower execs with bonuses

Mike Spector, Jessica DiNapoli 9 MIN READ

(Reuters) - Nearly a third of more than 40 large companies seeking U.S. bankruptcy protection during the coronavirus pandemic awarded bonuses to executives within a month of filing their cases, according to a Reuters analysis of securities filings and court records.

Under a 2005 bankruptcy law, companies are banned, with few exceptions, from paying executives retention bonuses while in bankruptcy. But the firms seized on a loophole by granting payouts before filing.

Six of the 14 companies that approved bonuses within a month of their filings cited business challenges executives faced during the pandemic in justifying the compensation.

Even more firms paid bonuses in the half-year period before their bankruptcies. Thirty-two of the 45 companies Reuters examined approved or paid bonuses within six months of filing. Nearly half authorized payouts within two months.

Eight companies, including J.C. Penney Co Inc and Hertz Global Holdings Inc, approved bonuses as few as five days before seeking bankruptcy protection. Hi-Crush Inc, a supplier of sand for oil-and-gas fracking, paid executive bonuses two days before its July 12 filing.

J.C. Penney - forced to temporarily close its 846 department stores and furlough about 78,000 of its 85,000 employees as the pandemic spread - approved nearly $10 million in payouts just before its May 15 filing. On Wednesday, the company said it would permanently close 152 stores and lay off 1,000 employees.

The company declined to comment for this story but said in an earlier statement that the bonuses aimed to retain a “talented management team” that had made progress on a turnaround before the pandemic.

The other companies declined to comment or did not respond. In filings, many said economic turmoil had rendered traditional compensation plans obsolete or that executives getting bonuses had forfeited other compensation.

Luxury retailer Neiman Marcus Group in March temporarily closed all of its 67 stores and in April furloughed more than 11,000 employees. The company paid $4 million in bonuses to Chairman and Chief Executive Geoffroy van Raemdonck in February and more than $4 million to other executives in the

weeks before its May 7 bankruptcy filing, court records show. Neiman Marcus drew scrutiny this week on a plan it proposed after filing for bankruptcy to pay additional bonuses to executives. The company declined to comment.

Hertz - which recently terminated more than 14,000 workers - paid senior executives bonuses of $1.5 million days before its May 22 bankruptcy, in part to recognize the uncertainty they faced from the pandemic's impact on travel, the company said in a filing.

Whiting Petroleum Corp bestowed $14.6 million in extra compensation to executives days before its April 1 bankruptcy. Shale pioneer Chesapeake Energy Corp awarded $25 million to executives and lower-level employees in May, about eight weeks before filing bankruptcy. Both cited fallout from the pandemic and a Saudi-Russian oil price war, which they said rendered their incentive plans ineffective.

Reuters reviewed financial disclosures and court records from 45 companies that filed for bankruptcy between March 11, the day the World Health Organization declared COVID-19 a pandemic, and July 15. Using a database provided by BankruptcyData, a division of New Generation Research Inc, Reuters reviewed companies with publicly trade stock or debt and more than $50 million in liabilities.

Such bonuses have long spurred objections that companies are enriching executives while cutting jobs, stiffing creditors and wiping out stock investors. In March, creditors sued former Toys 'R' Us executives and directors, accusing them of misdeeds that included paying management bonuses days before its

2017 bankruptcy. The retailer liquidated in 2018, terminating more than 31,000 people.

FILE PHOTO: A Neiman Marcus department store stands next to empty parking lots at the King of Prussia Mall which remains closed due to the ongoing outbreak of the coronavirus disease (COVID-19) in Upper Merion Township, Pennsylvania U.S., May 21, 2020. REUTERS/Lucas Jackson/File Photo

A lawyer for the executives and directors said the bonuses were justified, given the extra work and stress on management, and that Toys 'R' Us had hoped to remain in business after restructuring.

In June, congressional Democrats responded to the pandemic-induced wave of bankruptcies by introducing legislation that would strengthen creditors' rights to claw back bonuses. The bill - the latest iteration of a proposal that has long failed to gain traction - faces slim prospects in a Republican-controlled Senate, a Democratic aide said.

Firms paying pre-bankruptcy bonuses know they would face scrutiny in court on compensation proposed after their filings, said Clifford J. White III, director of the U.S. Trustee Program, a Justice Department division charged with monitoring bankruptcy proceedings. But the trustees have no power to halt bonuses paid even days before a company's bankruptcy filing, he said, allowing firms to "escape the transparency and court review."

DODGING BONUS RESTRICTIONS

The 2005 legislation required executives and other corporate insiders to have a competing job offer in hand before receiving retention bonuses during bankruptcy, among other restrictions. That forced failing firms to devise new ways to pay the bonuses, according to some restructuring experts.

After the 2008 financial crisis, companies often proposed bonuses in bankruptcy court, casting them as incentive plans with goals executives must meet. Judges mostly approved the plans, ruling that the performance benchmarks put the compensation beyond the purview of the

Slideshow (2 Images)

restrictions on retention bonuses. The plans, however, sparked objections from Justice Department monitors who called them retention bonuses in disguise, often with easy milestones.

Eventually, companies found they could avoid scrutiny altogether by approving bonuses before bankruptcy filings. Dozens of companies have approved such payouts in the last five years, said Brian Cumberland, an executive compensation expert at consulting firm Alvarez & Marsal who advises companies undergoing financial restructurings.

Companies argue the bonuses are crucial to retaining executives whose departures could torpedo their businesses, ultimately leaving less money for creditors and employees. Now, some companies are bolstering those arguments by contending that their business would not have cratered without the economic turmoil of the pandemic.

The pre-bankruptcy payouts are needed, companies say, because potential stock awards are worthless and it would be impossible for executives to meet business targets that were crafted before the economic crisis. The bonuses ensure stability in leadership that is needed to hold faltering operations together, the firms contend.

Some specialists argue the bonuses are hard to justify for executives who may have few better job options in an economic crisis.

“With double-digit unemployment, it’s a strange time to be paying out retention bonuses,” said Adam Levitin, a professor specializing in bankruptcy at Georgetown University’s law school.

CLOSED STORES, BIG BONUSES

J.C. Penney has not posted an annual profit since 2010 as it has struggled to grapple with the shift to online shopping and competition from discount retailers. The 118-year-old chain, at various points, employed more than 200,000 people and operated 1,600 stores, figures that have since been cut more than half.

On May 10, J.C. Penney's board approved compensation changes that paid top executives, including CEO Jill Soltau, nearly $10 million. On May 13, Soltau received a $1.7 million long-term incentive payment and a $4.5 million retention bonus, court filings show.

The annual pay of the company's median employee, a part-time hourly worker, was $11,482 in 2019, a company filing shows.

J.C. Penney filed for bankruptcy two days after paying Soltau's bonuses. At a hearing the next day, a creditors' lawyer argued the payouts were designed to thwart court review. The payouts were timed "so that they didn't have to put it in front of you," said the lawyer, Kristopher Hansen, addressing U.S. Bankruptcy Judge David Jones.

Jones - who is also overseeing the Whiting Petroleum, Chesapeake Energy and Neiman Marcus cases - told Reuters that such bonuses are "always a concern" in bankruptcy cases. "That said, the adversarial process demands that parties put the issue before me before I can take action," he added, emphasizing he was speaking of general dynamics applicable to any case. "A comment made in passing by a lawyer is not sufficient."

In its statement earlier this year, J.C. Penney said the bonuses were among a series of "tough, prudent decisions" taken to safeguard the firm's future.

Dennis Marten - a shareholder who said he once worked at a J.C. Penney store - disagrees. He has appeared at court hearings pleading for an investigation of the company's leadership.

"Shame on her for having the gall to get that money," he said of Soltau.

Reporting by Mike Spector and Jessica DiNapoli; Editing by Brian Thevenot

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Faculty

Hon. Rebecca B. Connelly is the Chief Judge for the U.S. Bankruptcy Court for the Western District of Virginia in Harrisonburg, appointed in July 2012. She is a former standing chapter 13 trustee and chapter 12 trustee for the Western District of Virginia. Judge Connelly has been a member of ABI since 1994 and has served as a contributing editor and a features author for the *ABI Journal*, a member of the Consumer Bankruptcy Committee, and a speaker at ABI's Annual Spring Meeting and Winter Leadership Conference, and most recently for "Eye on Bankruptcy." She also serves on the board of CARE and is an adjunct professor of law at Washington and Lee University School of Law. Judge Connelly received her B.A. in 1985 from the University of Maryland and her J.D. in 1988 from Washington & Lee University School of Law.

Hon. Martin Glenn is a U.S. Bankruptcy Judge for the Southern District of New York in New York, sworn in on Nov. 30, 2006. Previously, he was a law clerk for Hon. Henry J. Friendly, Chief Judge of the U.S. Court of Appeals for the Second Circuit, from 1971-72, and he practiced law with O'Melveny & Myers LLP in Los Angeles from 1972-85 and in New York from 1985-2006, where he focused on complex civil litigation including securities, RICO, financial and accounting fraud, and unfair competition. Judge Glenn is a member of the Committee on International Judicial Relations of the U.S. Judicial Conference, the New York Federal-State Judicial Council, the American Law Institute, the International Insolvency Institute, ABI, the New York City Bar, the National Conference of Bankruptcy Judges and the Federal Bar Council. He is also an adjunct professor of law at Columbia Law School and a contributing author to *Collier on Bankruptcy*. Judge Glenn received his B.S. from Cornell University in 1968 and his J.D. from Rutgers Law School in 1971, where he was an articles editor of the *Rutgers Law Review*.

Thomas M. Horan is a member of Cozen O'Connor in Wilmington, Del., where he focuses his practice on financial restructuring and bankruptcy litigation, representing debtors and official unsecured creditors' committees in complex chapter 11 proceedings; counseling secured creditors, trustees, unsecured creditors, and debtor-in-possession lenders; and representing clients in preference and fraudulent transfer proceedings. He is ABI's Vice President - Communications & Information Technology and serves on the advisory boards of ABI's Georgetown Views from the Bench, Delaware Views from the Bench Conference and Mid-Atlantic Bankruptcy Workshop. Mr. Horan was named a "Rising Star" by *Super Lawyers* and holds an AV rating by Martindale-Hubble. He received his B.A. in 1989 and his M.A. in 1992 from Fordham University, and his J.D. *cum laude* from St. John's University School of Law in 2002, where he was executive notes and comments editor for the *ABI Law Review*.

Lauren A. Moskowitz is a partner at Cravath, Swaine & Moore LLP in New York and has a broad practice with a particular focus on securities, general commercial, intellectual property and antitrust litigation, as well as litigation related to bankruptcy and restructuring matters. She has represented Credit Suisse as lender and administrative agent of the revolving credit facility provided to UCI International in connection with financing and litigation relating to the chapter 11 bankruptcy of UCI, and The Weinstein Company as debtor's counsel in connection with settlement proceedings related to its chapter 11 bankruptcy, among other matters. Ms. Moskowitz is repeatedly recognized as a leading lawyer by numerous professional publications, including *Benchmark Litigation*, *Law360*

and *The Legal 500 US*. Recently, she was named a *New York Law Journal* "Rising Star" and a 2020 "Future Star" by *Benchmark Litigation*. In 2018, Ms. Moskowitz was selected to serve as a member of *Law360*'s Securities Editorial Advisory Board. She joined Cravath in 2005 and from 2006-07, she clerked for Hon. Shira A. Scheindlin of the U.S. District Court for the Southern District of New York. She returned to Cravath in 2007 and was elected a partner in 2012. Ms. Moskowitz received her B.A. with distinction in all subjects from Cornell University and her J.D. *magna cum laude* from Fordham University School of Law, where she was a member of the National Moot Court Competition team and the Moot Court Editorial Board.

Hon. Brendan L. Shannon is a U.S. Bankruptcy Judge for the U.S. Bankruptcy Court for the District of Delaware in Wilmington, appointed in 2006. He manages a full chapter 11 docket and also handles all chapter 13 consumer bankruptcy cases filed in Delaware. He served as Chief Judge from 2014-18. Prior to his appointment to the bench, Judge Shannon was a partner with Young Conaway Stargatt & Taylor, LLP in Wilmington, Del., where he primarily represented corporate debtors and official committees in chapter 11 cases. He is an adjunct professor in the Bankruptcy LL.M. Program at St. John's University School of Law in New York, and at Widener School of Law in Delaware. He also serves on the board of editors of *Collier on Bankruptcy* (16th ed.) and is a contributing author for *Collier Forms* and for several chapters covering the Federal Rules of Bankruptcy Procedure. In addition, he serves on the editorial board of the *American Bankruptcy Institute Law Review*. In 2011, Judge Shannon was appointed to serve as a member of the National Bankruptcy Conference. In 2020, he was inducted as a member of the American College of Bankruptcy. Judge Shannon is a member of the Delaware State Bar Association, the American Bar Association, ABI and the Rodney Inns of Court in Wilmington, Del. He is also a member of the board of directors of the Delaware Council on Economic Education. Judge Shannon received his undergraduate degree from Princeton University and his J.D. from the Marshall-Wythe School of Law at the College of William and Mary.

Hon. Mary F. Walrath is a U.S. Bankruptcy Judge for the District of Delaware in Wilmington, appointed in 1998. She served as Chief Bankruptcy Judge from 2003-08. Judge Walrath previously clerked for Hon. Emil F. Goldhaber, Chief Bankruptcy Judge for the Eastern District of Pennsylvania, and was an attorney at Clark Ladner Fortenbaugh & Young in Philadelphia, concentrating in the areas of debtor/creditor rights and commercial litigation. In addition to speaking at numerous bankruptcy educational programs and panels throughout the country, Judge Walrath is a founding member and co-president of the Delaware Bankruptcy American Inn of Court, a member of the Delaware Chapter of the International Women's Insolvency & Restructuring Confederation (IWIRC), a member of ABI and a Fellow in the American College of Bankruptcy. She is also an editor of the *Rutter Group Bankruptcy Practice Guide*. Judge Walrath is active in the National Conference of Bankruptcy Judges (NCBJ), having served on its Board of Governors from 2007-12, as secretary from 2013-14, as chair of its Education Committee from 2014-15 and as president from 2016-17. Judge Walrath served as an associate editor and then business manager of the *American Bankruptcy Law Journal* from 2009-15. She also testified before the House Judiciary Committee on H.R. 1667, the Financial Institution Bankruptcy Act of 2017. Judge Walrath received her A.B. in history from Princeton University and earned her J.D. *cum laude* from Villanova University, where she was a member of the *Villanova Law Review* and was awarded the Order of the Coif.