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Special Committees and Creditors' Committees: Friends or Foes?

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AMERICAN BANKRUPTCY INSTITUTE

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I. Issues to Be Considered Before Accepting a Board Position

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Issues to Be Considered Before Accepting a Board Position

- Why me - why am I, in particular, being asked to join this board, and why now?
- Who are the current board members?
- Are any of them also independent directors, and, if so, how long have they been on the board?
- Have there been any resignations from the board within the past year, and, if so, why?
- What is the entity structure - corporate, LLC, LLP, sole proprietorship, or other?
- Are there public shareholders or public debt holders?
- Who are the various major parties in interest, whether lenders, creditors, shareholders, contract counter-parties, or otherwise?

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Issues to Be Considered Before Accepting a Board Position

- What is the current financial and operating condition of the company?
- If there are problems, are they primarily operational? Financial or leverage-related? External threats, such as litigation, regulation, or other?
- Is the company now, or will it soon be, at a financial or liquidity crisis point?
- Does there appear to be adequate value to satisfy the claims of all creditors?
- If not, who seems likely to get less than full payment? How much less than full payment is estimated at the current time?
- Does the company appear to have a long-term future, whether it goes through a restructuring or not?

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Issues to Be Considered Before Accepting a Board Position

- Does a restructuring appear to be feasible, should one be required?
- If there is no continuing future for the company as an operating business, what alternatives are being considered?
- Is the company considering appointment of a special committee of the board either now or in the future?
- If so, why, and when will it be appointed? Who is expected to be on it?
- Is there a current expectation that a chapter 11 case might have to be filed? If so, approximately when would that be?
- What safeguards are there for board members, in terms of D&O coverage, by-law protections, or otherwise?

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II. Fiduciary Duty Issues for Officers and Directors

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Executive Summary

- Under Delaware law, directors and officers of a corporation owe fiduciary duties of care and loyalty to the corporation and its shareholders.
- When a corporation is insolvent, both creditors (derivatively through the corporation) and shareholders may have standing to sue for breach of fiduciary duties.
- To fulfill their duties, directors and officers of a corporation should act in the interest of maximizing the value of the enterprise, taking into account potential risks and returns.
- Directors and officers should keep in mind that their conduct likely will be second-guessed in hindsight by sophisticated third parties; business judgment rule protects against second-guessing, but can be rebutted and is not available in all circumstances

Why Discuss Fiduciary Duties?

- The environment in which directors and officers of a financially-challenged company operate has become much more hostile and difficult, even for experienced directors and officers.
- Regulators, creditors, shareholders, and other related parties have become more aggressive and willing to second guess director and officer decisions.
- Directors and officers of a financially-challenged company may be asked to approve certain transactions, payments, or restructuring strategies.
    - **These actions – or the decision not to act – could be attacked (with the benefit of hindsight) if the company were to subsequently falter or stakeholders perceive that they were harmed by the decision to enter into, or forgo, a transaction or restructuring.**
- The Company's directors and officers should keep these fiduciary duties in mind when considering strategic alternatives.

Why Discuss Fiduciary Duties?

- Decisions regarding a transaction, payment, or other restructuring strategy (whether through action or inaction) could serve as the foundation for breach of fiduciary duty claims or other related claims based upon laws relating to illegal dividends, preferences, and fraudulent transfers.
- Such claims could be premised in some measure upon allegations that:
  - the company was (whether through action or inaction) insolvent at the time of the challenged decision or was rendered insolvent by such challenged decision;
  - the company did not receive fair value in connection with the challenged decision;
  - the directors or officers engaged in an inadequate decision making process; or
  - the challenged decision preferred certain stakeholders over other stakeholders or did not maximize the value of the enterprise.
- **Notwithstanding the challenging environment, as a general matter, directors and officers will have fulfilled their fiduciary duties if they act in an informed manner, with requisite care, and in the best interests of the company.**

The Role of the Board

- In the context of the restructuring process, the Company's directors and officers will be asked to take action regarding various restructuring alternatives and must:
  - evaluate each alternative to determine which restructuring alternative will maximize the value of the Company; and
  - establish a thorough decision-making process and record to demonstrate that the directors and officers carefully evaluated each alternative when making such decisions and, more importantly, to be in a position to defend such decisions in the face of perfect 20/20 hindsight.
- The Company's directors and officers are not required to eliminate business risk. Nonetheless, the risks that may be undertaken must be reasonable and the course of action chosen must be reasonably achievable and reassessed as new facts arise.
- Directors and officers should also engage independent advisors relating to key subject matter areas and keep excellent records (including minutes) for purposes of documenting the decision making process.

Fiduciary Duties Overview

- Directors' and officers' fiduciary duties are best understood by considering:
  - the nature of the fiduciary duties; and
  - to whom the fiduciary duties are owed.
- The primary fiduciary duties of directors and officers are:
  - the ***duty of care***; and
  - the ***duty of loyalty***.

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Duty of Care

- The duty of care requires that the actions and conduct of directors and officers be informed and considered and that that decisions be made with "requisite care."
- In satisfying the duty of care, directors and officers should:
  - ***inform*** themselves of all material information reasonably available;
  - ***carefully consider*** that information and all reasonable alternatives; and
  - ***act*** with requisite care in discharging their duties.
- In discharging the duty of care, directors and officers may reasonably rely on the advice of counsel, accountants, financial advisors, investment bankers, and other experienced advisors.

Duty of Care

- Nonetheless, directors and officers should not be merely passive recipients of advice.
  - ***Directors and officers should independently evaluate assumptions and information presented by advisors.***
- It is important to establish and follow a decision-making process and maintain good records to satisfy the duty of care.

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Duty of Loyalty

- Directors and officers must act in good faith and in a manner they reasonably believe to be in the best interests of the company.
- Directors and officers must not act solely or primarily for a personal or non-corporate purpose, such as to preserve their positions or compensation.
- Directors and officers must avoid an intentional dereliction of duty, a conscious disregard for one's responsibility, or, put differently, deliberate indifference and inaction in the fact of a duty to act.
  - ***Engaging with relevant interested parties is an important part of showing that directors and officers have pursued a good-faith attempt to act in the best interests of the company.***

Conflicts of Interest

- Where there is an actual conflict of interest or the appearance of a conflict of interest, directors and officers must exercise particular caution.
- While directors and officers owe fiduciary duties, shareholders generally do not owe fiduciary duties except in certain circumstances, such as with substantial shareholders.
  - In general, transactions undertaking with existing equityholders are likely to be closely scrutinized, especially in a distressed context.
- Directors and officers closely affiliated with existing equityholders (i.e., “insiders”) should ensure actions considered in their capacities as directors and officers are determined by reference to the interests of the company and its stakeholders.

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Business Judgment Rule

- The "business judgment rule" generally applies to protect directors and officers from fiduciary duty challenges.
- This rule creates a presumption that the directors and officers acted on an informed basis, in good faith, and with the honest belief that the action was in the best interests of the company.
- The process the board follows is critical in determining whether directors and officers receive the presumption of the business judgment rule.
    - With respect to the duty of care, courts focus more on process than content and consider whether the directors and officers have made an informed and appropriately-advised decision.
- When the business judgment rule applies (including in the context of insolvency), courts give considerable deference to the substance of the directors' and officers' decision if it can be attributed to a rational business purpose.
    - ***Directors and officers must fulfill their duties of care and loyalty to receive the protection of the business judgment rule.***

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Business Judgment Rule

- Business judgment rule protections may not apply in the following circumstances:
  - conflicts of interest;
  - director self-dealing;
  - lack of good faith;
  - fraud;
  - failure to act reasonably or exercise reasonable judgment; and
  - abdication of responsibilities.
- If the business judgment rule protection is lost, courts will then evaluate the challenged transaction under the stricter "entire fairness" standard, which shifts the burden to directors and officers to prove that the decision or transaction was both procedurally and substantively fair.

Business Judgment Rule

- Whether a company is solvent or insolvent, courts generally have found that directors and officers will be entitled to the benefits of the business judgment rule if they comply with their fiduciary duties.

- As a practical matter, a heightened level of scrutiny based on hindsight may be applied to directors and officers of an insolvent or near-insolvent company.

  - ***Because of concerns about future second-guessing, directors and officers of a financially challenged company should assume heightened scrutiny of their actions.***

- Thus, it is typically prudent for the directors and officers to put in place a process that assists them in their decision-making and to construct a record illustrating their compliance with the fiduciary duties of care and loyalty.

To Whom Are Fiduciary Duties Owed?

- When a corporate entity is solvent, a director does not owe a fiduciary duty to creditors. Fiduciary duties are owed solely to the corporate entity itself and its equity owners.
- When a corporate entity is insolvent, however, the class of constituents whose interests the directors may consider (and who may assert derivative claims) expands to include a corporation's creditors in addition to its stockholders.
- With respect to insolvent entities, unlike shareholders who can assert both direct claims on their own behalf and derivative claims on behalf of the company, creditors may only assert derivative claims on behalf of the company.
- Rather than choosing one group to favor over another, directors of an insolvent entity should choose an action that best serves the corporate enterprise as a whole.

To Whom Are Fiduciary Duties Owed?

- As long as directors make decisions “rationally designed to increase the value of the firm as a whole,” then those decisions will likely be protected by the business judgment rule.
- Insolvency - two independent tests:
  - balance sheet: liabilities exceed assets at fair market value
  - cash flow: unable to pay debts as they come due

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Creditors Cannot Assert Claims for Breach of Fiduciary Duty Unless Corporation is Insolvent

	Solvent	Zone of insolvency	Insolvent
Fiduciary duties owed to:	Shareholders and corporation	Shareholders and corporation	Shareholders and corporation/creditors
Entitled to bring direct claims:	Shareholders and corporation	Shareholders and corporation	Shareholders and corporation
Entitled to bring derivative claims:	Shareholders	Shareholders	Creditors and shareholders
Notes	• Creditors are protected by commercial law and contracts, not fiduciary duties • Favoring a creditor over shareholders may be a breach of fiduciary duty	Fiduciary duties do not expand in the zone of insolvency	Creditors may bring derivative claims for actions taken while corp was solvent

General rule - fiduciary duties enforceable by residual claimants of corporation

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Strategies to Minimize Liability in Decision-Making

- Analyze solvency throughout the restructuring process.
- Act in accordance with fiduciary duties of care and loyalty.
- Carefully assess insider or related-party issues.
- Obtain professional advice as various alternatives are analyzed, including the achievability of a potential course of action.
- Document the bases or reasoning underlying decision-making by directors and officers, including the burdens and benefits of bankruptcy.
- Complete a detailed evaluation of the business plan, challenge management assumptions and underlying data upon which the business plan is based, and consider historical accuracy of forecasts.

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III. Role of Independent Directors

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Role of Independent Directors

- Dispassionate interest in the performance of the business, evaluation of management effectiveness, and evaluation of strategic alternatives
  - Review and evaluation of corporate objectives and strategic direction and business decisions of the company
  - Review and evaluation of financial results
  - Effective corporate governance
    - Evaluation of management
  - Capital allocation decisions
  - Strategic restructuring decisions
    - Out-of-court or chapter 11 restructuring
    - Asset sales or sale of the business
    - Ensuring adequate liquidity
    - Post reorganization capital structure

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Why Does an Entity Require Independent Directors/Managers?

- Identification, review and effective treatment of potential or actual conflicts of interest?
  - Intercompany issues and intercompany claims
    - Multiple silos in the capital structure
  - Potential asset sales/business transactions with various impacts and effect on collateral and guarantee and secured claims
    - Multiple secured creditors with differing collateral
  - Business transactions with insiders
  - Evaluation of:
    - Fraudulent conveyance claims
    - Contract claims
    - Other claims
  - Allocation of shared administrative services and related costs

Corporate Analysis

- Corporate Governance
  - Analysis of the existing corporate governance structure
  - How long has the board been in place?
  - Under what circumstances was the current board appointed?
  - Are there existing, independent board committees?
  - Are there subsidiaries with separate boards?
- Capital structure
  - Analysis of debt and equity capital structure
    - Debt silos: Senior vs. subordinated. Secured vs. unsecured. Structural corporate seniority and subordination.
    - Creditor constituencies: How diverse are they?
  - Solvent and insolvent debtor entities
  - Domestic and foreign debtor entities

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Corporate Analysis

- Insolvency
  - Analysis of transactions giving rise to pending insolvency
  - Which entities are likely to file for chapter 11?
- Conflicts
  - Analysis of intercompany claims and transfer of funds and assets among subsidiary and parent companies and affiliates
  - Analysis of distributions to shareholders
  - Analysis of historic and proposed transactions with officers, directors, shareholders and affiliates

Prepetition Appointment of Independent Directors

- A restructuring process guided by the independent directors or a special committee of independent directors:
  - Helps instill confidence in the restructuring process
  - Validates debtor restructuring proposals
  - Act as a critical buffer against unfair restructuring and asset sale proposals from existing management, creditors and/or shareholders
  - Facilitates negotiations with creditors and between different classes of creditors, other claimholders and stakeholders

Prepetition Appointment of Independent Directors

- Prepetition appointment of independent directors:
  - Establishes independent ability to begin a review and investigation of conflicts, insolvency issues, fraudulent conveyance claims, and other potential claims in advance of a chapter 11 filing
  - Could reduce time spent in chapter 11
  - Could preclude the need for an Examiner or a Trustee
  - Likely requires separate retention of counsel and financial advisors
    - Costs may be substantial

Post-Petition Role of Independent Directors

- Post-petition, independent directors continue to facilitate restructuring negotiations
  - Interplay between independent investigation and "priority of liens" provisions in DIP/Cash Collateral orders
- Use of independent directors can avoid a parallel, expensive standing dispute with the official committee(s)
  - Power struggle with Creditors Committee for control over investigation/claims
  - Conflict of Interests with respect to a single Creditors Committee

Post-Petition Role of Independent Directors

- Post-petition, independent directors can be instrumental in negotiating through potential conflicts between the estates, including in the context of asset sales:
  - Tax and regulatory considerations
  - Nature of what is being marketed for sale
    - Sale of subsidiary's assets vs. sale of parent's equity
    - Debt-for-debt transaction
    - Debt-for-equity transaction
  - Evaluation of inter-estate releases
  - Impact on remaining business operations
- For situations with multiple entities and "multi-silo" structures and transactions, independent directors may be required for each entity
  - Multi-silo structures and transactions can accelerate a 9019 process, particularly where there a significant number of highly fact-specific claims

Role of Independent Directors

- **Even with independent directors, a robust governance and decision-making process is critical and likely to be heavily scrutinized**

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IV. Corporate Group Issues: Who Does the Board Serve

Corporate Group Issues: Who Does the Board Serve

- Many chapter II debtors are part of a larger corporate group, typically a wholly-owned subsidiary of a financially healthy parent, but the subsidiary may be forced to file a case of its own, even though the corporate parent does not also file chapter 11.
- The debtor's interests may not align with those of its parent; in some instances, the debtor may have possible claims against its parent.
- All parties representing the debtor counsel, advisors, managers, and board members, for example - must remember that their legal and fiduciary duties run only to the debtor, and not to any other member of the corporate group.
- Sometimes, a parent and all of its subsidiaries may file simultaneously, so that the entire group of companies has commenced a chapter 11 case; at other times, it may be only the parent that files; and, at still others, one or more subsidiaries may file, but the parent may remain outside of the bankruptcy.

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Corporate Group Issues: Who Does the Board Serve

- When all entities within the corporate family file a chapter 11, typically only the parent board of directors will have a direct impact on the course and direction of the chapter 11 case.
  - In some cases, that approach seems to work reasonably well, often on the theory that, whatever is reasonably believed to benefit the group as a whole, rather than favoring one particular entity and its creditors, is an appropriate course of action.
  - In other cases, however, such as those where a filing subsidiary has its own separate creditors and particularly valuable assets, those creditors can be expected to argue that only they should benefit from the value of that subsidiary. Creditors of debtor entities of perceived lesser value will argue for a common pool of asset values, to be distributed across all entities.
- Other times, only the parent may file, while the subsidiaries do not file and continue their operations as if there were no chapter 11.
  - In such instances, creditors of the non-filing subsidiaries are presumably unaffected by the parent's filing, so the parent directors typically focus only on their fiduciary duties with respect to the parent.

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Corporate Group Issues: Who Does the Board Serve

- In other instances, the parent entity may not itself commence a chapter 11 case, but one or more of its operating subsidiaries may do so.
  - In such instances it is important to focus on who the directors of the filing entity are; whether they are also directors of other entities in the same corporate group; and to whom the directors of the filing entity owes fiduciary duties.
  - Creditors of a filing subsidiary will argue strongly that they are entitled to the value of that entity, rather the parent.
- Accordingly, it is critically important for all directors serving on the board of member of a group entity to be certain that they understand to whom they owe their fiduciary duties.
- It is also important to consider the source of their legal advice and whether they may reasonably rely on it.
  - Does it come from the attorneys representing the entire corporate group? If so, have the directors been told unequivocally that they may rely on it?
  - Is the advice coming from attorneys representing only the filing entity?

Corporate Group Issues: Who Does the Board Serve

- Problems associated with corporate groups emphasize the critical importance for directors of always knowing whom it is that the board serves.

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V. Independent Directors, Special Committees and Chapter 11 Cases

Independent Directors, Special Committees and Chapter 11 Cases

- In a chapter 11 case, a special board committee may be formed to review past transactions or current restructuring or sale proposals to determine if causes of action exist or if the sale of restructuring proposals are highest and best.

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Independent Directors, Special Committees and Chapter 11 Cases

- Investigating Claims Against Insiders:
  - A special committee can review and analyze the strength of potential causes of action against insiders based on prepetition transactions with insiders. The committee can also recommend whether releases should be granted to or withheld from the insiders in any settlement of such claims.

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Independent Directors, Special Committees and Chapter 11 Cases

- Sales
  - As a general matter, section 363 incorporates a business judgment standard for arm's-length transactions.
  - If, on the other hand, corporate fiduciaries are on both sides of a sale, the company may lose the benefits of the business judgment rule; instead, the company may have to establish the "entire fairness" of the transaction, a standard that mandates strict scrutiny by the court.
  - Appointing a special committee to assess a postpetition sale transaction may protect the company's access to the business judgment standard.

Independent Directors, Special Committees and Chapter 11 Cases

- Settlement
  - When a settlement does not involve an insider, courts test the settlement—under Rule 9019 by looking at three factors:
    1. The probability of success in the litigation;
    2. The expense, complexity, and likely duration of the litigation; and
    3. All other factors bearing on the wisdom of the compromise.
  - A court reviewing a proposed compromise will consider whether the proposed agreement was negotiated at arms-length without any collusion. If it was not, the court will apply a heightened scrutiny standard.
  - Again, if the settlement was negotiated by a special committee of independent directors, the debtor may preserve business judgment standard of review.

Faculty: Special Committees and Creditors' Committees: Friends or Foes?

D.J. "Jan" Baker is a retired bankruptcy attorney in Garrison, N.Y. He previously was global co-chair of the Corporate Restructuring Practice Group of Latham & Watkins LLP until his retirement in 2017, and spent his legal career practicing in all phases of both out-of-court recapitalizations and restructurings, as well as in-court-reorganization proceedings. As a restructuring lawyer, Mr. Baker advised managements and boards not only with respect to core restructuring issues, but also with regard to fiduciary duty and corporate governance questions, having represented 150 different public and private companies. During his legal career, Mr. Baker was regularly recognized by both legal guides and clients as one of the most accomplished restructuring lawyers in the country, including by *The Legal 500 US* and *Chambers USA*. He is a Fellow of the American College of Bankruptcy and served as its president and chair of its board of directors. In 2014, UJA-Federation presented him with the Professor Lawrence P. King Award, and in 2016, *Catholic Renewal* selected him as the recipient of the St. Francis Service Award. Since retiring from Latham, Mr. Baker has concentrated on board-related work. He currently serves as a director of Cumulus Media, Inc., a member of the board of managers of Enduro Resource Holdings LLC, a director of Toisa Limited and Toshiba Nuclear Energy Holdings (UK) Limited, a member of the advisory council of the Hastings Center (a bio-ethics institute); a member of the executive committee of the Bankruptcy and Reorganization Group of UJA-Federation, and a member of the Conservation Board of Philipstown, N.Y. Mr. Baker received his undergraduate degree from Harvard College and his J.D. from the University of Houston Law Center.

Robert J. Feinstein is the managing partner of the New York office of Pachulski Stang Ziehl & Jones LLP, which he opened in 2011. He represents debtors, creditors' committees, equity committees, acquirers and examiners in business reorganizations and related litigation. He also has experience representing various constituencies in cross-border chapter 11 cases and chapter 15 cases. Mr. Feinstein's recent engagements include lead counsel to the official creditors' committees appointed in the chapter 11 cases of J. Crew, Whiting Petroleum, Ascena Retail Group, Shopko, Ditech, Jevic Transportation, The Weinstein Co., Open Road Films, Cobalt International Energy, Gymboree, Payless I and II, Bon-Ton Stores, A&P, Sports Authority, Aeropostale, AMF Bowling Worldwide, Reddy Ice Corporation and Circuit City Stores; and conflicts counsel to the creditors' committees appointed in the ResCap and Chrysler LLC cases. On the debtor side, he has represented Digital Domain Media Group, boxer Mike Tyson and General Media (publisher of *Penthouse* magazine) in their chapter 11 cases. His cross-border representations include the Canadian receiver for Blockbuster Canada in its chapter 15 case the Canadian monitor in the Essar Steel case. Mr. Feinstein is a Fellow of the American College of Bankruptcy and an adjunct professor in the St. John's University LL.M. in Bankruptcy program, and he frequently writes and lectures on bankruptcy topics. He is ranked among Bankruptcy/Restructuring attorneys by *Chambers USA,* was listed by *Lawdragon* as one of the 2020 "Lawdragon 500 Leading Global Restructuring & Insolvency Lawyers," and is a member of the International Insolvency Institute. He also served as an officer of the Insolvency Section of the International Bar Association. Mr. Feinstein received his B.A. from Lafayette College and his J.D. *magna cum laude* from Boston University School of Law.

Robert J. Keach is a shareholder at Bernstein, Shur, Sawyer & Nelson, P.A. in Portland, Maine, and co-chairs its Business Restructuring and Insolvency Practice Group. He focuses on the representation of various parties in workouts and bankruptcy cases, including debtors, creditors, creditors' committees, lessors and third parties acquiring troubled companies and/or their assets. Mr. Keach served as co-chair of ABI's Commission to Study the Reform of Chapter 11. He also is a Fellow of the American College of Bankruptcy and a former ABI President (2009-2010). Mr. Keach has appeared as a panelist on national bankruptcy, lender liability and creditors' rights programs, and is the author of several articles on bankruptcy and creditors' rights appearing in the *ABI Law Review*, *Commercial Law Journal* and *ABI Journal*, among other publications. He also is a contributing author to *Collier Guide to Chapter 11: Key Topics and Selected Industries* (2011 Ed.). Mr. Keach is recognized as a "Star Individual" in Corporate M&A/Bankruptcy in *Chambers USA*, *The Best Lawyers in America* (10-Year Certificate) and *New England Super Lawyers* (Bankruptcy and Top 100 Lawyers in New England). He also is Board Certified in Business Bankruptcy Law by the American Board of Certification. Mr. Keach served as the chapter 11 trustee in the railroad reorganization case of Montreal Maine & Atlantic Railway, Ltd., and as the fee examiner in both the *Exide Technologies* case in Delaware and the *In re AMR Corporation* case (the chapter 11 cases of American Airlines and its parent and certain affiliates). In addition, he *inter alia* represented ad hoc committees in the *Homebanc Mortgage*, *New Century TRS Holdings* and *Nortel Networks* cases in Delaware, as well as a public utilities commission in the *FairPoint Communications* case in the Southern District of New York. Mr. Keach received his J.D. in 1980 from the University of Maine.

Deborah Hicks Midanek is the Founder of Solon Group, Inc. in Grenada, Miss., and several other investment businesses. She is a corporate director and turnaround executive who has diagnosed sources of difficulty for more than 60 corporations, helping them develop robust business solutions. Having served as CEO, strategic advisor, independent director and chairman of public and private companies for more than three decades, Ms. Midanek writes, speaks and advises on corporate governance matters and effective board behavior. Her published works include her award-winning book, *The Governance Revolution*, as well as contributions to publications including *Financier Worldwide*, *Turnarounds & Workouts*, *Risk & Compliance*, *Directors & Boards*, *The Journal of Private Equity*, *Private Company Director*, *The Corporate Governance Review* and *The Conference Board*. Ms. Midanek received her A.B. from Bryn Mawr College and her M.B.A. from the Wharton School of Business.

Caroline A. Reckler is a partner with Latham & Watkins LLP in Chicago and chairs the Chicago office's Finance Department. She also serves as the firm's Chicago office recruiting partner. Ms. Reckler advises debtors around the world on all aspects of restructuring and special situations, and regularly advises public and private companies in financial distress and purchasers of distressed companies. A Fellow in the American College of Bankruptcy, she is regularly recognized in leading legal publications, including *Chambers USA* and *The Legal 500.* She also has led the Women Enriching Business initiative in Chicago. Ms. Reckler received her B.A. from Duke University and her J.D. from the University of Michigan Law School.

Harvey L. Tepner, CPA/CA is an independent corporate director, strategic and restructuring advisor, and private investor in New York. His expertise encompasses business strategy and planning, corporate governance, corporate and leverage finance, reorganizations and restructurings, and mergers and acquisitions, including businesses in chapter 11, with experience across numerous industries. In his various capacities, Mr. Tepner works constructively with executive management teams to establish and implement key strategic and tactical initiatives for improving operating performance and increasing enterprise value. He previously was a senior executive of WL Ross & Co. LLC, an alternative-asset-management and private-equity firm, and a general partner with WL Ross private-equity funds, for which he was responsible for sourcing, structuring and managing investments in select portfolio companies, as well as equity and distressed-debt securities. Mr. Tepner serves on the boards of several public and private companies, including Katerra, Inc., a building development, design and international construction company, and Village Roadshow Entertainment Group, a co-financier and co-producer of film and TV entertainment. He previously served on the boards of Clear Channel Outdoor Holdings Inc., Core-Mark Holding Company Inc., Exide Holdings Inc., Nine West Holdings Inc., Alpha Natural Resources Holdings Inc., Contura Energy Inc., and various WL Ross portfolio companies in the U.S., India and Brazil, where he had an instrumental role in fostering their turnarounds and success. Prior to WL Ross, Mr. Tepner spent more than 20 years as an investment banker at Rothschild, Dillon, Read & Co. (acquired by UBS), Loeb Partners and Compass Advisors, where he specialized in corporate restructurings and troubled company M&A, restructuring over $30 billion of liabilities in more than 75 transactions. He began his career with PricewaterhouseCoopers in Toronto. Mr. Tepner has spoken and written extensively about corporate governance, business strategy and planning, corporate restructurings, and mergers and acquisitions. He is a member of the National Association of Corporate Directors and the International Insolvency Institute, and he is an ABI member and former ABI Board member. Mr. Tepner received his B.A. from Carleton University and his M.B.A. from Cornell University.