AMERICAN BANKRUPTCY INSTITUTE

2021 Virtual Annual Spring Meeting

The Continued Impact of COVID-19 on the Distressed Real Estate Market

Hosted by the Real Estate and Secured Credit Committees

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CONCURRENT SESSION

2021

Annual Spring Meeting 2021

The Continued Impact of COVID-19 on the Distressed Real Estate Market

Evan Blum - Alvarez and Marsal North America, LLC

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Elizabeth B. Vandesteeg – Levenfeld Pearlstein, LLC

I. Real Estate Industry Overview

II. Legal Discussion Materials

A. Legislation

[In process]

B. Court Decisions

[In process]

ABI Commercial Real Estate Presentation

April 21, 2021

Moderator – Eve H. Karasik, LNBY&B

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Janine M. Figueiredo, Hahn & Hessen
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Eve H. Karasik

Partner

Eve H. Karasik is a Partner at Levene, Neale, Bender, Yoo & Brill L.L.P. in Los Angeles, California. She focuses her national practice on corporate restructuring and bankruptcy, including representation of Chapter 11 debtors, unsecured creditor and equity committees, trustees, secured and unsecured creditors, and parties involved in bankruptcy litigation and appeals.

Her prior debtor engagements include Valley Economic Development Corporation (Los Angeles, California); Marshall Broadcasting, Inc. (Houston, TX); Cornerstone Apparel, Inc. (Los Angeles, CA), Anna's Linens, Inc. (Los Angeles, CA), Associated Third Party Administrators and Allied Fund Administrators LLC (Los Angeles, CA), Imperial Capital Bancorp, Inc. (San Diego, CA), Utah 7000, LLC (Salt Lake City, UT), Falcon Products, Inc. (St. Louis, MO), Clark Retail Group (Chicago, IL), and U.S. Aggregates, Inc. (Reno, NV). Creditor and equity committee cases include PHI, Inc. (Dallas, TX); New Meatco Provisions, LLC (Los Angeles, CA), Circus and Eldorado Joint Venture (Reno, NV), Riviera Holdings Corporation (Las Vegas, NV), Eurofresh, Inc. (Phoenix, AZ), USA Capital First Trust Deed Fund (Las Vegas, NV), Aladdin Gaming, Inc. (Las Vegas, NV), and Amerco (Reno, NV). Ms. Karasik has represented clients in state and federal receiverships, and assignments for the benefit of creditors. Ms. Karasik served as Trustee's counsel in SIPA liquidations (W.S. Clearing, Inc.) (Los Angeles, CA), Examiner's counsel in Fontainebleau Las Vegas Holdings, LLC (Miami, FL), and counsel to Bankruptcy Code Section 524(g) Settlement Trusts (Los Angeles and San Francisco, CA).

Ms. Karasik is an American College of Bankruptcy fellow and is ranked in Chambers USA, Band 3, Bankruptcy and Restructuring. Ms. Karasik received the Century City Bankruptcy Attorney of the Year (2015) and the Turnaround Management Association "2007 Large Company Transaction of the Year" award.

Ms. Karasik serves on the Executive Committee for the Board of Directors of the American Bankruptcy Institute as the Vice President for Diversity and Inclusion, is the current President of the Los Angeles Bankruptcy Forum, and is a member of several other professional organizations.

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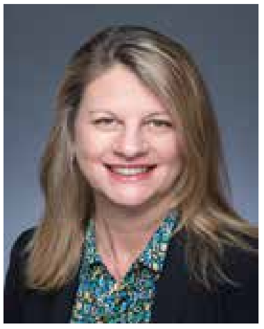

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Commercial Real Estate

Overview

- The pandemic saw rent deferrals, rent holidays, and tenant bankruptcies at once. Non-paying tenants have gained significant bargaining power
- Renegotiating rental terms in a weak market has been key for many small to medium-sized businesses trying to hold on until the end of the pandemic. Lower rates and looser terms have been agreed to for a period of time as such renegotiations occurred. We are in the early stage of negotiations around longer-term resolutions.

Sector Summary

- Work from home arrangements and permanent work from home ("WFH") policies may depress office demand even after the pandemic is resolved. Pushed to be more innovative by the pandemic, many firms have found ways to do more from home. This is most evident in the tech industry. The future of office space is far from decided as many businesses favor a blended model where the physical office space still plays a role for gathering and sharing ideas in person
- Retail has been particularly hard hit as many brick-and-mortar businesses watched the consumer shift to online options like Amazon.com accelerate in real time. Whether rents are paused or reduced for these retail tenants, many of them may not survive. Retail landlords are focused on getting such tenants to cover CAM.
- Mall traffic has been impacted by the decline of brick and mortar traffic; two mall-based REITS recently filed for bankruptcy
- The lack of business and leisure traffic has impacted hotels significantly; a rebound in travel may not be even across hotel classes
- Some subsectors of commercial real estate are better positioned to ride out the pandemic, including warehousing, centers and retail grocery and pharmacy

Conclusions

- Much of the dislocation in the sector has not yet occurred; owners are not yet selling at discounts and lenders are not yet offloading loans in significant amounts. Many believe that the restructurings in the sector will "bleed out slowly over time"
- In general, owners with capital will ride out the storm; the weaker players who are more highly-levered will face the most difficulty – as one lender put it, "If you have money, I have time"
- There is significant capital on the sidelines looking for opportunities

Commercial Real Estate

Multifamily, Office, Retail and Healthcare make up over 60% of the estimated value in the US Commercial Real Estate Market

Sector	Sq Ft. (millions)	Price Per Sq. Ft	Value [1] ($ trillions)	% of Total
Multifamily	17,541	$ 165	$ 2.9	18%
Office	11,266	218	2.5	16%
Retail	13,646	179	2.4	15%
Health Care	2,705	864	2.3	14%
Specialty, Sports & Other	n.a	n.a	2.2	14%
Hospitality	2,625	617	1.6	10%
Industrial	20,749	73	1.5	9%
Flex	2,402	145	0.3	2%
Self-Storage	n.a	n.a	0.2	1%
Towers	n.a	n.a	0.1	1%
Total	**70,934**		**$ 16.0**	**100%**
High Estmate			**$ 17.0**	
Low Estimate			**$ 14.4**	

Notes

Source: Nareit, Q4 2018

1) Value reflects the calculation of available square footage multiplied by price per sq ft. It is not a reflection of the market value.

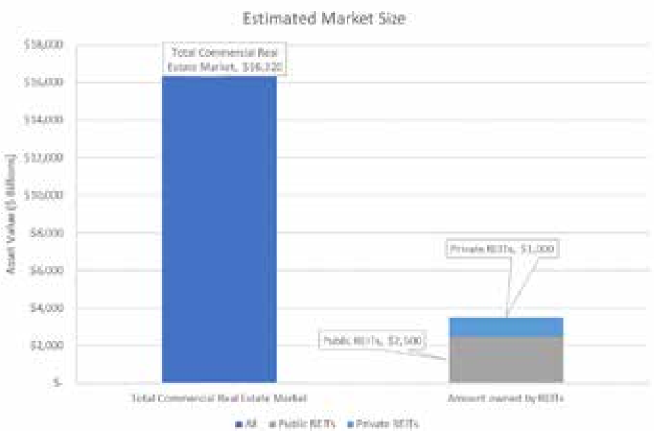
2) Due to data limitations, estimates do not include billboards, single home family rental, timber or infrastructure other than wireless towers.

3) Owner occupied properties account for 10% of total value, 33% of Real Estate is in seven "gateway" markets, half is is the next largest 47 markets and the remainderspread across all other markets.

Commercial Real Estate

Ownership of commercial real estate is highly fragmented

- According to Nareit, REITs own $3.5 trillion of the asset base with public REITs holding $2.5 trillion and the remainder in private REITs
- Sub bullet to top - This implies that REITs own approximately 21% of the US commercial real estate assets
- Private equity is the largest holder of commercial real estate assets in the US – by an order of at least 1.3x REITs[1]
- This leaves a large amount that would be owned directly via corporations (e.g. large tech, financial institutions), individuals/families or entities that may only have a handful of properties in their portfolio

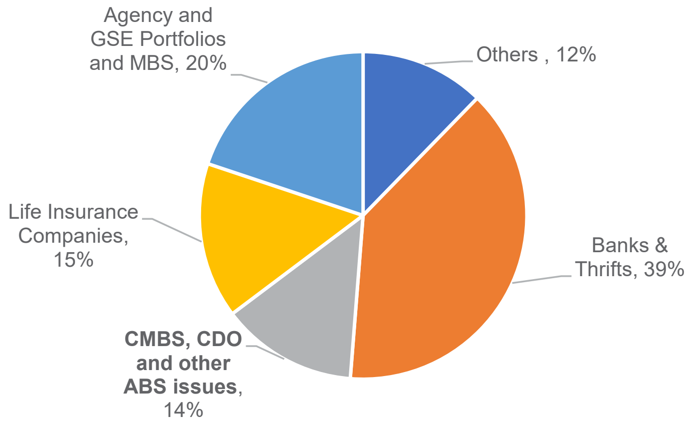


Sources:
1. thebalance.com based upon equity invested in commercial real estate

Commercial Real Estate

The U.S. commercial and multi-family debt market outstanding approximates $4.7 trillion as of November 2020.

- The CBMS market includes private-label issuers (14% share) and a portion of agency portfolios

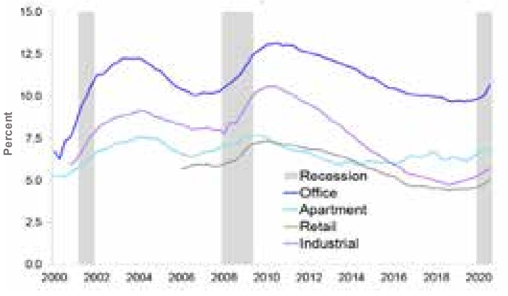


Commercial Real Estate

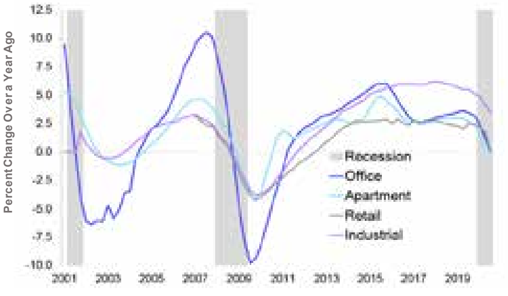
There has been a rise in vacancy rates across all sectors and pressure on rental prices. Commercial real estate, due to longer term leases, may not yet have felt the full impact of the pandemic

- Vacancy Rates
  - Office vacancies are still well below the 13.1% peak reached in 2010, but past recessions suggests that vacancy rates will continue to rise through 2021 and perhaps reach a peak only in early 2022
  - Apartment vacancy rates have remained generally flat. This relative stability masks a geographic shift, however, with weakening demand in many of the core urban markets in gateway cities, but relatively stronger demand in suburbs and smaller cities. Concerns about the pandemic as well as greater WFH adoption has caused a net move-out from areas with higher density and higher costs to areas with less density and greater affordability.
- Rental Prices
  - Rents are likely to decline over the coming quarters as demand weakens further and as more leases roll over

Vacancy Rates



Rental Prices



Indicates a period of market recession

Source: CoStar, Nareit: 2021 Outlook for REITs and Commercial Real Estate: Risk and Resilience, January 2021

Retail

Pre-COVID, retailers' major concerns included rising preference for e-commerce, inventory management, and new trade tariffs. Even pre-COVID, retail bankruptcies were rising, due in part to an increase in online sales. However, the COVID crisis accelerated the pace of decline for brick and mortar retail

- Early results show that retail sales in 2020 grew 6.7% over 2019 to $4.06 trillion. This figure compares with 3.9% growth in 2019. Online and other non-store sales, which are included in the total figure, skyrocketed to 21.9% at $969.4 billion as consumers shifted to ecommerce.
  - Stay-at-home orders as a result of the pandemic forced many retailers to close their brick-and-mortar shops, causing severe and unexpected cash flow shortages. Four of five consumers shifted at least some of their in-store spending to online shopping; nearly 30% are doing most or all of their shopping over the internet
  - Coresight estimates that 25,000 retail stores will have closed by the end of the 2020, and UBS predicts that more than 100,000 retail stores will close in the next five years
  - Some sectors within retail have benefitted during the crisis
    - Larger retailers like Wal-Mart and Target entered the pandemic with strong online platforms and fared better amid consumers shift to online
    - Essential goods providers and discount providers have been well-positioned and experienced a boom during the pandemic
    - Finally, the pandemic has changed what Americans do with their free time, where they spend their days and what they do with their money. As a result, home improvement, sporting goods and pet product sales have shifted sharply during the crisis and will likely reap long-term benefits. For the third fiscal quarter of 2020, Home Depot comparable sales rose 25% and Lowe's grew 30%

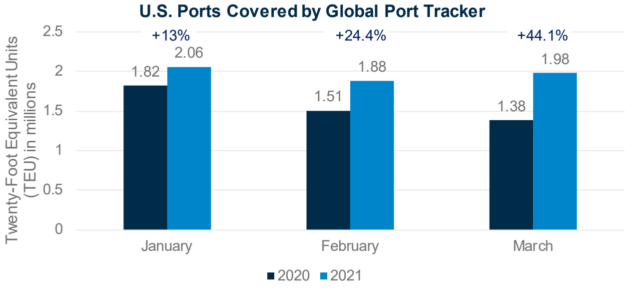
Retail

Retail restructurings dramatically increased in 2020

- Out-of-court restructurings in retail face many challenges, in particular:
  - For many companies, the ability to see the benefits of an operational restructuring can take up to 12 months. As an example, lead times for a specialty apparel retailer can take up to 12 months
  - Given the current challenges being faced by almost all retailers, store closures almost certainly need to be part of the ultimate restructuring plan. These closures can be incredibly difficult and expensive to negotiate with landlords out of court (as compared to the process in court)
- Many retailers were forced to cease or significantly reduce their operations during the country's shutdown. As a result, several Debtors have asked courts for the extraordinary relief of orders that essentially pause or suspend their Chapter 11 cases (i.e., mothballing their cases)
- In-court restructurings varied in approach
  - Many retail bankruptcies in 2020 were filed with an RSA and a plan to reorganize (Tailored Brands, Inc.; Neiman Marcus; J. Crew Group, Inc.; J. Hilburn Inc.; Ascena Retail Group; Grupo Famsa)
  - Other cases were filed with an intent to reorganize while simultaneously pursuing a sale (J.C. Penney, Inc.; GNC Holdings, Inc)
  - Some companies pursued a sale as a going concern (Stage Stores, Inc.; John Varvatos Enterprises, Inc.; Occasion Brands, Inc.; The Paper Store)
  - Others liquidated (Stein Mart Inc.; Modell's Sporting Goods, Inc.)
  - Certain retailers pursued a sale while simultaneously liquidating (Pier 1 Imports, Inc.; Art Van Furniture LLC; Lord & Taylor; RTW Retailwinds; Sur La Table; Lucky Brand Dungarees LLC)

Retail

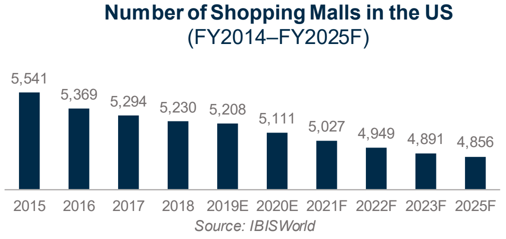
- Given the acceleration in vaccinations and pent-up demand, the National Retail Federation (NRF) is projecting a strong year for retail overall in 2021
- NRF forecasts that 2021 retail sales are estimated to total between $4.33 trillion and $4.4 trillion. Online sales, which are included in the total, are expected to grow between 18% and 23% to between $1.14 trillion and $1.19 trillion
- Early indications are consistent with this hypothesis
  - "The supply chain slowdown we usually see after the holiday season never really happened this winter, and imports are already starting to grow again," according to the NRF Vice President for Supply Chain and Customs Policy Jonathan Gold.



- Which retailers remain at risk?
  - Legacy laggards – challenge is to run the company and change the company at the same time. This is very difficult and COVID has increased the challenge
    - Many filed for bankruptcy in 2020 and additional filings will continue in 2021. Others will partner; many believe that a major consolidation cycle in retail is beginning

Shopping Malls

The number of shopping malls in the U.S. has been declining as retailers' brick-and-mortar footprint deterioration given expanding online retail



- The decline in the shopping mall market has been accelerated by lockdown and social distancing measures taken due to the spread of the COVID-19 pandemic in 2020
  - Temporary shutdown of malls led to a deferral / abatement of rental payments by retailers for mall space
  - Further, low sales caused by the pandemic (after reopening of malls) is expected to lead to the closure of 13,750–15,000 stores in malls (including such major brands as GAP and Banana Republic), which is likely to adversely impact rental revenue
  - As more retailers succumb to bankruptcy, it is becoming increasingly difficult for landlords to fill their spaces at sustainable rents
  - Closing of many stores at a mall, particularly big box retailers, can also lead to triggering of co-tenancy clauses, which can further adversely impact rental income
    - Most store closures are anticipated to be within the apparel and accessories, furniture, and other general merchandise categories
    - To counter the decline in demand for store space from retailers, malls are focusing on diversifying their customer portfolio by including movie theatres, restaurants and other recreational options; however, many of these industries are in trouble as well

Source: IBISWorld

Shopping Malls

Malls are now looking for alternative uses for retail space, including warehouses, shared office space, residential development and data centers to counter declining demand

Q1 2021 and Post COVID-19 Market

- According to Coresight Research, ~25% of the total malls in the U.S. will close during 2020–2025 due to a decline in demand. Lower quality malls are in particular trouble
  - As per a report by Green Street Advisors, >50% of all mall-based department stores would close by the end of 2021
- To counter declining demand, large malls are trying to turn retail space into warehouses to support e-commerce
  - In August 2020, Simon Property Group discussed with Amazon to convert some of the closed Sears and J.C. Penney department stores in its malls into warehouse centers to support Amazon
  - Turning store space at the mall into a warehouse could lead to a decrease in rent per square foot received by the mall as rent for warehouse typically lies between $5-10 per square foot, whereas rent for a department store is ~$20 per square foot
  - Other alternatives would require higher upfront costs but might provide a better overall return
- Mall owners are also purchasing retailers, a trend that may continue

"Turning a shuttered mall into an e-commerce warehouse or a residential complex could reduce the value of the property anywhere from 60% to 90%." **– Ryan Preclaw, Research Analyst, Barclays (October 2020)**

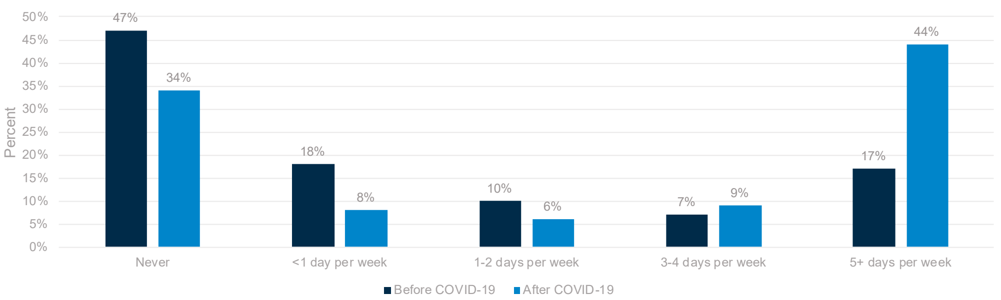
Source: 'Turning a dead mall into a warehouse will slash its value as much as 90%, Barclays predicts', CNBC (October 2020)

Office Space

The pandemic caused many businesses to shift to a work from home model

- As COVID-19 spread around the world in early 2020, offices were forced to close. Companies which could adopt WFH practices quickly rolled out remote models
  - Nearly 50% of the labor force was WFH in 2020
- Remote working has proven to be effective, leading some companies to allow remote-working as a permanent option. It is expected that remote working is here to stay although perhaps not on a full-time basis
- This will have implications as to how much office space companies will require going forward and where employees will choose to live if they don't have to physically be where the job is located
- Companies will continue to evolve their thinking as to their real estate needs

Change in Remote Work Trends Due to COVID-19 in the United States in 2020

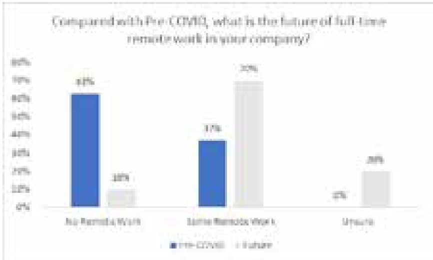


Source: Global Workplace Analytics, Upwork's "Future of Workforce Pulse Report"

Office Space

Recent surveys corroborate an evolving thought process

- CBRE conducted a survey of senior level global real estate executives to determine how COVID -19 will change the location, design and use of office space. Most respondents feel that the COVID era will have a lasting impact on real estate strategy – 72% stated it would have a somewhat or very significant impact
  - Portfolio adjustments are ongoing – over 85% are optimizing their portfolios
- Long-term strategies are under consideration – 25% are exploring suburban satellite strategies; 73% expect flexible office space will play a role in future strategy
- More flexible work is expected – 70% indicated that some portion of the workforce will be permitted to work remotely full time; 61% said all employees would be allowed to work outside the office at least part time



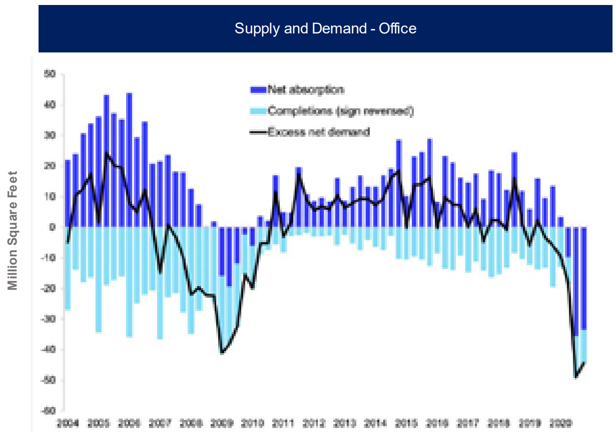
Source: CBRE

- Cushman & Wakefield recently issued a study that predicted an office recovery would take until 2025. In the near term, there will be significant challenges for the office sector
- According to this study, office leasing fundamentals will be significantly impacted, and vacancies will reach an all-time high. Global office vacancy is projected to rise from 10.9% pre-COVID to 15.6% by Q2 2022

Office Space

While demand has declined for office space, supply has remained relatively flat – this dynamic is expected to continue for the near-future

- Demand for office space fell most sharply as WFH has curbed firms' need for office space
  - Net absorption was negative at -33.6 million square feet, following a 35.6 million decline in occupied space in the third quarter of 2020. New supply has cooled to 10.8 million square feet (light blue bars, sign reversed) from a high of 19.4 million square feet in 2019:Q4



Source: Nareit: Falling Demand for CRE Impacts Vacancies, Rents in Fourth Quarter, February 2021.

Office Space

The outlook for office space is location specific

- Despite offices not currently being fully occupied, the longer-term nature of leases are likely insulating landlords and REITs from greater vacancy rates
- However, relative success of WFH will make companies re-think how much real-estate they need and how they will use that real estate
- As leases roll-off, increased pressure is likely on downsizing and go-forward rental rates
- Lower class office space in the bigger cities will likely see a greater impact while there may be more demand in “satellite” locations

Deterioration ← ***Funds Flow from Operations at pre-pandemic levels*** → ***Improvement***

Office Future (larger cities)
As companies determine their longer term space requirements we expect to see pressure on occupancy and rates as leases roll off

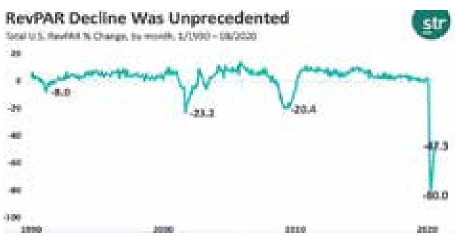
Office Today
Longer tenure of leases insulating near-term cash flow

Office Future (smaller cities)
Geographic migration to smaller cities and increased use of satellite offices may result in higher long-term demand

Hotels

Revenues from the U.S. hotel & motel industry were expected to have declined by 45% in 2020, with luxury and upscale segments likely to be the worst hit

- The pandemic has caused sharp declines in domestic trips by U.S. residents and inbound trips by non-U.S. residents, resulting in a dramatic RevPAR decline



- Hotel performance differs substantially across locations and property type

Urban, luxury and upper upscale hotels have been hardest hit.

Economy, interstate hotels have been least impacted.

Source: IBISWorld; STR

Hotels

Timing of travel recovery hinges on containment of the virus

- Late-2021
  - Assume vaccines make a meaningful impact by mid-2021
  - Assume travel context is improved for summer 2021
  - Assume post-Labor Day, with US perceived as substantially "safe from COVID", group and business travel returns strongly (e.g., by year-end group reaches 78% of 2019 Q4 levels)

2021 forecast reflects improvement over 2020; however, the expected metrics remain significantly below 2019

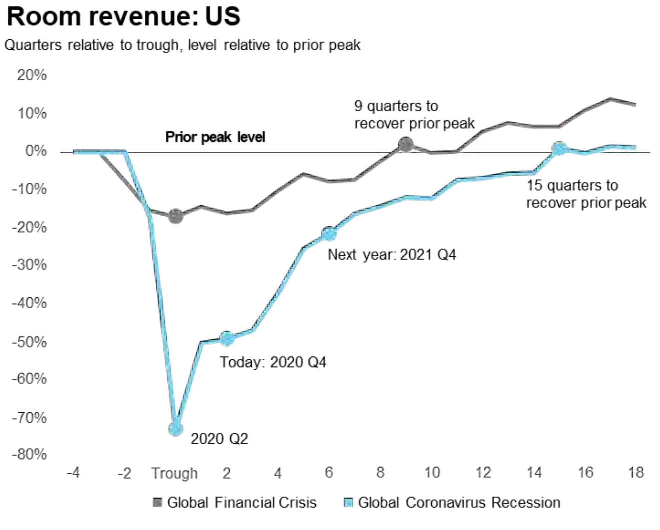
US Hotel Industry Forecast – Key KPIs (% Change vs Prior Year)			
Metric	2019 Actual	2020 Forecast	2021 Forecast
Occupancy	66.1%	39.8%	52.0%
ADR	$131.13	$103.71	$109.56
RevPAR	$86.64	$41.31	$56.95

"Performance recovery is going to remain slow and well off of the pre-pandemic pace until the context for travel improves and group business begins to return. Even with a slight improvement in ADR projections through 2021, pricing confidence will lag an eventual rise in occupancy. As a result, the $32 billion gain we forecast for room revenue from 2020 to 2021 will push the industry to a level that is still 32.5% lower than 2019." **– Amanda Hite, President, STR (August 2020)**

Source: STR; Tourism Economics; 'STR, TE slightly downgrade US hotel forecast', HotelNewsNow (August 2020); 'Hotel outlook is slightly worse now than in June', Travel Weekly (August 2020)

Hotels

It is estimated that it will take approximately four to five years to recover industry-wide revenue



Industry-wide room revenue is expected to recover to its prior peak level in early 2024.

Source: STR; Tourism Economics

Restructuring Considerations (CMBS v. Portfolio Loans)

There are key differences, making CMBS workouts more involved given the pool of loans in which the distressed credit exists. Portfolio loans are akin to direct lending

Recourse Provisions and Prepayment

CMBS – Non-recourse; recovery is limited to the underlying property value in a foreclosure situation.

Portfolio – Recourse; other assets of the borrower may be available to satisfy.

Borrower Eligibility and Loan Requirements

CMBS – Widely available credit, given diversified pool of loans and held off lender balance sheet

Portfolio – Strict credit and net worth requirements to complete underwriting

Defaults, Collateral Substitution and Debt Workouts

CMBS –

- Defaulted loans go through a special servicer limiting interactions between borrower and lender
- Require formation of a bankruptcy remote SPE than cannot accept substitute collateral
- Cash may be trapped in the CMBS structure and unattainable to borrower in a liquidity crunch
- CMBS noteholders lack standing, as a party in interest, in enterprise-level Chapter 11 cases (Innkeepers)

Portfolio –

- Can accept additional collateral, take an equity position or capitalize loan interest as a form of workout
- SAE filing possible to effect debt for equity exchange

Source: Capital Markets Advisors

Restructuring Considerations

Special servicing rates in the institutional market have increased markedly due to the pandemic; how they react to defaults will provide an indication as to the severity of the downturn as well as the opportunities for buyers

CMBS Special Servicing Rate (January 2009 – January 2021)

Source: Trepp

Special Servicing Rate by Property Type CMBS Full

	JAN-21
Industrial	1.06%
Lodging	24.49%
Multifamily	2.75%
Office	2.52%
Retail	17.04%

Source: Trepp

Restructuring Considerations

CMBS portfolios may not fully capture credit stress due to loan modifications, forbearance and low DSCR loans with reporting lags.

Delinquencies

- CMBS delinquencies peaked in June 2020 at 10.3% and have moderated each month since, possibly due to an increasing number of forbearance agreements, or the reallocation of reserves to fund debt service
  - By October 2020, delinquency had fallen to 8.3% representing 1,700 loans with a total balance of $46 billion.
  - By February 2021, delinquencies had fallen to 6.8%
  - The delinquency rate has declined for 8 straight months; however, delinquencies at the end of 2019 were just 2.2%
  - The hotel and retail sectors have the highest delinquency rates

Foreclosure

- The longer the economic impact of the pandemic lingers, the more forbearance agreements will expire and, if property cash flow still cannot service the debt, foreclosures will increase unless borrowers receive fresh infusions of capital
- As of Q4 2020, about $10 billion of CMBS loans are already in the foreclosure process or REO. It's estimated that an additional $4 billion of loans are in discussions for deed in-lieu of foreclosure (non judicial property conveyance).
- As with delinquencies, most of these loans are collateralized by retail properties and hotels

Source: Mortgage Bankers Association

Restructuring Considerations

New appraisals and ratings should be monitored

Forbearance Agreements

- A forbearance agreement typically provides a short-term respite; the special servicing rate is a better representative of the current state of distress in the CMBS universe

New Appraisal ARAs ("Appraisal Reduction Amount")

- As of March 2021, loans with ARAs increased to $11 billion. New appraisals (albeit 80% weighted toward hospitality and retail) are coming in 32% lower.
- Cumulative ARAs and losses may cause a shift in CMBS control (i.e., B holders may lose certain rights regarding loss realization and timing of appraisals)

Ratings Actions

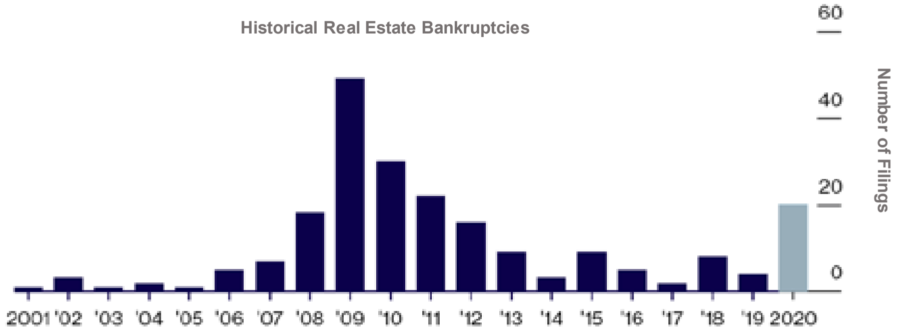
- Ratings transitions have occurred for A- and BBB- conduit CMBS tranches with actions to below investment grade
- BBB- have lower stability and much higher downgrade risk. To date, 2015 vintages and earlier have seen significant downgrades and it is expected later vintages will come under more scrutiny

Source: Mortgage Bankers Association; Deutsche Bank

Real Estate Bankruptcies

Real estate companies are filing for bankruptcy at the fastest pace since 2011

- In 2020, 20 real estate related entities filed for bankruptcy, representing roughly 10% of the total 256 company filings across all sectors with more than $50 million in liabilities
- Not included in the figures above, there has also been a rise in Single Asset Real Estate ("SARE") filings, or cases involving an entity that owns a real estate property with fewer than four residential units
- The slowdown in travel has caused a wave of hotel and hospitality filings to begin 2021, with some concentration in California and New York, two states which have had some of the most stringent restrictions



- In the hospitality sector, there has been a pickup in receiverships, which have the benefit of timing and cost relative to bankruptcies

Source: Bloomberg, American Bankruptcy Institute
Notes:
1) Filings are by companies with $50m+ in liabilities; 2020 is through Dec. 14, 2001-2019 are full years

Real Estate Bankruptcies

Compared to other industries, the real estate space is experiencing a lag in stress. However, experts believe the sector's worst days may still be ahead

- An estimated $126 billion in commercial real estate will be forced to sell at distressed prices through 2022
- Distressed hotel, retail, office and other properties will continue to flow to the market over the coming five years, potentially reaching anywhere between $300-$600 billion in sales by 2025
  - Cheap funding costs have extended a lifeline to many troubled companies, slowing the pace of U.S. bankruptcy filings
  - Retail, Office and Lodging sectors continue to be vulnerable in the WFH environment
- Despite the looming issues with the value of the underlying real estate, REIT bankruptcies are rare. In fact, since 2009 there were no REIT bankruptcies until 2020
  - REITs have been able to largely stave off bankruptcy in 2020; however, three REITS recently filed

REIT Name	Petition Date	Sector	Resolution
Eagle Hospitality Trust	Jan 2021	Lodging	TBD
CBL & Associates	Nov 2020	Malls / Retail	Debt reduction, unsecured noteholders to take 90% of equity
Pennsylvania Real Estate Investment Trust	Nov 2020	Malls / Retail	Exchange old debt for new debt with greater near-term financial flexibility $150M capital infusion

- In 2020, the more likely path for restructuring of a REIT was to amend credit agreements. Typical modifications included waiver or modification of financial covenants, extension of maturities, incremental guarantees or equity pledges along with additional negative covenants and incremental pricing

Source: Bloomberg

Evan Blum

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- Evan Blum is a Managing Director with Alvarez & Marsal in New York where he provides financial advisory, interim management and turnaround consulting services. Mr. Blum brings more than 20 years of experience representing domestic and international clients on restructuring matters, including assignments in and out of court.
- Mr. Blum is adept at both the operational and financial aspects of restructurings and has managed liquidity and business plan issues, as well as negotiated complex balance sheet restructurings and recapitalizations. His primary areas of focus include the development and evaluation of strategic business plans and cash flow projections, assessment of bankruptcy planning and strategy, assistance in the negotiation of debtor in possession financing, preparation of liquidation analyses and the development of recapitalization and refinancing plans. He advises companies, creditors and investors in media, telecommunications, coal, retail, finance, grocery, food processing, real estate / hospitality and manufacturing.
- Mr. Blum's engagements include representing the debtor in the U.S. Coal, Gas Mart and AmTrust bankruptcies. He was named Chief Restructuring Officer of Stillwater Offshore Asset Backed Fund where he constructed a global settlement encompassing over 20 parties that was approved in four separate court proceedings. He also served as CRO of several other companies during his career. He advised the indenture trustee for approximately $1.8 billion in bonds in the Travelport Holdings restructuring and represented Bayer in the Kodak bankruptcy. Mr. Blum was also an advisor to a private equity fund relating to the business plan restructuring and balance sheet recapitalization of multiple domestic and foreign real estate projects. He has also served as financial advisor to unsecured creditors' committees and as liquidating trustee.
- Prior to joining A&M, Mr. Blum served as a Principal with GlassRatner in New York where he was responsible for originating and managing operational and financial restructuring assignments throughout the U.S. Previously, he was a Managing Member of Triax Capital Advisors where he originated and executed various restructuring matters. Mr. Blum was formerly a Senior Vice President at Communications Equity Associates and a Director with Merrill Lynch in New York where he focused on the media and telecommunications industries.
- Mr. Blum earned a bachelor's degree from Cornell University, where he received the Arts & Sciences Dean's Award, and an MBA from Columbia Business School, graduating with Beta Gamma Sigma honors. He has published articles and participated as a speaker on panels related to a variety of restructuring topics. He was also a lecturer at Pace Business School on restructuring issues. Mr. Blum is a member of the American Bankruptcy Institute and the Turnaround Management Association.

NOTE: Alvarez & Marsal employs CPAs but is not a licensed CPA firm.

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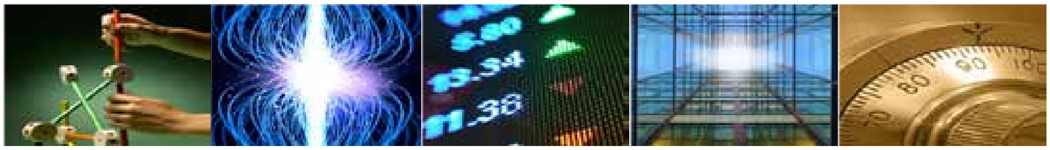
IMPACT OF THE PANDEMIC ON LANDORD AND TENANT ISSUES IN CHAPTER 11 RETAIL CASES

Presented by Janine M. Figueiredo



Extraordinary Relief

- With the onset of the global Covid-19 Pandemic, debtors began invoking rarely used sections of the Bankruptcy Code in order to obtain extraordinary types of relief.
- In retail cases, relief from payment of rental obligations, also called a "rent holiday", is one such type of extraordinary relief that has become commonplace in the last 13 months.
- Section 365 of the Bankruptcy Code requires that a debtor shall timely perform all of its obligations under any unexpired lease of nonresidential real property, arising from and after the petition date until such lease is assumed or rejected.
- Starting with the earliest pandemic cases, tenant debtors invoked Sections 105 and 305 of the Bankruptcy code for broad based relief to suspend all or part of their bankruptcy cases. They also sought the approval of revised DIP budgets with limited payments for only those expenses deemed absolutely necessary. In those cases, payment of rent was not included in the revised DIP budgets.
- As the next set of pandemic debtors filed their bankruptcy cases without seeking a broad suspension of their proceedings, these debtors had to rely on language in Sections 105 and 365(d)(3) for relief from their rental obligations. Section 365(d)(3) allows a debtor to defer performance of its rental obligations for the first 60 days of the case ***for cause.***

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Relevant Statutes

11 U.S.C. § 365(d)(3):

The Trustee 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. The court may extend, for cause, the time for performance of any such obligation that arises within 60 days after the date of the order for relief, but the time for performance shall not be extended beyond such 60-day period….

11 U.S.C. § 105:

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 be construed to 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 an abuse of process.

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Relevant Statutes

11 U.S.C. § 305:

(a) The court, after notice and a hearing, may dismiss a case under this title, or may suspend all proceedings in a case under this title, at any time if—
(1) the interests of creditors and the debtor would be better served by such dismissal or suspension …..

(c) An order under subsection (a) of this section dismissing a case or suspending all proceedings in a case, or a decision not so to dismiss or suspend, is not reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 of title 28 or by the Supreme Court of the United States under section 1254 of title 28.

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Rent Deferral

Various disputes have arisen over the application of Section 365(d)(3).

The first dispute centers around what constitutes cause.

- Before the pandemic, this section of the Bankruptcy Code was rarely invoked, thus providing little precedent for courts to rely on.
- Since the start of the Covid-19 Pandemic, courts have found that the extraordinary circumstances surrounding the Pandemic and the government shutdowns have constituted cause to allow a tenant debtor to defer its performance of rent obligations.
- Even now, a full year after the onset of the government shutdowns, courts continue to find that the lasting impacts of the Pandemic continue to constitute cause under Section 365(d)(3).

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Rent Deferral

The next dispute centers around what is required by "but the time for performance shall not be extended beyond such 60-day period".

- Most Courts have recognized that the Code does not allow for a deferral of performance of obligations arising from day 61 on.
- The biggest question has been when must the debtor perform those obligations arising in the first 60 days that have been deferred.
- Some Courts have explicitly allowed the debtor to defer payment until a time later than day 61, such as the closing of a sale or confirmation of a plan.
- Some of these courts state that the debtor's failure to perform its lease obligations merely gives rise to an administrative claim.
- Other courts have remained silent in the rent deferral order as to when these obligations must be performed.
- A few have directed payment on day 61.

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Rent Deferral

Landlords have few options to protect themselves when a rent deferral order is silent on time to perform

- A landlord can make a motion to compel performance under Section 365(d)(3) if the debtors fail to perform on day 61
- A landlord can make a motion for allowance and immediate payment of an administrative expense claim.

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Rent Deferral

Selected Case Overview

- **Modells** (DNJ; Petition 3/11/20; First order 3/27/20): Court approved a suspension of bankruptcy case proceedings and various payment obligations, including rent, pursuant to Sections 105 and 305. Supplemental orders extended suspension through June 15, 2020.
- **Pier One** (EDVA; Petition 2/17/20; First order 4/6/20): Court approved a suspension of certain case proceedings and approved revised budget with limited payments under Sections 105 and 365 through May 31, 2020. Rent was not included in Budget to be paid. Court references its prior Circuit City decision that stated a debtors' failure to perform lease obligations under Section 365 leads simply to an administrative claim not a superpriority administrative claim.
- **J Crew (Chinos)** (EDVA; Petition 5/4/20; order 5/26/20): Court approved 60 day deferral of rent obligations under Section 365 but did not address remedy issue.
- **Stage Stores** (SDTX; Petition 5/10/20; order 5/27/20): Court approved deferral of rent obligations for 60 days under Section 365 only for closed stores (as requested by the debtors) and specifically left open the question of when those deferred obligations need to be paid.

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Rent Deferral

Selected Case Overview

- **Studio Grill** (NDTX; Petition 10/23/20; order 11/30/20): Court deferred performance of lease obligations for 60 days under Section 365 for only certain leases and directed payment of all such deferred rent on day 61.
- **CEC Entertainment** (SDTX; Petition 6/24/20; order 12/14/20): Court specifically acknowledged that under Section 365 it cannot defer performance for more than 60 days after the petition date and by the time the order was entered, that time had already elapsed. But Court specifically refused to address the issue of landlord remedies for failure to perform.
- **Paper Source** (EDVA; Petition 3/2/21; Order 4/1/21): Court approved deferral of rent for 60 days pursuant to Section 365 but directs payment on day 61.

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Rent Deferral

Subchapter V

The Small Business Reorganization Act ("SBRA") went into effect just before the pandemic on February 19, 2020.

- SBRA added "Subchapter V" to the Bankruptcy Code, which affords "small business" debtors the option of pursuing chapter 11 restructuring under either the substantive and procedural laws and rules of (x) "traditional" chapter 11 or (y) Subchapter V.
- In its original form, the SBRA provided that a debtor would be eligible for Subchapter V if it owes less than $2,725,625 million in non-contingent, liquidated secured and unsecured debts.
- In response to the COVID-19 crisis, the CARES Act expanded Subchapter V eligibility (for a period of one year) by increasing the cap to $7,500,000 in aggregate secured and unsecured non-contingent and liquidated debt.
- On March 27, 2021, The COVID-19 Bankruptcy Relief Extension Act was signed by President Biden, extending the applicability of the increased cap under the CARES Act to March 27, 2022.

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Rent Deferral

Subchapter V

On Dec. 27, 2020, President Trump signed the Consolidated Appropriations Act which made changes to Section 365(d)(3) as it pertained to Subchapter V Debtors.

- The CAA added a new provision (section 365(d)(3)(B)), which applies only in a case under Subchapter V of chapter 11.
- New subsection (3)(B) allows for both an initial and subsequent 60-day deferral period, giving Subchapter V tenant debtors up to 120 days of relief.
- Subsection (3)(B) also applies a new standard for the debtor to satisfy in order to obtain relief. In contrast to subsection (3)(A)'s "for cause" standard, the small business debtor can only obtain an additional 60 days of rent relief if it "is experiencing or has experienced a material financial hardship due, directly or indirectly, to the coronavirus disease 2019 (COVID-19) pandemic".
- The CCA also added new subparagraph (C) to subsection 365(d)(3), which provides that obligations deferred under the new Subsection (B) shall be treated as an administrative expense described in section 507(a)(2) for the purpose of section 1191(e).
- These provisions sunset on December 27, 2022 but will continue to be applicable to Subchapter V debtors that filed their Subchapter V cases before the sunset.

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Rent Deferral

Temporary Section 365(d)(3)(B) and (C)

(B) In a case under subchapter V of chapter 11, the time for performance of an obligation described in subparagraph (A) arising under any unexpired lease of nonresidential real property may be extended by the court if the debtor is experiencing or has experienced a material financial hardship due, directly or indirectly, to the coronavirus disease 2019 (COVID-19) pandemic until the earlier of –

(i) the date that is 60 days after the date of the order for relief, which may be extended by the court for an additional period of 60 days if the court determines that the debtor is continuing to experience a material financial hardship due, directly or indirectly, to the coronavirus disease 2019 (COVID-19) pandemic; or
(ii) The date on which the lease is assumed or rejected under this section.

(C) An obligation described in subparagraph (A) for which an extension is granted under subparagraph (B) shall be treated as an administrative expense described in section 507(a)(2) for the purpose of section 1191(e).

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Other Legal Developments

Time to Assume or Reject

- The CAA amends Section 365(d)(4)(A) to extend the 120-day period to assume or reject an unexpired real property lease to 210 days, at the discretion of the Bankruptcy Court.
- This provision applies to cases under all bankruptcy chapters and it sunsets on December 27, 2022.

Preferences

- The CAA also amends Section 547 to shield certain deferred supplier and rent payments from avoidance as preferential transfers.
- These protections only apply to payments of arrearages made after March 13, 2020 in connection with an agreement entered into on or after March 13, 2020 to defer or postpone payments under an executory contract or lease of nonresidential real property.
- The protections do not apply to fees, penalties, or interest imposed by the post-March 13, 2020 payment deferral agreement or for payment defaults before March 13, 2020.
- The amendments expire two years after enactment, but remain applicable to any bankruptcy case commenced before the December 27, 2022 sunset date.

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Practical Implications

- As retail tenants are experiencing financial hardships due to the pandemic, landlords have been voluntarily granting various concessions including rent deferrals to their tenants.
- As a result, as these tenants enter into a bankruptcy proceeding, many landlords are already holding large claims against the estate for unpaid rent.
- The tenant debtors are then seeking additional rent deferrals for rent obligations arising in the first 60 days of the case.
- In many cases, the estates are at risk for administrative insolvency, leaving the landlords in a position of further vulnerability.
- In most cases, retail debtors will use the risk of administrative solvency and the threat of losing a tenant to negotiate waivers or reductions of the landlord's prepetition claims and even greater concessions in the go forward lease terms.
- Given the state of the retail industry and the decreased occupancy rates, retail debtors have far more leverage in negotiations involving its leases than it had even prior to the pandemic, when brick and mortar retail was already suffering.

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Janine Figueiredo

Partner, Bankruptcy & Restructuring

Janine's practice focuses primarily on the representation of Creditors' Committees, Liquidating Trustees and secured and unsecured creditors in complex corporate reorganizations, restructurings and liquidations. Janine has extensive experience representing clients in many different industries, including subprime mortgages, manufacturing, retail, media and entertainment, wholesale/distribution, and specialty chemicals. Through her representations of the Official Committees of Unsecured Creditors of some of the nation's largest subprime mortgage bankruptcies, including New Century TRS Holdings, Inc. and ResMAE Mortgage Corp, Janine has developed expertise both in financial products and complex debt structures. Her bankruptcy litigation experience spans from the defense and prosecution of avoidance actions to complex plan appeal issues.

Selected Creditor Committee representations:

- Vertellus Specialties Inc., a manufacturer of specialty chemicals;
- Hancock Fabrics, Inc., one of the largest fabric retailers in the United States;
- AWI Delaware, Inc., White Rose and Nell's, mid-Atlantic and New Jersey based supermarket and specialty store distributor and retailer;
- Reichhold Holdings US, Inc., manufacturer of unsaturated polyester resins for fabrication of composite products and coatings;
- Furniture Brands International, Inc., manufacturer, wholesaler and retailer of home furniture and furnishings;
- Syms Corp and Filene's Basement, clothing and accessories retailers;
- 4Kids Entertainment, Inc., full-service children's brand management company;
- Loehmann's Holdings, Inc., a leading national retailer that reorganized and emerged from Chapter 11 in less than three months, earning the Turnaround Atlas Award for Corporate Turnaround Deal of the Year in 2011;
- Zestra Laboratories Inc., manufacturer of consumer health products;
- New Century TRS Holdings, Inc., a residential home mortgage originator, securitizer and servicer, and one of the nation's largest subprime mortgage bankruptcies;
- ResMAE Mortgage Corporation, a residential home mortgage originator and securitizer;
- Crabtree & Evelyn Ltd., the only retail company to reorganize and emerge from Chapter 11 in 2010.

Janine is a member of the Executive Board of Directors of the Turnaround Management Association. She has previously held the positions of Chairwoman, President and General Counsel of the TMA New York Chapter. Janine is a member of the American Bankruptcy Institute and the New York State and American Bar Associations.
Janine has served as the Firm's Hiring Partner since 2016 and has served on the Associate's Committee since 2005.

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Alternatives for Workout Across Different Sectors of Distressed Property

Presented by Lisa B. Vandesteeg

Potential Alternatives – What's Likely for Each Sector?

- Out of Court Consensual Negotiations
- Discounted Debt Purchase
- Friendly Foreclosure/Article 9 Sale
- Assignment for Benefit of Creditors
- Receivership
- Chapter 11

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Elizabeth (Lisa) Vandesteeg

Partner, Financial Services & Restructuring

Lisa Vandesteeg is a Partner in the Financial Services & Restructuring Group at Levenfeld Pearlstein. She focuses on identifying risk exposure and mitigating liability for clients, with a concentration in the areas of bankruptcy, creditors' rights, commercial litigation, and data security and privacy.

She represents secured creditors, debtors, unsecured creditors, creditors' committees, landlords, and shareholders in bankruptcy courts throughout U.S, as well as representing clients in civil litigation in federal and state courts.

Her passion is helping clients identify and resolve potential problems related to creditors' rights, troubled businesses, bankruptcy and workouts, and business disputes. She strives to resolve disputes without litigation, but when necessary, she will litigate cases logically and efficiently. She prioritizes client communication and an ongoing understanding of the clients' objectives and what "success" in a particular case looks like so she can create a customized plan of action.

Lisa is also qualified as a Certified Information Privacy Professional for the U.S. Private Sector by the International Association of Privacy Professionals, the world's largest information privacy organization. She advises clients on cybersecurity and privacy compliance and regulatory issues. She also guides clients in developing and implementing information security programs that are reasonable and appropriate for their specific business needs and risks, as well as advising them in responding to data breaches.

Lisa rejoins LP from Sugar Felsenthal Grais & Helsinger LLP, where she was a partner and member of the firm's Executive Committee.

In addition to her robust legal practice, Lisa is also on the Board of Directors of Chicago Run, an organization that promotes the health and wellness of Chicago children through innovative, engaging, and sustainable youth running programs.

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APRIL 21, 2021

IMPACT OF THE COVID-19 PANDEMIC ON REAL ESTATE INVESTMENT TRUSTS ("REITS")

LATHAM & WATKINS LLP

Real Estate Investment Trusts ("REITs")

REIT is an acronym for real estate investment trust.

- A real estate investment trust is a company that owns, and in most cases operates, income-producing real estate.
- REITs own many types of commercial real estate, ranging from office and apartment buildings to warehouses, hospitals, shopping centers, hotels, prison systems, and commercial forests
- A REIT is a company that satisfies a number of requirements set forth in the Internal Revenue Code ("IRC")
  - If these requirements are met, the REIT is permitted to deduct dividends it pays in calculating its taxable income
  - A typical public REIT distributes, at least, 100% of its taxable income each year and, therefore, pays no federal income tax
- A REIT is intended to provide shareholders with the opportunity to invest in real estate, without the double tax normally associated with investing in a corporation, and without complicated reporting requirements that apply to an investment in a partnership
- By leasing space and collecting rent on real estate, REITs generate income which is paid to shareholders in the form of dividends
  - REITs must pay out at least 90% of their taxable income to shareholders—and most pay out 100%
  - In turn, shareholders pay the income taxes on those dividends

Real Estate Investment Trusts ("REITs") (cont'd)

- The IRC defines a REIT as a corporation, trust or association:
  - That is managed by one or more trustees or directors;
  - That issues transferable shares;
  - That would be taxable as a domestic corporation, but for the REIT provisions in the Code;
  - That is not a financial institution or an insurance company;
  - That is beneficially owned by 100 or more persons;
  - Pays > 90% of taxable income in the form of shareholder dividends each year;
  - Invests > 75% of total assets in real estate;
  - Produces > 75% of gross income from rents from real property, interest on mortgages financing real property or from sales of real estate;
  - Not more than 50% in value of the outstanding stock of which is owned, actually or constructively, by five or fewer individuals, including specified entities, during the last half of each taxable year; and
  - That meets other tests regarding the nature of its income and assets and the amount of its distributions.
- Real estate assets includes real property, including:
  - interests in real property and interests in mortgages on real property;
  - fee and co-ownership of real property;
  - leaseholds of real property;
  - options to acquire real property; and
  - personal property under certain circumstances.
- ***But real estate assets do not include mineral, oil or gas royalty interests***

Issues that REITs are Facing

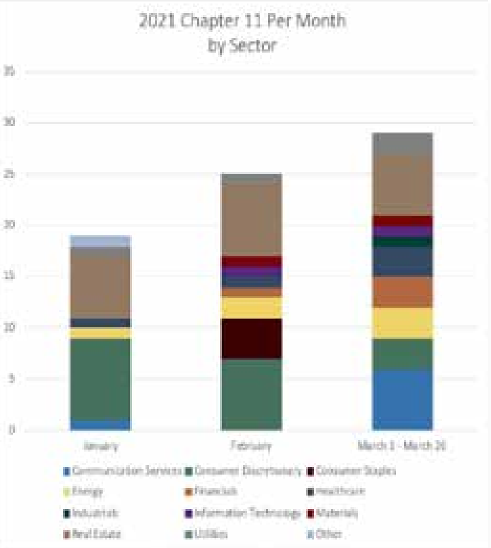
Real estate companies, in particular REITs, faced unique challenges as a result of (i) the COVID-19 pandemic, and (ii) industry-adjacent industries that underwent restructuring

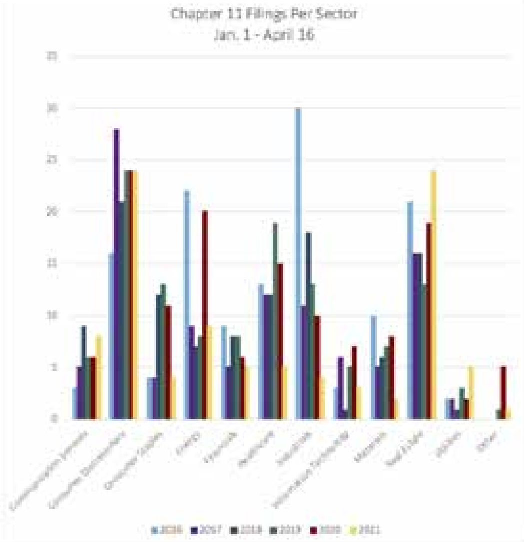
- Given this past year's events, and the potential shift in the real estate market, REITs face a number of challenges including the following:
  - **Retail Downside**: continuous decline of brick and mortar
  - **Rent Collection Challenges**: 2020 and 2021 were challenging years for rent collection and most REITs are structured to retain investment grade ratings despite reductions in cash flow
  - **Leverage / Ratio Testing**: leverage ratios are getting higher as EBITDA generally declines
  - **COVID Recovery**: depending on the type of investment, limited visibility with respect to rebound due to COVID and back-to-office trends
  - **Foreclosures**: there seems to be an increased trend in handing back the keys to lenders although it remains to be seen how lenders react to this growing trend
  - **Office Leases**: unclear when large scale office return occurs and at what scale
- But not all is "doom and gloom" with REITs, given the following:
  - **Good Retail**: there are still "good" brick and mortar locations that could be part of a REIT's portfolio
  - **Consumer Spending**: despite the difficult year that many Americans have had, there appears to be a decent amount of discretionary spending and that market share is up for grabs, due to less travel and leisure expenses
  - **Restaurants / Movie Theatres**: both industries appear to be slowly opening and consumers are seemingly willing to return to those activities

Statistics on Real Estate Filings

March 2021 and 2021 as a whole has been a busy year for real estate chapter 11 filings

- Reorg Research has reported that March 2021 and 2021 have been busy years for real estate filings, including REITs, as a result of the global pandemic and other macroeconomic factors facing the industry





Reorg Research

Liquidity Preservation

Many REITs have voluntarily elected to temporarily close some or all of their hotels, slash dividends and postpone expansion projects to preserve cash

- **The GEO Group Inc.:** on April 7, 2021, the company announced that its board of directors has suspended the company's quarterly dividend payments "with the goal of maximizing the use of cash flows to repay debt, deleverage, and internally fund growth."
  - The company stated that it currently intends to maintain its corporate tax structure as a REIT, but the board has determined to undertake an evaluation of its structure as a REIT.
- **CoreCivic**: Negative results as a consequence of lower utilization of existing contracts with ICE.
  - Decided to "de-REIT" (i.e., convert to corporation) due to pressures from creditors and enhanced future political risk.
- **Hersha Hospitality Trust:** engaged in a number of transaction including:
  - $216 million in gross proceeds from six property sales, five of which have yet to close;
  - amendments to its credit facility that push out the maturity of its term loan to August 2022 and extend the financial covenant holiday for its revolver until the first quarter of 2022; and
  - a new up to $200 million unsecured note private placement of which $150 million would be drawn immediately.
- **Ashford Hospitality Trust Inc.:** Ashford recently sold Embassy Suites Midtown Manhattan to repay lenders on the property which was secured by a senior mortgage and two mezzanine loans.
- **Service Properties Trust:** SVC transitioned branding and management for 78 hotels to subsidiaries of Sonesta International Hotels Corporation, or Sonesta, from Marriott International, Inc. Ten additional hotels are expected to transition to Sonesta by the end of March.

Case Study: CBL & Associates

CBL & Associates ("CBL") is one of the more major REIT's that recently filed as a result of the pandemic

- On November 1, 2020, CBL filed for chapter 11 in the Southern District of Texas (Houston Division)
- CBL owns and manages 107 properties totaling about 67 million square feet across 26 states, primarily in the southeastern and Midwestern United States
  - The company wholly owns approximately 66 properties, owns joint venture interests in approximately 33 properties, and manages approximately eight (8) properties for third parties. The portfolio includes 62 malls, 23 "associated centers" adjacent to malls, 34 outparcels, six community centers, four office buildings and four self storage facilities
- Events leading up to chapter 11 included the following:
  - In mid-March 2020, the debtors sought to draw down on its remaining $280 million revolver to get through the COVID pandemic shutdown and resulting stress on retail tenant rent payments
  - The credit agreement included a liquidity covenant, preventing CBL from holding more than $100 million
  - The company drew down on the revolver in two draws, $100 million would be held and $180 million would be invested in U.S. Treasuries
  - The company, however, was unable to purchase U.S. Treasuries due to scarcity in those securities
  - No written waiver was ever provided and CBL's auditors insisted that there was a default in the liquidity covenant
  - Wells Fargo sent CBL multiple notices of default, and CBL disclosed the liquidity covenant default in its 10-Q
  - Wells Fargo sought a collection action to seize control of approximately 22 properties pledged as security for the $1.1 billion secured credit facility
- The debtors and Wells Fargo spent considerable time negotiating and arguing about whether the "non-monetary" liquidity covenant default was a Default under the credit agreement
- After months of litigation and negotiations, CBL filed an amended Plan and Disclosure Statement that reflects the agreement between and amongst the consenting bank lenders and the consenting noteholders

Case Study: CoreCivic

On August 5, 2020, CoreCivic announced its plan to convert from a REIT to a corporation, effective January 1, 2021

- CoreCivic is currently the nation's largest owner of partnership correctional, detention, and residential reentry facilities.
- CoreCivic currently manages nearly 19 million square feet of real estate used by government agencies, making it the largest private owner of government-utilized real estate.
- **Macroeconomic Industry Trends & COVID-19**: In early 2020, private for-profit prisons fell out of favor with capital providers (i.e., ESG investment standards), with many exiting the space and / or refusing to lend to related issuers.
- The conversion allowed CoreCivic to delever its balance sheet from 3.9x to a 2.5x target leverage ratio
- The company was also able to address the $250 million and $916 million of upcoming 2022 and 2023 debt maturities, respectively
- Following the conversion, the company was able to fund its growth initiatives and pursue acquisitions of businesses not permitted as a REIT
- As a corporation, CoreCivic was also able to develop criminal justice properties to lease to government entities as well as provide chronic care, mental health, and substance abuse services for residents and inmates
  - Most of the company's income comes from operating instead of owning real estate, therefore, the justification to transition to a traditional C corporation.
  - That move will arguably give CoreCivic greater flexibility to expand the services offered in its community segment, which weren't available under the REIT structure.

Source: Mortgage Bankers Association

YOUR TEAM

George Klidonas

George Klidonas assists companies, creditors, and equity holders in navigating complex issues arising in the context of financially troubled situations, with a particular focus on corporate restructurings, liability management transactions, recapitalizations, and other special situation transactions.

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Education

LLM, St. John's University School of Law, 2010

JD, Benjamin N. Cardozo School of Law, Yeshiva University, 2007

BS (Business Administration), Fordham University, Gabelli School of Business, 2004

Bar Qualifications

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Profile

Mr. Klidonas provides counsel to key participants in in-court and out-of-court restructurings and special situations, including private and publicly held companies (including portfolio companies), equity owners and sponsors, and distressed investors (including hedge funds and private equity funds). He also advises boards of directors, board committees, and senior management of financially troubled companies on a range of issues, including fiduciary duties and corporate governance.

Mr. Klidonas brings broad industry experience spanning the aerospace, commodities, e-commerce, energy, power, healthcare, hospitality, media, real estate, retail, oil and gas, securities, shipping, technology, and telecommunications sectors. He also regularly represents clients in multijurisdictional and cross-border matters.

Mr. Klidonas has received broad industry recognition for his practice work. His honors include being named a 2021 Outstanding Young Restructuring Lawyer by *Turnarounds & Workouts* and one of the top nominees nationwide to participate in the 2012 Next Generation Program at the National Conference of Bankruptcy Judges.

Mr. Klidonas previously worked on secondment at Kohlberg Kravis Roberts in the Special Situations Group. In this role, he advised the investment team on existing portfolio investments as well as new investments. He also supported the KKR team with distressed investments / transactions and new investment opportunities, including rescue financing, debtor-in-possession and exit financing, recapitalizations, equity investments, distressed trades, and other opportunistic investments.

Earlier in his career, Mr. Klidonas served as a judicial intern to Judge Allan L. Gropper (Ret.), United States Bankruptcy Court for the Southern District of New York.

Experience

Mr. Klidonas' experience includes advising:

- Property Solutions Acquisition Corp. SPAC in its merger with Faraday Future to create a combined company with a value in excess of US$3.3 billion
- The senior creditors committee in relation to the rescue financing and subsequent €2.4 billion debt and equity restructuring of Swissport, a global aviation services business headquartered in Switzerland

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Experience (Continued)

Mr. Klidonas' experience includes advising:

- Superior Energy Services, Inc. and its affiliates in their chapter 11 cases in the US Bankruptcy Court for the Southern District of Texas and restructuring more than US$1.3 billion of their funded debt
- Mallinckrodt plc and its affiliates, a major specialty pharmaceutical company, in their chapter 11 cases in the US Bankruptcy Court for the District of Delaware and restructuring more than US$5.3 billion of their funded debt, as well as opioid-related liabilities
- Lonestar Resources US Inc. and its affiliates in their chapter 11 cases in the US Bankruptcy Court for the Southern District of Texas and restructuring more than US$535 million of their funded debt
- APC Automotive Technologies Intermediate Holdings and its affiliates in their chapter 11 cases in the US Bankruptcy Court for the District of Delaware and restructuring more than US$430 million of their funded debt*
- One Call Corporation in its successful out-of-court US$1 billion equitization of junior debt and US$375 million recapitalization by existing lenders, KKR, and GSO Capital Partners*
- The private equity sponsors and Sable Permian Resources in the successful completion of American Energy Permian Basin's US$2.1 billion out-of-court recapitalization*
- The private equity / creditor investment fund in connection with a term loan facility and debtor-in-possession financing facility in the chapter 11 cases of Furie Operating Alaska, Cornucopia Oil & Gas Company, and Corsair Oil & Gas*
- Sungard AS Capital and its affiliates in their "24-hour prepackaged" chapter 11 cases in the US Bankruptcy Court for the Southern District of New York, and restructuring more than US$1.26 billion of their funded debt, in the fastest chapter 11 case in history*
- Windstream Holdings and its debtor subsidiaries in their chapter 11 restructuring in the US Bankruptcy Court for the Southern District of New York and restructuring more than US$5.6 billion of their funded debt*
- FullBeauty Brands Holdings and its affiliates in their "24-hour prepackaged" chapter 11 cases in the US Bankruptcy Court for the Southern District of New York and restructuring more than US$1.2 billion of their funded debt*
- Cenveo and its domestic subsidiaries in their prearranged chapter 11 cases in the US Bankruptcy Court for the Southern District of New York and restructuring more than US$1 billion of their funded debt*
- rue21 and certain of its affiliates in their chapter 11 restructuring in the US Bankruptcy Court for the Western District of Pennsylvania and restructuring more than US$800 million of their funded debt*
- Avaya and certain of its affiliates in their chapter 11 cases in the US Bankruptcy Court for the Southern District of New York and restructuring more than US$6 billion of their funded debt; *Turnaround Management Association* recognized the successful restructuring of Avaya with its Mega Company Transaction of the Year Award*
- A private equity investment firm in providing US$386 million of debtor-in-possession financing to Performance Sports Group and purchasing substantially all of its assets in a 363 sale for US$575 million, which included the following brands: Bauer Hockey, Mission Roller Hockey, Maverik Lacrosse, Cascade Helmets, Combat, and Easton*
- Sabine Oil & Gas and its subsidiaries in their chapter 11 cases in the US Bankruptcy Court for the Southern District of New York; *Turnaround Management Association* recognized the successful restructuring of Sabine Oil & Gas Corporation with its Large Company Transaction of the Year Award*
- Samson Resources in its chapter 11 cases in the US Bankruptcy Court for the District Delaware and restructuring more than US$4 billion of their funded debt*

**Matter handled prior to joining Latham*

Faculty

Evan B. Blum is a managing director with Alvarez & Marsal in New York, where he provides financial advisory, interim-management and turnaround consulting services. He has more than 20 years of experience representing domestic and international clients on restructuring matters, including assignments in and out of court. Mr. Blum is experienced in both the operational and financial aspects of restructurings and has managed liquidity and business plan issues. He has assessed organizational restructurings as well as negotiated complex balance-sheet restructurings, and has advised boards on strategic alternatives. Mr. Blum represented the debtor in the AmTrust bankruptcy, the holding company of a $16 billon bank. His engagements include representing the debtor in the U.S. Coal and Gas Mart bankruptcies. He also served as CRO of several companies during his career, where he was responsible for global operational restructurings, and has served as financial advisor to numerous middle-market companies. Mr. Blum has been an advisor to many lenders relating to business-plan assessments and balance-sheet recapitalizations throughout a wide range of industries, including manufacturing, construction, retail, media and telecom. He has also served as financial advisor to unsecured creditors' committees and as liquidating trustee, where he has wound down companies. Prior to joining A&M, Mr. Blum served as a principal with GlassRatner, where he was responsible for originating and managing operational and financial restructuring assignments. Previously, he was a managing member of Triax Capital Advisors, a restructuring advisory firm. Mr. Blum was formerly a senior vice president at Communications Equity Associates and a director with Merrill Lynch. He has published articles and participated as a speaker on panels related to a variety of restructuring topics. He was also a lecturer at Pace Business School on restructuring issues. Mr. Blum is a member of ABI and the Turnaround Management Association. He received his B.A. from Cornell University, where he received the Arts & Sciences Dean's Award, and his M.B.A. from Columbia Business School with a concentration in finance and international business, where he graduated with Beta Gamma Sigma honors.

Janine M. Figueiredo is a partner in the Bankruptcy and Restructuring Group at Hahn & Hessen LLP in New York, where she serves as the firm's hiring partner. Her practice focuses on all aspects of distressed financial situations, including both in-court and out-of-court financial restructurings, corporate reorganizations and liquidations. Ms. Figueiredo's experience spans numerous industries, such as retail, manufacturing, wholesale/distribution, mortgage lending, securitizations and servicing, specialty chemicals, satellite and airlines. Her clients include all parties involved in these distressed situations, including debtors, official committees of unsecured creditors, liquidating trustees and plan administrators, secured and unsecured creditors, and asset-purchasers. Her expertise includes negotiating and litigating all issues that may arise during a bankruptcy or restructuring process, including issues such as financing disputes, asset sales, valuation, substantive consolidation, recharacterization, equitable subordination and avoidance actions, as well as company issues such as employee and ERISA matters and environmental liability. Ms. Figueiredo has represented official committees of unsecured creditors in diverse and notable chapter 11 cases such as Vertellus Specialties Inc., Hancock Fabrics Inc., AWI Delaware Inc., White Rose and Nell's, Reichhold Holdings US Inc., Furniture Brands International, Inc., Syms Corp and Filene's Basement, 4Kids Entertainment, Inc., Zestra Laboratories Inc. and New Century TRS Holdings, Inc. She has also represented various parties in interest in recent notable chapter 11 cases such as Avianca Holdings S.A., LATAM Airlines Group S.A., Intelsat S.A., JCPenney Co., Inc. Neiman Marcus Group LTD LLC and Ascena Retail Group

Inc. Ms. Figueiredo has been listed in *New York Super Lawyers*. She is an ABI member and previously served on its Unsecured Trade Creditors Committee. She also currently serves on the executive board of the Turnaround Management Association as its vice president of Marketing and Communications, and has served in numerous leadership roles at the NYC Chapter of the TMA, including as its general counsel, president and chairwoman. Ms. Figueiredo received her B.S. in 1998 from Fordham University and her J.D. *cum laude* in 2002 from Brooklyn Law School.

Eve H. Karasik is a partner at Levene, Neale, Bender, Yoo & Brill L.L.P. in Los Angeles and focuses her practice on corporate restructuring and bankruptcy, including the representation of chapter 11 debtors, unsecured creditor and equity committees, trustees, secured and unsecured creditors, and parties involved in bankruptcy litigation and appeals. Her prior debtor engagements include Valley Economic Development Corp. Marshall Broadcasting, Inc., Cornerstone Apparel, Inc., Anna's Linens, Inc., Associated Third Party Administrators and Allied Fund Administrators LLC, Imperial Capital Bancorp, Inc., Utah 7000, LLC, Falcon Products, Inc., Clark Retail Group and U.S. Aggregates, Inc. Her creditor and equity committee cases include PHI, Inc., New Meatco Provisions, LLC, Circus and Eldorado Joint Venture, Riviera Holdings Corporation, Eurofresh, Inc., USA Capital First Trust Deed Fund, Aladdin Gaming, Inc. and Amerco. Ms. Karasik has represented clients in state and federal receiverships, and assignments for the benefit of creditors. She served as trustee's counsel in SIPA liquidations (W.S. Clearing, Inc.), examiner's counsel in Fontainebleau Las Vegas Holdings, LLC and counsel to Bankruptcy Code § 524(g) settlement trusts. Ms. Karasik is an American College of Bankruptcy Fellow and is ranked in *Chambers USA* as a Band 3 Bankruptcy and Restructuring attorney. She received the Century City Bankruptcy Attorney of the Year (2015) and the Turnaround Management Association's "2007 Large Company Transaction of the Year" award. Ms. Karasik serves as ABI's newly created Vice President-Diversity & Inclusion, is the incoming president of the Los Angeles Bankruptcy Forum, and is a member of several other professional organizations. She received her B.A. with high honors from the University of California, Berkeley in 1984 and her J.D. from the University of Southern California in 1991, where she was a member of the Order of the Coif.

George Klidonas is a partner in the Restructuring & Special Situation Group of Latham & Watkins LLP in New York, where he focuses his practice on in-court and out-of-court corporate restructurings. His practice involves representing companies (including portfolio, privately held and public companies), equity owners and sponsors, and committees and distressed investors (including hedge funds and private-equity funds) in acquisitions, out-of-court restructurings and chapter 11 cases. Mr. Klidonas also advises boards of directors, board committees and senior management of financially troubled companies on a range of issues, including fiduciary duties and corporate governance. Recent examples of restructurings that he was involved with include American Energy - Permian Basin, LLC, APC Automotive, FULLBEAUTY Brands Holdings Corp., Lonestar Resources US Inc., Mallinckrodt plc, One Call Corp., Sungard AS Capital, Inc., Superior Energy Services, Inc. and Windstream Holdings, Inc. Mr. Klidonas regularly speaks on legal and financial topics for leading organizations, including CNBC, the Turnaround Management Association, Wharton Restructuring and Distressed Investing Conference and ABI. He also regularly speaks at the Benjamin N. Cardozo School of Law. Mr. Klidonas previously worked on secondment at Kohlberg Kravis Roberts in its Special Situations Group. In this role, he advised the investment team on existing portfolio investments as well as new investments. He also supported the KKR team with distressed investments/transactions and new investment opportunities, including rescue financing, debtor-in-possession and exit financing, recapitalizations, equity investments, distressed trades and other opportunistic investments. Mr. Klidonas received his undergraduate degree from Fordham University, his J.D. from the Benjamin N. Cardozo School of Law and his LL.M. in restructuring from St. John's University School of Law.

Elizabeth B. Vandesteeg, CIPP is a partner in the Financial Services & Restructuring Group at Levenfeld Pearlstein in Chicago, where she focuses on identifying risk exposure and mitigating liability for clients, with a concentration in the areas of bankruptcy, creditors' rights, commercial litigation, and data security and privacy. She represents secured creditors, debtors, unsecured creditors, creditors' committees, landlords and shareholders in bankruptcy courts throughout U.S., as well as clients in civil litigation in federal and state courts. Her passion is helping clients identify and resolve potential problems related to creditors' rights, troubled businesses, bankruptcy and workouts, and business disputes. Ms. Vandesteeg advises clients on cybersecurity and privacy compliance and regulatory issues. She also guides clients in developing and implementing information security programs that are reasonable and appropriate for their specific business needs and risks, as well as advising them in responding to data breaches, and was instrumental in launching the *ABI Journal*'s Cyber U column. Previously, Ms. Vandesteeg was with Sugar Felsenthal Grais & Helsinger LLP, where she was a partner and member of the firm's Executive Committee. She received her B.A. from Columbia University and her J.D. from Boston College.