AMERICAN BANKRUPTCY INSTITUTE

2021 Caribbean Virtual Insolvency Symposium

Business Track

Landlord and Tenant Dilemmas in a COVID and Post-COVID Environment

Sponsored by Kozyak Tropin & Throckmorton

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U.S. Bankruptcy Court (S.D. Tex.) | Houston

Hon. Robert A. Mark
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CONCURRENT SESSION

2021

Landlord and Tenant Dilemmas in a Covid and Post-Covid Environment

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Goals for the program

- Identify and analyze the pandemic-driven challenges and approaches to leases by debtors and landlords.
- Summarize impacts of The Coronavirus Combined Consolidated Appropriations Act, 2021, (H.R. 133) ("Cares Act II" or "the Act") passed on December 23, 2020, signed into law on December 27, 2020.
- Overview of potential remedies: force majeure, doctrine of impracticability, frustration of purpose, material adverse change/material adverse effect, and the limits of 11 U.S.C. §365(d)(3).
- Discussion of landlord decisions in the event of default…choices, choices! Confidential modifications, forbearance, eviction? What are the impacts on other tenants?
- Views from the Bench! Judge Isgur and Judge Mark to discuss recent case law including *In re CEC Entertainment, Inc.* (Chuck E. Cheese) (force majure, frustration of purpose)), *In re Townhouse Hotel, LLC*, 1:20-bk-19997 and *In re Cinemex USA Real Estate Holdings, Inc.*, Case No. 1:20-bk-14695.
- Given the strictures of 11 U.S.C. §365(d)(3), does a bankruptcy filing accomplish anything for debtors with lease defaults due the pandemic?

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.** This subsection shall not be deemed to affect the trustee's obligations under the provisions of subsection (b) or (f) of this section. Acceptance of any such performance does not constitute waiver or relinquishment of the lessor's rights under such lease or under this title.

A Call for Congress to Act

"Tenants should not have to live in fear of eviction because of a calamity that was not of their making. Landlords should not have to live in fear of losing their hard-earned investments in our community because of a calamity that was not of their making. Our citizens should not have to fight each other to avoid economic and personal ruin. Courts are an imperfect tool to resolve such conflicts. … The court respectfully implores our lawmakers to treat this calamity with the attention it deserves. It is, but for the shooting, a war in every real sense. Hundreds of thousands of tenants pitted against tens of thousands of landlords – that is the tragedy that brings us here."

Apartment Association of Los Angeles County, Inc. v. City of Los Angeles, Case No. 2:20-cv-05193-DDP-JEM, Doc. No. 80 (C.D. Cal. Nov. 13, 2020) (AAGLA filed a federal lawsuit against the City alleging eviction moratorium was unconstitutional and an abuse of power and moved for a preliminary injunction to stop the City's eviction ban and rent freeze. The Court denied the motion, finding that any impairment on the landlords' contractual rights was reasonable under the extraordinary circumstances of the pandemic and that irreparable harm was missing).

The Coronavirus Combined Consolidated Appropriations Act, 2021, (H.R. 133) ("Cares Act II" or "the Act") passed on December 23, 2020, signed into law on December 27, 2020.

Among other provisions, the Act makes the following significant changes to a debtor's options for handling non-residential leases and rent:

- Previously, debtors had a maximum of 210 days from the petition date to determine whether to assume or reject a non-residential lease of real property. The Act temporarily extends this time for 90 days, providing debtors a total of 300 days from the petition date to decide whether to assume or reject. (This extension sunsets in two years).

- Subchapter V debtors now have an additional 60 days to cure their rent defaults, for up to 120 days, if the court finds that the debtor is continuing to experience a material financial hardship due, directly or indirectly, to the Covid-19 pandemic. (This extension also sunsets in two years).

- Offers protections to landlords under leases of non-residential property and suppliers accepting payments in the 90 days pre-petition if they had agreed to payment extensions due to the pandemic; under the Act, these payments are not subject to clawback as a preference under 11 U.S.C. § 547. If a landlord or supplier enters into an agreement with a debtor on or after March 13, 2020, and the agreement does not provide for payments of fees, penalties, or interest greater than the amount contemplated under the lease or supply contract, then the landlord/supplier is protected from potential demands for return of these payments by a debtor or other party acting on behalf of the estate.

Developing Case Law

- **Force Majeure**
- **Doctrine of Impracticability**
- **Frustration of Purpose**
- **Material Adverse Change / Material Adverse Effect**
- **11 U.S.C. § 365(d)(3) and 11 U.S.C. § 105(a)**
- **Preliminary Injunctions**

Force Majeure Clauses

(Read the fine print!)

A force majeure clause is a "contractual clause that excuses performance of contractual obligations—either wholly or for the duration of the force majeure—upon the occurrence of a covered event which is beyond the control of either party to the contract." *In re Flying Cow Ranch HC, LLC*, 2018 WL 7500475, at *2 (Bankr. S.D. Fla. June 22, 2018). "Force majeure is a phrase coined primarily for the convenience of contracting parties wishing to describe the facts that create a contractual impossibility due to an 'Act of God.'" *Perlman v. Pioneer Ltd. P'ship*, 918 F.2d 1244, 1248 n.5 (5th Cir. 1990) (citing 6 A. Corbin, *Corbin on Contracts,* § 1324 (1962)).

-*In re CEC Entertainment, et al*, Case No. 20-33163 (Doc. No. 1482) (Bankr. S.D. Tex. Dec. 14, 2020).

Force Majeure – excused percentage of rent payments

In re Hitz Restaurant Group, 616 B.R. 374 (Bankr. N.D. Ill. 2020):

- A debtor's obligation to pay rent post-petition was partially excused based on an interpretation of the force majeure provision in the lease, the fact that the Governor's COVID-19 stay-at-home order limited restaurant operations to curbside pick-up, and the fact that the debtor conceded it could use 25% of the restaurant for its limited operations.
- Tenant/debtor argued, and the Court agreed, the force majeure clause excused rent payment post-petition up to 75% of the post-petition rent.

Force Majeure – did not apply to monetary obligations under lease

In re CEC Entertainment, et al, Case No. 20-33163 (Doc. No. 1482) (Bankr. S.D. Tex. Dec. 14, 2020):

- Although 365(d)(3) unambiguously requires debtors to perform their obligations under commercial leases, if either a lease or state law permits the abatement or reduction of rent, then 365(d)(3) will reflect such abatement or reduction.
- The Court examined a number of leases in different states, one of which contained an "anti-force majeure clause" expressly providing that the lease obligations would not be affected by acts of God or other causes beyond the reasonable control of either party.
- The force majeure clauses in the remaining leases contained carve outs providing that the force majeure clauses would not apply to the inability to pay any sum due under the lease.

Doctrine of Impracticability

Section 261, Restatement of Contracts, Discharge by Supervening Impracticability:

- "Where, after a contract is made, a party's performance is made impracticable without his fault by the occurrence of an event the non-occurrence of which was a basic assumption on which the contract was made, his duty to render that performance is discharged, unless the language or the circumstances indicate the contrary.

***Martorella v. Rapp*, Case No. 20 MISC 000153, 2020 WL 2844693 at *1 (Mass. Land Court, Nantucket County, June 1, 2020):**

- Martorella and a former business associate were in a dispute over a house in Nantucket, Mass. Martorella eventually purchased it at an auction for $1.8 million and signed a purchase agreement.
- COVID-19 hit, and Martorella stated he had difficulty obtaining the financing needed to complete the purchase. Martorella's wife also contracted COVID-19 and was admitted to the hospital and placed on a ventilator.
- The Court found that the doctrine of impracticability did not apply to excuse performance. There were no financing contingencies in the purchase agreement. Additionally, because Ms. Martorella was not a party to the agreement, the Court found her illness did not excuse performance.

Frustration of Purpose

Section 265, Restatement of Contracts:

- Where, after a contract is made, a party's principal purpose is substantially frustrated without his fault by the occurrence of an event the non-occurrence of which was a basic assumption on which the contract was made, his remaining duties to render performance are discharged, unless the language or the circumstances indicate the contrary.

Material Adverse Change / Material Adverse Effect (MAC/MAE)

- A MAC or MAE clause may allow a party to "cancel" a deal if there is a material adverse change or event that threatens the fundamentals of the deal itself.
- Litigation over MAC or MAE clauses is fact-intensive and contract specific. Whether a public health crisis, like COVID-19, is enough to trigger a MAC or MAE clause will depend on whether the party invoking the clause can meet its burden to show COVID-19 caused a change that is material to the whole agreement.
- *In re Lucky Brand Dungarees, LLC*, Case No. 20-11768, 2020 WL 4698654 at *1 (D. Del. Aug. 12, 2020): COVID-19 specifically excluded as a MAE in the Bankruptcy Court's order approving a sale free and clear of liens.

Landlord Options with Distressed Retail Tenant

- Default, eviction, state law remedies

  Drawbacks: local moratoria, co-tenancy provisions, and challenging market
- Forbearance or deferral agreements

  Drawbacks: preference risk, addressed by Cares Act II
- Lease Amendment

  Drawbacks: longer term reductions and lower starting point for post-filing negotiations

Lease Amendment – Confidentiality in Bankruptcy?

- As with the underlying leases, lease amendments contain commercially sensitive terms
- Landlords and Debtors both benefit from keeping amendment terms confidential
- "During a Chapter 11 reorganization, a debtor's affairs are an open book and the debtor operates in a fish bowl." *In re Alterra Healthcare, Corp.*, 353 B.R. 66, 73 (Bankr. D. Del. 2006).

2020 Rent Deferral Innovations: Modell's Sporting Goods

- Modell's filed on March 11, 2020, in New Jersey as a liquidating 11. On March 23, 2020, Modell's motion was filed pursuant to section 305(a) and section 105, not section 365(d)(3).
- The New Jersey Bankruptcy Court granted an initial 30-day deferral relying on the unforeseen circumstances presented by the COVID-19 pandemic and related shutdowns.
- In April, the debtors sought an additional 30-day deferral, as the store-closing sales still could not get underway. The contractual remedies of frustration of purpose and intervening impossibility were argued.
- Consensually resolved after extensive mediation among debtors, landlords, lender, and committee in connection with final cash collateral.

2020 Rent Deferral Innovations: Pier 1

- Pier 1 Imports, Inc. filed for bankruptcy on February 17, 2020 in the Eastern District of Virginia. The case was filed with a few possible outcomes: reorg/restructure; sale of a going concern; or liquidation. The pandemic ultimately doomed the enterprise.
- On March 31st, Pier 1 sought emergency relief pursuant to section 105(a), the Court's equitable powers, frustration of purpose, the doctrine of impossibility, etc. On the date the motion was filed, the debtors were already 43 days into the 60 days that would be permitted by section 365.
- At an April 2nd hearing, the Bankruptcy Court granted an extension through and including April 28th, leaving the door open for additional relief, if cause could be shown. No adequate protection was granted to the landlords beyond a budget showing available funds.

2020 Rent Deferral Innovations: Pier 1 (cont'd)

- In finding that the deferred rent would have administrative priority, following its prior Circuit City ruling on stub rent, the Court ruled that section 365(d)(3)'s 60-day limitation was not offended by a further deferral.
- The Court determined that because the code does not specify a remedy for a violation of section 365(d)(3), the remedy is only an administrative claim and landlords have no right to compel payment under 365(d)(3).
- The Court also found that to the extent landlords were entitled to adequate protection, the debtors' continued payment insurance, security payments, and utility payments, combined with the promise to make pay the "catch-up" rent in July constituted adequate protection of landlords' interests.
- The Debtors ultimately did not make the promised July payment, but eventually paid landlords' administrative claims in full by the fall.

2020 Rent Deferral Innovations: Stage Stores

- Stage Stores, Inc. filed bankruptcy on May 10, 2020 in the Southern District of Texas. On May 11, 2020, the debtors filed an emergency motion to defer payment of certain lease obligations, which was only heard on May 27th.
- The order held that, for stores that were closed on the petition date, rent could be deferred until the earlier of a) the date on which the store reopens or b) a period of 60 days from the petition date, tying the deferral relief to the Debtors' actual operations at each location.

2020 Rent Deferral Innovations: J.C. Penney

- J.C. Penney filed on May 15, 2020, in the Southern District of Texas. At the time of their filing 474 stores were open and another 340 were scheduled to be open in a matter of weeks. The debtors' deferral motion was filed on May 28th.
- The debtors emphasized that granting the related relief would help obtain rent concessions from landlords. It is worth noting that, at the time the debtors filed their motion, they had $554 million in cash.
- On June 11th, the Court granted the debtors' request through and including July 13th (the 60th post-petition day) pursuant to the limitations of section 365(d)(3), requiring payment immediately upon expiration of the deferral period.

2020 Rent Deferral Innovations: 24 Hour Fitness

- 24 Hour Fitness Worldwide, Inc. filed on June 15, 2020 in Delaware. The debtors filed their rent deferral motion on June 16. The hearing was set for June 29th.
- 235 locations were open at the time the motion was filed, but another 75 remained closed. Landlords had already endured months of unpaid pre-petition rent, at the time the request was made.
- The request was granted, and then extended, based upon landlords' ability to opt in to a partial payment protocol: if the location was open, full rent would be paid. If a government order kept a location closed, landlords would receive partial payment. If the debtor chose to keep a location closed that could have been opened under law, full rent would be paid.
- Partial payment protocol changed the course of the case. It took financial pressure off landlords, covered costs and periodic payments, restored equilibrium, and paved the way for lease amendments resulting in a reorganization in December, despite the persistence of COVID-related restrictions.

2020 Rent Deferral Innovations: Ascena

- Ascena Retail Group, Inc. (Ann Taylor) filed for Bankruptcy on July 23, 2020 in the Eastern District of Virginia. The debtors filed their rent deferral motion on July 31 (38 days after the petition date) and requested a hearing on August 20 (58 days after the petition date).
- The hearing was continued by the debtors twice, and ultimately was never held.
- The debtors and Committee struck a global deal agreeing to defer rent through and including September 18 and checks for all unpaid post-petition rent were cut on September 18.

Rent Deferral Thoughts

- Consider not whether a debtor can seek a rent deferral, but whether a debtor should defer post-petition rent.
- Timing of repayment of deferred obligations: plain language of statute.
- Self-help: adjournment to mootness?

A study in determination…

In re Townhouse Hotel, LLC

Case No. 20-19997-RAM, Bankr. S.D. Fla.

Background facts: Hotel closed by government order in April and most of May. It reopened in June and was open on the petition date (September 16), but revenues were down sharply. Prior to the petition date, hotel landlord filed eviction action in state court. Parties dispute whether lease is terminated. Debtor is five months in arrears on petition date.

In re Townhouse Hotel, LLC

9/16	Petition Date
9/30	Debtor files Motion to Extend Time to Pay Rent for October & November 2020
10/1	Debtor files Motion to Determine Rent
10/13	Landlord files Motion for Relief from Stay/Adequate Protection/Determination that Stay does not apply
11/12	Court Enters Order (1) Denying, In Part, Debtor's Motion To Determine Rent, (2) Granting Debtor's Motion For Extension of Time to Pay Rent, and (3) Reserving Ruling on Landlord's Motion For Relief From the Automatic Stay

- Debtor had made no post-petition rent payments to Landlord
- Court ordered Debtor to pay Landlord $154,683.82 ($77,341.91 per month) as rent owing under 11 U.S.C. § 365(d)(3) for the period beginning September 16, 2020 and ending November 16, 2020, such period being the "First 60 Days" of the case.
- If the Debtor failed to pay the Landlord $154,683.82 by November 16, 2020, the Landlord may file a Certificate of Noncompliance and upload an order granting the Landlord stay relief because of the Debtor's failure to comply with this Order and its obligations under 11 U.S.C. §365(d)(3).
- Court grants Landlord's request for adequate protection payments and directs Debtor to make payments in the full amount due under the lease until the lease is assumed or rejected.
- Court reserves ruling to determine whether the lease terminated prior to the filing of the Chapter 11 case.

In re Townhouse Hotel, LLC, continued

11/16 Debtor seeks reconsideration and appeal order authorizing adequate protection and denying motion to determine rent and seeks stay pending appeal

11/18 Landlord files Notice of Non-Compliance

12/07 Court enters order denying Debtor's Motion for Reconsideration and for Stay Pending Appeal

12/08 Court enters order granting Landlord's Motion for Relief from the Automatic Stay

12/17 Debtor appeals order denying Debtor's Motion for Reconsideration and for Stay Pending Appeal

12/24 Debtor files Motion to Extend Time to Assume Executory Contracts and Leases

12/28 Debtor files (*inter alia*) Motion to Assume and Assign Lease

Evidentiary Hearing Ensues…

In re Townhouse Hotel, LLC, continued

(January 14 was a very busy day)

1/14 Court issues bench ruling finding that the lease was not terminated prepetition and that it remained an unexpired lease under section 365 notwithstanding the order granting stay relief.

1/14 Court denies Debtor's Motion to Assume and Assign Lease without prejudice because the Debtor had not reached a final agreement with the proposed assignee; orders the Debtor to pay the Landlord $232,026 in cleared funds no later than 5:00 PM on January 19, 2021, failing which the Court would enter an order denying the Debtor's Motion to Extend Lease Assumption Deadline, deeming the lease rejected, and compelling immediate surrender of the leasehold; denies Debtor's request to reimpose the automatic stay without prejudice to the Debtor filing an adversary proceeding against the Landlord and moving for injunctive relief.

1/14 Court sets further hearing on hearing on Debtor's Motion to Extend Lease Assumption Deadline

1/14 Debtor files Emergency Motion to Incur Debt, Grant Security Interests and Superpriority Claims, seeking cash advances of up to $300,000 to fund rent payments per the Court's order that payment be made by 5:00pm on January 19. Debtor sought a hearing prior to 4:30pm on January 19. Debtor stated it expected to assume and assign the lease as part of a sale of the hotel business for an amount of $1,600,000, plus the return of the security deposit. Hearing is scheduled on January 20.

Townhouse Hotel LLC vs. Universal Investments Unlimited, Inc.

- Debtor files complaint and motion for preliminary injunction on January 15 seeking injunctive relief in the form of an order enjoining state court proceedings after the state court determines amount of rent due because the state court can require payment in as little as one business day, which would destroy the Debtor's ability to assume, and assign, the lease to maximize value of the leasehold for the bankruptcy estate. State court hearing on rent determination was scheduled for January 19.
- Debtor claimed it identified a Buyer and engaged in substantial negotiations for the sale of the leasehold and assignment of the Lease which would result in full cure to the Landlord and a substantial dividend to secured as well as unsecured creditors.
- Debtor claimed Landlord interfered with the potential buyer and offered to work directly with the buyer and cut the Debtor out of the deal.
- Hearing held on January 20
- Preliminary injunction granted on interim basis on January 21, further hearing set for February 16. Landlord temporarily enjoined from seeking further relief in state court eviction action.

Meanwhile, back in the main case…

1/19	Debtor files Amended Motion to Assume Lease
1/19	Debtor files Motion to Extend Time to Pay Post-Petition Rent
1/19	Landlord files Notice of Non-Compliance
1/20	Hearing held on Motion to Extend Time to Pay Post-Petition Rent
1/21	Court enters Order Granting Debtor's Motion to Extend Time to Pay Post-Petition Rent directing the Debtor to pay Landlord $232,026 in cleared funds by 5:00pm on January 21
1/21	Court enters Order Granting Debtor's Motion to Extend Time to Assume Executory Contracts and Leases finding that Debtor established cause under 11 U.S.C. § 365(d)(4)(B)(i) to grant a 90-day extension IF the Debtor timely paid rent arrearages and going forward rent
1/22	Court approves $500,000 loan from insiders to fund the post-petition rent obligations
1/25	Landlord files Notice of Non-Compliance stating Debtor failed to pay total rent due in the amount of $77,341.91 in cleared funds by 5:00 p.m. on January 25, 2021 and requests order terminating Debtor's extension, deeming the lease rejected, and compelling immediate surrender
1/25	Debtor objects to Notice of Non-Compliance, claiming it paid the full rent due on January 25 in two separate wire transfers

Stay tuned for future developments…

Abatement Test Motion Case Study: Chuck E. Cheese

- CEC Entertainment, Inc. (Chuck E. Cheese) filed bankruptcy in the Southern District of Texas, on June 25, 2020. On the 28th of June, the debtors filed their emergency motion to extend the time to perform certain lease obligations. The matter was heard on less than 24 hour notice and the debtors' request was granted on an interim basis.
- After a second hearing, the initial 60-day extension was approved on a final basis, with all deferred obligations to be paid upon expiration of the deferral period.

Abatement Test Motion Case Study: Chuck E. Cheese, Continued

- Within 4 hours of final approval of the rent deferral motion, the debtors filed a motion seeking to abate rent at 141 locations in 7 states affected by governmental restrictions.
- Requested relief included abatement of pre-petition and post-petition rent
  - *Premature general unsecured claim adjudication?*
- Negotiated a partial payment protocol in exchange for a standstill agreement.
- Landlords could choose to opt in or request evidentiary hearing on abatement motion

Abatement Test Motion Case Study: Chuck E. Cheese, Continued

- Outcome
  - Most landlords chose partial payment and standstill through November, Debtors stopped paying rent entirely at end of standstill
  - 7 landlords requested and obtained evidentiary hearings
  - 6 out of 7 defeated abatement motion
- Lease amendments with 330 landlords, rejected 60 leases, just under 500 go-forward leases assumed at plan confirmation in December

Questions

- Was the “test motion” construct successful? Compare to Ruby Tuesday (RTI Holding Company), Case No. 20-12456, filed October 7, 2020 in Delaware.
- Does filing an abatement motion and exercising “self-help” by withholding rent moot the requested relief?

Faculty

Patricia A. Redmond is an Insolvency and Restructuring shareholder in Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.'s Miami office. She lectures locally and nationally on various aspects of bankruptcy, particularly on chapter 11 issues, and is frequently quoted in *The Miami Herald* and other business publications. Ms. Redmond's bankruptcy practice concentrates on creditors' rights and corporate restructuring in bankruptcy court and in out-of-court workouts. She also has experience representing creditors' committees, secured creditors and debtors in chapter 11 cases. Ms. Redmond is the recipient of The Florida Bar's 2019 Tobias Simon Pro Bono Service Award and the American Bar Association's 2017 Jean Allard Glass Cutter Award. She is also a fellow of the American College of Commercial Finance Lawyers. Ms. Redmond has been recognized with the highest ranking in *Chambers USA*, as a "Top 100 Florida Super Lawyer" and "Top 50 Women Florida Super Lawyer" by *Florida Super Lawyers*, and as the "Miami Bankruptcy and Creditor Debtor Rights/Insolvency and Reorganization Law Lawyer of the Year" by *The Best Lawyers in America*. She is a past president of the American Bankruptcy Institute from 2013-14 and served as the initial chair of ABI's "40 Under 40" celebration. Ms. Redmond received her J.D. in 1979 from the University of Miami.

Tiffany Payne Geyer is a partner with BakerHostetler in Orlando, Fla., and practices primarily in the areas of bankruptcy and creditors' rights. She has represented both corporate and individual debtors in chapter 11 cases and individuals in chapter 7 cases, and her clients include health care businesses and medical professionals, investment bankers and financial advisors. She has also represented clients in the hospitality sectors, and has assisted in representing debtors in the energy sectors. Ms. Geyer has negotiated multiple settlements of guarantor liability and has experience with assignments for the benefit of creditors. She has also represented secured creditors, unsecured creditors, landlords and panel trustees. Ms. Geyer has been listed in *Chambers USA* for Bankruptcy/Restructuring in Florida and in *The Best Lawyers in America* in 2020 for Bankruptcy and Creditor/Debtor Rights/Insolvency and Reorganization Law, and she is a member of the Central Florida Bankruptcy Law Association (CFBLA), Federal Bar Association, American Bar Association and the International Women's Insolvency & Restructuring Confederation (IWIRC). She received her B.A. with honors in political science and public administration in 1998 from the University of Central Florida, and her J.D. in 2000 from the University of Florida Levin College of Law, where she received the Book Award for Legal Drafting and was a member of a trial competition team.

Hon. Marvin Isgur is a U.S. Bankruptcy Judge for the Southern District of Texas in Houston, appointed Feb. 1, 2004, and also served as Chief Judge. His first bankruptcy experience was as an expert witness before the bankruptcy court and then as a principal of a number of real estate partnerships that became chapter 11 debtors. From 1978-1990, Judge Isgur was an executive with a large real estate development company in Houston. Between 1990 and 2004, he represented trustees and debtors in chapter 11 and chapter 7 cases, as well as various parties in 14 separate chapter 9 bankruptcy cases. Judge Isgur has written over 500 memorandum opinions and was one of the first judges to issue opinions interpreting the 2005 Bankruptcy Abuse Prevention and Consumer Protection Act. He is one of the principal organizers of the annual University of Texas Consumer Bankruptcy Conference in Galveston, Texas, and is a frequent speaker at continuing education programs. Judge Isgur is a member of the Judicial Conference Committee on Court Administration and Case Management, ap-

pointed by Chief Justice John Roberts, and active participant in national bankruptcy rules process; he also led a national compromise effort on chapter 13 plans. He received his bachelor's degree from the University of Houston in 1974, his M.B.A. with honors from Stanford University in 1978, and his J.D. with high honors from the University of Houston in 1990.

Hon. Robert A. Mark was appointed a Bankruptcy Judge for the U.S. Bankruptcy Court for the Southern District of Florida in 1990 in Miami and served as Chief Judge from 1999-2006. Prior to his appointment to the bench, Judge Mark served as head of the bankruptcy department of the Miami firm of Stearns, Weaver, Miller, Weissler, Alhadeff & Sitterson, PA. He has served on the National Conference of Bankruptcy Judges Endowment for Education and frequently lectures at continuing education seminars, including the National Conference of Bankruptcy Judges and the Federal Judicial Center's educational programs for bankruptcy judges. Judge Mark is a Fellow of the American College of Bankruptcy and is an author for *Collier on Bankruptcy*. His community activities include participation in a program that offers internships to minority law students, and participation in financial education programs for high school students through the Bankruptcy Bar Association's CARE program, which teaches students about the dangers of credit card abuse. Judge Mark is a Fellow of the American College of Bankruptcy and an author for *Collier on Bankruptcy*. He is a graduate of Boalt Hall School of Law, University of California at Berkeley.

Laurel D. Roglen is an associate with Ballard Spahr LLP in Wilmington, Del., where she focuses her practice on representing corporations as debtors and debtors-in-possession in chapter 11 bankruptcy proceedings. She previously clerked for Hon. Mary F. Walrath of the U.S. Bankruptcy Court for the District of Delaware. Ms. Roglen is a member of the International Women's Insolvency & Restructuring Confederation and is listed in *The Best Lawyers in America*'s "Ones to Watch" for Litigation - Bankruptcy (Wilmington) in 2021. She is admitted to practice in Delaware and New York. Ms. Roglen received her B.A. in 2008 from Pennsylvania State University and her J.D. *cum laude* in 2011 from Hofstra University School of Law, where she received ABI's Medal of Excellence, the American College of Bankruptcy Distinguished Law Student award and the Benjamin Weintraub and Alan Resnick Bankruptcy Law Award, and was managing editor of articles for the *Hofstra Law Review*.