AMERICAN BANKRUPTCY INSTITUTE

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Valuation Developments and Disputes: Where Are We Now?

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CONCURRENT SESSION

2021

Agenda

Valuation Methods and Economic Perspective on Valuation

Case Studies:

Chesapeake Energy Corporation

Quorum Health Corporation

Ultra Petroleum Corporation

Economic Perspective on Valuation

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Insight in Economics™

Roadmap

- Valuation Methods
- Can market evidence be used to evaluate the reasonableness of management projections?
- How can capital adequacy be tested?

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What is the Basis of Value?

- The Question: How Much is a Business Worth?
- Standard of value:
  - Intrinsic value (fair value)
  - Fair market value
  - Acquisition value
  - Liquidation
  - Minority v. majority interest
- Valuation date

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Valuation tools

1. Income Approach
2. Market Approach
3. Other Approaches
4. Discounts and premia

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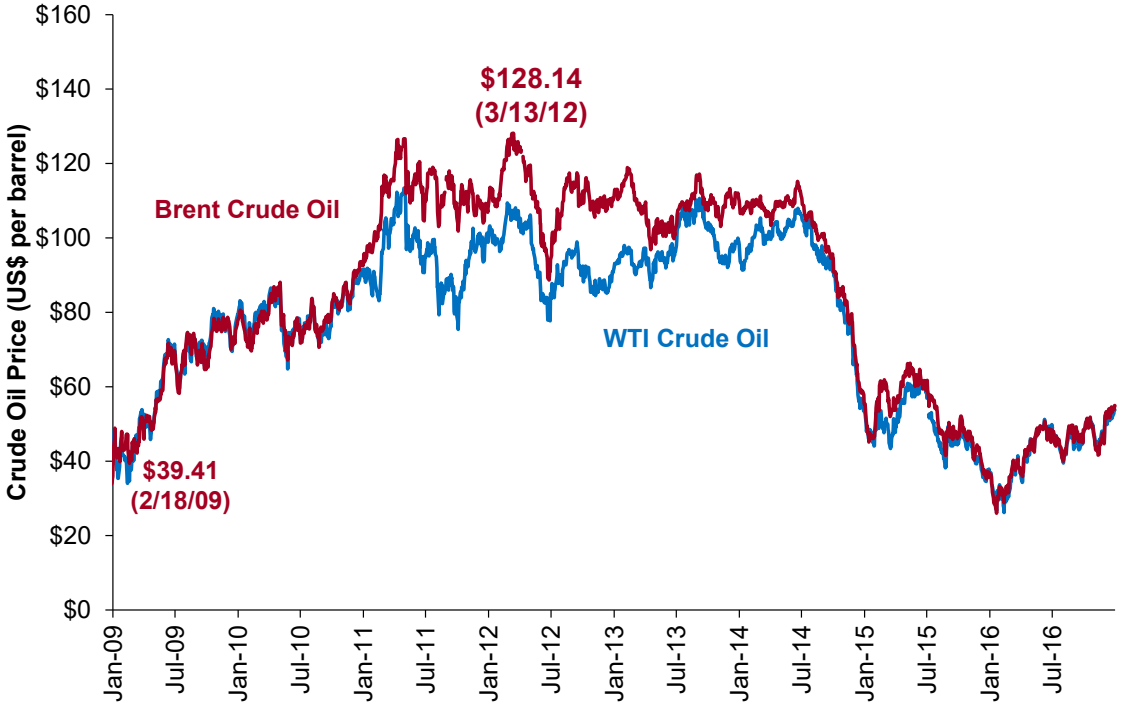
Can Market Evidence be Used to Evaluate Management Projections?

Crude Oil Prices and Energy Bankruptcies



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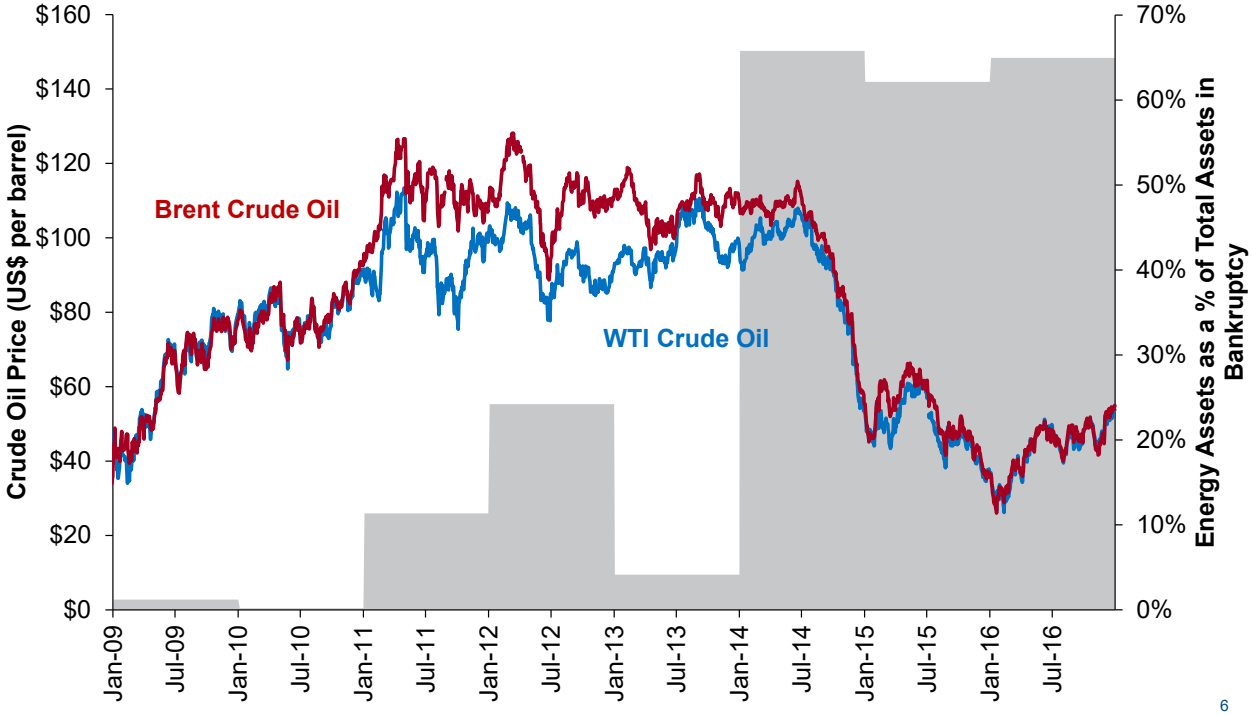
Crude Oil Prices and Energy Bankruptcies



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Management Projections as Basis for Feasibility Plan

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- Oil rig company sought plan confirmation in 2016
- Senior creditors challenged the plan as too optimistic
- Management projections depend upon assumptions regarding:
  - Rig utilization rates
  - Day rigrates

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Actual and Management Revenue Projections

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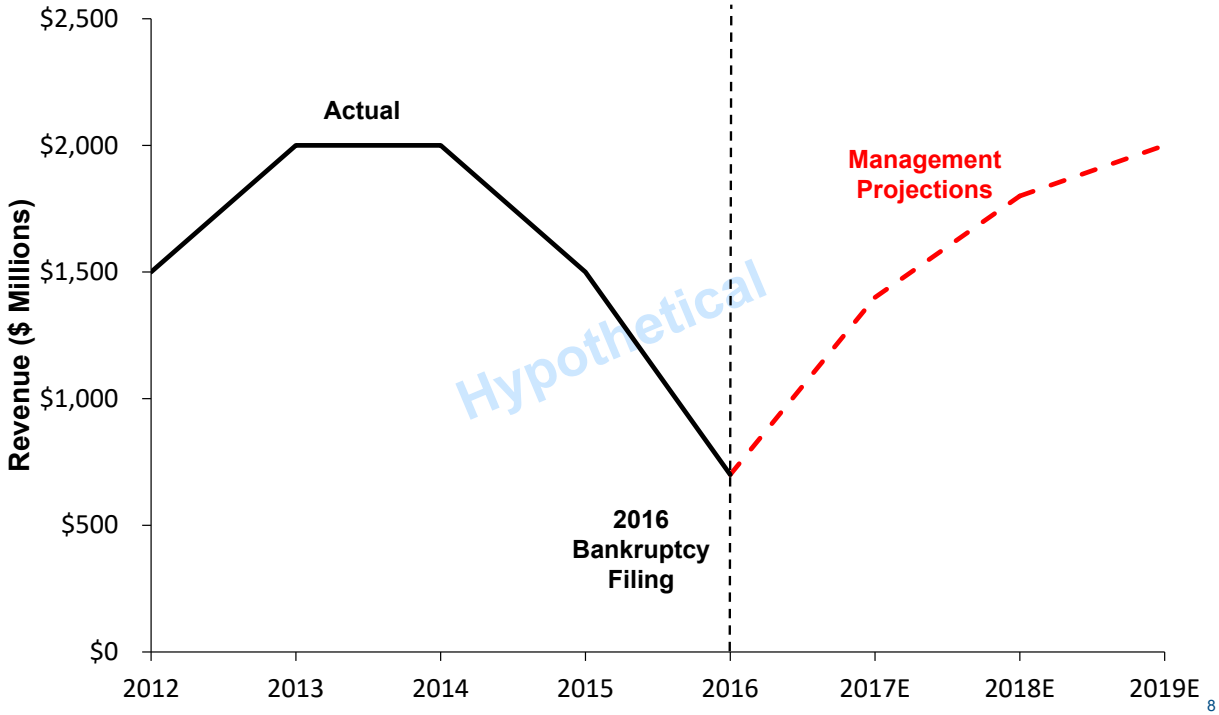

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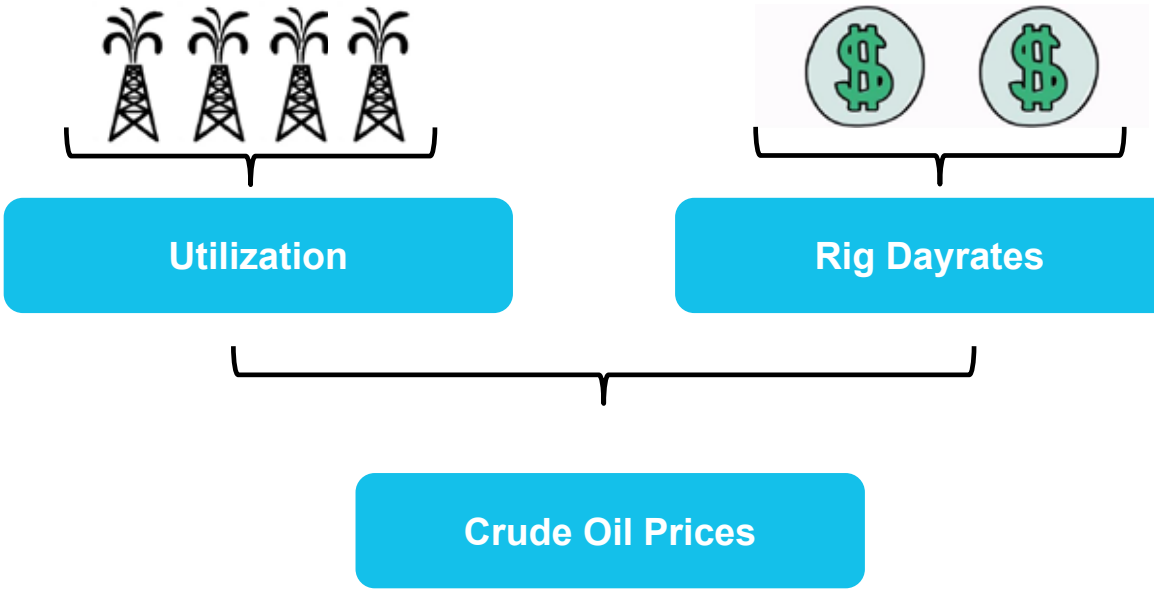
Assumptions Underlying Management Projections



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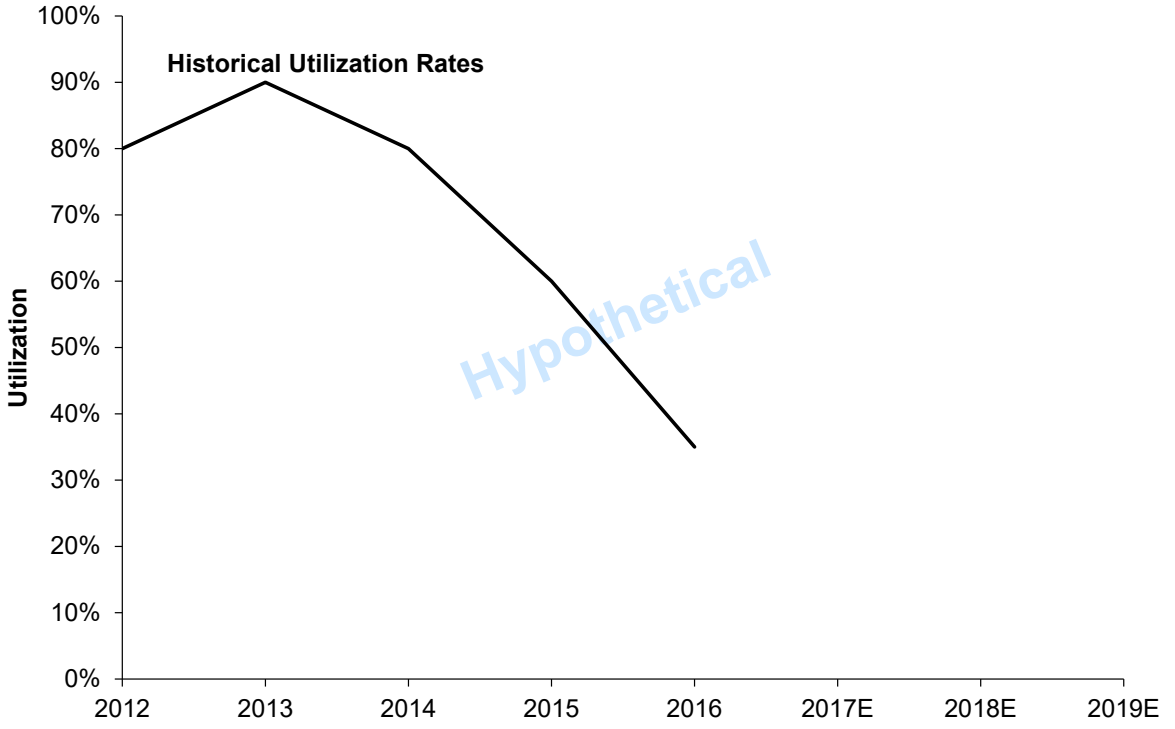
Are Management Projections Consistent with Industry Expectations?



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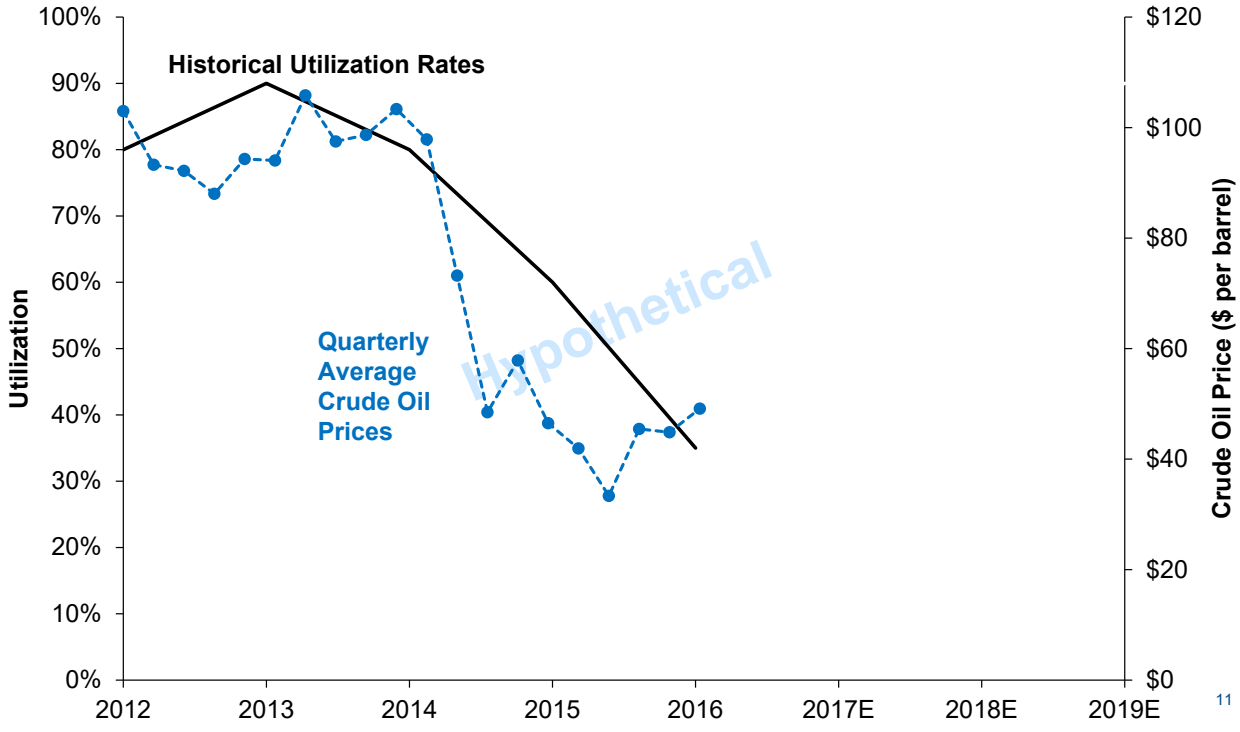

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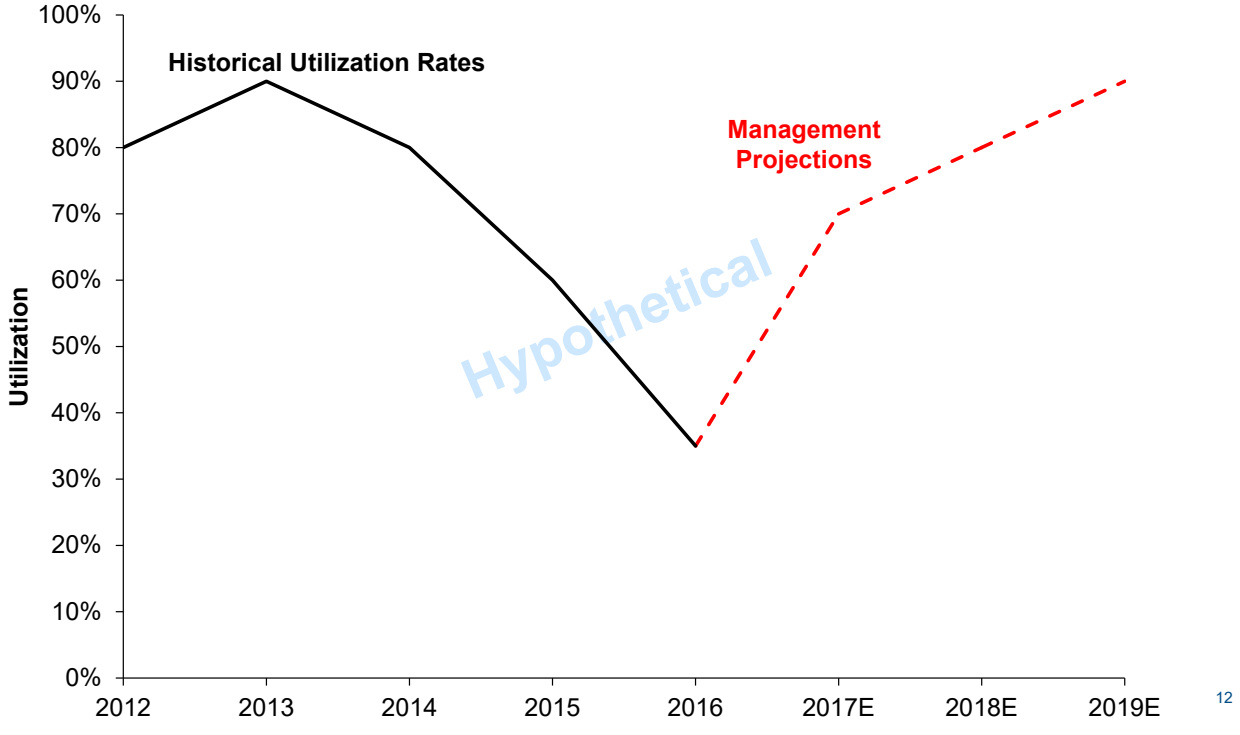

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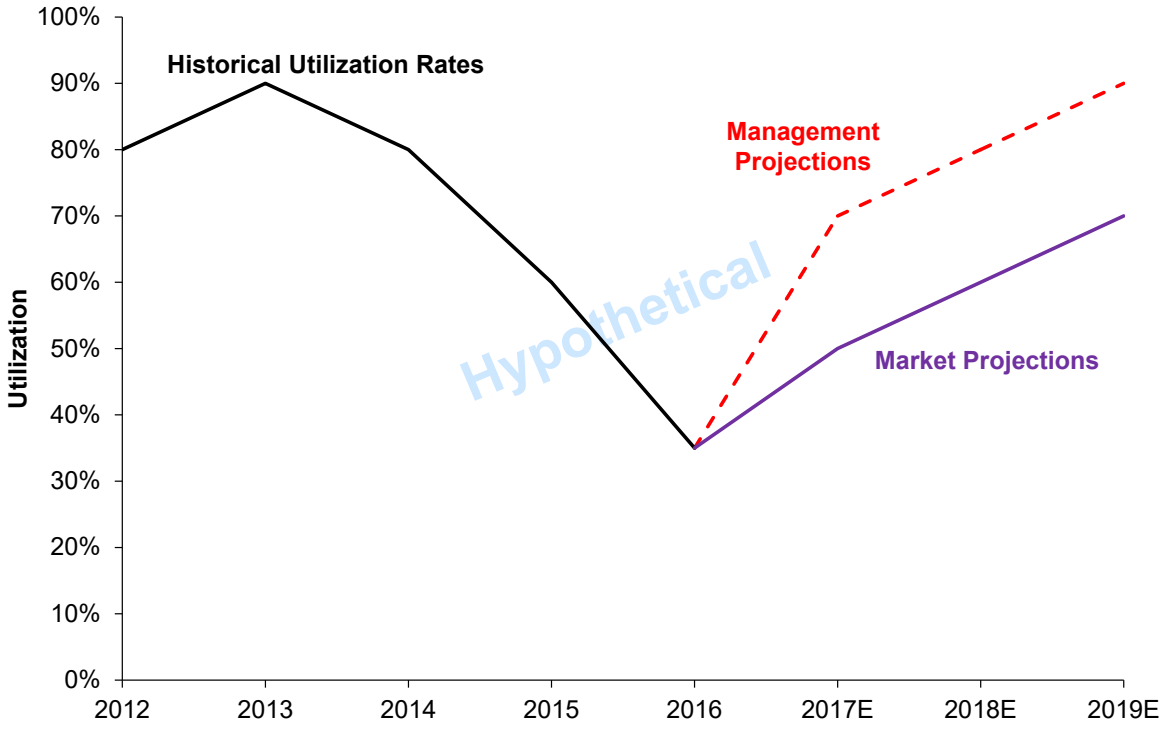

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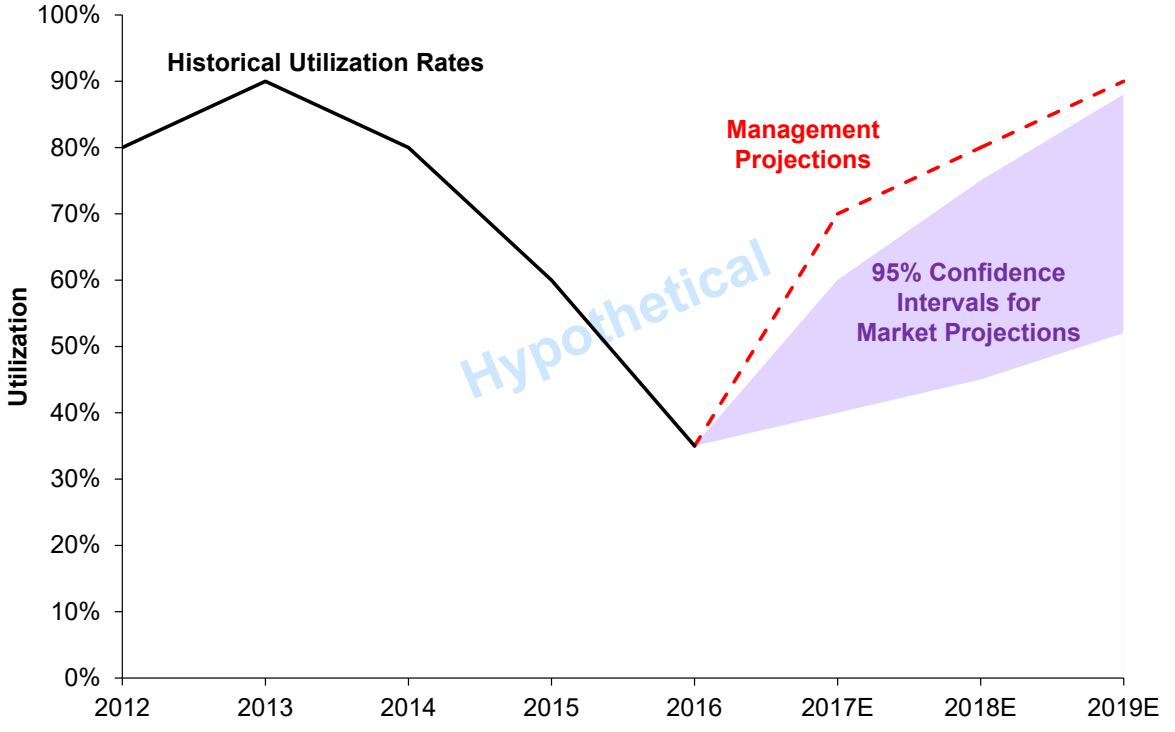

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How High Do Expected Oil Prices Need to Be for Projections to Hold?

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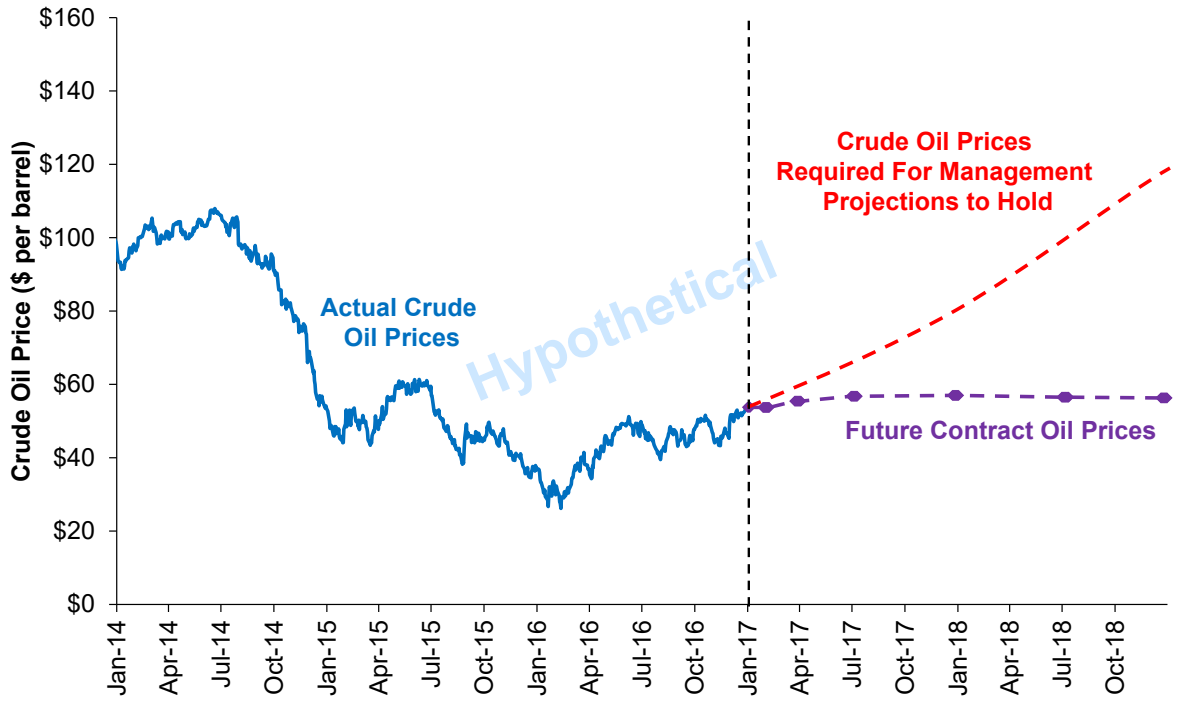

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Credit Spreads Pre and Post Restructuring

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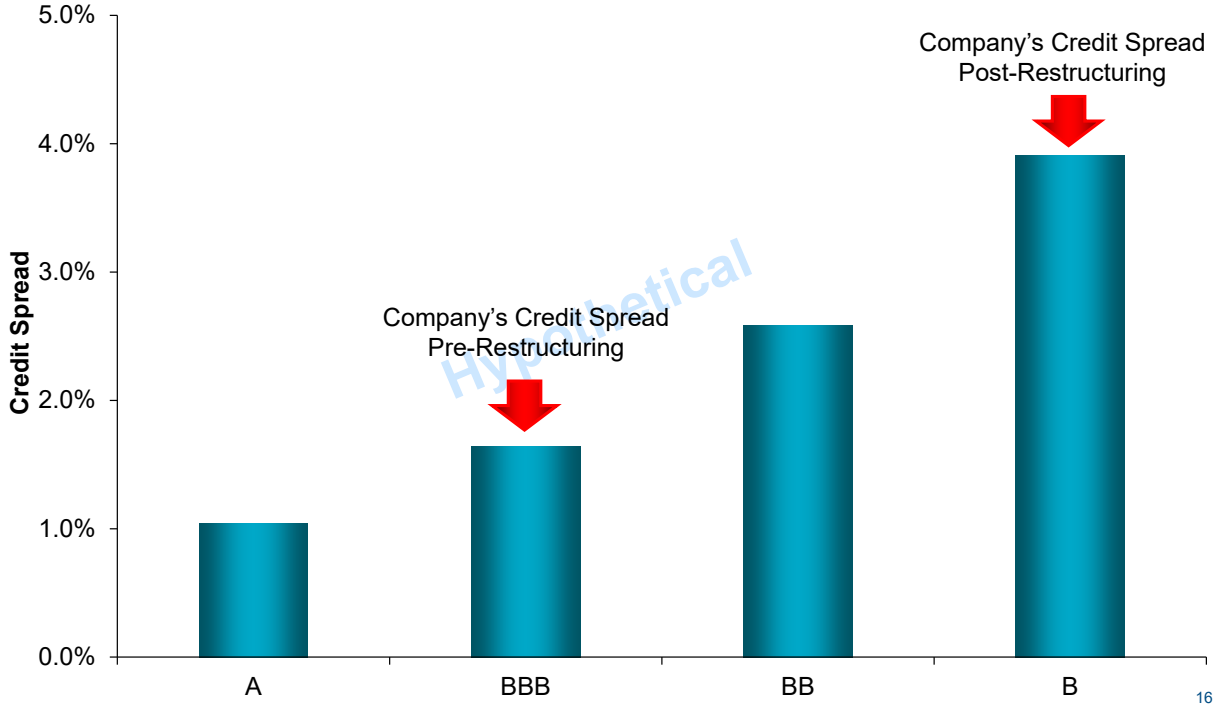

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Can Capital Adequacy Be Tested?

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What is Adequate Capitalization?

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- "Viewed in this light, an "unreasonably small capital" would refer to the inability to generate enough cash flow to sustain operations." *Moody v. Sec. Pac. Bus. Credit, Inc., 971 F.2d 1056, 1073 (3d Cir. 1992)*
- "The test is aimed at transferees that leave the transferor technically solvent but doomed to fail." *MFS/Sun Life Trust-High Yield Series v. Van Dusen Airport Servs.Co., 910 F. Supp. 913, 933 (S.D.N.Y. 1995*)
- [T]he difference between insolvency and "unreasonably small" assets in the LBO context is the difference between being bankrupt on the day the LBO is consummated and having such meager assets that bankruptcy is a consequence both likely and foreseeable." *Boyer v. Crown Stock Distribution Inc., 587 F.3d 787, 794 (7th Cir. 2009).*

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A Subjective Standard?

"Mirror, mirror, on the wall ... 'It's all so subjective' is not an acceptable answer."

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No Hindsight

"Here, [the Trustee] would have the court, in effect, forecast

- (1) the lenders' reaction to discovering the conduct, and then
- (2) the consequences of that reaction, i.e., that the only option chosen by all of the lenders would have been to foreclose access to all credit, which
- (3) had the reasonably foreseeable consequence of bankruptcy."

I agree with the bankruptcy court that what appellant proposes is a "speculative exercise" not rooted in the case law."

In re SemCrude, L.P., 2016 BL 135006 (3d Cir. Apr. 29, 2016).

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Access to Capital Markets

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- Which factors preclude capital market access?
  - 10 –to- 1 leverage ratio
  - Accounting fraud
  - Breach of covenants

Leverage Ratios

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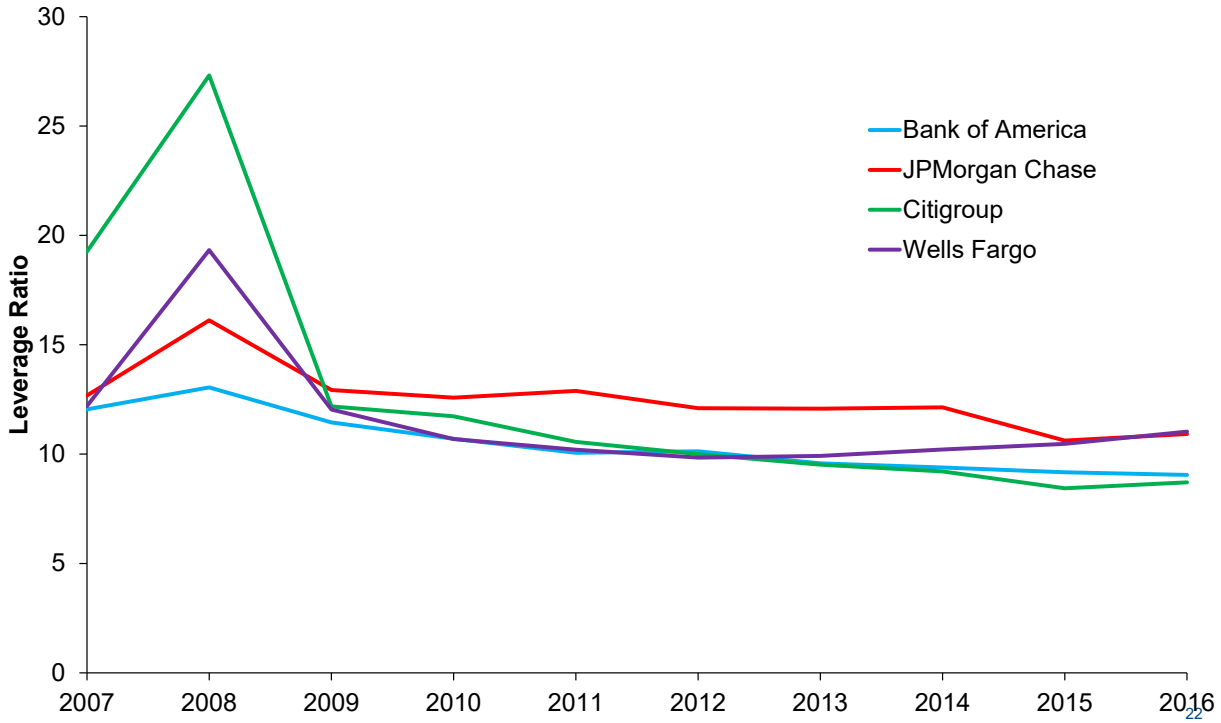

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Section 546(e) Selected Statutory Provisions

11 U.S.C. § 546(e)
Notwithstanding sections 544, 545, 547, 548(a)(1)(B), and 548(b) of this title, the trustee may not avoid a transfer that is a…settlement payment, as defined in section 101 or 741 of this title, made by or to (or for the benefit of) a…stockbroker, financial institution, financial participant, or securities clearing agency, or that is a transfer made by or to (or for the benefit of) a…stockbroker, financial institution, financial participant, or securities clearing agency, in connection with a securities contract, as defined in section 741(7)…that is made before the commencement of the case, except under section 548(a)(1)(A) of this title.

11 U.S.C. § 101(22)
The term "**financial institution**" means—

(A) a Federal reserve bank, or an entity that is a commercial or savings bank, industrial savings bank, savings and loan association, trust company, federally-insured credit union, or receiver, liquidating agent, or conservator for such entity and, when any such Federal reserve bank, receiver, liquidating agent, conservator or entity is acting as agent or custodian for a customer (whether or not a "customer", as defined in section 741) in connection with a securities contract (as defined in section 741) such customer; or

(B) in connection with a securities contract (as defined in section 741) an investment company registered under the Investment Company Act of 1940.

Case Background

- Chesapeake Energy Corp. is an Oklahoma shale oil and gas producer that commenced a Chapter 11 case in June 2020 in the Southern District of Texas.
- Chesapeake commenced its case with commitments for $4b in new capital, including a $925m DIP, $600m fully backstopped rights offering, and $2.5b in exit facilities—$1.75b revolving, $750m first lien last-out term loan.
- Chesapeake's plan of reorganization (the "**Plan**"), as initially based on the restructuring support agreement ("**RSA**") and as later amended provided for the recoveries summarized on the following slide.
- The Plan, as initially contemplated, would have removed about $7b of prepetition debt and was originally based on a $3.25b valuation.

Case Background

Creditor Constituency	Recovery
DIP claims	Paid in cash from proceeds of exit facilities or rights offering, but if the DIP lender was also an exit facility lender, DIP claims would be reduced by the exit facility amount.
Other secured claims; other priority claims	Unimpaired
Revolving credit facility	Pro rata share of either (i) tranche A RBL exit facility loans or (ii) tranche B exit facility loans on a dollar-for-dollar basis
First lien, last-out ("FLLO") term loan facility	Pro rata share of (a) 76% of new common stock subject to dilution and (b) the right to participate in the rights offering
Second lien notes claims	Pro rata share of (a) 12% of new common stock subject to dilution, (b) the right to participate in the rights offering, (c) new Class A warrants, (d) new Class B warrants, and (e) 50% of new Class C warrants
Unsecured notes claims	Pro rata share of the "unsecured claims recovery": (a) 12% of new common stock pro rata with general unsecured and subject to dilution and (b) 50% of new Class C warrants
General unsecured claims	Pro rata share of "unsecured claims recovery" unless the claim was a convenience claim, then the holder would receive the convenience claim distribution
Existing equity interests	Canceled without distribution

Chesapeake's Valuation

- Intrepid Partners, Chesapeake's financial advisor, estimated the value of the debtors to be $3.5b to $4.7b.
  - Netting for pro forma net debt of $1.8b, Intrepid estimated an implied equity value of $1.7b to $2.9b.
- Intrepid used the following valuation methodologies:
  - Risked net asset value analysis
  - A publicly traded companies analysis
  - A sum-of-the-parts analysis
- Intrepid did not use a precedent transactions analysis because the precedent transactions occurred under different market conditions and involved companies with dissimilar assets to Chesapeake.

Objections

Confirmation of the Plan

There were three general themes to the objections to confirmation of the Plan:

1. **The Debtors relied on flawed assumptions about the future of commodity prices.**
2. **The Debtors failed to include potentially valuable reserves in their calculation.**
3. **The Debtors purposely understated valuation to drive the deal.**

The UCC's Confirmation Objections

– The UCC challenged the valuation as "unsustainably low" and created "entirely to justify the deal" reflected in the RSA, which was negotiated during height of the Russia-Saudi price war and the onset of a global pandemic.

Technical Objections

- The UCC's objected to the Intrepid valuation on several grounds:
  – Use of 5-Year Strip Pricing: The Intrepid analysis used NYMEX 5-year strip in its estimation of NAV and then held depressed prices flat for 45 years. The UCC contends that the Company has used 2-year strip in other contexts and that had Intrepid followed that use, value would increase by $1b.
    – Note: Strip pricing refers to futures contracts. A 2-year strip is the average of futures contracts over the next 24 months while five-year strip is the average over 60 months.
  – Inappropriate Weighting: The UCC argues that the choice of weighting among the methods (NAV: 75 percent; publicly traded companies: 10 percent; sum-of-the-parts: 15 percent) gave an overly conservative valuation (compounded by the fact that sum-of-the-parts also weighted NAV at 75 percent).
  – No DCF or Comparable Transactions Analyses: The UCC faulted Intrepid for not conducting a discounted cash flow analysis, and for not conducting a comparable transactions analysis.

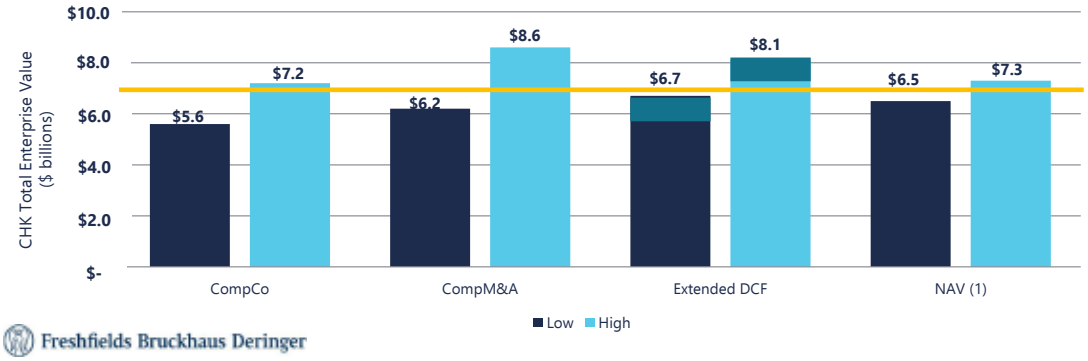
The UCC's Confirmation Objections

Cont'd

- No Weighted Average Cost of Capital ("**WACC**") Analysis: The UCC says that instead of applying a 10 percent discount to the cash flows generated in the NAV model, Intrepid should have calculated a WACC for Chesapeake (which would have resulted in a lower discount rate).
- No Value Ascribed to Undeveloped Acreage: The UCC says that Intrepid should have included undeveloped well locations that had non-producing, probable, and possible reserves.

UCC's Valuation

- **The UCC's analysis:**
  - The Committee used two experts to perform its valuation: Dr. Israel Shaked and David Baggett (of Opportune LLP). Dr. Shaked performed an augmented DCF analysis that produced a valuation of $7.1b.
  - Shaked's report had four components: (i) a comparable companies analysis, (ii) a comparable transactions analysis, (iii) an extended discounted cash flow analysis, and (iv) Baggett's NAV analysis.
  - The Committee concluded that, if the Committee's valuation were used, the FLLO lenders would be compensated far in excess of their claims.



Response

Debtors' Confirmation Brief

- The Debtors argued that the UCC's valuation relies "novel and completely unsupported pricing assumption that flies directly in the teeth of recent headwinds and is designed solely from necessity—if not sheer desperation—to inflate value in hopes of defeating confirmation."
- The Debtors' valuation methodologies were "ubiquitous" in oil and gas restructurings while the UCC's valuation ignore depleting reserves and the volatility of oil and gas markets
- The Debtors also argued that even at its own purported valuation, the UCC lacked standing to object that the plan was fair and equitable because the interests of the unsecured creditors would not be affected at the $7.1b valuation (the Debtors argued that value would have to exceed $7.3b).
- In response to the UCC's claims: **(see adjacent table)**

UCC criticism	Debtor's response
NAV was weighted too heavily	• NAV is the only methodology that considers the depleting nature of oil and gas • UCC didn't weigh valuations at all—DCF doesn't factor in diminishing oil and gas reserves and comparable transactions are never truly comparable
Debtors used depressed pricing for commodities	• UCC used a model that assumed perpetual increases in pricing • 5-year strip is industry standard • The 2-year strip was chosen to avoid a downward trend in the 5-year strip • Debtor model is in line with historical pricing trends • UCC model ignores activity of market participants in years 3–5

Court Ruling

- The confirmation hearing took place over 13 days, with Chief U.S. Bankruptcy Judge David Jones of the Southern District of Texas presiding.
- During Day 11 of the confirmation hearing, Judge Jones announced that he had observed "**fantasy land**" assumptions in the valuation to drive specific results and that he had "**run [his] own modelling**." Relying on his own background in business, he noted that he was not going to just accept numbers provided by experts.
- On Day 12, Judge Jones said that he had "**rejected everybody's valuation models**." He gave the parties the option of receiving the preliminary valuation before closing arguments, noting that it would end the debate on valuation (though Judge Jones would not provide his calculations). The parties agreed and he provided a $5.129b valuation.
- The following day, Judge Jones found total enterprise value to be $5.129b. While remarking that he was not so arrogant to say that it was *the* value, he found that his valuation was a "**fair representation**" of value.
- Judge Jones found that the plan met all the relevant requirements of Sections 1123(a) and 1129(a) and (b) of the Bankruptcy Code, noting that under 1129(a)(7), each class of unsecured creditors was "**equally unhappy**" and that the plan did not discriminate unfairly.

Quorum Health Corporation

Case Background

- Quorum Health Corporation was an over levered rural hospital operator, that commenced a Chapter 11 Case in the United States Bankruptcy Court for the District of Delaware in April 2020
- Prior to its Chapter 11 case, it negotiated an RSA and plan of reorganization with its key creditor constituencies, including its secured term loan holders and unsecured creditors:

RSA Terms	
First Lien Term Loan Holders	Pro rata share of debt in post reorganized company
Unsecured Noteholders	100% of post-reorganization equity through a distribution of all pre-dilution equity and rights to participate in a $200mm new common equity raise
General Unsecured Creditors	Unimpaired
Prepetition Equity	No recovery

- With the notes' equitization and rights offering proceeds, the company would decrease its $1.306bn prepetition debt load to $795m, while maintaining relationships with its trade vendors and patients, whose continued support was critical for its operation

Quorum's Valuation

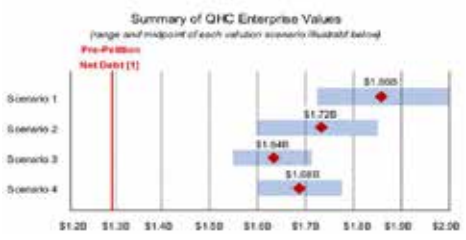
Quorum's Enterprise Value

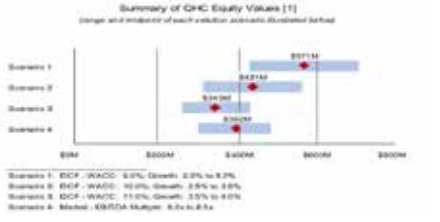
- Quorum's investment banker, MTS, determined that Quorum's **enterprise value** was between **$965** and **$1,275m**
  - Netting for debt, this resulted in an implied **equity value** from **-$430 to -$120m**
- Methods MTS used to value Quorum
  - Comparable companies' analysis
  - Precedent transaction analysis
  - Discounted cash flow analysis

Mudrick's Objection

Mudrick's Objection

- Mudrick Capital Management, a 15 percent equity holder, objected to confirmation.
  - The plan was unconfirmable because it improperly undervalued the reorganized debtors, and thereby wiped out the equity of a solvent debtor to distribute more than 100 percent of claim value to noteholders.
- The proposed plan transaction was bad faith attempt of debtors, its management, and debt holders to take away value from debtors' equity holders and give it to noteholders through presentation of artificially depressed value.
- Mudrick asserted Quorum had a total **enterprise value of $1.64-1.86bn**, with an **equity value of $343 to $571m** over pre-petition net debt.
  - Mudrick hired Protiviti to perform a valuation analysis.
  - To arrive at this value, Protiviti used comparable company, precedent transaction, and discounted cash flow analyses.
    - Used EBITDA multiples of 8x to 8.5x.
    - For cash flow, estimated weighted average cost of capital ("WACC") between 9-11 percent. Growth between 2-4 percent.





Mudrick's Objection

Challenging Quorum's Enterprise Valuation

Mudrick's Objection

- Mudrick's papers asserted that Quorum's enterprise value was incorrect because MTS, Quorum's investment banker
  - improperly accounted for COVID-19's impact on equity markets when performing forward-looking analyses
  - did not account for the approximately 160-240m in cash that would flow to Quorum from the US Government as a result of the CARES Act, and
  - applied the wrong market multiple and estimate for WACC
- "Debtors and Noteholders seek to rush confirmation using a temporary pandemic-related earnings trough to drive an opportunistic false valuation."

Valuation Factors	MTS	Corrected
1. Market Multiple	7.5x	8.0x - 8.5x
2. WACC	13.3%	9.0% - 11.0%
3. Exit Multiple	7.5x	7.5x - 9.5x
4. COVID-19 Relief	$0M	$159M - $238M[1]
5. NOLs	Unknown	$25M

[1] Represents estimates – could be materially higher.

Quorum's Response Papers

Quorum's Response to Mudrick's Narrative

- Mudrick's position is incorrect: Quorum Chapter 11 was driven by its evaporating liquidity, and inability to service its debts, even before COVID-19.
- The plan transaction represents the best possible option following failed efforts by Quorum's management and advisors to obtain an alternative proposal that would bring value to shareholders.
  - No party, including Mudrick was willing to transact in restructuring transactions that would provide a recovery to equity.
  - Mudricks' own e-mails (three months old at the time of the valuation dispute) indicated that Quorum's share should trade between $3-$5 (far below the $10.50-$17.50 range implied by its valuation).
- With a proper enterprise value, the value of the new common stock to be issued by Reorganized Quorum does not satisfy in full, much less exceed, 100 percent of the value of the noteholders' claims. Thus, equity is not entitled to a distribution.

Quorum's Response to Mudrick's Valuation

- Mudrick's valuation was incorrect because, inter alia, it:
  - relied solely upon forward-looking projection-based DCF methodology and a comparable companies methodology without incorporating historical or pre-COVID-19 2020 performance or any regard to precedent transaction methodology;
  - improperly assigned a control premium to its comparable company analysis;
  - used incorrect market inputs for its DCF methodology;
  - utilized incorrect comparable companies for purposes of calculating the WACC; and
  - extrapolated an inflated view of future COVID-19-related government aid
  - Ignored that federal Covid-19 aide can be used only to offset Covid-19-related lost revenue and increased expense, and cannot be used to make a distribution to equity.
  - improperly relied on projections management's "base case" budget for 2020, which was superseded by a "risk-adjusted" budget with projected EBITDA reduced by approximately $30m.
- Notably, Quorum did not submit a responsive expert report, or rely on an expert in its responsive briefing.

The Delaware Bankruptcy Court's Ruling

The Delaware Bankruptcy Court's Ruling:

- Judge Karen Owens overruled Mudrick's objections, found that Quorum's valuation was appropriate and confirmed Quorum's plan of reorganization.
  - The Court was "unable to find evidentiary support for Mudrick's positions," and has "confirmed the debtor's narrative in all respects."
- The Court was persuaded that Quorum tried and failed to engage in a transaction that would provide value shareholders. No one would provide new money for a transaction that gave value to equity.
  - Quorum's plan was the only value maximizing transaction, and "continues to be the best and only actual proposal available."
- It reasonable to base the restructuring transaction on risk-adjusted projections given COVID-19, Quorum's continuing deterioration of revenues and EBITDA and history of missing budgeted projections.
- Although "reasonable minds can disagree" on valuation, Quorum's valuation was "a fair and balanced attempt" to discern enterprise value. Because it was "reliable" and "credible," it "should not be upended."

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Case Background

- Ultra Petroleum, an Englewood, Colorado-based exploration and production company commenced a Chapter 11 case in May 2020 in the Southern District of Texas.
- Ultra commenced its case with a restructuring support agreement that provided for equitization of substantially all of Ultra's debt, a $25 million DIP credit facility, new capital investment up to $85 million under a rights offering, and contemplation of an exit facility with a $100 million borrowing base.
- Ultra's plan of reorganization (the "**Plan**") provided for the following recoveries for the relevant constituencies:

Case Background

Creditor Constituency	Recovery
Other secured claims	Unimpaired—at applicable debtor's choice: (i) cash, (ii) collateral securing the claim, (iii) reinstatement, (iv) other such treatment rendering the claim unimpaired.
Other priority claims	Unimpaired—payment in full in cash.
First lien RBL claims	Impaired—option to exercise a cash election: • If exercised, cash equal to 85% of the allowed amount of the claim. • If not exercised, pro rata share of 97.5% of redistributed equity.
First lien term loan claims	Impaired—(i) right to participate in the rights offering and (ii) its pro rata share of 97.5% of redistributed equity subject to dilution.
Second lien note claims	Impaired—pro rata share of (i) 2.5% of new equity subject to dilution (except as to the new rights offering) and (ii) instruments evidencing entitlement to 45% of the proceeds of the make-whole litigation.
General unsecured claims	Impaired—"death-trap": $250,000 if the class votes for the plan, nothing if the class votes to reject.
Equity interests	Impaired—interests extinguished.

Ultra's Valuation

- Centerview Partners, Ultra's investment banker, estimated the total enterprise value between **$850 million** and **$950 million**, with a midpoint of **$900 million**.
  - Netting for debt, the total equity value was estimated between **$849 million** and **$949 million**, with a midpoint of **$899 million**.
- Centerview used the following valuation methodologies:
  - Net asset value analysis
  - Discounted cash flow analysis
  - Comparable company analysis
- At the time of valuation, there were $242 million in claims related to ongoing make whole and postpetition interest litigation arising out of Ultra's previous Chapter 11 filing. In the previous Chapter 11 case, Ultra chose to treat creditors with claims under a Note Agreement and Revolving Credit Facility as unimpaired under the plan, paying the principal and prepetition and postpetition interest owed under these agreements. The creditors argued that they were additionally entitled to make whole amounts under prepayment clauses of these agreements. Centerview valued these claims at $40 million.

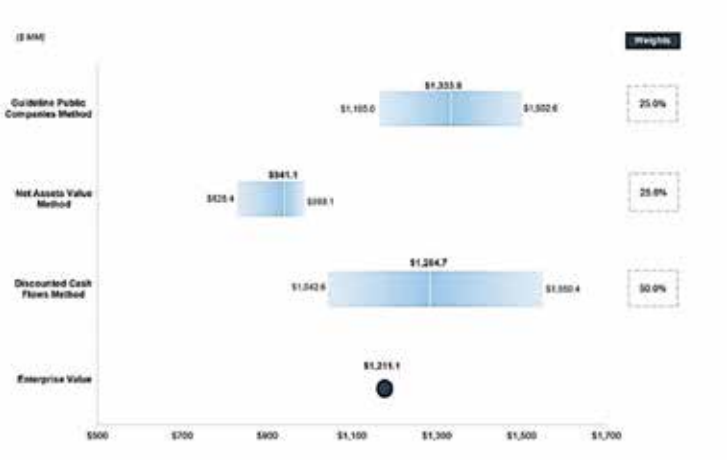
Objections

- Several parties objected to the Debtors' valuation and confirmation of the Plan: the Unsecured Creditors Committee ("**UCC**"), Aedes LLC (a minority Second Lien holder), the Ad Hoc equity group, and individual shareholders.
- Objections focused on a few common themes:

1. **The Debtors undervalued undrilled reserves, relying on conservative management projections and low energy prices.**
2. **The Debtors undervalued the make-whole litigation.**
3. **The Debtors made the valuation in bad faith to privilege management, certain investors and insiders.**

Objections: the UCC's Valuation

- Goldin Associates LLC, the Committee's financial advisor, calculated the total enterprise value of the debtors as **$1.428 billion** and used the following methodologies:
  - Income Approach – Discounted Cash Flow (weighted 50 percent)
  - Income Approach – Net Asset Value
  - Market Approach – Guideline Public Companies
  - Precedent Transaction Analysis



UCC's Challenges to Valuation

- The UCC argued that Certerview's valuation reflected a "flawed analysis . . . to drive a predetermined output showing unsecured creditors 'out of the money.'"[1]:
  - Undervalued Assets: Centerview attributed no value to undrilled locations (Goldin: $77.1m), avoidance actions, or potential unencumbered assets. The UCC also claimed Centerview undervalued the make-whole litigation at $40m (Goldin: $139.9m).
  - Misapplied Valuation Methods: Centerview "relies on management projections . . . without assessing them for reasonableness." Goldin, on the other hand, concluded that management's projections were unreasonable because they were predicated on a business plan without reductions in cost structure.
- The UCC also contended, in largely redacted portions of its objection, that Centerview made artificially conservative judgments and should have included a solvency analysis.
- The UCC also claimed that the Centerview report failed to comment on the UCC's claims regarding a debt exchange. Before the filing of the plan, Ultra has commenced a debt exchange with some unsecured second lien noteholders to convert their debt into secured debt (the "**Up-Tier Exchange**"). The UCC asserted claims in a separate standing motion that the Up-Tier Exchange was fraudulent.

Objections to Valuation by Other Creditors

- Aedes LLC
  - Aedes argued that the Debtors had relied on the UCC's valuation in other motions and had failed to provide sufficient information about their valuation in the Disclosure Statement, raising the possibility that the Second Lien Noteholders were in the money.
  - Aedes also moved for the appointment of a Second Lien Noteholders committee.
- Ad Hoc Equity Group
  - In its motion to appoint an ad hoc equity committee, the group of equity holders argued that the Company had represented that it was in good financial health despite the pandemic and Russia-Saudi price war.
- Individual shareholders
  - Louis Talarico—Talarico argued that Debtors failed to value significant assets that they had ascribed value to in the 2016 Chapter 11 filing and that Debtors' behavior in negotiating the Plan and RSA was in bad faith.
  - Charles Viscito—Viscito argued that Debtors had used the backdrop of a global pandemic in bad faith to lock in the lowest possible valuation of the Company.
  - Rengan Rajaratnam—Rajaratnam also argued that certain reserves should have been ascribed value and that future natural gas price recovery could mean significant recoveries for all asset classes.

Debtors' Response

Valuation challenge	Debtor response
• **The Debtors failed to value undeveloped reserves.**	• This valuation is due to market and operational realities; UCC's valuation is not reflective of market reality.
• **The Debtors undervalued the make-whole litigation.**	• The UCC ignores historic settlements and makes unrealistic and unsupported assumption to reach its "artificially high and unreliable value."
• **The Debtors rely too heavily on management projections.**	• The UCC provides no reason why the projections are unreasonable or why significant changes should be made. UCC can't second-guess costs of the Debtors' business. • Debtors have been aggressively cutting costs.

- The Debtors also noted that even at the UCC's own valuation, they are out of the money unless they prove that the Up-Tier Exchange were fraudulent.
- Further, the Debtors suggested that the wide range of values in the UCC's methods indicated a lack of reliability.

Confirmation Hearing

- The Confirmation Hearing took place over the course of seven days, with Judge Marvin Isgur of the Southern District of Texas presiding.
- Before day 1 of the Confirmation Hearing, the Debtors settled with the UCC.
  - Cash to be paid to unsecured creditors increased from $250k to $3m.
  - 9 percent of the proceeds of the make-whole litigation would be paid to unsecured creditors
  - Indenture trustee fees would be paid
  - Debtors would make some other "drafting tweaks" to the Plan.
- The equity holders and second lien noteholders maintained their challenges, focusing on management projections, undeveloped reserves, the value of the make-whole litigation, and changes in energy prices since the Chapter 11 commenced.

Court Ruling

- On day 6 of the Confirmation Hearing, Judge Isgur overruled the second lien noteholders' and equity holders' objections.
- On the arguments related to good faith, Judge Isgur found the Company witnesses credible and, in overruling the objections, stated that "**a lot of the case is based on conspiracy theories.**"
- On overall valuation, Judge Isgur adjusted value upwards, but generally accepted the valuation methods of Chopra:
  - Judge Isgur valued the make-whole litigation at **$55 million** (the Debtors had valued the claims at **$40 million**). He relied on the market value of the settlement (trades made after opinions in the case) and his own "deep knowledge" of the issues in the case. He attempted to value the claims at what the Debtors could trade the settlements for and not at "some future litigation amount."
  - He accepted the overall valuation and methodology of the Debtors' expert, but remarked that the market had moved. Judge Isgur said that "**no valuation is ever made**" when dealing with commodities traded on an open market that "**should not be adjusted at some level by the time you get to confirmation.**"
  - Judge Isgur found that the proven undeveloped reserves should have option value instead of no value. He found it credible that the market factors had caused the Debtors to stop drilling the locations long before they filed for bankruptcy. He accepted that the only way to value the reserves was the value of the land, adding $1–2 million of value.
  - While the midpoint valuation should likely be adjusted upwards given the make-whole litigation and market trends, value stopped within the first lien noteholders "more probably than not" (noting that it was a "close call"). Judge Isgur also concluded that there was clear and convincing evidence that the equity holders were not in the money.

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Madlyn Gleich Primoff, a partner in the Restructuring Group at Freshfields, has more than 25 years of experience in helping companies, lending groups, financial institutions, and private credit investors overcome the complexities around the Chapter 11 process, out-of-court restructurings, and related litigation matters. Clients regard Madlyn as a masterful tactician who can drive their most complex challenges to an optimal resolution - be it through negotiation or a litigated result.
Madlyn has been ranked as a leading attorney in Chambers USA, Best Lawyers, Lawdragon 500 Leading Global Restructuring & Insolvency Lawyers, IFLR1000 Women Leaders, and Expert Guides – Women in Business Law. She has also been named the "Best in Insolvency and Restructuring" – Americas Women in Business Law Awards by Euromoney.

Madlyn's experience includes:

- Advising HKSE-listed corporation with substantial US operations and its US subsidiaries in its restructuring negotiations with its global bank group and other lenders and creditors;
- representing Nyrstar in its restructuring of $3bn of debt, including Chapter 15 approval of UK Scheme of Arrangement;
- representing the administrative agent and steering committee of lenders in out-of-court restructuring of a multitranche credit facility secured by La Muralla IV, a semi-submersible drillship, with contract revenues from PEMEX in a matter that spans Mexican, Portuguese, Korean and US jurisdictions;
- twice defeating confirmation of Chapter 11 plans on behalf of term loan lenders in Paragon Offshore, Inc. Chapter 11 cases involving total term, revolver and noteholder claims of approximately $2.4bn, resulting in vastly improved recoveries to term loan lenders;
- Mizuho Bank, Ltd as facility agent for the lenders, on the restructuring of project financing indebtedness incurred by Olympia Shipping B.V., a Dutch company, with respect to a compact semi-submersible offshore accommodation vessel owned by the borrower and under charter to Petrobras Netherlands B.V.;
- representing the term loan intervenors and ad hoc group comprising lenders holding in excess of $1.1bn in term loans to AM/FM radio station operator Cumulus Media, Inc. Madlyn led the team that prevailed on summary judgment before the federal district court in New York and successfully blocked Cumulus' exchange offer from going forward;
- representing the indenture trustee and ad hoc bondholders' committee of Wise Metals, in connection with. Madlyn led the restructuring and litigation teams on behalf of the indenture trustee for $150m in PIK toggle notes issued by Wise Metals, an aluminum sheet manufacturer, resulting in the redemption of the notes at 105 cents on the dollar;
- representing an ad hoc committee of noteholders in opposing coercive exchange offer (involving the intricate application of Luxembourg, English and New York law), and in resulting restructuring negotiations that culminated in the consensual restructuring of €275m of Ideal Standard's indebtedness; and
- representing a global financial institution as administrative agent, arranger and lender in Tribune Chapter 11 cases, involving restructuring of $13bn of indebtedness incurred by this major publication and broadcasting conglomerate and settlement of fraudulent conveyance and related claims asserted against our client in its capacity as agent, arranger and lender.

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Henry services clients' litigation needs arising out of complex cross-border mandates, including commercial disputes and bankruptcy proceedings. Henry represents individuals, companies, financial institutions and private credit investors in a wide variety of complex cross-border litigation matters pending before federal district, bankruptcy and appellate courts in the United States. A substantial part of Henry's practice consists of representing foreign representatives and defendants in adversary proceedings brought under Chapters 15 of the Bankruptcy Code. Henry also represents creditors in contested Chapter 11 cases. Henry has extensive experience prosecuting and opposing 28 U.S.C. § 1782 applications for discovery in support of non-US litigation, as well as taking and opposing discovery in civil and bankruptcy litigation in the United States

Henry's recent matters include advising:

- Barings LLC, in a successful attempt to appoint an examiner in the Chapter 11 reorganization of Parker Drilling Company and in a challenge to Parker Drilling's proposed Chapter 11 plan of reorganization;
- Barings LLC, in successful defense of a lawsuit challenging the capital restructuring of Serta Simmons Bedding;;
- Porsche Automobil Holding, SE, in its attempt to obtain discovery in the United States pursuant to 28 U.S.C. 1782 for use in Model Case Proceedings in Germany;
- Reward Science and Technology Group, in its successful attempt to obtain a stay of all US litigation against the company or its property through initiating a case under Chapter 15 of the US Bankruptcy;
- Structured Finance Industry Group, in connection with Lehman's attempt to recover collateral that was liquidated and distributed to dozens of swap counterparties as a result of Lehman's bankruptcy-related defaults under its various swap agreements;
- liquidators of a a major oil-and-gas exploration holding company in adversary proceedings in the US initiated under Chapter 15 of the United States Bankruptcy Code;
- Whirlpool Corporation in successful defense of a case initiated under Chapter 15 of the United States Bankrupt
- a major Chinese cement and construction materials producer in connection with a cross-border shareholder litigation;
- Volkswagen Group, in connection with ongoing civil, criminal and regulatory proceedings worldwide, including opposing multiple Section 1782 applications seeking US-style discovery for use in lawsuits against Volkswagen Group companies in Germany and throughout Europe; and
- a German financial institution reorganising certain balance sheet positions triggering, among others, Section 1782 applications in the US.

Thank You

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Faculty

David M. Posner is a partner with Kilpatrick Townsend & Stockton LLP in New York and focuses his practice on bankruptcy and insolvency matters. He represents creditors' committees, chapter 11 trustees, acquirers, indenture trustees and other significant parties-in-interest in complex reorganizations and financially distressed situations, as well as debtor/creditor rights and commercial litigation. In addition, he has substantial litigation experience representing both plaintiffs and defendants in complex commercial litigation inside the context of complex reorganization cases and in state and federal courts across the country. Mr. Posner has been involved in all aspects of pre-trial proceedings, preliminary-injunction hearings, motion practice, applications, mediation, objections and other contested matters. He has tried both jury and non-jury trials in bankruptcy, state and federal courts. Mr. Posner received his B.A. *magna cum laude* in political science and philosophy from Syracuse University in 1984 and his J.D. *cum laude* in 1988 from Syracuse University College of Law, where he was senior editor of the *Syracuse Law Review*.

Madlyn Gleich Primoff is a partner with Freshfields Bruckhaus & Deringer LLP in New York and a member of Freshfields' Finance and Risk Committee. She has more than 25 years of experience representing lending groups, global financial institutions, creditors' committees, private-equity funds and hedge funds in contentious chapter 11 cases, out-of-court insolvency matters, workouts and restructurings, pre-arranged chapter 11 cases, and related litigation matters. She also has substantial cross-border insolvency experience, including chapter 15 cases and parallel proceedings. Ms. Primoff is regularly called upon by her clients to act as "first chair" trial counsel in contentious restructuring matters and insolvency-related litigations. She has expertise in metals and mining, energy and infrastructure, consumer products, financial services, agriculture, entertainment, media, communications, shipping and health care, including device manufacturing and distribution. Ms. Primoff is ranked as a leading attorney in *Chambers USA*, *The Best Lawyers in America* and *Expert Guides – Women in Business Law*. She has also been named the "Best in Insolvency and Restructuring" – Americas Women in Business Law Awards (2016) by *Euromoney*. Ms. Primoff received her B.A. *magna cum laude* from Cornell University and her J.D. from Columbia University School of Law, where she was a Harlan Fiske Stone Scholar.

Dr. Faten Sabry, APS is a managing director and chair of NERA Economic Consulting's Global Securities and Finance practice in New York and chairs its Bankruptcy Practice. She is also chair of NERA's Bankruptcy Litigation Practice and leads the Securities and Finance Practice's subprime task force. Dr. Sabry has performed analyses involving issues of class certification, econometric modeling, liability, fraudulent conveyance, and damages in cases ranging from contract disputes to valuing a portfolio of mortgages. She also has assessed risk management models and examined the prudence of investments including hedging strategies. Dr. Sabry has consulted on the valuation of fixed income securities, derivatives, businesses and litigation settlements. In particular, she has consulted on complex securities including cash and synthetic CDOs, as well as asset- and mortgage-backed securities. In addition, she has evaluated rating agencies' models, loan loss prediction models and cash-flow models. Dr. Sabry has testified as an expert at trial in state and federal courts, as well as at a FINRA proceeding. Her product-liability work includes estimating the future liabilities in cases involving asbestos, silica, pharmaceutical products, medical devices, automobiles and con-

struction products; analyzing liabilities related to environmental contamination in cases including the Met-Coil bankruptcy Trust and the future silica and asbestos liabilities for the Tyler Pipe/Swan Transportation bankruptcy trust; assessing recall costs and diminution of value for automobile and construction products; analyzing insurance allocation; applying statistical and content analyses to examine product identification; and analyzing class certification in consumer class actions, including actions related to consumer finance and credit as well as automobile recalls. Dr. Sabry's research has been published in the *Journal of Structured Finance*, *Journal of Investment Compliance*, *Journal of Alternative Investments*, *Business Economics*, *International Trade Journal* and others. She has been accredited as a professional statistician by the American Statistics Association and is a member of the advisory board of VALCON. She also is a member of ABI and the American Finance Association. Dr. Sabry received her B.A. *magna cum laude* and her M.A. from American University in Cairo, and her Ph.D. from Stanford Business School, where she was awarded the J.M. Olin Graduate Fellowship, the Graduate School of Business Fellowship and a Ford Foundation Fellowship.

Hon. John K. Sherwood is a U.S. Bankruptcy Judge for the District of New Jersey in Newark, appointed in June 2015. In private practice, he had more than 25 years of experience in bankruptcy and debtor/creditor matters, including related litigation. Some of his noteworthy engagements were Ocean Place Development Resort (counsel to debtor), MagnaChip Semiconductor Finance Co. (counsel to creditors' committee), Quebecor World (USA) Inc. (litigation counsel), Le Nature's Inc. (counsel to creditors' committee) and the City of Detroit (counsel to union). Judge Sherwood was president of the New Jersey Bankruptcy Lawyers Foundation from 2008-13 and an active member of ABI and the Turnaround Management Association. He was selected by *Chambers USA* from 2013-14 as one of America's Leading Lawyers for Business, and he was recognized in *The Best Lawyers in America* (2012-15) for his work in bankruptcy and in *Super Lawyers* (2006, 2009-14), where he was featured in the bankruptcy section and corporate counsel edition. Judge Sherwood received his undergraduate degree from James Madison University in 1983 and his J.D. in 1986 from Seton Hall University School of Law.

Christopher K. Wu is president of Teneo Restructuring in New York and a senior managing director. His experience spans many industries, with a focus on energy (renewable biofuels and solar, power, offshore services and other sectors), commercial real estate (hospitality, leisure-related, MPCs, specialty REITs and other asset classes), financial services (specialty finance, leasing, subprime consumer and SME lending), industrials, health care (community hospitals and pharmaceuticals), consumer products, shipping and barge, business services and media. Mr. Wu has closed more than 100 transactions in his career encompassing a wide variety of complex situations, including debt-to-equity conversions, mergers, reorganizations, equity and junior capital financing, and asset and corporate stock purchases and sales, both in and out of bankruptcy. He has advised a significant number of public and private companies in a wide range of industries, advising boards of directors, management teams, investors and creditor groups. Prior to joining Teneo, Mr. Wu was a partner, co-head of Investment Banking and a member of the Management Committee of Carl Marks Advisors for 14 years, successfully growing the investment banking practice into an industry-leading boutique. Before joining Carl Marks in 2003, he was a vice president in JP Morgan's Global M&A Group, focused in New York and London for seven years. Prior to his career in banking, he served in various roles in international trade, including special assistant to the Trade Policy Bureau of Japan's Ministry of International Trade & Industry (MITI) and assistant manager in Itochu International's Machinery Group. Mr. Wu has been deemed an expert witness in various courts nationally and has

testified in numerous contested matters on various subject matters, including valuation, feasibility, bidding and auction procedures, sale processes, bid protections, DIP financing, interest rates, plans of reorganization, substantive consolidation, option valuation, and § 1111(b) notes, among other topics. He was named Restructuring Banker of the Year in both 2013 and 2014 in the boutique and middle-market categories, Distressed M&A Banker of the Year in 2016 by the Turnaround Atlas Awards, and consistently ranked as a Top 5 Bankruptcy Investment Banker by *The Daily Deal*, among many other awards and recognitions. Mr. Wu received his B.A. in English language and literature from the University of Chicago and his M.B.A. in finance from New York University's Stern School of Business.