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Out-of-Home Entertainment: Ready for Take-Off, or Ready to Disappoint?

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“Out-of-Home” Entertainment

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Effects of new trends and the COVID-19 Pandemic

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The Out-of-Home Entertainment ("OOHE") industry had been steadily gaining momentum prior to the recent impacts of COVID-19

Current OOHE Landscape

Consumer shift to experiences over possessions has driven historical growth and momentum

Total industry revenues in excess of \$100BN

Superior / differentiated offerings are best positioned to capture future growth

COVID-19 has caused significant near-term impact, though no fundamental effect on long-term viability

Select OOHE Operators



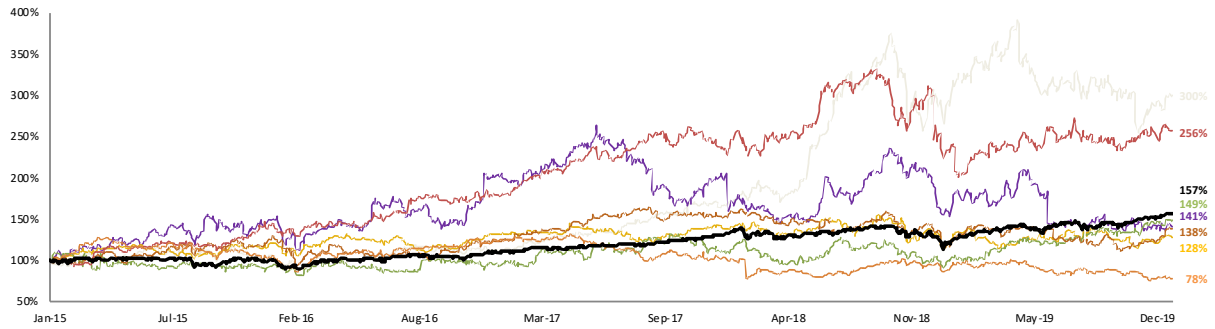
- In recent years, the broader OOHE landscape has expanded with several new alternatives, as well as modified and updated offerings from longstanding operators.
- Traditional operators and new entrants alike have embraced new technologies like virtual reality, mobile engagement and analytics to bring OOHE into the 21st century.
- Despite increased pressure from a breadth of options, OOHE operators have demonstrated continued presence, resilience and ability to grow and innovate.
- Coming out of the current pandemic, OOHE operators will benefit from customers' pent-up demand to leave the house, desire to socially interact with others and accumulated excess savings from the pandemic.

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OOHE Market Performance

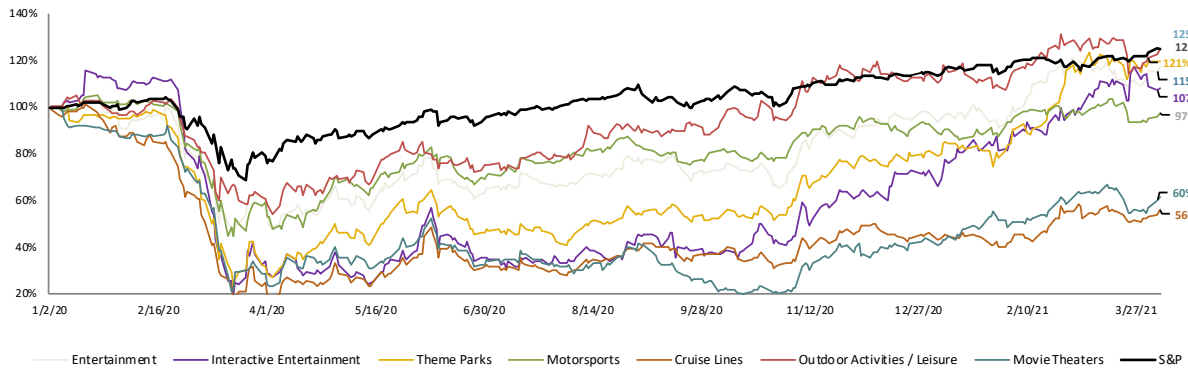
Comparable Companies '15-19 Stock Performance



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Comparable Companies '20-21 YTD Stock Performance



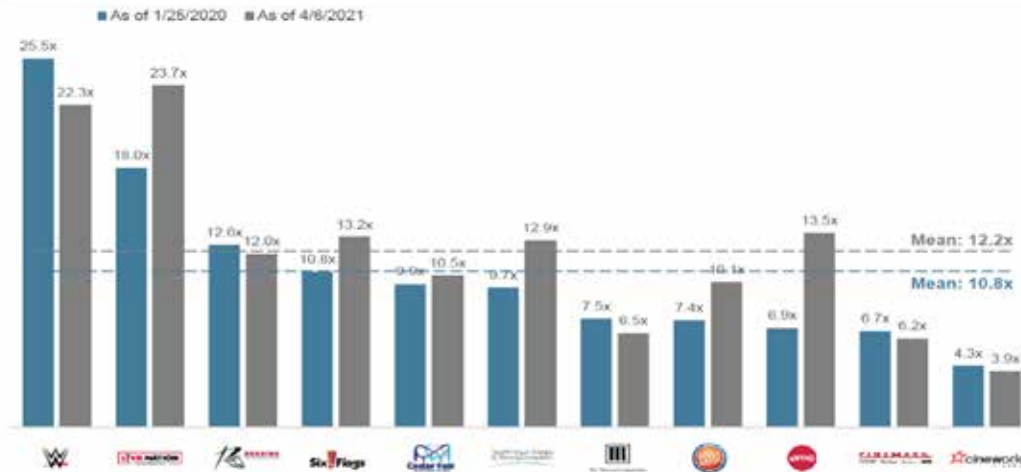
Sources: Capital IQ, IBIS World.
Note: Pricing as of 4.6.21.
(1) Excludes AMC due to volatility.

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Selected OOHE Comparable Companies

Implied TEV / 2019A EBITDA Multiples



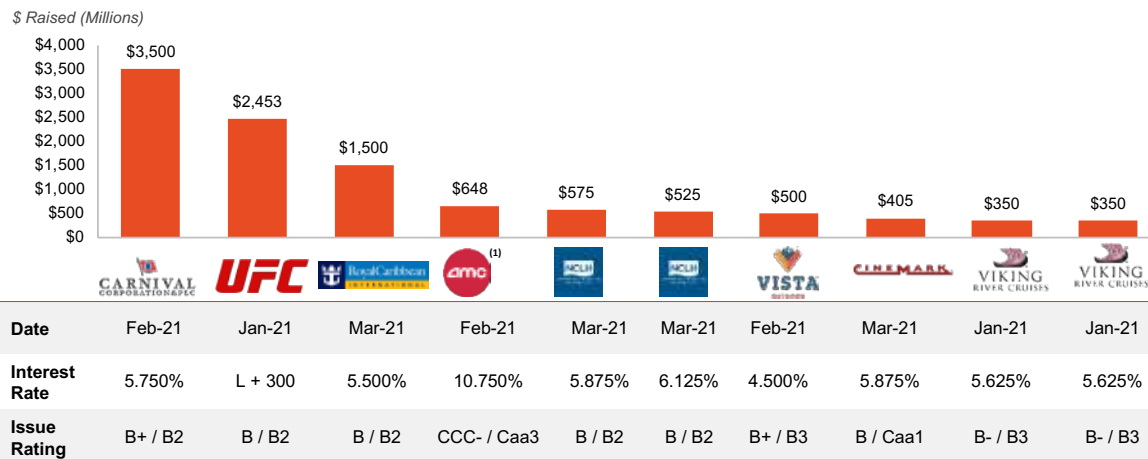
Out-of-Home Entertainment multiples have seen significant volatility in light of COVID-19 and the subsequent market recovery

Source: S&P Capital IQ, Wall Street research, HL estimates and public filings.

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Selected Out-of-Home Entertainment Transactions: Q1 2021 Issuances



Source: S&P LCD

(1) Includes AMC's issuance of \$100 million, 15% / 17% cash PIK toggle first lien secured notes as well as the issuance of a \$548 million, 10.75% term loan by AMC's wholly owned subsidiary, Odean Cinemas Group Limited; Odean term loan unrated, issue rating reflects corporate family rating.

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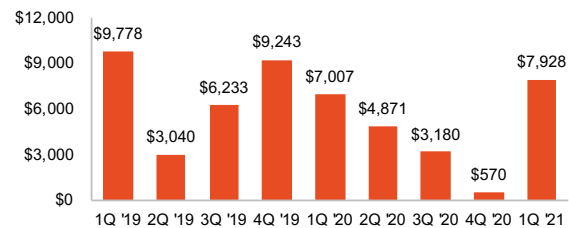
OOHE Capital Markets Update

- OOHE loan issuance volume declined 24% to ~\$7 billion in 1Q20 from ~\$9 billion in 4Q19 before continuing to fall throughout the remainder of 2020 as bank lenders hesitated to provide additional liquidity in an uncertain macroeconomic environment.
- 2Q20 is marked by a dramatic increase in high yield activity as OOHE businesses issued \$16 billion to refinance balance sheets and extend maturities amid COVID-19 lockdowns.
- Dovish central bank policy provided necessary liquidity to ensure stability in credit markets, preventing immediate insolvency for many businesses directly impacted by quarantines.
- Volumes of both loan and high yield issuances have increased materially in 1Q21 as a continued low-rate environment and improving economic outlook have paved the way to a continued wave of refinancing.

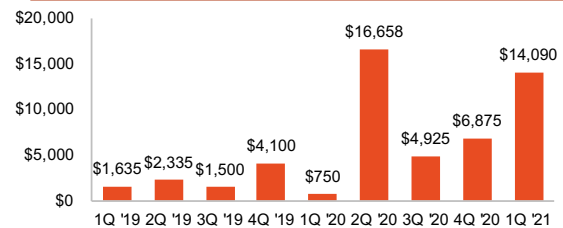
Source: S&P LCD

(1) Includes Entertainment & Leisure and Gaming & Hotel industry groupings.

OOHE Loan Issuance Volumes (\$ millions) ⁽¹⁾



OOHE High Yield Issuance Volumes (\$ millions) ⁽¹⁾



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The Rise of At-Home Entertainment

New Trends.

- The proliferation and increasing popularity of streaming platforms marks a major shift in consumption of entertainment.

COVID-19 Effects.

- The pandemic has created a variety of issues in ongoing business operations and valuations. Established values of assets were called into question as state and local governments issued stay-at-home orders, and even after such orders were lifted. This is particularly evident in companies that rely on physical locations.
- The pandemic has accelerated changes related to new technology and business models.

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Shift Strains Businesses

Companies have generally pursued two different paths for coping with this strain.

1. Bankruptcy

- Cinemex (Ch. 11)
- Studio Movie Grill (Ch. 11)
- Alamo Drafthouse (Ch. 11)
- Chuck E. Cheese (Ch. 11)
- Cirque du Soleil (Ch. 15)

2. Capital Raises

- Cineworld
- AMC

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Bankruptcies: the goal of chapter 11 bankruptcy is to reduce debt and optimize go-forward operations.

Cinemex

Successfully confirmed chapter 11 plan eliminating approx. \$200 million in debt.

Chuck E. Cheese

Successfully confirmed chapter 11 plan removing roughly \$705 million in debt.

Cirque Du Soleil

U.S. chapter 15 case ancillary to Canadian proceeding.

Achieved approval of asset sale through Canadian proceedings.

Alamo Drafthouse

Entered bankruptcy with approx. \$105 million in unsecured debt.

Chapter 11 plan contemplates sale of assets.

Studio Movie Grill

Entered bankruptcy with approx. \$105 million secured debt plus approx. \$231 million unsecured debt.

Equitization plan confirmed on 3/31/21.

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Capital Raises

AMC

- \$506 million in equity (issued 164.7 million new common shares).
- \$411 million in debt (refinanced credit facility).
- AMC carries a total of approx. \$7.2 billion in debt.

Cineworld

- New \$450 million term loan.
- Extension on existing credit facility.
- Cineworld carries a total of approx. \$4.9 billion in debt.

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Bankruptcy Issues: Several common issues have arisen in chapter 11 cases of OOHE operators.

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OOHE Businesses commonly face issues regarding:

a. Rent Deferral / Abatement

- Debtors generally must continue to pay lease obligations but may have options to lighten that load.

b. Contract Assumption/Rejection

- Debtors may assume or reject executory contracts, subject to 11 U.S.C. 365.

c. Critical Vendor Treatment

- Debtors may determine which vendors should be treated as critical, allowing them to maintain key operating relationships in exchange for payment of prepetition claims.

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Rent Deferral / Abatement

Debtors with significant brick and mortar operations, such as movie theaters and retailers, were severely impacted by the COVID-19 pandemic and related shutdowns.

Bankruptcy may provide temporary relief from burdensome rent obligations while physical locations are shut down.

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Rent Deferral / Abatement

Section 365(d)(3) requires debtors to perform post-petition obligations.

Section 365(d)(3) also allows deferral of performance for up to 60 days for cause.

At the outset of the pandemic some debtors, such as J. Crew, Modell's, and True Religion, were successful in deferring rent obligations during this period

In *Pier 1*, the E.D. Va. bankruptcy court allowed the debtor to defer rent beyond this 60-day period, on the basis that while the debtor was breaching its obligation the code does not compel payment. Rather, the court held that the landlords would be entitled to adequate protection and administrative claims for the failure to pay.

In *CEC*, however, the S.D. Texas bankruptcy court refused to extend beyond the 60-day period, holding that section 365(d) requires payment and clearly limits deferral to 60 days.

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Contract Assumption/Rejection

A debtor may assume or reject executory contracts, those with unperformed material obligations by parties on each side, pursuant to Section 365 of the Bankruptcy Code.

Rejection

- If a debtor rejects a contract, it is effectively a statement that it will no longer perform its obligations under the contract.

Assumption

- A debtor that seeks to assume a contract must cure any defaults and provide adequate assurance to its counterparty that it will perform its obligations going forward.
- A debtor may seek to assign an assumed contract to a third-party (e.g., an asset purchaser).

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Consequences of Assumption/Rejection

Rejection

- Rejection constitutes a pre-petition breach of the contract.
- The counterparty may have a pre-petition claim for rejection damages.
- The counterparty may also have administrative claims for post-petition obligations.

Assumption / Assignment

- Assumption of a contract after cure or adequate assurance of performance will entitle the reorganized debtor to the benefit of the contract.
- Certain contracts, such as personal services agreements and intellectual property licenses may not be assignable without counterparty consent.

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Typically, a debtor may not pay debts arising before the petition date. "Critical Vendor" payments are an exception to this rule.

- Generally, debtors will seek to pay "critical vendors" at the beginning of their bankruptcy cases for unsecured prepetition debts incurred by the debtors purchase of goods from vendors on credit.
- The rationale behind this is that these "critical vendors" are those without whose continued provision of goods the debtor could not continue operating; paying critical vendors is a way to ensure that this provision of goods continues.

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Critical Vendors

K-Mart: The Seventh Circuit rejected debtors' request to pay 2,330 trade creditors and expounded a stringent standard to allow critical vendor payments.

In re Kmart Corp., 359 F.3d 866 (7th Cir. 2004).

Critical vendor agreements are often entered into. These agreements dictate the terms of the relationship going forward and can strip vendors of payments received if not complied with.

Windstream: The S.D.N.Y. District Court permitted critical vendor payments, noting the debtors' flexibility under section 363(b).

GLM DFW, Inc. v. Windstream Holdings Inc. (In re Windstream Holdings Inc.), 614 B.R. 441 (S.D.N.Y. 2020).

Delaware: The Delaware bankruptcy court does not have a specific critical vendor test, but judges typically allow critical vendor payments under the doctrine of necessity and similar authority.

See e.g. *In re Just for Feet, Inc.*, 242 B.R. 821, 823 (D. Del. 1999).

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Licensors as Critical Vendors

While licensors may benefit from being treated as “critical vendors” they must still behave in the way that rendered them “critical” in the first place.

“Critical vendors” typically must continue fulfilling the obligations of an existing agreement or commit to continue customary business practices.

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Movie License Agreements

- Movie studio license agreements with theaters raise issues at the intersection of contract assumption and critical vendor treatment.
- To be capable of assumption or rejection, a contract must be “executory.”
- “Executory” contracts are typically understood as those where material performance remains due by both parties.
- Movie license agreements are typically structured so that individual films are licensed on a one-off basis, with the terms of the master license agreement controlling (i.e., they do not *require* the studio to license a particular film to the theater).

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Movie License Agreements

- Studios have objected to debtors' efforts to “assume” these master license agreements (“MLA”) as executory contracts.
 - Cinemex
 - Alamo
- Usually, the debtors will instead treat the studios as critical vendors, meaning the studios get paid what would otherwise be “cure” amounts payable under section 365 upon assumption.
- The MLAs are treated as assets of the debtor and are either sold to the buyer, or revert in the reorganized debtor, subject to both parties' rights going forward.

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What future challenges and changes does the industry face?

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Will the entities that raised capital through equity or debt eventually need to file for bankruptcy?

Equity raises may increase capital, but the use of capital must address the need for raising it in the first place.

These entities still face the broader challenges of a changing industry.

Debt financing may only delay the inevitable or dig a deeper hole.

The terms of loans given to distressed companies reflect that distress. Lenders that have an established relationship with the borrower may not be willing to further refinance and opportunistic investors may aggressively seek to recover.

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Uncertainty remains with respect to COVID-related guidelines and the lingering social and behavioral effects of the pandemic.

Lasting effects on OOHE engagement and landscape.

The psychological effects of the pandemic may be long-lasting and the general population may be inclined to favor certain OOHE activities over others.

Some firms may not be able to recover their pre-pandemic business in light of this.

The new normal

The COVID-19 pandemic has left an indelible mark on our collective attitudes and behavior, but the lasting effect on our social and economic participation is uncertain.

E.g. government regulations and standards of the general population regarding cleanliness and safeguards and related equipment and labor costs.

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The traditional 90-day release window is shortening or being eliminated.

Traditionally, movies were released in theaters exclusively, followed by a 90-day period before home-video release.

This period may be eliminated because of the rise in online streaming and the increasing leverage of movie studios over the theaters seeking to recover from the pandemic shut-downs.

Different firms may have different approaches for different properties.

The purpose of the release window dark period is to maximize profits from a title by reducing or eliminating the cannibalization of revenues from theatrical release and home-video, digital release, etc.

More and more firms are beginning to adjust their approach and reevaluate prior practices and economic analyses.

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The rise of online streaming raises several questions regarding how to maximize profits.

How are revenue streams changed?

If, traditionally, movie studios made 50% of their revenue from theatrical release, how does online streaming change the analysis with respect to overhead and different sources of revenue (e.g. subscriptions and advertisements)?

How much is the role of physical movie theaters diminished?

With potential efficiencies from online streaming, including vertical distribution to online (depending on the studio) and targeted marketing of titles, we can expect the role of theaters to be less significant than it historically has been.

- Does this diminished role pose an existential threat to theaters?
- Will their bargaining power be severely diminished?
- Will there be enough left on the table for them? 29

Faculty

Kathryn A. Coleman is a partner in Hughes Hubbard & Reed LLP's New York office and has handled a wide range of restructuring and other high-stakes matters in her more than 30 years in practice, including representing U.S. and non-U.S. companies in chapter 11 cases, dealing with “bet-the-company” litigation claims, representing acquirers in chapter 11 sale transactions, representing DIP lenders, and handling cross-border insolvency matters, out-of-court restructurings and distressed investments. Her clients include individuals and companies defending trade secret theft and RICO lawsuits, publicly traded and privately held companies restructuring their financial affairs, traditional and nontraditional secured lenders, unsecured creditors (both official committees and significant creditors for their own account), equityholders, potential acquirers, equity sponsors, and financial and strategic buyers. Ms. Coleman is a trusted advisor to the inner management circles of her clients, with expertise in advising management and boards of directors on corporate governance, fiduciary duty and D&O insurance matters. She has advised clients on, and litigated at the trial and appellate levels, plan confirmations, prepackaged plans, credit bidding, exclusivity, debtor-in-possession financings, valuation, adequate protection of security interests, the ability to collaterally attack orders of the bankruptcy court, and cash-collateral usage. She also has experience litigating venue, remand, removal and stay issues, and has represented recovery trustees dealing with myriad post-confirmation issues and litigation. Ms. Coleman is a Fellow of the American College of Bankruptcy and served two terms on ABI's Board of Directors, for which she co-chairs its annual Complex Financial Restructuring Program. She was recently named a *Law360* Bankruptcy MVP and a Notable Woman in Law by *Crain's New York Business*. Ms. Coleman frequently speaks on bankruptcy law and distressed investing, participating in programs sponsored by the Practising Law Institute, ABI, the Turnaround Management Association, AIRA, the M&A Advisor, the New York City Bar Association and the American Bar Association. She also serves on the Steering Committee of the NYC Bankruptcy Assistance Project. Ms. Coleman graduated *magna cum laude* from Pomona College and received her J.D. from Boalt Hall School of Law (U.C. Berkeley), subsequently clerking for Hon. C. Martin Pence, U.S. District Judge for the District of Hawaii.

Adam L. Dunayer is a managing director in Houlihan Lokey's Financial Restructuring Group in Dallas, where he leads the firm's regional financial restructuring and distressed-company M&A efforts. He has nearly 20 years of experience consummating transactions and providing strategic advice to companies and creditors in connection with in- and out-of-court financial restructurings, mergers, acquisitions and dispositions. He also has experience raising debt and equity capital in public and private markets. Mr. Dunayer's experience spans such industries as consumer products, food, health care, building products, energy, general industrial, telecom and technology. His recent engagements include Quicksilver Resources (company), TNT Crane (secured creditors), Chuck E. Cheese (secured creditors), Alert 360 (company), Pilgrim's Pride (equity committee), Jack Cooper (company), Taco Bueno (company), Dental One (company), Pioneer Energy Services (company) and Parker Drilling (creditors). He speaks frequently on trends and issues in restructuring, distressed M&A and other topics, and has testified as an expert witness on a variety of bankruptcy and restructuring issues. Before joining Houlihan Lokey, Mr. Dunayer was a managing director with Bear, Stearns & Co. and was an executive vice president and chief financial officer with Miller Industries, where he also served as president of the company's largest subsidiary. He is a member of ABI and the Turnaround Manage-

ment Association, and is registered with FINRA as a General Securities Principal (Series 7, 24 and 63). Mr. Dunayer received his B.B.A. from the University of Texas at Austin.

Andrew N. Goldman is co-chair of WilmerHale’s Bankruptcy and Financial Restructuring Practice Group in New York and handles bankruptcy-related litigation and corporate issues. He has practiced in the field for 27 years, and his practice includes the representation of large public-company debtors, creditors’ committees, DIP lenders, acquirers and individual institutional creditors, in both out-of-court workouts and formal restructuring processes (both domestic and cross-border). Among his key clients are Walt Disney, National Holdings, Wilmington Savings Fund Society, GLAS, Euroclear Bank, Cross Sound Advisors and Pennsylvania Power and Light (PPL). Mr. Goldman was named in *The Best Lawyers in America* for bankruptcy and creditor-debtor rights law in 2020 and 2021, and he was named a 2018 Insolvency & Restructuring – Advisor of the Year (USA) by *Finance Monthly* and a leading insolvency and restructuring attorney in 2014 by *Expert Guides*. From 2012-19, Mr. Goldman was recognized by *Chambers USA* for bankruptcy/restructuring, and he received a 2011 Top Attorneys in the New York Metro Area award, was named one of *Legal Times*’ Top 3% Attorneys in the United States for 2009 and named one of the world’s leading lawyers in the ninth and tenth editions of the *Guide to the World’s Leading Insolvency and Restructuring Lawyers*. He also was also named in *The Best Lawyers in America* for bankruptcy and creditor-debtor rights law in 2020. Mr. Goldman guest lectures an advanced business reorganizations class at Brooklyn Law School and is a frequent lecturer on restructuring at The University of Pennsylvania Carey Law School and The Wharton School of the University of Pennsylvania. He received his B.S. from The Wharton School of Business at the University of Pennsylvania in 1989 and his J.D. from Brooklyn Law School in 1992, where he was a notes and comments editor of the *Brooklyn Journal of International Law*.

Michael Juniper, CTP is a partner with CR3 Partners in Dallas and has 15 years of experience in financial and operational analysis and improvement, turnaround and restructuring consulting, and interim management. He has served as an advisor to numerous companies through chapter 11 proceedings. Prior to joining CR3, Mr. Juniper served in finance functions for private manufacturing and distribution companies. He has experience in the food processing, manufacturing and consumer products industries, and he is active in the restructuring community, having previously served as the Dallas/Ft. Worth TMA president. He currently serves on its board. Mr. Juniper’s practice involves many industries, including durable and consumable goods, distribution, manufacturing, retail, oil & gas, biofuels and protein. He received his B.B.A. from the University of Arkansas at Little Rock and his M.B.A. from Washington University in St. Louis.

Patricia B. Tomasco is a partner in Quinn Emanuel Urquhart & Sullivan LLP’s Houston office and has more than 30 years of experience solving corporate insolvency problems. She focuses on workouts, distressed acquisitions and corporate restructuring, and debtor and creditor representation in chapter 11 cases and related litigation. Ms. Tomasco frequently represents clients in the energy and telecommunications industries and high-tech debtors in both reorganizations and litigation. Her current and recent representations include counsel to the Kingfisher Midstream, LLC in the pending chapter 11 cases of Alta Mesa Resources, Inc.; the ad hoc committee of unsecured bondholders in Sanchez Energy, Inc.; the unsecured creditors’ committees of Halcon Resources, Inc. and EXCO Resources, Inc.; counsel to the Ad Hoc Committee of First Lien Lenders in Vanguard Natural Resources, Inc.; and debtors’ counsel in SH-130 Concession Company, LLC., Westmoreland Coal Company,

iHeartMedia, Inc., Linn Energy LLC, Berry Petroleum, Midstates Petroleum Company, Inc., El Paso Children's Hospital, AF Global and Ameriforge Group, Inc. and Light Tower Rentals; and equity sponsor in Francis' Drilling Fluids, Inc.. Ms. Tomasco currently serves a three-year term as chair of the Complex Case Committee for the Southern District of Texas, a function created by Judges Jones and Isgur to review and improve complex case procedures and to provide a liaison between complex case practitioners and the courts. From 2006-19, she has been listed as a *Super Lawyer* and was selected as a Best Business Bankruptcy Lawyer by the *Austin Business Journal*. She is admitted to the New York and Texas Bars, as well as the U.S. Court of Appeals for the District of Columbia, Federal, Fifth and Sixth Circuits, the U.S. District Courts for the District of Columbia, the Eastern District of Michigan, the Southern District of New York, the District of Arizona, and the Eastern, Western, Southern and Northern Districts of Texas, and the U.S. Supreme Court. Ms. Tomasco received her B.A. from Rice University and her J.D. from South Texas College of Law.