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Impact of COVID-19 on Valuation: Views from the Bench, Investors and Advisors

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Hon. Marvin P. Isgur
U.S. Bankruptcy Court (S.D. Tex.) | Houston

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2021

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Chief Judge David R. Jones, *Bankruptcy Court for the Southern District of Texas*
Judge Marvin Isgur, *Bankruptcy Court for the Southern District of Texas*
Michael Addeo, *Managing Director, Blackstone Credit*
Josh Abramson, *Partner, PJT Partners*

Moderator: **Abid Qureshi**, *Akin Gump Straus Hauer & Feld LLP*

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Retail Case Studies

- *In re Centric Brands Inc.*, No. 20-22637 (Bankr. S.D.N.Y.)
- *In re Chinos Holdings, Inc.* ("J. Crew"), No. 20-32181 (Bankr. E.D. Va.)
- *In re J. C. Penney Company, Inc.*, No. 20-20182 (Bankr. S.D. Tex.)

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Centric Brands

- **Petition Date**: 05/18/2020
- **Plan Confirmation Date**: 09/21/2020
- **Effective Date**: 10/09/2020
- Judge Sean H. Lane (S.D.N.Y.)

Background: Centric Brands is a New York City-based lifestyle brand collective. The Company filed for bankruptcy with an RSA contemplating the conversion of more than $700 million of funded debt into equity and emergence as a private company. The Company filed for chapter 11 due to the impact of the COVID-19 pandemic on the Debtors' business resulting from temporary store closures, as well as supply chain disruption.

Prepetition Capital Structure:

Total Secured Debt	**$1.735 billion**
Unsecured Convertible Notes	**$28.7 million**
Subordinated Convertible Notes	**$19 million**

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Centric Brands (cont'd.)

Plan: Holders of first lien debt received 30% of the equity and the face amount of the first lien term loan claim in indebtedness under the exit facility. Holders of second lien debt received 70% of the equity and also contributed to new money financing on a *pari passu* basis with first lien lenders. The plan as filed provided for no recovery to convertible notes and general unsecured creditors.

Plan Equity Value: $1.25 billion to $1.45 billion, with a $1.35 billion midpoint valuation.

Key Issues: The Official Creditors' Committee argued that the Debtors' liquidation analysis failed to reflect unencumbered value that resided in foreign subsidiaries. The Debtors responded that the liquidation analysis fully reflected the purported unencumbered value identified by the UCC because, although only 65% of the equity interests in a Canadian and a Norwegian subsidiary were subject to liens, the remaining equity would have no practical value because the non-Debtor subsidiaries were dependent upon the Debtors for financing, and would themselves be liquidated in a hypothetical chapter 7 liquidation.

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Centric Brands (cont'd.)

Key Issues (cont'd.): The Debtors contended that the Committee's other valuation arguments relating to the net book value of the foreign subsidiaries were similarly unavailing because that metric does not reflect the equity value of a company in a liquidation, much less what the Debtors in the United States would receive if the non-Debtor foreign subsidiaries were liquidated in foreign jurisdictions under foreign insolvency laws.

The valuation dispute was ultimately settled by increasing cash distributions to unsecured creditors and establishing a funded litigation trust to prosecute claims against certain directors for the benefit of unsecured creditors.

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J. Crew

- **Petition Date**: 05/04/2020
- **Plan Confirmation Date**: 08/26/2020
- **Effective Date**: 09/11/2020
- Judge Keith L. Phillips (E.D. Va.)

Background: The Debtors comprise an internationally recognized multi-brand apparel and accessories retailer. When COVID-19 struck, the Debtors were on the cusp of a long-negotiated recapitalization. However, the market volatility brought by the pandemic forced them to pursue an alternative path for their businesses. The Debtors filed for chapter 11 with a restructuring support agreement in place with an ad hoc committee of prepetition lenders and noteholders.

Prepetition Capital Structure:

ABL Facility	$311,000,000
Term Loans	$1,337,400,000
IPCo Notes	$347,600,000
Total	$1,996,000,000

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J. Crew (cont'd.)

Plan: ABL Facility Claims were paid in full in cash. Holders of Term Loan claims received 76.5% of the new common equity remaining after certain distributions. Holders of IPCo Notes Claims received 23.5% of the new common equity remaining after certain distributions. A trust was established for general unsecured creditors, though their recovery was capped at 50%.

Plan Equity Value: $1.06 billion to $1.43 billion

Key Issues: COVID-19 was cited in the Disclosure Statement as a significant contributor to the Debtors' sharp decline in business contributing to the need to file for chapter 11.

Debtors obtained a $400 million DIP financing package, which converted into a postpetition exit facility on a dollar-for-dollar basis. The DIP facility consisted of 100% new money without a rollup of prepetition secured debt, and all liens granted on account of the DIP were junior to existing liens on ABL collateral.

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J. Crew (cont'd.)

Key Issues (cont'd.): The Official Creditors' Committee objected to the Debtors' Plan, arguing in part that the Debtors' valuation analysis was flawed in that it "double-counted" the impact of COVID-19 by assuming that the impact of the pandemic on the Debtors' cash flow would extend in perpetuity. The Committee argued that, had the Debtors utilized correct valuation methodologies, it would have resulted in an additional $1 billion in value and increased recoveries for unsecured creditors.

The Debtors settled with the Committee, and a GUC Trust was formed and funded with $60 million pursuant to the settlement.

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J.C. Penney

- **Petition Date**: 05/15/2020
- **Plan Confirmation Date**: 12/16/2020
- **Effective Date**: 01/30/2021
- Chief Judge David R. Jones (S.D. Tex.)

Background: The Debtors are one of America's largest department store retailers, with 846 locations and roughly 85,000 employees. Prior to COVID-19, the Debtors were working to deleverage their capital structure and extend debt maturities. However, the pandemic resulted in the temporary closure of all stores and drastic reductions in net sales, necessitating a bankruptcy filing.

The chapter 11 cases were filed with an RSA supported by 70% of first lien debt. The RSA contemplated (i) a "NewJCP" operating company; and (ii) a separate REIT that would hold certain properties and lease them to NewJCP in a sale-leaseback transaction. The RSA also contemplated (i) a toggle to a sale process for substantially all assets if certain milestones were not met; and (ii) a "market testing" process to solicit interest in a sale transaction.

J.C. Penney (cont'd.)

Prepetition Capital Structure:

ABL Facility	$1,179,000,000
2016 Term Loan	$1,521,000,000
First Lien Notes	$500,000,000
Second Lien Notes	$400,000,000
Unsecured Notes	$1,318,000,000
Total	$4,918,000,000

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J.C. Penney (cont'd.)

Asset Sale: Substantially all assets were sold pursuant to an asset sale with a "PropCo" and "OpCo" structure. "OpCo" consisted of substantially all retail and operating assets and was purchased by landlords Simon Property Group and Brookfield Asset Management. "PropCo" consisted of various owned and leased properties, acting as landlord to OpCo pursuant to a Master Lease Agreement. PropCo was purchased with a credit bid by an ad hoc group of DIP and first lien lenders.

Plan: ABL Claims paid in full in cash. First lien claims (term loan and first lien notes) received a pro rata share of certain credit bid amounts. Second lien notes claims received a pro rata share of $1.5 million in cash subject to certain modifications. Unsecured notes received a pro rata share of $750,000 in cash subject to certain modifications. General unsecured creditors received, together with the second lien and unsecured notes claims, potential distributions under an unsecured claims earnout pool.

Key Issues: Contested DIP process with competing proposals from first lien creditor group and crossover creditor group. Despite high fees, the Debtors ultimately selected the first lien creditor proposal, noting heightened risks of lending during the COVID-19 pandemic.

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J.C. Penney (cont'd.)

Key Issues (cont'd.): An Ad Hoc Equity Group challenged valuation at the sale hearing and throughout the case, arguing that the Debtors' hard assets alone were valued at $6.5 billion. In response, the Debtors argued that following a five-month marketing process, no entity was willing to pay even $2 billion for the Debtors.

The proposed $1 billion credit bid from the DIP and first lien lenders distributed the value of the reorganized entity ratably based on the percentage of debt contributed to the credit bid. This resulted in the DIP lenders receiving 90% of the value of the reorganized entity, which amounted to a recovery on the DIP loans well in excess of 100%. An ad hoc group of minority first lien lenders objected to this structure and made an alternative bid for the PropCo, arguing that the credit bid grossly undervalued the Debtors' assets and improperly enriched the DIP lenders, among other things. Shortly before the sale hearing, the ad hoc group of minority first lien lenders reached a settlement with the Debtors and DIP lender group.

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Participant Biographies

Chief Judge David R. Jones, *Bankruptcy Court for the Southern District of Texas*

David R. Jones was sworn in as a bankruptcy judge for the Southern District of Texas on September 30, 2011. Judge Jones was appointed as chief judge in 2015. Prior to taking the bench, Judge Jones was a partner in the bankruptcy group of Porter Hedges, LLP.

Judge Jones received an LLM from Duke University in 2018, his Juris Doctor from the University of Houston in 1992 where he served as editor-in-chief of the HOUSTON LAW REVIEW. Judge Jones received his Master of Business Administration from Southern Methodist University in 1986 and his Bachelor of Science in Electrical Engineering from Duke University in 1983.

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Participant Biographies (cont'd.)

Judge Marvin Isgur, *Bankruptcy Court for the Southern District of Texas*

Marvin Isgur has been a United States Bankruptcy Judge since February 1, 2004. He has been appointed to a second term as a Bankruptcy Judge, which started on February 1, 2018. Chief Justice John Roberts, Jr. has appointed Judge Isgur to the Judicial Conference Committee on Court Administration and Case Management. Judge Isgur is the sole bankruptcy judge appointed to the Committee by the Chief Justice.

Judge Isgur received his bachelor's degree from the University of Houston in 1974. In 1978, he received an MBA, with honors, from Stanford University. Between 1978 and 1990, Judge Isgur was an executive with a large real estate development company in Houston. In 1987, he returned to the University of Houston where he received a law degree (with high honors) in 1990. Between 1990 and 2004, Judge Isgur represented trustees and debtors in chapter 11 and chapter 7 cases. He also represented various parties in 14 separate chapter 9 bankruptcy cases.

Judge Isgur has written over 500 memorandum opinions. He was one of the first judges to issue opinions interpreting the 2005 Bankruptcy Abuse Prevention and Consumer Protection Act.

Judge Isgur is a volunteer with the Houston Urban Debate League, a non-profit organization that works in partnership with the Houston Independent School District to bring policy debate to high school students. He is one of the principal organizers of the annual University of Texas Consumer Bankruptcy Conference and is a frequent speaker at continuing education programs. When his volunteer and court activities permit, Judge Isgur spends his weekends sailing on Galveston Bay.

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Participant Biographies (cont'd.)

Michael Addeo, *Managing Director*, *Blackstone Credit*

Michael Addeo is a Managing Director with Blackstone Credit, and is involved in leading restructuring activities. In this role, Mr. Addeo is involved in recapitalizations of existing portfolio companies and sources new investment opportunities around restructuring transactions. Since joining Blackstone Credit, then known as GSO Capital Partners, in 2011, he has also been involved in both debt and equity investments in the U.S. and Europe, with a specific focus on distressed and special situations investing. From May 2015 to May 2017, Mr. Addeo worked in Blackstone's London office.

Before joining Blackstone Credit, he was a Vice President in equity research at Wolfe Research covering transportation companies, and specializing in the trucking, logistics, and rail sub-sectors. Prior to Wolfe Research, Mr. Addeo began his career with Deutsche Bank's Private Wealth Management division.

Mr. Addeo graduated cum laude with a BS in Business Administration and a double major in Finance and Accounting from Georgetown University's McDonough School of Business. He is a CFA® Charterholder and previously served on the board of directors of Warrior Met Coal, Inc.

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Participant Biographies (cont'd.)

Josh Abramson, *Partner, PJT Partners*

Josh Abramson is a Partner in the Restructuring and Special Situations Group at PJT Partners, based in New York. Since joining PJT Partners' predecessor firm Blackstone, Mr. Abramson has advised companies, creditors and sponsors in restructurings, special situations, financings, mergers and acquisitions. He has advised on all aspects of domestic and international transactions across a broad range of industries. Examples of Mr. Abramson's public assignments include API Heat Transfer, Caesars Entertainment, CEDC, Centric Brands, Constellis, Deluxe Entertainment, Full Beauty, Genco Shipping & Trading, Gibson Brands, Hovnanian Enterprises, J.Crew, Jack Cooper, McGraw Hill Education, PetSmart, Revlon, Travelport and TridentUSA Health. Prior to joining PJT Partners and Blackstone, Mr. Abramson worked at Barclays Capital and Lehman Brothers. He frequently serves as a guest lecturer at Wharton Business School, University of Pennsylvania Law School and George Washington Law School. Mr. Abramson received a JD from the University of Pennsylvania Law School where he graduated Magna Cum Laude and Order of the Coif, and an MBA from the Wharton School of the University of Pennsylvania where he was a Palmer Scholar.

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Participant Biographies (cont'd.)

Abid Qureshi, *Akin Gump Strauss Hauer & Feld LLP*

Abid Qureshi is a partner in the financial restructuring group, and the partner in charge of the New York office, at Akin Gump. He is a dedicated financial restructuring litigator, giving him comprehensive experience in virtually every issue that arises in the course of a complex restructuring. He is among a very small number of lawyers in the country with such experience and is widely regarded as a leading lawyer in this area. His clients include creditors, bondholders, hedge funds, institutional investors, creditor committees and debtors.

Mr. Qureshi has litigated the most complex, cutting-edge issues in the highest-profile chapter 11 cases, and also has extensive experience in cross-border insolvencies and chapter 15 proceedings. His work extends across various industries including energy, oil and gas, entertainment, retail, chemicals and forestry and paper, among others.

Some examples of Mr. Qureshi's recent engagements include Travelport Worldwide Ltd., Frontier Communications Corporation, Pacific Gas and Electric Company, Aeroméxico, Chesapeake Energy Corporation, FirstEnergy Solutions, Intelsat Corporation, Nordic Aviation Capital, Payless Holdings LLC, Sears Holdings Corporation and Virgin Australia.

Mr. Qureshi received an LLM with merit from the London School of Economics and Political Science; his JD from the University of Toronto and his BA with highest honors from the University of British Columbia. He serves as president of the United Nations Association of New York and as Akin Gump's liaison for Lawyers Without Borders.

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Faculty

Joshua Abramson is a partner in the Restructuring & Special Situations Group at PJT Partners, Inc. in New York. Since joining PJT Partners' predecessor, Blackstone, he has advised companies, creditors and sponsors in restructurings, special situations, financings, and mergers and acquisitions. He also has advised on all aspects of domestic and international transactions across a broad range of industries. Mr. Abramson's public assignments include API Heat Transfer, Caesars Entertainment, CEDC, Centric Brands, Constellis, Deluxe Entertainment, Full Beauty, Genco Shipping & Trading, Gibson Brands, Hovnanian Enterprises, J.Crew, Jack Cooper, McGraw Hill Education, PetSmart, Revlon, Travelport and TridentUSA Health. Prior to joining PJT Partners and Blackstone, he worked at Barclays Capital and Lehman Brothers. Mr. Abramson has been recognized in the Top 40 Under 40 dealmaker category by the M&A Advisor. He frequently serves as a guest lecturer at Wharton Business School, University of Pennsylvania Law School and George Washington Law School. Mr. Abramson received his B.A. from Wesleyan University, his M.B.A. from the Wharton School of the University of Pennsylvania, where he was a Palmer Scholar, and his J.D. from the University of Pennsylvania Law School, where he graduated *magna cum laude* and Order of the Coif.

Michael Addeo, CFA is a managing director and head of Restructuring for Blackstone Credit in New York, where he is involved in recapitalizations of existing portfolio companies and sources of new investment opportunities around restructuring transactions. Since joining Blackstone Credit, then known as GSO Capital Partners, in 2011, he has also been involved in both debt and equity investments in the U.S. and Europe, with a specific focus on distressed and special situations investing. From May 2015 to May 2017, Mr. Addeo worked in Blackstone's London office. Before joining Blackstone Credit, he was a vice president in equity research at Wolfe Research, covering transportation companies and specializing in the trucking, logistics and rail subsectors. He began his career with Deutsche Bank's Private Wealth Management division. Mr. Addeo received his B.S. *cum laude* in business administration with a double major in finance and accounting from Georgetown University's McDonough School of Business.

Hon. Marvin P. Isgur is a U.S. Bankruptcy Judge for the Southern District of Texas in Houston, appointed Feb. 1, 2004, and reappointed on Feb. 1, 2018. He 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 a volunteer with the Houston Urban Debate League, a nonprofit organization that works in partnership with the Houston Independent School District to bring policy debate to high school students. He also is one of the principal organizers of the annual University of Texas Consumer Bankruptcy Conference and is a frequent speaker at continuing education programs. Judge Isgur 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. David R. Jones is a U.S. Bankruptcy Judge for the Southern District of Texas in Houston, sworn in on Sept, 30, 2011. Prior to becoming a judge, he was a practicing lawyer in Houston for approximately 19 years specializing in bankruptcy and bankruptcy-related litigation. Judge Jones received his B.S. in electrical engineering from Duke University in 1983, his M.B.A. from Southern Methodist University in 1986, and his J.D. from the University of Houston in 1992, where he served as editor-in-chief of the *Houston Law Review*.

Abid Qureshi is the partner in charge of the Akin, Gump Strauss Hauer & Feld LLP's New York office. He is a financial restructuring litigator and has litigated the most complex, cutting-edge issues in the highest-profile chapter 11 cases. He also has experience in cross-border insolvencies and chapter 15 proceedings. Mr. Qureshi handles bankruptcy appellate issues at both the district and circuit court levels. He is a frequent speaker and writer on bankruptcy-related issues and has also testified before the Advisory Committee on Bankruptcy Rules regarding recent amendments to the Bankruptcy Rules. Mr. Qureshi's recent litigations include contested plan confirmation proceedings, valuation disputes, cramdown disputes, make-whole and no-call claims, breaches of fiduciary duty, fraudulent transfer claims, asset sales and valuation proceedings. He is a frequent speaker at major financial restructuring and distressed investments industry events and has been listed in *The Legal 500* (recommended in Finance-Corporate Restructuring from 2016-18), *The Best Lawyers in America* for Bankruptcy Litigation from 2012-18, *Benchmark Litigation* as a U.S. Bankruptcy Litigation Star from 2013-17 and as a New York Litigation Star from 2013-17, and *IFLR1000 United States* as a Notable Practitioner in Restructuring and Insolvency for 2019. Mr. Qureshi received his B.A. with highest honors in 1991 from the University of British Columbia, his J.D. in 1994 from the University of Toronto and his LL.M. with merit in 1996 from the London School of Economics and Political Science.