AMERICAN BANKRUPTCY INSTITUTE

Bankruptcy 2021:
Views from the Bench

Confirmation: Brave New World?

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Hon. Robert D. Drain
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2021

VIEWS FROM THE BENCH

Confirmation Roundtable*

Panelists

Hon. Robert D. Drain
U.S. Bankruptcy Court (S.D.N.Y.)

Hon. Christine M. Gravelle
U.S. Bankruptcy Court (D.N.J.)

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

Moderator / Facilitator

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September 24, 2021

Washington, DC

* The views expressed in this presentation do not necessarily represent the views of the judges, the moderator or the facilitator or their respective institutions. Nothing the judges say today may be construed as binding them to any legal position or commentary on the direction their courts may take in the future.

Today's Topics

- Ultra Fast Prepacks
  - In re Belk, Case No. 21-30630 (Bankr. S.D. Tex. Feb. 24, 2021)
- "Deathtrap" Provisions
  - In re MPM Silicones, LLC, Case No. 14-22503 (Bankr. S.D.N.Y Sep. 17, 2014)
- Restructuring Support Agreements
  - In re Indianapolis Downs, LLC., 486 B.R. 286, 291 (Bankr. D. Del. 2013)
- Proving feasibility during the current pandemic

Ultrafast Prepacks

In re Belk, Inc., Case 21-30630 (Bankr. S.D. Tex. Feb. 24, 2021)

- Facts:
  - Belk is the nation's largest private department store chain headquartered in Charlotte, North Carolina.
  - Belk commenced Chapter 11 bankruptcy proceedings with a comprehensive pre-negotiated restructuring in hand, together with key creditor support.
  - The key lenders and Belk had executed an RSA and a plan term sheet that contemplated a swift restructuring supported by the sponsor and holders of more than 75% of outstanding principal amount under Belk's loan facilities.
  - Given the overwhelming support for the plan, Belk elected to pursue an expedited prepackaged restructuring to maximize value by requesting confirmation of the plan on the same day of filing its petition.
  - The plan also proposed third-party releases that were an essential element of the negotiations between the RSA parties to ensure support for the plan.

3

Ultrafast Prepacks

In re Belk, Inc., Case 21-30630 (Bankr. S.D. Tex. Feb. 24, 2021)

- U.S. Trustee objected to the plan arguing that:
  - Proposed timeline would deprive parties-in-interest, such as applicable governmental agencies, sufficient time to evaluate and object to the plan.
  - The pace of proceedings will result in practical problems that range from the inability to create an evidentiary record that can support the findings in the confirmation order to the inability of landlords to understand if any leases will be assigned without their consent. In other words, the lack of adequate notice renders the plan unconfirmable.
  - Even if there was adequate notice, the court should not confirm the plan with the third-party releases and exculpation provisions because the releases are not truly consensual. This is because if a party was not a creditor on the day the debtors sent out the plan, but became one in the intervening period between solicitation and case filing, that creditor would not have received any notice of the third party release, but yet might be bound by it.

4

Ultrafast Prepacks

In re Belk, Inc., Case 21-30630 (Bankr. S.D. Tex. Feb. 24, 2021)

Due Process Preservation Order

- To address the due process concerns in In re Belk, the court *sua sponte* issued a "due process preservation order" on the same day it issued the confirmation order.
- Under the due process preservation order, the court provided that:
  - To the extent there was any conflict between the due process preservation order and the confirmation order, the former controlled.
  - Any person or governmental unit alleging that it had inadequate due process could file an objection to the plan or confirmation order by a court approved deadline.
  - If any person or government unit demonstrated a deprivation of its due process rights, the court would issue an appropriate order that fully vindicated those due process rights. No prejudice was to be imposed on any such person or governmental unit based on estoppel or mootness as a consequence of the plan or the confirmation order.
  - Any person or governmental unit could seek an emergency hearing at any time to assure that their due process rights were fully protected.

5

"Deathtrap" Provisions

In re MPM Silicones, LLC, Case No. 14-22503 (RDD) (Bankr. S.D.N.Y)

- Facts:
  - Momentive Performance Materials Inc. is one of the world's largest producers of silicones and silicone derivatives, and a developer of products derived from quartz and specialty ceramics.
  - Momentive proposed a chapter 11 plan that separated the various claims and interests into eleven separate classes.
  - With respect to the classes of first lien holders and 1.5 lien holders, the plan proposed a "deathtrap" provision, which provided that if such classes vote to accept the proposed plan, they will receive payment in full in cash on account of their secured claims without any premium or make-whole amount. But, if they vote to reject the proposed plan, they will receive replacement notes in the amount of their allowed claim, including, a make-whole amount that would be determined by the court.
  - The plan was rejected by the classes comprising first and 1.5 lien holders. The court issued a ruling at the conclusion of the confirmation hearing holding that it would not allow, as part of the first and 1.5 lien holders' allowed claim, a make-whole claim or other premium.

6

"Deathtrap" Provisions

In re MPM Silicones, LLC, Case No. 14-22503 (RDD) (Bankr. S.D.N.Y)

- Change of Vote:
  - After the court's ruling, the classes comprising the first and 1.5 lien holders filed a motion to change their vote on the plan such that they can take advantage of the earlier "deathtrap" provision allowing them to receive payment in full in cash on account of their secured claims.
  - The first and 1.5 lien holders argued that Bankruptcy Rule 3018(a) allowed the court to permit a creditor to change or withdraw an acceptance or rejection of a chapter 11 plan for cause shown.
- Holding:
  - Court denied the motion filed by the first and 1.5 lien holders and held that a creditor cannot subsequently change its vote unless such change is supported or agreed to by the plan proponent.
  - The court also noted that "deathtrap" provisions have long been customary in Chapter 11 plans. The first and 1.5 lien holders were sophisticated institutions represented by knowledgeable and sophisticated professionals. Once they voted against the plan, they exhausted their option and the deathtrap was closed.

7

Restructuring Support Agreements

In re Indianapolis Downs, LLC., 486 B.R. 286, 291 (Bankr. D. Del. 2013)

- Facts:
  - The debtors and certain creditors agreed on a "parallel path" approach to the debtors' reorganization—a) test the market to determine whether bids would be made for the debtors' assets at a sufficiently high level such that the debtors' major creditor constituents would support a sale, and b) if the marketing effort failed to produce adequate offers, the debtors would proceed with a recapitalization. This "parallel path" approach was embodied in a Restructuring Support Agreement (the "RSA").
  - The RSA provided, *inter alia*, for (i) specific terms of the "parallel path" approach, (ii) a prohibition upon any party to the RSA proposing, supporting or voting for a competing plan of reorganization, and (iii) the requirement that parties to the RSA vote "yes" for a plan that complies with the RSA.
  - A separate set of creditors objected to the RSA stating the RSA constituted a wrongful post-petition solicitation of votes on a plan prior to court approval of a disclosure statement. As a remedy, they requested that the ballots of the parties to the RSA not be counted pursuant to Bankruptcy Code sections 1125(g) and 1126(e).

8

Restructuring Support Agreements

In re Indianapolis Downs, LLC., 486 B.R. 286, 291 (Bankr. D. Del. 2013)

- Holding:
  - Court rejected the arguments against the RSA stating that the Congress intended that creditors have the opportunity to negotiate with debtors and amongst each other; to the extent that those negotiations bear fruit, a narrow construction of solicitation affords RSA parties the opportunity to memorialize their agreements in a way that allows a Chapter 11 case to move forward.
  - The Code's robust disclosure requirements are designed to end the undesirable practice of soliciting acceptance or rejection at a time when creditors and stockholders were too ill-informed to act capably in their own interests. The RSA parties, by contrast, are all sophisticated financial players and have been represented by able and experienced professionals throughout these proceedings. It would grossly elevate form over substance to reject the RSA parties' votes because they should have been afforded the chance to review a court-approved disclosure statement prior to making or supporting a deal with the debtor.

Feasibility In the COVID-19 Era

- Section 1129(a)(11): A plan of reorganization may be confirmed only if "[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan . . . ."

- Typical Evidence to Prove Feasibility:
  - The debtor's prospective earnings or earning power of the debtor's business.
  - The adequacy of the capital structure and working capital for the debtor's post-confirmation business.
  - The debtor's ability to meet its capital expenditure requirements.
  - Economic conditions in the debtor's industry.
  - The capability of management.

- Does traditional evidence of feasibility hold up in light of COVID-19?

AMERICAN BANKRUPTCY INSTITUTE

BANKRUPTCY 2021: BRAVE NEW WORLD

CONFIRMATION ROUNDTABLE

September 24, 2021

Case Summaries

1. Ultrafast Prepacks

The term "prepack" is used to describe a Chapter 11 bankruptcy where the reorganization plan is negotiated, solicited, and voted upon by creditors prior to the petition date.[1] On the petition date, or shortly thereafter, the debtor files the disclosure statement, the proposed plan of reorganization, and a motion seeking approval of the disclosure statement and plan confirmation, in addition to typical first-day motions.[2] The modern prepack developed in the aftermath of the 1980s leveraged buyouts (LBOs), where unmanageable debt burden required a balance sheet restructuring with little to no operational change.[3] The companies involved in these troubled LBOs sought to restructure their debts in the most expeditious and efficient manner.[4] Prepacks are especially suited to companies that face severe risk of disruption to essential business operations during bankruptcy proceedings, where anything but the shortest time in bankruptcy is simply not feasible.[5]

(A) In re Belk, Inc., Case 21-30630 (Bankr. S.D. Tex. Feb. 24, 2021)

Belk, Inc. is a private department store chain headquartered in Charlotte, North Carolina. Amidst the challenges facing many in the retail industry, it (together with affiliates) commenced a chapter 11 proceeding with a comprehensive pre-negotiated restructuring in hand, together with key creditor support.[6] After extensive diligence and arms' length negotiations with certain secured term loan lenders, the debtors reached agreement with the sponsor and term loan lenders holding more than 75 percent of the outstanding first lien term loan claims and 100 percent of the outstanding second lien term loan claims to fund and support an expedited restructuring (the "RSA").[7] Given the overwhelming support for the plan, debtors elected to pursue an expedited prepackaged restructuring to maximize value by requesting confirmation of the plan on the same day of filing of petition. The plan also proposed third-party releases that were an essential element of the negotiations between the RSA parties to ensure support for the plan.[8]

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1 Jay M. Goffman, ET AL., "Prepackaged Bankruptcies," Included as Chapter 5 in Strategic Alternatives for Distressed Businesses (2012).
2 Id.
3 Id.
4 Id.
5 See Jay M. Goffman, A One-Day Prepack – The Ultimate Reorganization, in First Annual Prepackaged Restructuring Seminars (1996); Jay M. Goffman & Matthew P. Hereinstein, Bankruptcy as Business Tool: The One-Day Prepack Beckons in The 1996 Bankruptcy Yearbook and Almanac (Christopher M. McHugh, ed., May 1996).
6 See Disclosure Statement Relating to the Joint Prepackaged Plan of Reorganization of Belk, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code, In re Belk, Inc., No. 21-30630 [Docket No. 9] (Bankr. S.D. Tex. Feb. 24, 2021).
7 Id. at 1.
8 Id. at 10.

(cont'd)

The U.S. Trustee for Region 7 filed an objection to the debtors' scheduling motion and the plan of reorganization on the same day.[9] The U.S. Trustee alleged that the debtors were seeking "to confirm a plan within hours of filing for bankruptcy, which would enable them to race through chapter 11 too quickly and deprive parties-in-interest, governmental agencies, and the court sufficient time to evaluate – let alone respond or object to – the" proposed plan.[10] Among other things, the U.S. trustee alleged that the pace of proceedings will result in practical problems that range from the inability to create an evidentiary record that can support the findings in the confirmation order to the inability of landlords to understand if any leases will be assigned without their consent.[11] The U.S. Trustee was concerned that "the lack of adequate notice renders the plan unconfirmable."[12] Relatedly, the U.S. trustee raised an argument that even if there were adequate notice, the court should not confirm the plan with the third-party releases and exculpation provisions because the releases are not truly consensual.[13] This is because if a party was not a creditor on the day the debtors sent out the plan, but became one in the intervening period between solicitation and case filing, that creditor would not have received any notice of the third party release, but yet might be bound by it.

In response to the U.S. Trustee's objection to the confirmation of the proposed plan on due process violation grounds, the court entered a due process preservation order (the "Due Process Order").[14] The Due Process Order was entered on the same day that the court issued a confirmation order confirming the debtor's proposed chapter 11 plan. Under the Due Process Order, the court ordered, among other things, that:

- To the extent there was any conflict between the Due Process Order and the confirmation order, the former controlled.[15]
- Any person or governmental unit alleging that it had inadequate due process notice and opportunity to object to the plan or confirmation order could file an objection to the plan or confirmation order by a court approved deadline. The court was to conduct an initial status conference on any such objections … If any person or government unit demonstrated a deprivation of its due process rights, the court would issue an appropriate order that fully vindicated those due process rights. No prejudice was to be imposed on any such person or governmental unit based on estoppel or mootness as a consequence of the plan or the confirmation order.[16]
- Any person or governmental unit could seek an emergency hearing at any time to assure that their due process rights were fully protected.[17]

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9 Objection of United States Trustee to Debtors' Emergency Scheduling Motion and Joint Prepackaged Plan of Reorganization, In re Belk, Inc, No. 21-30630 [Docket No. 44] (Bankr. S.D. Tex. Feb. 24, 2021).

10 Id. at 2.

11 Id.

12 Id.

13 Id. at 3.

14 Due Process Preservation Order, In re Belk, Inc., No. 21-30630 [Docket No. 62] (Bankr. S.D. Tex. Feb. 24, 2021).

15 Id. at 2.

16 Id. at 3.

17 Id.

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2. "Deathtrap" Provisions

A deathtrap is a plan provision that proposes to pay one distribution to creditors (or classes) who vote for the plan and a different (lower distribution) to those who vote against it.[18] In a traditional deathtrap provision, the debtor proposes to give a creditor class some form of compensation if it votes "yes," but cuts it off altogether if it votes "no."[19] A more elaborate version—the "individually targeted deathtrap"—may offer one form of compensation to individual creditors who vote "yes" and a different compensation to individual creditors who vote "no."[20] In each case, the point is to apply pressure, using both a carrot (the compensation for a "yes" vote) and a stick (worse treatment of "no" votes) to nudge the creditors or shareholders to vote in favor of the plan.[21] On one hand, deathtrap provisions "save the expense and uncertainty of a cramdown fight, which is in keeping with the Bankruptcy Code's overall policy of fostering consensual plans of reorganization."[22] On the other hand, some scholars have argued that deathtraps are tantamount to vote buying, or that deathtraps distort the voting process by decreasing creditors' likelihood of success in challenging the plan in the event the class of creditors votes "no."[23] By making the alternative to voting "yes" less attractive, these techniques can coerce creditors to vote for the plan.[24]

(A) In re MPM Silicones, LLC, Case No. 14-22503 (RDD) (Bankr. S.D.N.Y)

Momentive Performance Materials Inc. is one of the world's largest producers of silicones and silicone derivatives, and a developer of products derived from quartz and specialty ceramics.[25] Before commencing chapter 11 proceedings, it faced significant financial challenges and was overlevered (at ~ 16x EBITDA).[26] Ultimately, due to a lack of adequate cashflow, it was unable to make interest payments totaling $62 million on the first and 1.5 lien notes (the "Notes").[27]

Momentive proposed a chapter 11 plan that separated the various claims and interests into eleven separate classes.[28] With respect to the classes of first lien holders and 1.5 lien holders, the plan proposed a "deathtrap" provision, which provided that if such classes vote to accept the proposed plan, they will receive payment in full in cash on account of their secured claims without any premium or make-whole amount.[29] But, if they vote to reject the proposed plan, they will receive

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18 Edward J. Langer and Adam J. Levitin, The Proceduralist Inversion—A Response to Skeel, Yale L.J. Forum (Nov. 24, 2020).
19 David A. Skeel , Distorted Choice in Corporate Bankruptcy, 130 Yale L.J., 370 (2020).
20 Id. at 371.
21 Id.
22 In re MPM Silicones, LLC, No. 14-22503-RDD, 2014 WL 4637175, at *3 (Bankr. S.D.N.Y. Sept. 17, 2014).
23 David A. Skeel , Distorted Choice in Corporate Bankruptcy, 130 Yale L.J., 370 (2020).
24 Id.
25 See Disclosure Statement For Joint Chapter 11 Plan for Momentive Performance Materials Inc., and its Affiliated Debtors, In re MPM Silicones, LLC, No. 14-22503 [Docket No. 173] (Bankr. S.D.N.Y. May 12, 2014).
26 Id. at 25.
27 Id.
28 Id. at 30.
29 In re MPM Silicones, LLC, 2014 WL 4637175 at *1 (Bankr. S.D.N.Y. 2014).

(cont'd)

replacement notes in the amount of their allowed claim, including, a make-whole amount that would be determined by the court.[30] The plan was rejected by the classes comprising first and 1.5 lien holders.[31] The court issued a ruling at the conclusion of the confirmation hearing holding that it would not allow, as part of the first and 1.5 lien holders' allowed claim, a make-whole claim or other premium.[32]

After the court's ruling, the classes comprising the first and 1.5 lien holders filed a motion to change their vote on the plan such that they can take advantage of the earlier "deathtrap" provision allowing them to receive payment in full in cash on account of their secured claims.[33] The first and 1.5 lien holders argued that Bankruptcy Rule 3018(a) allowed the court to permit a creditor to change or withdraw an acceptance or rejection of a chapter 11 plan for cause shown.[34]

The court denied the motion holding that allowing a change of vote based on the creditor's subsequent assessment that the vote will actually have meaning, if changed, will not be permitted unless the change is supported or agreed to by the plan proponent.[35] The court went on to state that "Deathtrap" provisions have long been customary in Chapter 11 plans.[36] The court held that the first and 1.5 lien holders were sophisticated institutions represented by knowledgeable and sophisticated professionals.[37] Once they voted against the plan, they exhausted their option and the deathtrap was closed.[38]

3. Restructuring Support Agreement

Restructuring support agreement (the "RSA") is an agreement under which a debtor negotiates the terms of a potential reorganization plan with a subset of its creditors—often focusing on multiple classes of creditors but sometimes targeting a single class.[39] The RSA commits its signatories to support a future reorganization plan that conforms to the terms of the RSA, including the proposed payout to each creditor class.[40] A creditor that signs the RSA relinquishes its ability to decide independently whether to support a reorganization plan subsequently proposed by the debtor.[41] It does this before a disclosure statement is approved and the proposed reorganization is submitted to creditors for a vote.[42] Critics of RSAs argue that they distort the decision-making process in bankruptcy by offering to pay a "support fee" to creditors who sign the RSA or by offering inducements to creditors that are akin to a form of vote buying.[43] The proponents of the RSAs argue that they provide two crucial benefits to debtors, both of which have contributed to their

30 Id.
31 Id.
32 Id.
33 Id.
34 Id.
35 Id. at *4.
36 Id.
37 Id.
38 Id.
39 David A. Skeel , Distorted Choice in Corporate Bankruptcy, 130 Yale L.J., 370 (2020).
40 Id.
41 Id.
42 Id.
43 See generally id.

(cont'd)

growing popularity. First, in any bankruptcy case, prepack or traditional, timing and certainty are the key. An RSA helps on both fronts by formalizing any commitments debtors receive from creditors. Second, and relatedly, with the explosion of the distressed debt market, which now totals over $770 billion today, certainty is more important then ever. Since debt is constantly being bought and sold by new parties, an informal agreement between the debtor and one creditor might not be honored by subsequent purchasers of the debt. RSAs solve this problem by contractually obligating the subsequent purchaser of debt to honor the RSA.[44]

(A) In re Indianapolis Downs, LLC., 486 B.R. 286, 291 (Bankr. D. Del. 2013)

The In re Indianapolis Down case concerned two debtors that operated a combined horse racing track and casino in Shelbyville, Indiana.[45] They employed over 1,000 people and provide patrons a wealth of wagering and entertainment options.[46] The debtors and certain creditors agreed on a "parallel path" approach to the debtors' reorganization—a) test the market to determine whether bids would be made for their assets at a sufficiently high level such that their major creditor constituents would support a sale, b) if the marketing effort failed to produce adequate offers, the debtors would proceed with a recapitalization.[47] This "parallel path" approach was embodied in a Restructuring Support Agreement (the "RSA"). The RSA provided, *inter alia*, for (i) specific terms of the "parallel path" approach, (ii) a prohibition upon any party to the RSA proposing, supporting or voting for a competing plan of reorganization, and (iii) the requirement that parties to the RSA vote "yes" for a plan that complies with the RSA.[48]

When the debtor sought confirmation of joint plan of reorganization, the United States Trustee and certain other creditors (the "Oliver Parties") opposed confirmation, and the Oliver Parties filed a motion to designate. The Oliver Parties claimed that the RSA constituted a wrongful post-petition solicitation of votes on a plan prior to court approval of a disclosure statement and as a remedy, they requested that the ballots of the parties to the RSA not be counted pursuant to Bankruptcy Code sections 1125(g) and 1126(e).[49]

The court rejected the arguments against the RSA stating that the Congress intended that creditors have the opportunity to negotiate with debtors and amongst each other; to the extent that those negotiations bear fruit, a narrow construction of solicitation affords RSA parties the opportunity to memorialize their agreements in a way that allows a Chapter 11 case to move forward.[50] According to the court, the Bankruptcy Code's robust disclosure requirements are designed to end the undesirable practice of soliciting acceptance or rejection at a time when creditors and stockholders were too ill-informed to act capably in their own interests.[51] The RSA parties, by contrast, were all sophisticated financial players and were represented by able and experienced

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44 See generally Edward J. Langer and Adam J. Levitin, The Proceduralist Inversion—A Response to Skeel, Yale L.J. Forum (Nov. 24, 2020).
45 In re Indianapolis Downs, LLC., 486 B.R. 286, 291 (Bankr. D. Del. 2013).
46 Id.
47 Id. at 292.
48 Id.
49 Id. at 293-294.
50 Id. at 295.
51 Id.

(cont'd)

professionals throughout the proceedings. Relying on this observation, the court held that it would grossly elevate form over substance to reject the RSA parties' votes because they should have been afforded the chance to review a court-approved disclosure statement prior to making or supporting a deal with the debtor.[52]

[52] Id. at 296.

Faculty

Hon. Robert D. Drain is a U.S. Bankruptcy Judge for the Southern District of New York in White Plains. Since his appointment in May 2002, he has presided over such chapter 11 cases as *Loral*, *RCN*, *Cornerstone*, *Refco*, *Allegiance Telecom*, *Delphi*, *Coudert Brothers*, *Frontier Airlines*, *Star Tribune*, *Reader's Digest*, *A&P*, *Hostess Brands*, *Christian Brothers* and *Momentive*. He also has presided over the ancillary or plenary cases of *Corporacion Durango*, *Satellites Mexicanas*, *Parmalat S.p.A.* and its affiliated U.S. debtors, *Varig S.A.*, *Yukos* (II), *SphinX*, *Galvex Steel*, *TBS Shipping*, *Excel Maritime*, *Nautilus*, *Landsbanki Islands*, *Roust* and *Ultrapetrol*. He has served as the court-appointed mediator in a number of chapter 11 cases, including *New Page*, *Cengage*, *Quicksilver*, *LightSquared*, *Molycorp*, *Breitburn Energy* and *China Fishery*. Previously, Judge Drain was a partner in the bankruptcy department of Paul, Weiss, Rifkind, Wharton & Garrison, where he represented debtors, trustees, secured and unsecured creditors, official and unofficial creditors' committees, and buyers of distressed businesses and distressed debt in chapter 11 cases, out-of-court restructurings and bankruptcy-related litigation. He was also actively involved in several transnational insolvency matters. Judge Drain is a Fellow of the American College of Bankruptcy and a member and board member of ABI, a member of the International Insolvency Institute, a member and former Secretary of the National Conference of Bankruptcy Judges, and a founding member and chair of the Judicial Insolvency Network. He also is the current chair of the Bankruptcy Judges Advisory Group established through the Administrative Office of the U.S. Courts, and was appointed to the FDIC's Systemic Resolution Advisory Committee through May 1, 2021. Judge Drain was an adjunct professor for several years at St. John's University School of Law's LL.M. in Bankruptcy Program and currently is an adjunct professor at Pace University School of Law. He has lectured and written on numerous bankruptcy-related topics and is the author of the novel *The Great Work in the United States of America*. He received his B.A. *cum laude* from Yale University and his J.D. from Columbia University School of Law, where he was a Harlan Fiske Stone Scholar for three years.

Jay M. Goffman is vice-chairman of Global Advisory North America at Rothschild & Co. in New York and advises clients across the firm's Restructuring, Debt and M&A practices. He has more than 38 years of experience in restructuring and M&A, and prior to joining Rothschild & Co. in 2020, he was the global co-head of Skadden, Arps, Slate, Meagher & Flom's Corporate Restructuring Group. Mr. Goffman was named among "The Decade's Most Influential Lawyers" by *The National Law Journal* in 2010, and was recognized as one of *The American Lawyer*'s "Dealmakers of the Year" in 2011 for his work in restructuring MGM, the largest prepackaged bankruptcy ever completed in under 33 days. In the 2011 *Financial Times*'s "U.S. Innovative Lawyers" report, Mr. Goffman was named one of the 10 most innovative lawyers in the U.S. and recognized as a "pioneer" and a leader in out-of-court and prepackaged restructurings. In 2016, he was presented with the Restructuring Leadership Achievement award at the 8th Annual Turnaround Atlas Awards recognizing his leadership and numerous contributions to the broader restructuring community over more than three decades. Mr. Goffman received his B.S. in 1980 in chemical psychobiology from the State University of New York at Binghamton and his J.D. in 1983 with honors from the University of North Carolina at Chapel Hill, where he was a member of the *University of North Carolina Law Review*. In 2018, the University of North Carolina School of Law presented him with its Distinguished Alumni Award.

Hon. Christine M. Gravelle is a U.S. Bankruptcy Judge for the District of New Jersey in Trenton, named to the bench in 2013. Previously, she was a partner at the law firm of Markowitz Gravelle, LLP in Lawrenceville, N.J., where she focused on commercial litigation and bankruptcy, representing individual and commercial debtors, creditors, trustees and committees. Judge Gravelle served as president of the Mercer County Bar Association in 2011 after serving nine years as an officer and trustee for the Association. She was a member of the Lawyers Advisory Committee to the Board of Judges of the U.S. Bankruptcy Court for the District of New Jersey from 2008-13, having chaired the committee in her last year of service. She also served as a trustee of the Bankruptcy Section of the New Jersey State Bar Association, and she served on the Board of Trustees of Central Jersey Legal Services as a member and officer. She is a member of the National Conference of Bankruptcy Judges. Judge Gravelle has written and participated in panel presentations and instructional videos for the Federal Judiciary Center. She received her undergraduate degree *magna cum laude* from the University of Massachusetts at Amherst and her J.D. *magna cum laude* from Suffolk University Law School in Boston, after which she clerked for Hon. Donald F. Shea on the Supreme Court of Rhode Island.

Leslie C. Heilman is a partner in the Litigation Department and Bankruptcy, Reorganization and Capital Recovery Group of Ballard Spahr LLP in Wilmington, Del. She concentrates her practice on commercial restructuring and bankruptcy, specializing in representing commercial landlords of shopping centers and other commercial properties, among other creditors, in all aspects of chapter 11 bankruptcy cases and nonbankruptcy workouts across the country, including in such high-profile retail cases as *24 Hour Fitness*, *Chuck E. Cheese*, *Ascena*, *Lord & Taylor*, *J.C. Penney*, *Hertz*, *Pier 1 Imports*, *Forever 21*, *Sears*, *Toys R Us*, *Gymboree*, *Payless Shoes*, *Linens 'N Things*, *RadioShack* and *Sports Authority*. She is also experienced in bankruptcy-related litigation, including claims administration, avoidance actions and other adversary proceedings. Ms. Heilman is a long-time member of the International Council of Shopping Centers (ICSC) and sits on the board of the Delaware Network of the International Women's Insolvency & Restructuring Confederation (IWIRC). She is a frequent writer and speaker on bankruptcy and landlord issues. Ms. Heilman received her B.A. *magna cum laude* in 1994 from Cedar Crest College and her J.D. *magna cum laude* in 2004 from Widener University School of Law, where she served as a research editor of the *Delaware Journal of Corporate Law*, received the Honorable Helen S. Balick Award for excellence in the study of bankruptcy or creditors' rights, received the Donald E. Pease Best Student Article Award for the *Delaware Journal of Corporate Law*, and was a nominee for the American College of Bankruptcy's Distinguished Bankruptcy Law Student Award.

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. Judge Isgur serves as adjunct faculty at the University of Houston Law Center. Between 1978 and 1990, he was an executive with a large real estate development company in Houston. From 1990 until 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. 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 nonprofit 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 educa-

tion 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.

Damian S. Schaible is a partner with Davis Polk & Wardwell LLP in New York and co-heads its Restructuring practice. He has experience in a wide range of corporate restructurings and bankruptcies, representing debtors, creditors, banks, hedge funds, asset-purchasers and other strategic parties in connection with pre-packaged and traditional bankruptcies, out-of-court workouts, DIP and exit financings, bankruptcy litigation, § 363 sales and liability-management transactions. Mr. Schaible has served on ABI's Executive Committee and on the Executive Committee of the New York City Bar Association as its treasurer. Mr. Schaible was twice named an "Outstanding Restructuring Lawyer" by *Turnarounds & Workouts*, most recently in 2020, and was named an "Energy MVP of the Year" by *Law360* for 2017 and 2021. He received his B.A. *magna cum laude* in political science from the College of the Holy Cross in 1998 and his J.D. *magna cum laude* from New York University School of Law in 2001, where he was a member of the Order of the Coif and served on the *NYU Law Review*. After law school, he clerked for Hon. Danny J. Boggs of the U.S. Court of Appeals for the Sixth Circuit.