



AMERICAN  
BANKRUPTCY  
INSTITUTE

## 2021 Winter Leadership Conference

### **Real Estate Restructurings in the Aftermath of COVID-19**

*Hosted by the Business  
Reorganization and Real Estate  
Committees*

**Michael M. Eidelman**

*Vedder Price; Chicago*

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*Underwood Murray PA; Tampa, Fla.*

**Hon. Lori V. Vaughan**

*U.S. Bankruptcy Court (M.D. Fla.); Orlando*

CONCURRENT SESSION

2021

ABI 2021 Winter  
Leadership Conference:

**Real Estate  
Restructurings in the  
Aftermath of COVID**

December 10, 2021

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**Panel / Moderator**

- ▶ Michael M. Eidelman, Co-Chair of Bankruptcy Group, Vedder Price
- ▶ Ben Pickering, Principal – Restructuring, Ernst & Young LLP
- ▶ Honorable Lori V. Vaughan, U.S. Bankruptcy Court for the Middle District of Florida
- ▶ Scott A. Underwood, Underwood Murray P.A.

# Agenda

- ▶ Current market overview
- ▶ Sectors with an uncertain outlook
- ▶ Sectors that gained momentum
- ▶ Future outlook and driving forces
- ▶ Case Study: L'Ermitage Beverly Hills Hotel
- ▶ Foreclosure, moratoriums and rent relief
- ▶ CBMS defaults
- ▶ Appendix

## Current market overview

The COVID-19 pandemic has stormed through the Real Estate Industry, delineating certain sectors as clear winners while others remain plagued by uncertainty

*While certain sectors have benefited from the pandemic, the outlook for many of the largest sub-sectors remains uncertain with ranging time horizons for recovery*

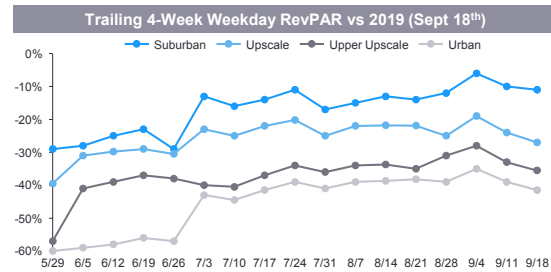
1 Sectors with Uncertain Outlook	2 Sectors that Gained Momentum	3 Future Outlook Driving Forces
<ul style="list-style-type: none"> <li>▶ <b>Hospitality:</b> <ul style="list-style-type: none"> <li>▶ Divergence in occupancy rates and daily rate performance between business vs leisure markets</li> <li>▶ Business market "Upside" estimates point to 2024 or later RevPAR recovery, and profitability has been hampered by increasing operating costs due to labor, supply and health and safety issues</li> </ul> </li> <li>▶ <b>Office:</b> <ul style="list-style-type: none"> <li>▶ Work from home clouding picture of a post-COVID market leaving near term focus on flexible workspace and optimizing footprint</li> <li>▶ Favorable subtenant market combined with minimal major lease restructurings threatens prime tenant renewals</li> <li>▶ Shift in utilization preferences of available space; with prime space less impacted than secondary space</li> <li>▶ Hence companies desire to solidify future plans for future lease expirations remains limited</li> </ul> </li> <li>▶ <b>Retail:</b> <ul style="list-style-type: none"> <li>▶ Continued struggle for class B &amp; C malls seeing declining occupancy and lack of capital to reposition</li> <li>▶ E-commerce shift, ending of PPP loan program and wall of maturities result in bleak future</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>▶ <b>Industrial:</b> <ul style="list-style-type: none"> <li>▶ Acceleration of e-commerce resulting in vacancy rates at industrial properties near all time lows</li> <li>▶ Next day delivery demand causing double digit rental rate growth near population centers / port hubs</li> </ul> </li> <li>▶ <b>Single Family:</b> <ul style="list-style-type: none"> <li>▶ Record low mortgage rates, flight from urban centers and supply chain constraints created a market in which demand well outpaced supply</li> <li>▶ Private Equity funds increasing presence as a result of attractive yields and potential inflation hedge</li> </ul> </li> <li>▶ <b>Multi-family:</b> <ul style="list-style-type: none"> <li>▶ Emerged as surprise victor from the pandemic, with certain geographies seeing pricing at all time highs</li> <li>▶ Effect of ending of eviction moratoriums appears minimal, even while states deployment of funds from emergency rental assistance program lags</li> </ul> </li> <li>▶ <b>Digital Infrastructure:</b> <ul style="list-style-type: none"> <li>▶ Work from home, remote schooling, e-commerce connected devices and e-mobility have all fueled a need for digital infrastructure to support enablement and scale</li> <li>▶ The race to 5G capabilities emergence as part of U.S. political agendas</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>▶ <b>Rise in Treasury Yields:</b> <ul style="list-style-type: none"> <li>▶ May inhibit ability of companies to refinance</li> <li>▶ Broader impact of decline in government purchases of securities on available cash of institutional investors</li> <li>▶ CMBS and Repo market considerations</li> </ul> </li> <li>▶ <b>Work from Home:</b> <ul style="list-style-type: none"> <li>▶ Location of workforce is a catalyst growth or regression across a number of sectors</li> </ul> </li> <li>▶ <b>Input Prices:</b> <ul style="list-style-type: none"> <li>▶ Supply chain delays and cost increases causing impact on new development projects</li> <li>▶ Potential impact on prioritization of asset classes and use of available resources</li> </ul> </li> <li>▶ <b>Private Equity:</b> <ul style="list-style-type: none"> <li>▶ Continued expansion of large PERE Funds into SFR's and away from previous markets of focus (e.g. retail)</li> </ul> </li> <li>▶ <b>Taxation:</b> <ul style="list-style-type: none"> <li>▶ Biden administration tax reform proposal potential to impact asset allocation strategy and ultimately pricing</li> </ul> </li> <li>▶ <b>Environmental Social Governance (ESG):</b> <ul style="list-style-type: none"> <li>▶ Heightened corporate focus on ESG and carbon neutrality will be felt across asset classes</li> </ul> </li> </ul>

# 01

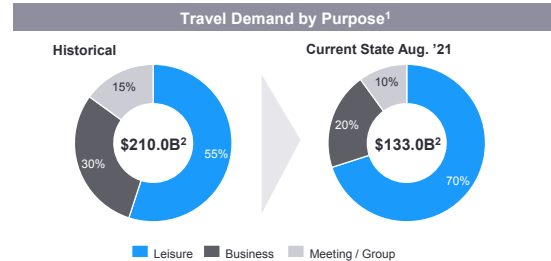
## Sectors with an uncertain outlook

### Sectors with an uncertain outlook

The hospitality sector is a tale of two markets, with significant divergence in performance based on the target market as leisure recovers and business travel lags



Source: STR Inc., U.S. Weekly Hotel Review; Green Street – Lodging Insights



Sources: <sup>1</sup>CBRE Recovery of Business Travel; <sup>2</sup>U.S. industry size by revenue 2019 vs 2021 per IBIS World

### Key Takeaways

- ▶ **Leisure travel has largely recovered to and at times surpassed pre-pandemic levels, however business travel remains at risk**
  - ▶ Business travel continues to trail well behind historic levels, evidenced by Q2 Delta and American earnings calls stating their domestic business travel had reached 40% and 45% of 2019 levels by June.
  - ▶ Green Street estimates a 5-year business travel demand decline as a result of the pandemic ranging from 7% to 24%
  - ▶ Performance is worst in urban, dense markets, with future recovery further complicated with these markets owning the largest share of future supply (strongest performance is in the Sunbelt)
  - ▶ AHLA (American Hotel & Lodging Association) says nationwide, hotels will have lost \$59 billion in just business travel revenue between Q4 2019 and Q4 2021.
- ▶ **Consensus estimates show NOI recovery to 2019 levels occurring by 2024, at the earliest and could be further impacted by emerging trends**
  - ▶ With an increasing number of companies reporting on ESG metrics, business travel remains under the microscope
  - ▶ Work from home remains prevalent, clouding the image of what the future workweek looks like
  - ▶ Increased operating costs, staff shortages, and the need for capital to scale IT capabilities and cater to remote working further threaten the recovery of hotels targeting the business market

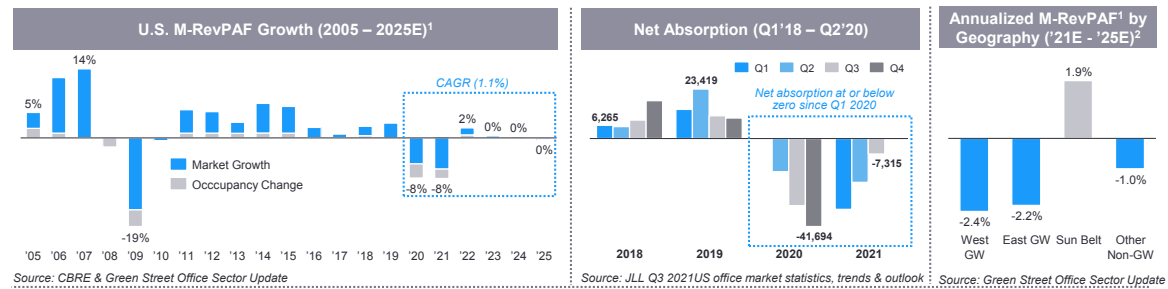
### Factors Impacting Uncertainty

- ▶ Business travel demand
- ▶ Geography
- ▶ Increased operating costs

## 2021 WINTER LEADERSHIP CONFERENCE

### Sectors with an uncertain outlook

Office sector recovery, driven by future workplace strategy, is expected to diverge by asset type and location



### Key Takeaways

- Recovery remains prolonged as return to office timelines have been delayed or permanently altered
  - Per Kastle Systems, as of June 2021, 32% of office workers had returned to the office, however delta variant put the breaks on this trend
  - C&W projects that vacancy will not return to pre-COVID-19 4Q 2019 levels (12.8%) until 2025.
  - As of Q2 2021 gross leasing activity remains 41.6% below the pre-pandemic quarterly average per JLL
  - Numerous companies have offered workers the optionality of working remote full-time
- Future outlook for the sub-sector is largely a story of asset class and geography
  - Expectation that companies maintain/expand metro footprint, opting for higher density open-plan offices at the expense of secondary office locations
  - With the exception of high-quality Sun Belt markets, Green Street anticipates an annualized M-RevPAF decline in the office sector over the coming 5yrs.
  - Sublease demand is at an all-time high as companies assess their future space needs further hampering new lease demand and term length
  - Focus on ESG will also drive demand for prime office space, further hampering secondary markets and is no longer a "nice to have"

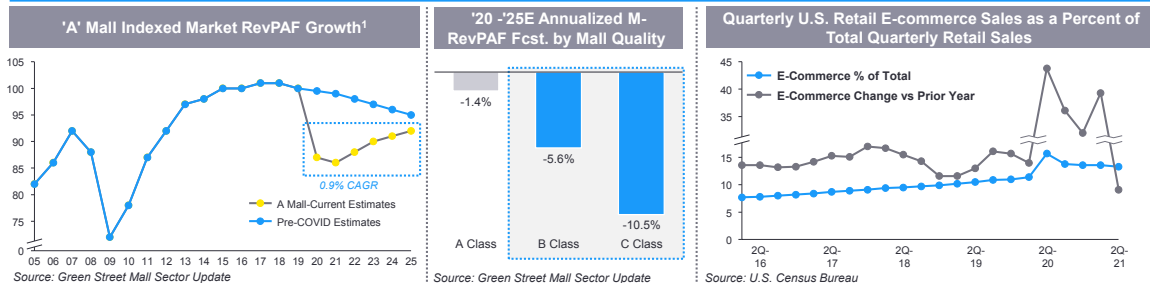
#### Factors Impacting Uncertainty

- Property class
- Labor market – return to office
- Geography

Notes: <sup>1</sup>M-RevPAF is a Green Street internally developed metric combining changes in market-level occupancy and rent. <sup>2</sup>GW refers to Gateway cities (i.e. LA, NY, SF, DC, BOS, SEA)

### Sectors with an uncertain outlook

Retail performance continues to improve from its pandemic low, but asset class and consumer behavior will shape the future of the sector



### Key Takeaways

- The "recovery" in retail is unlikely to be consistent among asset types or subsectors
  - Green Street estimates that RevPAF for class A malls will decrease at an annualized rate of -1.4% through 2025, while the forecasts for class B and C malls are significantly worse, calling into question their viability
  - RevPAF figures illustrate improvement from the COVID-19 induced lows, but ultimately the retail sector must contend with the same challenges that haunted it prior to the pandemic
  - Consumers also are showing a preference to shop outdoors, as class A open air mall foot traffic exceeded class A indoor
- Consumer behavior will play a major role in the future of retailers as brick and mortar businesses continue to cede market share
  - The pandemic forced consumers to adopt e-commerce and retailers to establish an omnichannel presence, unlocking additional customers, creating new shopping experiences and permanently shifting loyalties
  - In the second quarter of 2021, e-commerce's penetration was 13.3% of overall retail sales compared to 10.5% for the same period in 2019
  - Mastercard estimates that 20-30% of global e-commerce growth experienced during the pandemic will be permanent
  - Restaurant reservations through OpenTable remain down approx. 8% vs. 2019 levels since July 15<sup>th</sup> despite lifted capacity restrictions and expanded outdoor dining capabilities

#### Factors Impacting Uncertainty

- Asset class
- Consumer behavior
- E-commerce

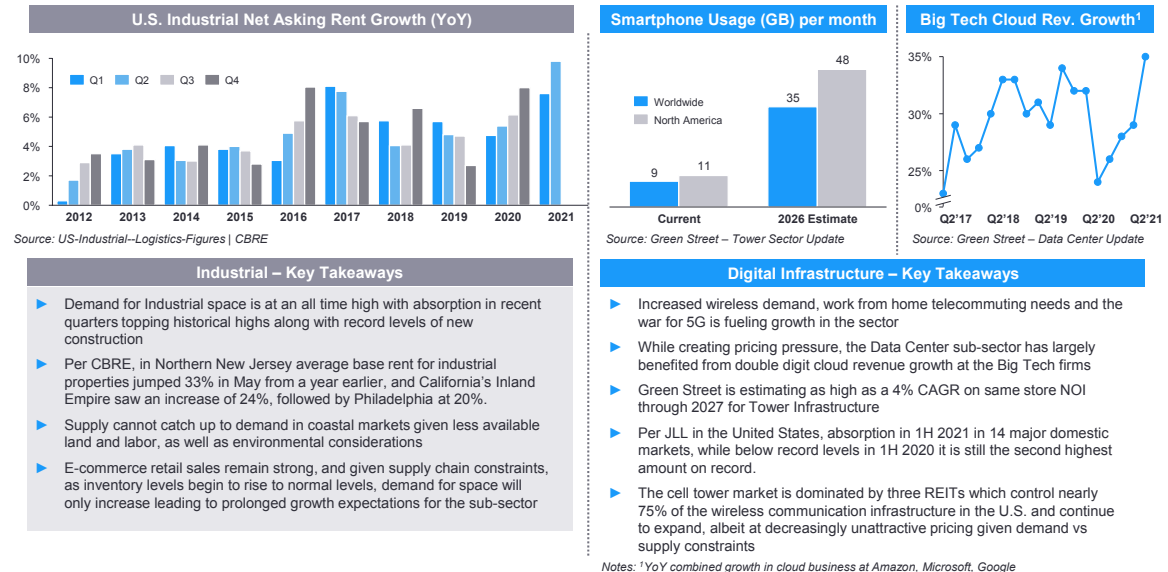
Notes: <sup>1</sup>M-RevPAF is a Green Street internally developed metric combining changes in market-level occupancy and rent.

# 02

## Sectors that gained momentum

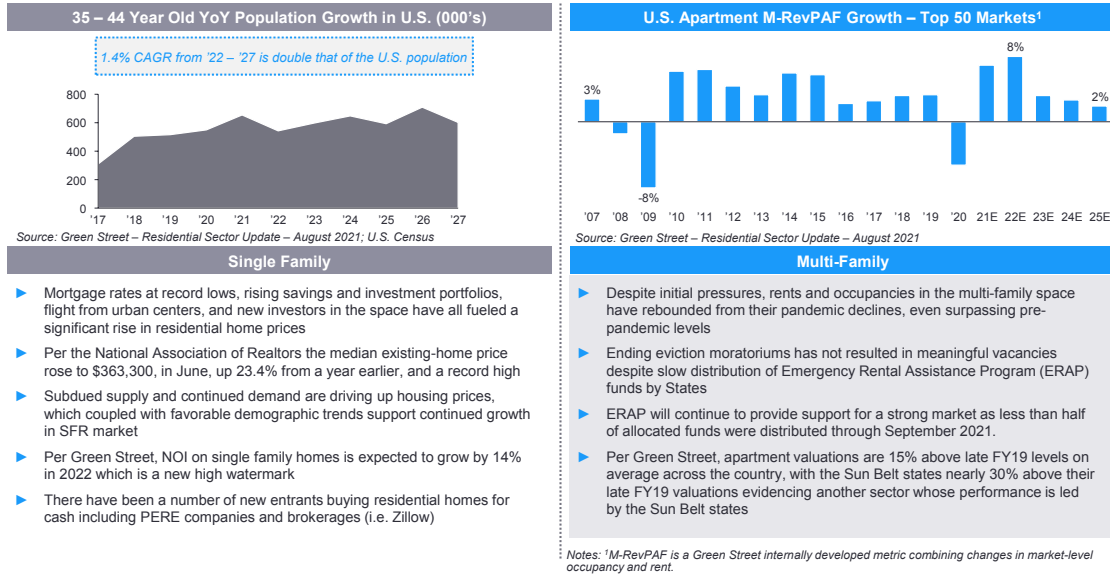
### Sectors that gained momentum

While many historical stalwarts are experiencing significant uncertainty, the pandemic shifted growth prospects to other subsectors, accelerating previous trends



## Sectors that gained momentum

The housing sector has been one of the largest beneficiaries of positive momentum from the pandemic









## 03

Future outlook and driving forces

Future outlook – driving forces

In a sector ripe with uncertainty, timing of economic and structural changes will be a driving force for both distress and opportunity

Economic	Structural
 <p>► <b>Rise in treasury yields</b></p> <ul style="list-style-type: none"> <li>► Fiscal policy is expected to diminish liquidity in the market, forcing prioritization on uses of capital</li> <li>► As maturity waves begin, and forbearance periods end, lenders will need to balance appetite for risk with uncertainty around industry outlook</li> </ul>	 <p>► <b>Work from home</b></p> <ul style="list-style-type: none"> <li>► Hits multiple sectors including hospitality, retail, multi-family, single family, industrial, infrastructure and office, given broader impact of where people work</li> <li>► May take time to shake out permanent vs temporary shifts, potentially kicking the impact down the road</li> </ul>
 <p>► <b>Input prices</b></p> <ul style="list-style-type: none"> <li>► May drive prioritization of capital for new developments towards high growth high yielding asset classes (i.e. industrial) and away from declining industries (i.e. retail)</li> <li>► Inability to pass costs onto customers could squeeze margins of developers</li> </ul>	 <p>► <b>PERE presence in single family home market</b></p> <ul style="list-style-type: none"> <li>► Bolstered by a view on limited new supply to the market post financial crisis, PERE funds have begun building their single family portfolios</li> <li>► This new allocation of capital further threatens uncertain sub-sectors</li> </ul>
 <p>► <b>Taxation</b></p> <ul style="list-style-type: none"> <li>► Change in capital gains rate, limitations on 1031 exchanges and real estate loss deductions, as well as taxation of unrealized gains all threaten allocation of investment capital and ultimately asset values</li> <li>► CMBS market is one to monitor as clarity emerges on what code changes ultimately will be passed</li> </ul>	 <p>► <b>Environmental Social Governance (ESG)</b></p> <ul style="list-style-type: none"> <li>► Poses challenges to older, Class B and C assets across a number of sectors as companies look to lease LEED certified buildings</li> <li>► Targets for carbon neutrality threaten a permanent reduction in business travel</li> </ul>

# 04

Case Study: L'Ermitage  
Beverly Hills Hotel



## Receivership sale of the L'Ermitage Beverly Hills Hotel

July 20, 2016	May 6, 2020 – August 11, 2020
<ul style="list-style-type: none"> <li>▶ U.S. Government initiates two civil forfeiture actions alleging that all personal and real property assets relating to the business operated as the Viceroy L'Ermitage Beverly Hills (collectively, the "Hotel") were subject to forfeiture pursuant to 18 U.S.C. § 981(a)(1)(A) and (C) and (ii). The 116-room boutique Hotel is located about a mile from Rodeo Drive in Beverly Hills, CA, and was involved in the long-running investigation into one of the biggest foreign bribery and kleptocracy cases in history: the looting of more than \$4.5 billion from a Malaysian sovereign wealth fund, 1Malaysia Development Berhad, known as 1MDB.</li> </ul>	<ul style="list-style-type: none"> <li>▶ Keen and Mr. Eidelman (i) create a dedicated website and Data Room containing all relevant information relating to the Sale (which was accessed by 838 parties that signed NDAs), (ii) actively advertise the Sale to domestic and international buyers via e-mail blasts, teasers, print advertisements and other mediums, and (iii) facilitate tours of the Hotel. Ultimately, a stalking horse bidder is selected from the 35 stalking horse bids received.</li> <li>▶ COVID greatly impacted the sale process, as the Special Master, his professionals and all interested parties had to comply with various local, city and state ordinances enacted in response to the pandemic. Further, the Hotel had 8 guests during the entire Sale process, so interested buyers had no accurate "real time" data about the Hotel's performance (other than historical data).</li> <li>▶ In addition to the usual definitions used to determine a "Qualified Bid" and a "Qualified Bidder," the US Government had discretion on who was an acceptable bidder.</li> </ul>
May 5, 2020	
<ul style="list-style-type: none"> <li>▶ Judge appoints Michael Eidelman as "Special Master to oversee the sale the Hotel (the "Sale"). Mr. Eidelman retained Keen-Summit Capital Partners LLC ("Keen") as the exclusive real estate advisor to run the Sale process.</li> <li>▶ Pursuant to FRCP 53, a court may appoint a "Special Master" to perform any duties contemplated in an Order Appointing Special Master. Per FRBP 9031, a "Special Master" cannot be appointed in bankruptcy proceedings.</li> <li>▶ Similar to a Receiver, the powers of the Special Master arise from the Order of appointment.</li> </ul>	

# 05

Foreclosure, moratoriums and rent relief

## Commercial foreclosure and eviction moratoriums

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- ▶ The number of foreclosures and evictions which have been filed since March 2020 are far fewer than the comparable numbers from preceding years, but as Federal, state, and city authorities begin to lift COVID-19 based moratoriums, we are generally seeing large increases in the number of foreclosures and evictions.
- ▶ In the third quarter of 2021, foreclosures are up 32% from second quarter of 2021 and 67% from the third quarter of 2020. The cities with the most foreclosures initiated during the third quarter of 2021 include Chicago, IL (1,122 foreclosure started), Los Angeles, CA (1,102 foreclosure started) and Miami, FL (992 foreclosure started).
  - ▶ Status of Moratoriums in Cook County, IL: (a) eviction moratorium expired on October 3, 2021; and (b) foreclosure proceeding moratorium expired on October 7, 2021/
  - ▶ Status of Moratoriums in Los Angeles, CA: (a) eviction moratorium expired on October 1, 2021 (with certain prerequisites for evictions based on missed rent payments during the COVID-19 pandemic); and (b) no known foreclosure moratorium in place.

Notes: <https://www.pnnewswire.com/news-releases/q3-2021-us-foreclosure-activity-begins-to-see-significant-increases-as-foreclosure-moratorium-is-lifted-301399980.html>.

## The Consolidated Appropriations Act, 2021

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- ▶ The Bankruptcy Code does not generally allow debtors to unilaterally abate or modify the terms of their property leases. In order to offer rent relief to debtor-tenants, Congress enacted the Consolidated Appropriations Act, 2021 ("CAA"), an approximately \$2.3 trillion omnibus appropriations bill, which was signed into law on December 27, 2020. The CAA not only funded the federal government, but also provided additional COVID-19 relief for businesses and individuals. Significantly, the CAA includes nine amendments to the Bankruptcy Code, three of which directly impact commercial debtor-tenants.
- ▶ The CAA amended §365(d)(3) to allow the extension of time for the performance of lease obligations beyond the normal extension period, but only in case filed under Subchapter V of Chapter 11. Generally, a debtor operating in bankruptcy must timely perform all obligations under an unexpired lease of nonresidential real property. §365(d)(3) allows a court to extend, for cause, the time for performance—but not beyond 60 days after the petition date. The CAA, however, extended the potential relief period by an additional 60 days—for a potential total of 120 days—only for certain small business debtors filing under Subchapter V. Where a Subchapter V debtor is experiencing or has experienced a material financial hardship due, directly or indirectly, to the COVID-19 pandemic, a court may extend the time for performance of commercial lease obligations for 60 days after the petition date. If an extension is granted for an obligation, the obligation is treated as an administrative expense

## The Consolidated Appropriations Act, 2021

- ▶ The CAA amended §365(d)(4) to extend the initial deadline for any debtor-tenant—not just those filing under Subchapter V—to assume or reject an unexpired lease of nonresidential real property by an additional 90 days to a total of 210 days after the petition date and allowed for further extension, upon the showing of cause, for an additional 90 days. Therefore, a debtor could potentially have as many as 300 days to decide whether to assume or reject an unexpired commercial lease without the consent of the landlord. Note: the CAA includes a two-year sunset after enactment, upon which the above amendment will be struck from the Bankruptcy Code on December 27, 2022.
- ▶ The CAA amended §547 to provide that any “covered payment of rental arrearages” cannot be avoided as preferences. “Covered payments” are defined as payments made pursuant to arrangements entered into between any debtor-tenant and their landlord on or after March 13, 2020 to defer or postpone payments owed under a lease; such arrangement may also include the debtor’s obligation to pay penalties or fees. This amendment also includes a two-year sunset, after which it will be struck on December 27, 2022.

## Commercial rent relief due to COVID-19

- ▶ During the COVID-19 pandemic, bankruptcy courts throughout the nation utilized their equitable powers to defer timely payments of rent for several commercial tenant debtors, including restaurants and retailers.
- ▶ *In re Hitz Restaurant Group*, 616 B.R. 374 (Bankr. N.D. Ill. June 3, 2020) (due to a force majeure clause in a lease, court abated the debtor’s rent payments “in proportion to its reduced ability to generate revenue due to the Governor of Illinois’ executive order” (debtor still had to pay the 25% of rent attributable to takeout and delivery activities)). Note: the lease in Hitz Restaurant Group included “governmental action” and “orders of government” provisions in the force majeure clause.
- ▶ *In re True Religion Apparel, Inc.*, No. 20-10941 (Bankr. D. Del. May 12, June 22, and Aug. 7, 2020) (extending time to perform rent obligations for four months).
- ▶ *In re Modell’s Sporting Goods, Inc.*, No. 20-14179 (Bankr. D.N.J. Mar. 27, Apr. 30 and June 5, 2020) (suspending a bankruptcy case under §§ 105 and 305 of Bankruptcy Code and deferring payment of nonessential expenses, including rent obligations). The Modell’s bankruptcy cases were filed on March 11, 2020, and two days later, the COVID-19 pandemic was declared a national emergency. The debtors subsequently requested an “Operational Suspension” of the bankruptcy case, including rent deferment, due to COVID-19-related disruptions to the planned liquidation sales of the debtors’ stores. The court found that it was in the best interest of the debtors and creditors to grant the requested relief. The court extended the suspension twice—it ultimately lasted until June 15, 2020—due to the continued impact of stay-at-home orders on the ability to conduct going-out-of-business sales.
- ▶ *In re Pier 1 Imports*, No. 20-30805, 615 B.R. 196 (Bankr. E.D. Va. 2020), the Court granted the debtors’ request for a “breathing spell,” allowing the debtor-tenants to defer rental payments pursuant to the court’s equitable power under §105(a). The court “recognize[d] the extraordinary nature of the relief,” but found that the court’s “broad equitable powers” allowed such relief, notwithstanding §365(d)(3) requiring timely performance of rental obligations and the limits on bankruptcy courts’ equitable powers. The court explained that “[d]eferring rental payments during an unprecedented financial crisis in order to provide a post-Petition Date ‘breathing spell’ for the Debtors is not inconsistent with similar relief the bankruptcy process otherwise provides for pre-Petition Date obligations.”

## Commercial rent relief due to COVID-19

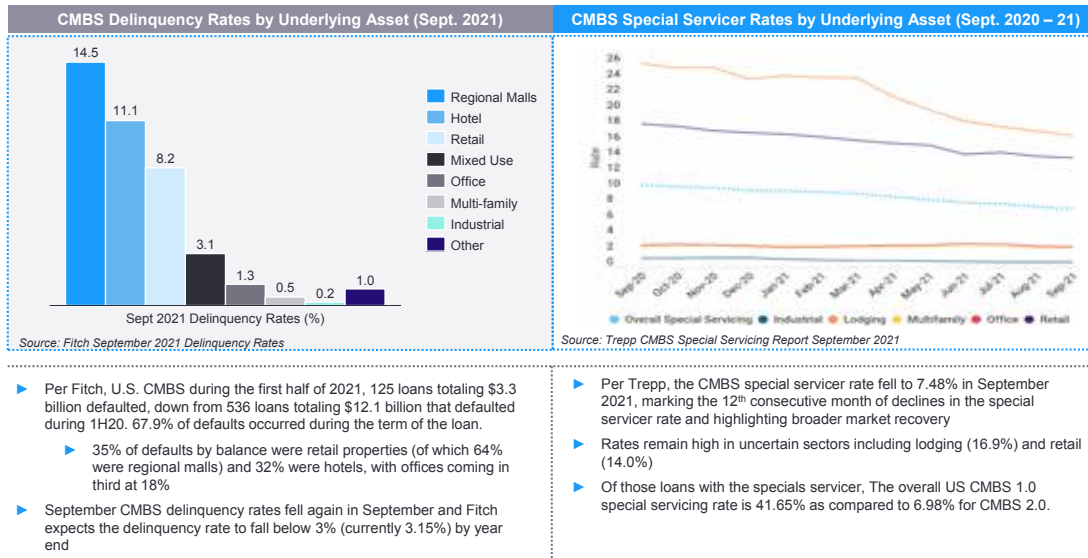
- ▶ On the other hand, some bankruptcy courts refrained from using their equitable power to circumvent the Bankruptcy Code's provisions mandating post-petition rental payments.
- ▶ *In re CEC Entertainment Inc.* (the operator of Chuck E. Cheese), 2020 WL 7356380 (Bankr. S.D. Tex. Dec. 14, 2020) (denying a 11 debtor's motion for a further rent abatement of rent and holding that: (i) a court cannot use its equitable powers to override Bankruptcy Code §365(d)(3)'s rent payment requirement; and (ii) force majeure clauses in the leases did not excuse timely payment of rent due to the pandemic or government shutdown orders.
- ▶ *In re: Cinemex USA Real Estate Holdings, Inc., et al.*, 2021 WL 564486 (Bankr. S.D. Florida, Miami Div., Jan. 27, 2021,) (for period of time that movie theaters were not shut down by government orders, rent would not be deferred or abated even though there was customer reluctance and no new movie releases).

06

CBMS defaults

## Appendix – CMBS defaults

Trends in the CMBS market reflect currently observed conditions in the underlying asset classes



# 07

## Appendix

Scott A. Underwood has extensive experience in some of the most complex bankruptcy cases and distressed business situations. Mr. Underwood has represented distressed businesses, chapter 11 debtors, secured and unsecured creditors, bankruptcy trustees, creditors' committees, landlords, liquidating trustees and parties acquiring and selling assets from bankruptcy cases. Mr. Underwood has stood out among his peers for many years, being consistently recognized as one of the State's top ranked bankruptcy attorneys while being selected by his colleagues to lead the bankruptcy practice group of one of the largest firms in the country, after previously chairing the statewide litigation group of one of Florida's most prominent firms.

Mr. Underwood's debtor side representative experience crosses many industries. He has represented chapter 11 debtors in the healthcare industry, hospitality, real estate, utilities, waste management, technology and manufacturing.

In addition to representing debtors, Mr. Underwood has represented large secured creditors, asset purchasers, bond holders, debtor-in-possession lenders, trustees, business owners, creditor committees and professional fiduciaries. Mr. Underwood's representative and transactional bankruptcy experience measures in the billions of dollars.

Beyond core chapter 11 matters, Mr. Underwood represents clients in various high stakes insolvency related litigation matters. He has been involved in substantial director and officer litigation, bond disputes, technology products liability litigation, and other commercial disputes.

Mr. Underwood also brings substantial experience with assignments for the benefit of creditors, having represented assignees, assignors, asset purchasers and creditors in such proceedings throughout Florida.

Mr. Underwood is a member of, among other organizations, (i) the American Bankruptcy Institute – where he is a past chair of the Real Estate Committee, (ii) Tampa Bay Bankruptcy Bar Association, (iii) Bankruptcy Bar Association for the Southern District of Florida and (iv) Business Law Section of the Florida Bar, where he is an active member of the Bankruptcy/UCC Committee and its study groups. In connection with these organizations, and others, Mr. Underwood is a frequent speaker on bankruptcy topics.

Mr. Underwood has been recognized by his peers and clients for many years as a leading bankruptcy lawyer in Florida. Those honors include recognition by Chambers USA (since 2012), selection for inclusion by Florida Super Lawyers (since 2009) and Top 50 Layers in Tampa in 2019, and named to Florida Trend Magazine Legal Elite (since 2013). He was also selected for inclusion in The Best Lawyers in America (2018, 2019 and 2020 editions) in Bankruptcy & Creditor Debtor Rights and Insolvency & Reorganization Law. He has also garnered an AV® Preeminent distinction, the highest available mark for professional excellence from Martindale-Hubbell's Peer Review Ratings.

In his younger years, he was recognized as one of the leading "Up and Comers" under 40 years old in the Tampa Bay area's business and civic community. When not practicing law, he can often be found coaching his boys in youth sports and spending time with his family in Tampa Bay's parks and restaurants.



## Education

- University of Florida Levin College of Law, J.D., 2003, Magna Cum Laude
- University of Florida, B.A., 1998

## Bar Admissions

- U.S. District Court and Bankruptcy Court for the Middle District of Florida
- U.S. District Court and Bankruptcy Court for the Northern District of Florida
- U.S. District Court and Bankruptcy Court for the Southern District of Florida
- Eleventh Circuit Court of Appeals
- Admitted to Several other U.S. Bankruptcy Courts Pro Hac Vice

## Bio – Ben Pickering Ernst & Young LLP



**Ben Pickering**

Principal - Restructuring

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Ben is a Principal in Ernst & Young's Restructuring Advisory Services group and has over 30 years of professional experience addressing special situations for a wide variety of constituents. Ben has extensive experience addressing issues such as strategic alternatives and operating models, stakeholder management and negotiations, financial analytics and alternatives, liquidity and testimony.

Ben has also served as interim management (including as CFO of a distressed portfolio company) and in similar capacities ranging from operating distressed business to winding down an international financial institution and its portfolio of assets around the globe.

### Select Real Estate Experience

- Ben was the lead advisor to a syndicate of lenders to a financial services organization with over \$3 billion of CMBS in a variety of CDOs and direct holdings. Ben led a team that analyzed the portfolio and direct real estate assets, assess restructuring and recovery alternatives, and the likelihood of triggering "cash traps". Ultimately, Ben determined and assisted with the execution of the settlement between the syndicate and the company resulting in a significant improvement to recoveries than originally estimated.
- He recently advised an East-coast State with respect to a significant municipality in distress due to deflated commercial and residential property values. Ben worked with the State and the municipality to restructure the municipalities finances, and utilize sizeable developed and un-developed real estate to support the restructuring and to create a PILOT program for certain commercial taxpayers.
- Ben has evaluated restructuring and recovery options for various stakeholders including partially completed real estate projects, a conversion from commercial to residential high-rise tower, timberlands, and a distressed vacation village complex.
- Recently, Ben has been involved with assessing Chinese real estate developments with offshore legal structures, assets and debts to assess alternative recoveries and risks.

### Background

CPA CA  
Chartered Insolvency and Restructuring Professional  
Licensed trustee in bankruptcy  
Qualified insolvency counselor  
University of Toronto – Bachelor of Arts, Commerce

Court Connection  
Volume No. 9 – Issue No. 2  
April 2020



## *Hon. Lori V. Vaughan* *Sworn In as Newest Bankruptcy Judge*

On February 25, 2020, the Honorable Lori V. Vaughan was sworn in as the newest bankruptcy judge of the United States Bankruptcy Court for the Middle District of Florida. She is presiding in the Orlando Division and conducts hearings in Courtroom 6C of the George C. Young United States Courthouse.

Prior to her appointment, Judge Vaughan was a shareholder with Trenam Law in Tampa and a member of the firm's Bankruptcy, Creditor's Rights & Insolvency practice group. While there, she represented both debtors and creditors in business reorganizations, creditors' and equity holders' committees, and Chapter 11 and 7 trustees.

Judge Vaughan joined Trenam Law in 2007 after practicing in the business reorganizations group of Foley & Lardner, the last year of which was spent in its New York City office. Prior to that, she served as judicial law clerk to the Honorable Karen S. Jennemann. She graduated from Eckerd College with a degree in Political Science with high honors and received her J.D. with honors from the University of Florida Levin College of Law.

Judge Vaughan is past chair of the Bankruptcy/UCC Committee of the Florida Bar, Business Law Section and is an author of multiple chapters of the Florida Bar's publication *Creditors' and Debtors' Practice in Florida*. She has also served as a board member for the International Women's Insolvency & Restructuring Confederation and American Bankruptcy Institute bankruptcy litigation committee.

## VedderPrice

### Michael M. Eidelman Shareholder

Chair, Corporate Reorganization, Bankruptcy and  
Insolvency Group  
Member, Board of Directors



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#### Client Services

Complex Commercial  
Litigation

Corporate Liability

Health Care Finance

Insolvency, Bankruptcy &  
Corporate Reorganization

Real Estate

Securities & Capital Markets

#### Education

DePaul University College of  
Law, J.D., 1987

University of Michigan,  
B.G.S., 1984

#### Bar Admissions

Illinois, 1988

#### Court Admissions

U.S. Bankruptcy Court,  
Northern District of Indiana,  
2005

U.S. Bankruptcy Court,  
Western District of Michigan,  
2008

Michael M. Eidelman is a Shareholder at Vedder Price and a member of the Corporate practice area.

Mr. Eidelman concentrates his practice in bankruptcy and insolvency matters and has acted as lead counsel for debtors, secured and unsecured creditors, chapter 7 and 11 trustees, landlords, purchasers of assets, and creditors' and bondholders' committees. In addition, Mr. Eidelman represents companies, creditors, court-appointed receivers and assignees for the benefit of creditors in out-of-court restructurings and liquidations. Mr. Eidelman also represents officers and directors of financially distressed companies. He has substantial litigation experience in all aspects of creditors' rights, in both U.S. state and federal jurisdictions and in cross-border transactions in Canada and Mexico.

Mr. Eidelman was appointed by the U.S. District Court for the Northern District of Illinois as Receiver in *U.S. Commodity Futures Trading Commission v. Peregrine Financial Group, Inc. and Russell R. Wasendorf, Sr.* (Case No. 1:12-cv-05383) (\$200 million fraud) and the "Information Agent" by the United States Government in *United States of America v. All Business Assets of the Viceroy L'Ermitage Beverly Hills et al.*, pending in the United States District Court for the Central District of California (Case No. CV 16-5369-DSF-PLA) (relating to the alleged multibillion-dollar 1MDB fraud).

Mr. Eidelman is a member of the Turnaround Management Association and the Chicago, Illinois and American Bar Associations. He served as a member and Co-Chairman of the Bankruptcy Court Liaison Committee, which was established to address issues concerning bankruptcy judges and lawyers in the Northern District of Illinois. He is also a frequent speaker and author on numerous bankruptcy-related issues.

Mr. Eidelman was selected for inclusion from 2005 to 2021 in *Illinois Super Lawyers*. From 2010 to 2021, Mr. Eidelman has been ranked in *Chambers USA* in

# AMERICAN BANKRUPTCY INSTITUTE

U.S. District Court, Northern  
District of Illinois, 1988

U.S. District Court, Eastern  
District of Michigan, 2004

U.S. Court of Appeals, Third  
Circuit, 2010

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## Affiliations

Member, Turnaround  
Management Association

Member, American  
Bankruptcy Institute

Member, Chicago Bar  
Association

Member, Illinois State Bar  
Association

Member, American Bar  
Association

Former Member (Chair),  
Bankruptcy Court Liaison  
Committee

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the Illinois Bankruptcy/Restructuring category. He received an "AV Preeminent" Peer Rating in *Martindale-Hubbell*. Mr. Eidelman was selected by his peers as a *Leading Lawyer* in Bankruptcy & Workout: Commercial Law. He has also been selected by his peers from 2013 to 2022 for inclusion in *The Best Lawyers in America* in the field of Bankruptcy and Creditor Debtor Rights/Insolvency and Reorganization Law.

## Publications

**Co-author, "Discovering the Hidden Value of Life Insurance Policies: Application of Life Settlements in the Context of Bankruptcy"**  
*Bloomberg Law Reports: Bankruptcy Law*, December 9, 2011

**Co-author, "Life Insurance Settlements: A Potentially Powerful Cash Generation Tool"**  
*NABTalk: Journal of the National Association of Bankruptcy Trustees*, Summer 2011

**Co-author, "Dealing with Troubled Tribal Casinos"**  
*Pratt's Journal of Bankruptcy Law*, May 2010

**Co-author, "Commercial Law – Troubled Domestic Sovereign Debt"**  
*Vedder Price Newsletter*, April 2010

**Co-author, "Recent Trends in Second Lien Loans"**  
*Vedder Price Newsletter*, Winter 2008-2009

**Co-author, "Special Report: 'Second Lien' Loans"**  
*Vedder Price Newsletter*, November 2005

**Co-author, "Special Report"**  
*Vedder Price Newsletter*, May 2004

**Co-author, "Debtor-in-Possession Financing"**  
White Paper, March 2003

**Co-author, "Avoiding Fraudulent Transfers"**  
White Paper, March 2002



# Faculty

**Michael M. Eidelman** is a shareholder with Vedder Price in Chicago and chairs the firm's Corporate Reorganization, Bankruptcy and Insolvency Group. He also is a member of the firm's board of directors. Mr. Eidelman concentrates his practice in bankruptcy and insolvency matters and has acted as lead counsel for debtors, secured and unsecured creditors, chapter 7 and 11 trustees, landlords, asset-purchasers, and creditors' and bondholders' committees. In addition, he represents companies, creditors, court-appointed receivers and assignees for the benefit of creditors in out-of-court restructurings and liquidations. He also represents officers and directors of financially distressed companies. Mr. Eidelman has litigation experience in all aspects of creditors' rights, in both U.S. state and federal jurisdictions and in cross-border transactions in Canada and Mexico. He was appointed by the U.S. District Court for the Northern District of Illinois as receiver in *U.S. Commodity Futures Trading Commission v. Peregrine Financial Group, Inc. and Russell R. Wasendorf, Sr.* (Case No. 1:12-cv-05383), and as the "Information Agent" by the U.S. Government in *United States of America v. All Business Assets of the Viceroy L'Ermitage Beverly Hills, et al.*, pending in the U.S. District Court for the Central District of California (Case No. CV 16-5369-DSF-PLA). Mr. Eidelman is a member of the Turnaround Management Association and the Chicago, Illinois and American Bar Associations. He served as a member and co-chair of the Bankruptcy Court Liaison Committee, which was established to address issues concerning bankruptcy judges and lawyers in the Northern District of Illinois. He is also a frequent speaker and author on numerous bankruptcy-related issues. Mr. Eidelman was selected for inclusion from 2005-21 in *Illinois Super Lawyers*, and since 2010, he has been ranked in *Chambers USA* in the Illinois Bankruptcy/Restructuring category. Mr. Eidelman is rated AV-Preeminent by Martindale-Hubbell and was selected as a Leading Lawyer in Bankruptcy & Workout: Commercial Law. In addition he has been listed in *The Best Lawyers in America* in the field of Bankruptcy and Creditor Debtor Rights/Insolvency and Reorganization Law since 2013. Mr. Eidelman received his B.G.S. in 1984 from the University of Michigan and his J.D. in 1987 from DePaul University College of Law.

**Andrew D. Hede** is a restructuring senior managing director with EY Americas in New York. He advising companies, creditors and equity sponsors in distressed and nondistressed situations. Mr. Hede concentrates on financial and operational reviews, liquidity management, business and asset divestment, business plan preparation and review, recapitalization strategies, and the negotiation of reorganization plans. He has more than 20 years of financial and operational restructuring experience in both the U.S. and Australia, and he has advised clients in numerous formal and out-of-court restructurings. Mr. Hede has worked across a broad range of sectors and served in various interim-management roles. He received his B.Com. in accounting and business law from the University of Melbourne.

**Ben Pickering, CPA, CIRA** is a principal in Ernst & Young's Restructuring Advisory Services group in New York and has more than 30 years of professional experience addressing special situations and distressed matters for a wide variety of constituents. Mr. Pickering has in-court and out-of-court experience addressing issues such as strategic alternatives and operating models, stakeholder management and negotiations, financial analytics and alternatives, liquidity and testimony. He has also served as interim management (including as CFO of a distressed portfolio company) and in

similar capacities ranging from operating distressed business to winding down an international financial institution and its portfolio of assets around the globe. Immediately prior to joining EY, Mr. Pickering served as the interim CFO of a distressed pharmaceutical company. In this role, he led the negotiations with its sponsor and lenders, as well as other key stakeholders. He also reorganized the accounting and treasury functions, and implemented cash-flow and financial forecasting for use in business planning and negotiations with key stakeholders and restructured operations. He also prepared and negotiated the potential financing options required to support the company, and led the preparations for a potential chapter 11 filing and, ultimately, the sale of the business via a creative mechanism. In addition, Mr. Pickering has also advised clients on crisis resolution and rapid cost takeout, operational alternatives and related impacts, including strategic assessment and options analysis, the restructuring of operations, divisional consolidation/rationalization, business divestitures and debt restructuring. His international experience includes matters in the U.S. and Canada, Trinidad, the Cayman Islands, Bermuda, the U.K., Cyprus, Greece, Ivory Coast, Liberia, China (including Hong Kong and Macau before the handovers) and Thailand. Mr. Pickering received his B.A. in commerce from the University of Toronto.

**Scott A. Underwood** is an attorney with Underwood Murray PA in Tampa, Fla., and has experience in some of the most complex bankruptcy cases and distressed business situations. He has represented distressed businesses, chapter 11 debtors, secured and unsecured creditors, bankruptcy trustees, creditors' committees, landlords, liquidating trustees and parties acquiring and selling assets from bankruptcy cases. Mr. Underwood's debtor-side representative experience crosses many industries. He has represented chapter 11 debtors in the health care industry, hospitality, real estate, utilities, waste-management, technology and manufacturing. In addition to representing debtors, he has represented large secured creditors, asset-purchasers, bondholders, debtor-in-possession lenders, trustees, business owners, creditors' committees and professional fiduciaries. His representative and transactional bankruptcy experience measures in the billions of dollars. Beyond core chapter 11 matters, Mr. Underwood represents clients in various high-stakes insolvency related litigation matters. He has been involved in substantial director and officer litigation, bond disputes, technology products liability litigation and other commercial disputes. He also has experience with assignments for the benefit of creditors, having represented assignees, assignors, asset-purchasers and creditors in such proceedings throughout Florida. Mr. Underwood is a member of ABI (for which he is a past chair of its Real Estate Committee) and the Tampa Bay Bankruptcy Bar Association, Bankruptcy Bar Association for the Southern District of Florida and Business Law Section of the Florida Bar, where he is an active member of its Bankruptcy/UCC Committee and its study groups. A frequent speaker on bankruptcy topics, he has been listed in *Chambers USA* since 2012, in *Florida Super Lawyers* since 2009, as one of the Top 50 Lawyers in Tampa in 2019, and as one of *Florida Trend Magazine's* Legal Elite since 2013. He was also selected for inclusion in *The Best Lawyers in America* (2018, 2019 and 2020 editions) in Bankruptcy & Creditor Debtor Rights and Insolvency & Reorganization Law, and is rated AV-Preeminent by Martindale-Hubbell. Mr. Underwood received his B.A. in 1998 from the University of Florida and his J.D. *magna cum laude* from the University of Florida Levin College of Law in 2003.

**Hon. Lori V. Vaughan** is a U.S. Bankruptcy Judge for the Middle District of Florida in Orlando, sworn in on Feb. 25, 2020. In moving to the bankruptcy court in Orlando, she returns to sit next to Hon. Karen S. Jennemann, with whom she started her career as a law clerk immediately out of law school. After her clerkship, Judge Vaughan practiced at two law firms. Most recently, she was a

shareholder at Trenam Law in Tampa, Fla., and before that, she practiced at Foley & Lardner, the last year of which she spent practicing out of its New York office. Judge Vaughan previously served as president of the Tampa Bay Bankruptcy Bar Association, chair of the Bankruptcy/UCC Committee of the Florida Bar's Business Law Section, and board member for the International Women's Insolvency & Restructuring Confederation. She has also sat on the boards of the USF Financing Corp. and USF Property Corp. Judge Vaughan was recognized by *Florida Super Lawyers* as being among the top 100 Lawyers in Florida, the top 50 Lawyers in Tampa Bay and the top 50 Women Lawyers in Florida. She also has been recognized by *Chambers USA* and *The Best Lawyers in America*. Judge Vaughan received her B.A. with high honors from Eckerd College in 1995 and her J.D. with honors from the University of Florida, College of Law in 1998.