American Bankruptcy Institute

New York City Bankruptcy Conference

Advanced DIP Topics

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Advanced DIP Topics

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Today's Speakers

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DIP Financing Requirements and Adequate Protection

General DIP Financing Requirements

Under Bankr. Rule 4001(c)(2), the court may grant authority to obtain credit on an interim basis if “necessary to avoid immediate and irreparable harm to the estate pending a final hearing.”

When seeking authority to obtain a DIP Loan, Section 364 of the Bankruptcy Code requires the debtor to show that it was unable to obtain financing on more favorable terms. This means the debtor must “shop” the loan opportunity. While the debtor need not reach out to every possible source, it must make a good faith effort.

Under Section 364(d) of the Bankruptcy Code, to obtain a DIP loan secured by a lien that primes or is pari passu with existing secured debt, the debtor must provide “adequate protection” to the holders of existing liens.

Adequate Protection

Adequate protection is intended to preserve the value of a prepetition lender’s interest in its collateral while the debtor is in bankruptcy and protect against any diminution in the value of its lien.

- The prepetition lender is entitled to adequate protection only to the extent of diminution in value of its collateral.
- If the adequate protection granted is less than the eventual diminution, the prepetition lender has an administrative expense claim under section 507(b).

Adequate protection is not defined in the Bankruptcy Code, but section 361 states that it may be provided by:

- Periodic cash payments (interest, principal, fees)
- Additional or replacement liens (including on after-acquired property for which section 552 cuts off prepetition liens)

Courts may also find that a prepetition lender is adequately protected due to an “equity cushion” in the collateral.

- An equity cushion exists where the value of the DIP collateral exceeds the amount of the priming DIP loan plus the prepetition secured debt.

Adequate Protection – Measuring Diminution of Value

In re Sears Holdings Corp., 51 F.4th 53, 57 (2d Cir. 2022):

- Value of collateral for adequate protection purposes must be determined based on the proposed disposition or use of the property.
- As of the Petition Date, Debtors proposed to dispose of inventory, rather than use it, so replacement value was not a proper way to measure value.
- Given that there were two realistic scenarios—a going concern sale or forced liquidation— the bankruptcy court used net orderly liquidation value (a valuation of the collateral between forced liquidation and retail price). The Second Circuit held that the bankruptcy court did not err through this approach since there was a high likelihood that the Debtors would liquidate. Even though the Debtors continued operating for several months and ultimately sold the business as a going concern, the strong possibility of liquidation was sufficient for the Second Circuit.

Lender-Imposed Requirements

Lender Imposed Requirements Overview

Secured Lenders can use various aspects of the DIP Financing Agreement, as they are included in the Interim and Final DIP Orders, to exercise control over the debtor or debtors. Provisions of the DIP Financing can set requirements for the Debtors through the following, among others, to increase their own recoveries or protect themselves from liability:

- **Stipulations**, typically related to prepetition indebtedness and waivers of the debtor or debtors' rights, claims and liens, and **releases** of the DIP Lenders and/or any Prepetition Secured Lenders;
- A **DIP Budget** for the use of DIP funds; and,
- **Milestones** controlling the pace of the case and forcing a quicker emergence from bankruptcy.

Stipulations and Releases

Where the DIP lender is also a prepetition lender, the DIP Financing typically will require the debtors to stipulate to, among other things, (a) prepetition amounts owed, (b) validity and perfection of prepetition liens, (c) good faith, arms' length conduct, (d) ability to credit bid, and (e) waivers of certain statutory rights (i.e. equities of the case exception or right to assert a 506(c) claim), and (f) no defenses or counter claims. The DIP lender will also typically seek a release of all claims and causes of action against them.

The stipulations and releases are included in the DIP order, subject to the ability of the unsecured creditors' committee to investigate and seek standing to challenge the stipulations or bring claims within a specified period.

- The challenge period length varies depending on the applicable local rules and other factors.
- Example: Delaware local rules require justification for a challenge period of less than 75 days. Recent cases indicate that an extraordinary factual showing (or a settlement with the committee) will be necessary for some judges to shorten the challenge period. In re Performance Powersports Group Investor, LLC, Case No. 23-10047 (Bankr. D. Del. 2023); In re Independent Pet Partners Holdings, LLC, Case No. 23-10153 (Bankr. D. Del. 2023).

If there is no challenge or the challenge is unsuccessful, the stipulations become findings of the court that are binding on all parties.

Stipulations and Releases (cont'd)

Section 506(c) of the Bankruptcy Code allows a debtor-in-possession to surcharge a secured creditor's collateral in bankruptcy to pay for the reasonable, necessary costs and expenses of preserving or disposing of collateral securing a secured claim, to the extent of any quantifiable, direct benefit to the secured creditor holding the claim.

- DIP lenders typically require that the Debtor waive its right to assert a 506(c) claim.

Section 552(b) allows prepetition secured creditors to maintain a post-petition floating lien on "proceeds, products, and offspring" of prepetition collateral and post-petition rents and hotel room revenues generated from prepetition collateral unless the court orders otherwise based on the "equities of the case."

- DIP lenders typically require that the Debtor waive its right to argue the "equities of the case" exception.

DIP lenders may seek a waiver of the "for cause" exception to the right to credit bid under Section 363(k).

DIP Budget

DIP lenders typically require a cash flow budget reflecting receipts and expenditures projected over a 13-week period.

- The budget lays out specifically the various receipts and expenditures by line item.
- Typically the budget is a "rolling" budget which is updated periodically (usually weekly), removing the lapsed week and adding a new week at the end, with the updates subject to the approval of the DIP Lender.
- Budget will include not only ordinary operational expenses but also administrative expenses and legal fees.

Milestones

DIP credit agreements often include events of default for the Debtors' failure to meet certain case milestones. These include deadlines to, for example, file the DIP motion, obtain entry of DIP orders, file a bid procedures motion, sell assets, file a plan of reorganization plan and a disclosure statement, receive approval of the disclosure statement and the plan, complete plan confirmation, consummate the chapter 11 plan, among others.

DIP lenders may also be party to a restructuring support agreement containing such milestones, with a cross-default to the DIP.

Non-Consensual DIPs/Cash Collateral

Non-Consensual DIPs/Cash Collateral

Where a debtor attempts to prime prepetition liens, and the prepetition lender objects, the main issues usually relate to the existence and extent of an equity cushion and/or the extent to which the value of collateral will erode or appreciate during the case.

This requires a trial regarding the valuation of collateral.

- Certain cases have held that an equity cushion between 11% and 20% provides sufficient adequate protection.
- Some cases suggest that an under secured creditor can never be adequately protected if primed by post petition debt without additional collateral, which is difficult to give where lenders have a lien on all assets.
- Other cases have found that the ability of the debtor to continue operations that may increase the value of collateral can constitute adequate protection.

Non-Consensual DIPs/Cash Collateral

In re Alpha Media Holdings LLC, Case No. 21-30209 (Bankr. E.D. Va. 2021):

- Debtor filed with proposed DIP that would prime first lien lenders, who objected at the first day hearing on adequate protection grounds, and would not consent to priming on a final basis.
- Prior to entry of a final order, the DIP lenders agreed to increase the DIP to pay off the first lien debt in full, thereby avoiding a priming fight at the final hearing.
- First lien lenders continued to object on the basis that they had not agreed with the debtors on the correct payoff amount, and any amount above the debtors' contemplated payoff amount would remain an outstanding first lien obligation that could not be primed without adequate protection.
- The court approved the DIP on a final basis subject to a $5 million escrow to address the disputed payoff amount.

Non-Consensual DIPs/Cash Collateral

In re True Religion Apparel, Inc. et. al., Case No. 20-10941 (Bankr. D. DE 2020):

- The debtors filed a proposed DIP with a minority of its prepetition lenders and equity holders, rolling up some of the prepetition indebtedness in favor of these lenders.
- Prepetition Lender Ivy High Income Opportunities Fund objected to the DIP Financing, alleging that, among other issues, the non-participating lenders were not provided with adequate protection. Ivy specifically alleged that the proposed replacement liens subordinated to DIP Liens would put them in a worse position after being primed.
- At the Interim DIP Hearing, the debtors asked that the Court apply fire sale liquidation analysis for the valuation of the collateral and find that the replacement liens provided Ivy with adequate protection. Ivy, however, advocated for the use of going concern value and a finding that there was no adequate protection.
- In Judge Sontchi's bench decision, he stressed that "we cannot separate ourselves from the facts" and "there was no other option on the petition date without this loan." Judge Sontchi did not address what analysis should be used to value the collateral, but rather found that the Debtor demonstrated that Ivy was adequately protected since it showed that its operations as a going concern provided lenders with an overall increase in value since the petition date.

Intercreditor Agreement Limitations

Certain rights may be waived by 2nd lien lenders in intercreditor agreements:

- Right to seek adequate protection and/or object to cash collateral;
- Right to contest 1st lien lenders' liens;
- Right to current payment of interest;
- Right to object to DIP financing supported by 1st lien lenders; and
- Right to propose a DIP loan.

In re Ion Media Networks, Inc., 419 B.R. 585 (Bankr. S.D.N.Y. 2009) – court enforced intercreditor agreement to prevent junior creditor from objecting to the proposed chapter 11 plan on the basis that senior creditor liens on certain licenses were invalid. Did not require senior creditors to commence adversary proceeding or sue in state court.

Other cases have interpreted intercreditor agreements in favor of junior lenders and against senior lenders. In In re Boston Generating, LLC, 440 B.R. 302 (Bankr. S.D.N.Y. 2010), the bankruptcy court held that the intercreditor agreement did not deprive second lien lenders of standing to challenge a proposed 363 sale. In In re MPM Silicones, LLC, 518 B.R. 740 (Bankr. S.D.N.Y. 2014), the bankruptcy court held that junior lenders could support the Debtors' objection to the senior lenders exercising their make-whole payment rights without breaching the applicable intercreditor agreement.

Roll-Ups

What is a Roll-Up?

A roll-up is the refinancing of prepetition debt with a post-petition loan.

The effect is to cause prepetition debt to have the benefit of the blanket DIP Liens (subject to exception for challenge) and to have superpriority administrative expense claim status.

Rolled-up debt cannot be crammed down.

As a general matter, roll-ups are considered “disfavored” but permitted.

Roll-Up Amounts

Typically, courts have permitted roll-ups up to a 2:1 ratio representing $2 of prepetition debt for every $1 of DIP financing. In the following cases, courts approved roll-ups with ratios greater than 2:1:

- In re True Religion Apparel, Inc., Case No. 20-10941 (Bankr. D. Del. 2020)- approved 7:1 roll-up
- In re Mountain Express Oil Co., Case No. 23-90147 (Bankr. S.D. Tex. 2023)- approved 4.53:1 roll-up
- In re Cineworld Group PLC, Case No. 22-90168 (Bankr. S.D. Tex. 2022)- DIP included $664 million of new money for liquidity, $1 billion to refinance prepetition priming facilities, and $271 million to purchase loans made to non-debtor "rest of world" affiliates, for a 3:1 ratio of debt refinance/purchase to new money.
- In re Vital Pharmaceuticals Inc., Case no. 22-17842 (Bankr. S.D. F.L. 2023)- Debtors sought 3.55:1 roll-up, and, after objections by the UCC and largest creditor Monster Energy, the Debtors amended the DIP to reduce the "above-market" to a 2.35:1 roll-up.

Timing of the Roll-Up

Courts were reluctant to grant roll-ups on interim basis

- Cineworld – court allowed for borrowing of entire DIP amount under interim order, but required that the $1 billion amount for rolling up the first lien debt be escrowed pending a challenge period deadline of 53 days from entry of interim order.
- PhaseBio – court initially indicated that the full $9.1 million rollup as proposed by the debtors cannot be approved on an interim basis but eventually granted the DIP financing as the debtors and the DIP lender were unable to reach an agreement on modifying the terms.
- Suitable Technologies – court refused to allow roll-up of prepetition claims as part of $6 million in DIP Financing from the debtor's founder who was also the prepetition lender.

Rolling Up Non-Participating Lenders' Debt

The norm has been that prepetition lenders would have to participate as a DIP Lender to have prepetition debt rolled-up.

– In re Chesapeake Energy Corp., Case No. 20-33233 (Bankr. S.D. Tex. 2020)- roll-up not limited to prepetition lenders that put in new money. Roll-up extended to non-participating lenders in exchange for consent to priming.

Roll-Ups – Non-Pro Rata

Some Courts have also approved non-pro rata roll-ups through which the DIP Lenders were majority holders of secured debt who prevented minority holders of the same debt from participating pro rata in the DIP Financing.

In re JC Penney Co. Inc., Case No. 20-20182 (Bankr. S.D. Tex.):

– Proposed DIP lenders were majority first lien lenders. Opportunity to participate in the DIP was not offered on a pro rata basis to the minority first lien lenders.

– DIP included $450 million in new money and a $450 million roll-up of first lien debt of only the participating lenders.

– Minority lenders objected on the grounds that, among others, the DIP violated the "ratable sharing" provision of the first lien credit agreement because the roll-up was a payment of the debt that should be shared on a ratable basis.

– Eventually the parties settled for participation by the minority lenders in $53 million of the roll-up (which was less than their pro rata share) on the same terms as existing DIP lenders.

Roll-Ups – Payment of Revolving Prepetition Debt

Secured Lenders have used roll-ups on various kinds of prepetition financing, including revolving prepetition debt.

In re Armstrong Flooring, Inc., Case No. 22-10426 (Bankr. D. Del. 2022)

- Roll-up included payment of prepetition ABL debt from DIP Collateral constituting ABL Priority Collateral, including:
  - All proceeds of accounts receivable, plus an additional dollar for each dollar of proceeds of accounts receivable remitted
  - All proceeds of inventory in the amount of the invoiced price of such inventory.

Equity Conversions

Equity Conversions

Recent DIP financings have included the option to convert outstanding amounts to equity in the reorganized company.

This can be a benefit to the estates by reducing the amount of cash that must be raised to repay the DIP loan. Can also be abused to divert value from creditors to existing shareholders.

Equity conversion features approved in:

- In re Avianca Holdings S.A., Case No. 20-11133 (Bankr. S.D.N.Y. 2020)- DIP loan had a $1.296 billion senior Tranche A and a $722.3 million junior Tranche B. Debtors had to the option to repay the entire Tranche B in reorganized equity.
- In re Grupo Aeroméxico, S.A.B. de C.V., Case No. 20-11563 (Bankr. S.D.N.Y. 2020)- DIP loan had a $100 million Tranche 1 and an $800 million Tranche 2. Lenders had option to convert Tranche 2 to reorganized equity.
- In re Party City Holdco Inc., Case No. 23-90005 (Bankr. S.D. Tex. 2023)- DIP Lenders under $150 million DIP facility received a backstop commitment fee giving them the option to convert their DIP loans into equity in connection with any rights offering under a plan. First lien noteholders were offered the ability to participate pro rata if they signed the RSA. DIP was approved with the ability for certain noteholders to participate but preserve limited rights to object to the plan.

Equity Conversions (cont'd)

In re LATAM Airlines, Case No. 20-11254 (Bankr. S.D.N.Y. 2020), the proposed DIP loan included a Tranche C provided by existing shareholders. The Debtors had the option to repay Tranche C in reorganized equity at a 20% discount to plan value.

- The court denied the DIP loan because it concluded that the equity subscription provision in the Tranche C facility represented a prohibited sub rosa chapter 11 plan.
- The Debtors were asking "to approve a transaction that will fix now, some of the terms of a plan yet to be filed," because the Tranche C facility would lock into place the 20% discount to plan value on the stock to be issued at LATAM's option to the Tranche C lenders in satisfaction of the loan.
- Because it was not market tested, "[t]here is no way of knowing now whether that discount is appropriate … [and] neither the Debtors' decision to make that election, nor the 20% discount, will be subject to creditor comment or Court review."
- This feature provided a distribution to existing shareholders "on account of" their status without market testing.

Interim Order Creep

Interim Order Creep

Under Bankr. Rule 4001(c)(2), applications for credit under DIP financing must be “necessary to avoid immediate and irreparable harm to the estate pending a final hearing.”

Despite what reads like a high standard, more and more recent interim DIP orders have included provisions that affect substantive rights typically reserved for final orders.

- **Challenge Period**: - court in *In re Altera Infrastructure* entered an interim order providing that the challenge period for stipulations and releases would expire upon entry of the final order. This was amended in the final order as to the committee to provide for an additional 39 days after entry of the final order. In re Altera Infrastructure, Case No. 22-90130 (S.D. Tex. 2022).
- **Waiving Debtor Protections**- court in *Party City* granted 506(c) and 552 “equities of the case” waivers in the interim order despite the fact that the landlords involved had insufficient information as to whether they were adequately protected.
- **Financing and Roll-Ups**- court in *Bed Bath & Beyond* granted entire $240 million DIP Financing, with $40 million in new money and a roll-up of $200 million of prepetition debt, on an interim basis without notice, a formed creditors’ committee or a marketing process. The interim order also provided for an exceedingly short challenge period.

Liability Management and DIP Loans

Impact of Liability Management Transactions

In re TPC Group Inc., Case No. 22-10493 (Bankr. D. Del. 2022)

- In February 2021, TPC issued $153mm in new notes (the "2021 Notes") and in 2022, TPC issued an additional tranche of $51.5mm in new notes (the "2022 Notes" and collectively with the 2021 Notes, the "New Notes").
  - The New Notes were secured by the same collateral as the 2019 Notes, but secured on a senior basis pursuant to a new intercreditor agreement entered into among the collateral agents in respect of each of the 2019 Notes and the New Notes.
  - To permit the transactions, holders of a majority of the 2019 Notes consented to certain amendments to the 2019 Notes indenture.
  - Unlike other similar transactions, the majority holders did not exchange their holdings in the 2019 Notes into the New Notes.

TPC

- On June 1, 2022, TPC and its subsidiaries filed for bankruptcy in Delaware and sought approval of DIP financing that also included a roll-up of the New Notes.
- Certain nonconsenting minority holders of the 2019 Notes challenged the transactions and commenced an adversary proceeding seeking a declaratory judgment that the New Notes were in fact junior to the 2019 Notes because the subordination of the 2019 Notes was not permitted.
- The parties disputed whether the transaction was properly characterized as an “uptier” transaction, considering that the majority holders did not sell or exchange their loans back to the Debtors and retained their position in the old (junior) loan.
- Under the relevant provisions of the 2019 Notes Indenture, the indenture could be amended by holders of a majority of the notes, subject to certain sacred rights.
- The Court concluded that in the absence of express language establishing a sacred consent right for the subordination of the old debt to the new, that consent could be required by the Court. The Court also concluded that the roll-up was reasonable since the priming notes were oversecured and would be paid in full.

Minority Lender Protections and DIP Loans

Minority Lender Protections and DIP Loans

Creditors can include safeguards in the “Amendments” provision of their financing agreements to prevent liability management transaction which would subordinate any lenders (“Serta Blockers”), mainly through prohibitions on lien subordination and mandatory notice for all lenders if there are any proposed modifications or amendments to the financing agreement.

Through **prohibitions on lien subordination**, non-participating lenders may not be subordinated by lenders participating in a liability management transaction unless the opportunity is offered to them to participate.

Advance notice requirements prevent the borrower and a group of majority lenders from negotiating and executing amendments in secret which would pave the way for a liability management transaction.

A key question in this area is the following: Do the minority lender have the right to oppose a DIP loan that would violate a Serta Blocker protection? Would they be limited to adequate protection as a remedy, or could they block the loan through trying to enforce the blocker provision?

Unsecured Creditor Standing Issues

Delaware "LLC Issue" & Creditor Standing

- The Delaware Supreme Court has held that the Delaware Limited Liability Company Act limits derivative standing in cases to members of the LLC or assignees of an LLC interest, and precludes creditor derivative standing. CML v. Bax, 28 A.3d 1037 (Del. 2011).
- Based on the Bax decision, Delaware Bankruptcy Court judges has held that a statutory creditors' committee cannot be granted derivative standing to pursue claims of the limited liability company, because it is neither a member nor an assignee of the limited liability company. This is true even with respect to claims that arise under federal law. See, e.g., In re Dura Automotive Systems, LLC, Case No. 19-12378 (Bankr. D. Del. June 9, 2020).
- Other courts have held that bankruptcy courts have the power to grant standing to a committee as an estate fiduciary as a matter of federal bankruptcy law, and that preclusion of standing under state law is irrelevant. See, e.g., In re The McClatchy Co., Case No. 20-10418 (Bankr. S.D.N.Y. July 8, 2020).
- Certain Delaware judges, in an effort to ensure that committees' challenge rights are not rendered illusory, have required that DIP order contains a stipulation by the debtors and secured creditor that they will not invoke the "LLC issue" as a defense to a committee's motion for derivative standing. See, e.g., In re The Collected Group, LLC, Case No. 21-10663 (Bankr. D. Del. April 6, 2021).

Dechert LLP

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Faculty

Hon. Philip Bentley is a U.S. Bankruptcy Judge for the Southern District of New York in New York, sworn in on Sept. 7, 2022. Prior to joining the court, he has been a partner in the bankruptcy and restructuring department of Kramer Levin Naftalis & Frankel LLP, where his practice focused on complex litigation in bankruptcy courts, as well as other federal and state courts. In addition to occasionally representing debtors, trustees and examiners, Judge Bentley frequently litigated on behalf of official committees and creditor groups in large bankruptcies, including Purdue Pharma, Puerto Rico, Residential Capital, Madoff Investment Securities, General Motors, W.R. Grace, Adelphia Communications, WorldCom, Dow Corning and SGL Carbon. A regular speaker on bankruptcy issues, he is a member of the Federal Bar Council's Bankruptcy Litigation Committee and of the National Conference of Bankruptcy Judges. Prior to his appointment, Judge Bentley was a member of the advisory board for ABI's annual New York City Bankruptcy Conference, as well as a longstanding member of the Policy Committee of Human Rights Watch. He received his B.A. *cum laude* from Yale University and his J.D. *cum laude* from Columbia Law School, where he was a Harlan Fiske Stone Scholar.

Robert J. Feinstein is the managing partner of the New York office of Pachulski Stang Ziehl & Jones LLP, which he opened in 2011. He represents debtors, creditors' committees, equity committees, acquirers and examiners in business reorganizations and related litigation. He also has experience representing various constituencies in cross-border chapter 11 and chapter 15 cases. Mr. Feinstein's recent engagements include lead counsel to the official creditors' committees appointed in the chapter 11 cases of J. Crew, Rockdale Marcellus, Alamo Drafthouse, Whiting Petroleum, Ascena (Ann Taylor/LOFT/Lane Bryant), Ditech, Payless ShoeSource, The Weinstein Co., Barney's Inc., Aeropostale and Jevic Holding Corp. (appearing on behalf of the creditors' committee in the U.S. Supreme Court). On the debtor side, he has represented Digital Domain Media Group, former world heavyweight champion Mike Tyson, and *Penthouse* magazine publisher General Media, Inc. in their chapter 11 cases. His cross-border representations include the Canadian receiver for Blockbuster Canada in its chapter 15 case and the Canadian monitor in the *Essar Steel* case. Mr. Feinstein is an adjunct professor in the St. Johns University LL.M. in Bankruptcy Program and frequently writes and lectures on bankruptcy topics, and he is a Fellow of the American College of Bankruptcy. He is ranked among Bankruptcy/Restructuring attorneys by *Chambers USA*, was listed by *Lawdragon* as one of the 2020 "Lawdragon 500 Leading Global Restructuring & Insolvency Lawyers," and he is a member of the International Insolvency Institute. He also served as an officer of the Insolvency Section of the International Bar Association and is rated AV-Preeminent by Martindale-Hubbell. Mr. Feinstein received his B.A. from Lafayette College and his J.D. *magna cum laude* from Boston University School of Law.

David M. Hillman is a partner with Proskauer LLP in New York, co-head of its Private Credit Restructuring Group and a member of its Business Solutions, Governance, Restructuring & Bankruptcy Group. He has more than 25 years of experience with an emphasis on representing private credit lenders, private funds, sovereign wealth funds and other alternative lenders and distressed investors in special situations and restructurings both in and out of court, whether the lender is secured or unsecured, unitranche or structured preferred. Mr. Hillman has experience in every phase of restructuring and distressed investing, including credit bidding sales under § 363, debt-for-equity swaps, chapter 11 plans, out-of-court restructurings and foreclosures, and navigating intercreditor issues involving the relative rights of majority and minority lenders. He also litigates the issues facing private credit lenders, including issues involving plan confirmation, solvency, valuation, intercreditor disputes, financing and cash-collateral disputes, fraudulent transfers, equitable subordination, recharacterization, breach of fiduciary duty and similar disputes. Mr. Hillman was listed as a "leading individual" in bankruptcy/restructuring by *Chambers USA* and as a leader in his field by *New York Super Lawyers*. A member of ABI, he speaks frequently on bankruptcy-related topics, including recent decisions affecting secured creditor rights and preparing creditors for bankruptcy risks. Mr. Hillman received his B.A. *cum laude* from the State University of New York at Oneonta and his J.D. *cum laude* from Albany Law School, where he was associate editor of the *Albany Law Review*.

Douglas Mannal is a Financial Restructuring partner with Dechert LLP in New York, where he focuses his practice on financial restructuring, representing a diverse range of clients in complex chapter 11 bankruptcy cases, out-of-court restructurings and other distressed situations. His clients include ad hoc creditor groups, creditors' committees, major secured and unsecured creditors, and debtors, bank agents and financial institutions. Throughout his career, Mr. Mannal has led numerous representations of creditors in high-profile chapter 11 cases, most recently acting for the official unsecured creditors' committees in the chapter 11 cases of Gulfport Energy Corp., Frontier Communications, Bristow Helicopters, California Resources, RAIT Funding LLC, Seadrill Ltd., CHC Group Ltd. and Arch Coal Inc. In addition, recent ad hoc creditor group representations include groups in the chapter 11 cases of Alpha Media, McClatchy Newspapers, Bristow Helicopters and Nine West. On behalf of creditors, Mr. Mannal has designed, implemented and negotiated numerous litigation-focused strategies aimed at maximizing creditor recoveries. His practice includes proposing and confirming plans of reorganization; investigating and prosecuting viable estate causes of action; negotiating intercreditor disputes; crafting cash-collateral orders, debtor-in-possession/exit-financing packages and creditor-sponsored equity rights offerings; challenging confirmation of nonconsensual plans; and terminating exclusivity to propose alternative creditor-sponsored plans. He also often advises hedge funds and financial institutions regarding investments in distressed companies with complex corporate and capital structures, including in the purchase and sale of bank and bond debt, trade claims and derivatives. On the debtor side, Mr. Mannal counsels distressed businesses in navigating the complex legal, financial and operational issues that arise from filing for chapter 11 reorganization. His debtor-focused experience includes obtaining debtor-in-possession financing, negotiating forbearance agreements, achieving support from trade vendors, conducting sales of nonessential business lines, and negotiating plans of reorganization with secured lenders, creditors' committees and other stakeholders. Mr. Mannal has been listed in Chambers USA, *Turnarounds & Workouts* named him among the "Outstanding Restructuring Lawyers" for 2020 and 2017, and *Lawdragon 500* ranks him among "Leading U.S. Bankruptcy and Restructuring Lawyers" and "Leading Global Restructuring and Insolvency Lawyers." He was previously regarded as a rising star for bankruptcy by some of the most prominent legal and industry publications, including *Turnaround & Workouts* and *Law360*. Mr. Mannal received his B.A. in government and law in 1995 from Lafayette College and his J.D. from Brooklyn Law School in 2000.

Lorenzo Marinuzzi is global co-chair of Morrison & Foerster LLP's Business Restructuring & Insolvency Group in New York and represents debtors, creditors and creditors' committees in complex bankruptcy cases, workouts and litigation. His cases have spanned the U.S. as well as countless industries, such as airline and cargo transportation, mortgage origination and servicing, retail, banking and finance, energy, oil and gas, and telecommunications. Mr. Marinuzzi has represented unsecured creditors' committees in numerous recent chapter 11 cases, including Windstream Holdings Inc., Cloud Peak Energy, Westmoreland Coal Co. Inc., The NORDAM Group Inc., Avaya Inc., Armstrong Energy Inc., 21st Century Oncology Holdings Inc., Peabody Energy Inc., Energy Future Holdings Corp. and UCI International Inc. He also recently represented Maxus Energy Corp. and HOVENSA LLC in their chapter 11 cases. Mr. Marinuzzi is listed as a leading lawyer in *Chambers USA* and has also been recommended by *The Legal 500 US*. He was also designated by *Turnarounds & Workouts* magazine as an Outstanding Restructuring Lawyer for his accomplishments in 2016 and 2017. Mr. Marinuzzi received his B.A. from Fordham University in 1993 and his J.D. from Fordham University School of Law in 1996, where he was a staff member of the *Fordham Urban Law Journal*.

Lisa M. Schweitzer is a partner with Cleary Gottlieb Steen & Hamilton LLP in New York, where her practice focuses on financial restructuring, bankruptcy, insolvency and commercial litigation. She has advised clients in some of the most high-profile bankruptcy matters in North America, and her work repeatedly has been recognized by the business and legal press, including *The American Lawyer*, which previously named her a "Dealmaker of the Year." Ms. Schweitzer is lead U.S. restructuring counsel to Nortel Networks Inc. and affiliates in their U.S. chapter 11 proceedings, and she has experience advising corporate debtors, individual creditors and strategic investors in both U.S. chapter 11 proceedings and restructurings in other jurisdictions in North America, Europe and Asia. She also has represented several companies seeking to acquire distressed assets in bankruptcy proceedings. Ms. Schweitzer has advised clients in some of the most high-profile bankruptcy matters in North America, and her work repeatedly has been recognized by the business and legal press, including *Chambers Global*, *Chambers USA*, *The Legal 500 U.S.*, *IFLR 1000: The Guide to the World's Leading Financial Law Firms*, *The International Who's Who of Business Lawyers* and *The International Who's Who of Insolvency & Restructuring Lawyers*. She also was honored as one of the "Top 250 Women in Litigation" by *Benchmark Litigation* and as a "Dealmaker of the Year" and "Dealmaker in the Spotlight" by *The American Lawyer*. Ms. Schweitzer is a Fellow in the American College of Bankruptcy. She received her B.A. *magna cum laude* and Phi Beta Kappa from the University of Pennsylvania and her J.D. *magna cum laude* from New York University School of Law, where she was elected to the Order of the Coif.

John Singh is a partner in the Restructuring and Special Situations Group at PJT Partners Inc. in New York. He has advised companies, boards, creditors and sponsors on a wide range of completed transactions, including mergers and acquisitions, special-situation financings and restructurings. Prior to joining PJT Partners, Mr. Singh was a vice president in Blackstone's Restructuring & Reorganization Group and a buy-side fixed-income analyst at JPMorgan. Mr. Singh is a frequent panelist at conferences and speaks at various schools on restructuring-related topics. He received his B.S. in finance and economics from the Leonard N. Stern School of Business at New York University and his M.B.A. with a concentration in finance and strategic management from the Wharton School of the University of Pennsylvania.

Brian I. Swett is a partner with McGuireWoods LLP in New York and concentrates his practice on restructuring and insolvency, including representing a broad range of parties in complex restructuring, bankruptcy and workout matters. He represents senior secured lenders and other creditors, companies (including debtors in possession), shareholders, investors, sellers and purchasers in restructurings, both in and out of court. These representations have involved federal district and bankruptcy court proceedings and appeals across the country. Mr. Swett's experience includes a range of debtor-in-possession bankruptcy financing and cash-collateral matters in a wide range of industries. He has structured facilities that provide liquidity and accommodate a broad array of pre-bankruptcy capital structures. Mr. Swett recently was involved on behalf of credit-enhancers, construction agents, lenders and debtor-in-possession financing agents and lenders in a wide range of matters in the hospital, senior living, continuing care retirement community and long-term-care industries. In particular, his representations include a number of international, diversified financial institution in bankruptcy cases and out-of-court workout and restructuring matters involving loans to (or letters of credit enhancing bonds issues with respect to) hospitals, continuing care retirement communities, assisted-living facilities and nursing homes in Illinois, New York, California, Florida, Maryland, Louisiana, Texas, Wisconsin, Georgia, Tennessee, Mississippi, Arizona, Kansas and Utah. He has also represented parties in interest in transactions under the remedial provisions of the Uniform Commercial Code, including private sales, public sales and acceptances of collateral in exchange for the full or partial satisfaction of debt. In addition, he has overseen the acquisition of distressed assets. Mr. Swett received his B.A. Phi Beta Kappa in 1992 in international relations from Johns Hopkins University, his M.A. in international relations in 1993 from Johns Hopkins University School of Advanced International Studies, and his J.D. in 1996 from New York University School of Law.