



AMERICAN  
BANKRUPTCY  
INSTITUTE

## Winter Leadership Conference

# Bank Holding Company Bankruptcies

**Kirk B. Burkley, Moderator**

Bernstein-Burkley; Pittsburgh

**Christine L. Childers**

First American Bank; Chicago

**Gregory V. Demo**

Pachulski Stang Ziehl & Jones; New York

**Bradley D. Sharp**

Development Specialists, Inc.; Los Angeles

# WINTER Leadership CONFERENCE

FAIRMONT SCOTTSDALE PRINCESS  
SCOTTSDALE, ARIZONA



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## Introductions

**Moderator:** Brad Sharp | CEO | DSI Consulting | Los Angeles

**Panel:**

- Kirk B. Burkley | Managing Partner | Bernstein-Burkley | Pittsburgh
- Christi Childers | Deputy General Counsel | First American Bank | Chicago
- Gregory V. Demo | Partner | Pachulski Stang Ziehl & Jones | New York



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### Why Wasn't SVB Followed by Other Bank Failures

- SVB filed because of liquidity issues caused by a mismatch of long-dated bonds with immediate deposit withdrawal obligations
- Why didn't this come up earlier? Fed didn't require portfolios to be marked so books showed bonds at full value
- Fed allowed long-dated treasuries to be exchanged for cash at the par value rather than market value



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### Any Reasons There Could Be More Bank Failures?

- Are banks regulatory capital ratios accurately stated?
- Are smaller banks overexposed to CRE?



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### Bankruptcy/Insolvency Issues

- Banks cannot file bankruptcy. Bank holding companies can file bankruptcy
- FDIC is the sole process by which bank insolvencies can be addressed
- BHC Bankruptcies generally start off as a liquidation but possible to reorganize around NOLs if there is an appetite
- Potential use of Subchapter V



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### Concerns with the FDIC

- FDIC is your partner in diligence - they do not care about you
- Generally no access to accurate books and records or former management
- Difficult to get a full picture of actual assets



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### Potential Assets

- Deposits at the Failed Bank
- Tax refunds
- OREO and other subsidiaries (broker/dealers and specialized servicer subs)
- Jurisdictional challenges by FDIC



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### Federal Deposit Insurance Act (“FDIA”) vs. Bankruptcy Code

- Requirements to file claim with FDIC and claims resolution process
- Requirements for FDIC to file claim in bankruptcy and resolution process
- Set off and automatic stay issues
- FDIC steps into shoes of failed bank and has its claims



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### Roles of Different Constituents in Bankruptcy

- D&O's - generally being sued by everyone, including the FDIC. Issues with insurance policies that are shared by subs and BHC
- Depositors – generally satisfied by FDIC's sale of failed bank
- New Bank Owner – may assert claims after stepping into the shoes of the failed bank, but may be the subject of a suit by BHC
- Debt Holders at BHC – could be hedge funds or institutional holders



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### Potential for Reorganization

- NOL Recaptures
- 382(l)(5) Exception
- Deduction in NOL by CODI or basis adjustment
- Need to reorganize around a future business
- May be no appetite in creditor base
- May need to file a competing plan

# Faculty

**Kirk B. Burkley** is the managing partner of Bernstein-Burkley, P.C. in Pittsburgh, where his practice emphasizes all aspects of bankruptcy and restructuring, creditors' rights, business and corporate transactions, litigation, real estate and oil and gas. He conducts seminars, live webinars and workshops on bankruptcy, creditors' rights and oil and gas, and has lectured for the National Association of Credit Management (NACM), ABI and the Pennsylvania Bar Institute. He also is a regular panelist for NBI and Lorman Educational Services on various legal topics. Mr. Burkley has written several publications related to the bankruptcy field, with work appearing in the *ABI Journal*, *Equipment Leasing Newsletter*, the Pennsylvania Association of Credit Managers newsletter, the *Creditor*, and more. He is an emeritus board member of the American Board of Certification, as well as a past President of the Turnaround Management Association. Mr. Burkley is a member of Allegheny County Bar Association, ABI and the Western District of Pennsylvania Local Rules Committee. Mr. Burkley received his B.S. in 1999 from Ohio University and his J.D. in 2002 from the University of Pittsburgh School of Law, where he was a recipient of the Center for Forensic Economic Studies Award for Excellence in Litigation.

**Christine L. Childers** is senior vice president and deputy general counsel at First American Bank in Chicago. She serves as legal counsel for consumer-oriented legal issues, federal and state regulatory matters, acquisitions, intellectual property matters and human resources issues. Ms. Childers advises the bank's executive team and board on regulatory and litigation risks. She also engages with the bank's business units and provides legal support for projects, contracts and the implementation of products/services. In addition, she advises on privacy, record-retention, litigation holds and eDiscovery. Ms. Childers helps create processes and practices to improve the day-to-day efficiency of teams, facilitate change and control costs. She oversees the bank's Compliance, Community Reinvestment Act and Legal Order Processing departments, and assists with the management of all legal functions in the Legal Department. Ms. Childers has served as an adjunct professor at Valparaiso University School of Law, where she taught UCC: Payment and Credit Systems. She also has been involved in the Credit Abuse Resistance Education Program (CARE) and the Constitutional Rights Foundation's Edward J. Lewis II Lawyers in the Classroom Program. Prior to joining First American Bank, Ms. Childers was a partner at Jenner & Block LLP, where she practiced from 2002-13 in the firm's Bankruptcy, Workout, and Corporate Reorganization Practice Group. She represented parties in complex bankruptcy litigation matters and debtors and trustees in chapter 7 and 11 cases. She also represented lenders in a variety of litigation proceedings. Ms. Childers was named an *Illinois Super Lawyer* in 2013 for Bankruptcy & Creditor/Debtor Rights and in 2014 for Bankruptcy: Business. She received her B.S. in business administration-management from the University of Nevada, Las Vegas and her J.D. *magna cum laude* from Valparaiso University School of Law, where she served on the *Valparaiso University Law Review*.

**Gregory V. Demo** is an attorney with Pachulski Stang Ziehl & Jones in New York and regularly represents hedge funds and other significant holders of securities in connection with complex chapter 11 reorganizations. In addition, he is part of the firm's team handling insolvency-related sales and acquisitions. Mr. Demo is adept at creating litigation strategies for investments in state, federal and bankruptcy court, and overseeing all aspects of the implementation of such strategies. He is admitted

to practice in New York and Illinois. Mr. Demo received his B.A. *magna cum laude* in 2003 from Marquette University and his J.D. in 2008 from the College of William & Mary School of Law, where he was elected to the Order of the Coif, served on the *William & Mary Law Review* and graduated second in his class.

**Bradley D. Sharp** is the president and CEO of Development Specialists, Inc. (DSI) in Los Angeles and has nearly 30 years of experience providing crisis-management, financial advisory and third-party fiduciary services in numerous industries, including finance, real estate development, high-tech, manufacturing, food and agriculture. He has served as a federal equity receiver, CRO and trustee under chapters 11 and 7. Mr. Sharp is an expert witness with respect to fiduciary duties, banking, finance and securitizations. He is a Fellow of the American College of Bankruptcy, a member of the International Insolvency Institute (III), a full member of the National Association of Federal Equity Receivers (NAFER) and an ABI Board. Mr. Sharp received his B.S. in accounting with an emphasis in business computer information systems from Mesa College in Grand Junction, Colo.