AMERICAN BANKRUPTCY INSTITUTE

New York City Bankruptcy Conference

CONCURRENT SESSION

Corporate Governance in Distressed Situations, Including the Role of Sponsors and Senior Management

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2022

Distressed Corporate Governance: Senior Management Considerations

Presentation for: ABI Corporate Governance

Employee Compensation in Chapter 11

Companies facing financial distress often encounter difficulties retaining and motivating high performing executives and key employees.

- Value of existing long-term equity compensation erodes.
- Uncertainty regarding company performance may create a lack of confidence in employees' ability to earn a bonus.
- Lack of knowledge regarding the restructuring process and the future of the company may decrease the retentive power of existing compensation programs.
- Amount of additional work required to restructure effectively can be daunting.

As a result, key employees may find other employment opportunities more attractive.

- It is important for companies in financial distress to review existing programs to determine whether they continue to work in a distressed environment, particularly focusing on (i) the form of consideration (i.e., cash vs. stock), (ii) the term of the program (long vs. short term) and (iii) the metrics for earning the compensation (performance vs. retention).
- And although it is imperative to retain and motivate key employees, process and bankruptcy law create many challenges and roadblocks in doing so.

Legal Framework

- Notably, section 503(c) of the Bankruptcy Code significantly restricts a debtor's ability to provide both severance and retention-based compensation to senior executives, but *does not* restrict a debtor's ability to provide incentivizing compensation to senior executives, including insiders.
  - By its terms, section 503(c) creates significant hurdles designed to restrict ***direct*** or ***indirect*** transfers to "insiders" that are in the nature of severance or retention-based compensation.

Insider Retention Plans

- Section 503(c)(1) of the Bankruptcy Code restricts a debtor's ability to award direct or indirect bonuses intended solely or primarily to "retain" insiders.
- Section 503(c)(1) prevents a debtor from paying retention bonuses to an insider absent a finding that:
  - the insider has a "bona fide job offer" at the same or greater level of compensation;
  - the insider's services are essential; and
  - the proposed bonus is not more than 10x the average bonus paid to non-insiders or, if no such bonuses have been paid, not more than 25 percent of any bonus paid to an insider in the prior year.

Non-Insider Retention Plans

- Non-insiders are ***not*** subject to section 503(c)(1).
  - Instead, retention-based programs for non-insiders may be approved where they reflect a sound exercise of the debtor's business judgment, based on an appropriate record submitted to the court.
  - Such programs are commonly referred to as "key employee retention plans" or "**KERPs**."

Who is an Insider?

- Section 101(31) of the Bankruptcy Code defines "insiders" to include "directors," "officers," and any person "in control of the debtor."
- In a seminal case on the issue, the Delaware bankruptcy court found that the title of "vice president" or higher creates a rebuttable presumption that the relevant employee is an "insider" for purposes of a postpetition bonus program. *See In re Foothills Texas, Inc.*, 408 B.R. 573 (Bankr. D. Del. 2009).
- Courts historically looked to the facts and circumstances of a particular case to determine whether a particular executive is in fact an "insider."

Corporation Insider
§101(31)(B)

Director, officer, person in control, partnership in which debtor is a general partner, general partner of the debtor, relative of a general partner/director/officer

Partnership Insiders
§101(31)(C)

General partner of or in the debtor, relative of a general partner, partnership in which debtor is a general partner, person in control of the debtor

Employee Compensation Trends

Retention bonuses in bankruptcy have received intensified scrutiny in recent years, both in the courtroom and in the court of public opinion.

- In *In re LSC Communications, Inc.*, Case No. 20-10950 (Bankr. S.D.N.Y. 2020), LSC proposed KERP payments in the aggregate of $8 million. Payments were determined based on length of employment to employees that were divided into ranked "tiers."
- The U.S. Trustee objected to the KERP on the basis that LSC failed to provide sufficient information to determine whether the recipients were insiders, objecting particularly to the bonuses proposed for six employees that served as elected officers.
- Relying on a "functional" approach, the Bankruptcy Court found that the six employees were not barred from receiving KERP payments as statutory "insiders" as they were "officers in title only" and did not exercise decision-making authority.
- On appeal, the District Court overruled the Bankruptcy Court. Utilizing an objective rather than functional test, the court found that the employees were officers under the Bankruptcy Code and were board-elected, they were statutory insiders ineligible to receive KERP payments.
- The LSC ruling signals a potential shift to a broader view of "insider" and heightened scrutiny of KERPs.

LSC COMMUNICATIONS

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Pre-Bankruptcy Filing Bonuses

- In order to avoid the added costs and risks of seeking court approval of a KERP post-filing, companies in recent years have favored providing pre-filing bonuses:
  - ***Chesapeake Energy Corp.***: Awarded $25 million to executives and lower-level employees in May, about eight weeks before filing bankruptcy.
  - ***Hertz Global Holdings, Inc.***: Awarded senior executives bonuses of $1.5 million, days before its bankruptcy.
  - ***JC Penney***: Awarded approximately $10 million in payouts just before filing.
  - ***Whiting Petroleum***: Awarded $14.6 million in extra compensation to executives, days before its April 1 bankruptcy
- While pre-filing bonuses avoid a potentially lengthy court-process and provide executives with certainty, they have drawn increased negative publicity in recent years.

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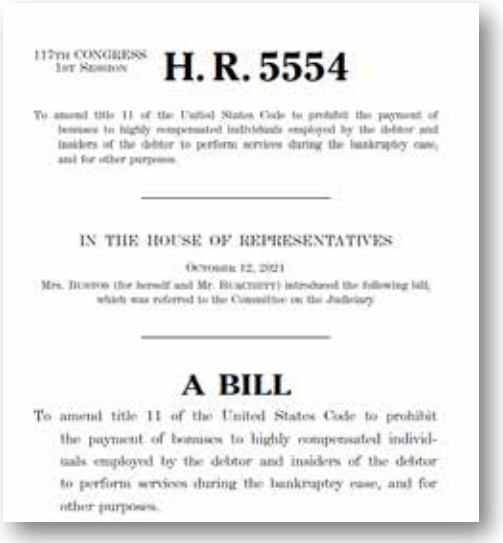
New House Proposal: H.R. 5554 "No Bonuses in Bankruptcy Act"

- Capitalizing on the negative press surrounding executive bonuses, lawmakers proposed a bill that would prohibit debtors from paying bonuses to certain employees, including insiders and highly compensated employees.
- The bill would apply to employees earning $250,000 or more.
- It would also allow the U.S. Trustee to recover similar bonuses paid within 180 days before a bankruptcy filing.
- Originally introduced in 2019 and reintroduced last October, this bill is still in play through the end of this year, although it has seen no action.



117TH CONGRESS
1ST SESSION

H. R. 5554

To amend title 11 of the United States Code to prohibit the payment of bonuses to highly compensated individuals employed by the debtor and insiders of the debtor to perform services during the bankruptcy case, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 12, 2021

Mrs. BUSTOS (for herself and Mr. BUCSHON) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 11 of the United States Code to prohibit the payment of bonuses to highly compensated individuals employed by the debtor and insiders of the debtor to perform services during the bankruptcy case, and for other purposes.

SPONSOR STRATEGIES IN CHAPTER 11

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DIRECTORS' FIDUCIARY DUTIES

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FIDUCIARY DUTIES TO COMPANY & SHAREHOLDERS

DUTY OF CARE

- Directors (including sponsor directors) must make informed decisions in good faith.
- Standard of reasonably prudent person applies.
- Decisions do not need to be correct but need to have been made upon reasonable due diligence in the good faith belief that the decision is in the company's best interest.
- **Business Judgment Rule:** An evidentiary presumption that directors' decisions are made based on sound business judgment and will be given deference unless rebutted by proof of bad faith, fraud or conflict of interest.

DUTY OF LOYALTY

- Directors must be loyal to the company at all times, avoiding potential conflicts of interest that might lead to self-dealing or personal gain at the company's or shareholders' expense.
  - Duty of good faith: duty to act with honest good faith in decision-making process
  - Duty of oversight: duty to monitor compliance with law and company protocols
  - Duty of disclosure: duty to disclose facts that might affect director's disinterestedness

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FIDUCIARY DUTIES EXCULPATION

Delaware General Corporation Law (§ 102(b)(7)) Corporation's certificate of incorporation may limit the directors' (but not officers') personal liability for monetary damages for breaches of the duty of care, but not for breach of the duty of loyalty or any acts or omissions involving intentional misconduct or knowing violations of law).

Delaware Limited Liability Company Law (§ 18-1101(e)) An LLC's operating agreement may provide for the limitation or elimination of all liabilities for managing members for the breach of fiduciary duties, except for any act or omission that constitutes fraud, illegal conduct or a bad faith violation of the duty of good faith and fair dealing. *See, e.g. Wood v. Brown*, 953 A.2d 136 (Del. Sup. Ct. 2008); *Fisk Ventures LLC v. Segal*, 2008 Del. Ch. LEXIS 158 (Del. Ch. May 7, 2008). *Drivetrain LLC v. Everstream Solar et al. (In re SunEdison, Inc.)*, Case No. 16-10992, Dkt. No. 57 (Bankr. S.D.N.Y. April 26, 2022) (under Delaware law, language in limited partnership agreement "'eliminat[ing] and replac[ing]'" partner's fiduciary duties with "those set forth in this Agreement,'" was "specific" enough to override partners' fiduciary duties.

- Operating agreements may unintentionally reimpose traditional fiduciary duties as contractual duties depending on how the agreement is worded. *See, e.g. In re Cadira Group Holdings LLC Litigation*, 2021 Del. Ch. LEXIS 151 (Del. Ch. July 12, 2021) (Where language exculpated LLC managers from traditional fiduciary duties but added back similar contractual duties, fiduciary duties were deemed reimposed.)
- Exculpation may not cover managing members on one entity that itself controls another entity. *In re USACafes, LP Litig.,* 600 A.2d 43 (Del. Ch. 1991).

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FIDUCIARY DUTIES EXCULPATION

New York General Corporation Law (§ 402(b)): Corporation's certificate of incorporation may eliminate or limit personal liability of directors (but not officers) for damages for any breach of duty in such capacity except acts or omissions taken "in bad faith or involved intentional misconduct or a knowing violation of the law" or where a manager "personally gained" profit other advantage to which he or she was not legally entitled.

New York Limited Liability Company Law (§ 417(a)(1)): Similar to Delaware except for acts or omissions taken "in bad faith or involved intentional misconduct or a knowing violation of the law" or where a manager "personally gained" profit other advantage to which he or she was not legally entitled.

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DERIVATIVE STANDING

When Does A Committee Have Standing To Sue?

The Colorable Claim Rule:

- A committee may obtain derivative standing to bring suit on behalf of a chapter 11 estate if the committee can assert a "colorable claim" that the trustee, the DIP or the DIP lender unjustifiably refuses to assert on behalf of the estate. *In re STN Enterprises*, 779 F.2d 901, 905 (2d Cir. 1985); *Official Committee of Unsecured Creditors of Cybergenics Corp. ex rel Cybergenics Corp. v. Chinery*, 330 F.3d 548 (3rd Cir. 2003); *Wooley v. Haynes & Boone LLP (In re SI Restructuring, Inc.)*, 714 F.3d 860 (5th Cir. 2013).

Colorable Claims:

- Claims that, with a showing of "appropriate proof," would support a recovery. *STN*, 779 F.2d at 905.
- The inquiry "focuses on whether the claim would survive a defendant's motion to dismiss." *Official Comm. of Unsecured Creditors v. Sabine Oil and Gas Corp. (In re Sabine Oil and Gas Corp.)*, 562 B.R. 211, 216 (Bankr. S.D.N.Y. 2016); In *re Centaur, LLC* 2010 Bankr. LEXIS 3918, *13 (Bankr. D.Del. Nov. 5, 2010).
- Relying on the Rule 12(b)(6) standard, the question is not whether the plaintiff (or committee) will ultimately prevail, but whether it is entitled to offer evidence to support its claims. *NetJets Sales, Inc. v. RS Air, LLC (In re RS Air, LLC)*, Case No. 20-51604, Memorandum (BAP 9th Cir., April 26, 2022) (not for publication).

Proof Required:

- Typically, an official committee will be required to attach to the motion seeking derivative standing a draft proposed complaint setting forth the committee's colorable claims and evidence in support thereof. *See In re The Standard Register Company*, No. 15010541 Docket No. 648 (June 10, 2015).
- The committee may use discovery procedures, such as DGCL § 220 and Bankruptcy Rule 2004, to obtain evidence, including privileged documents. *See Wal-Mart Stores, Inc. v. Indiana Elec. Workers Pension Tr. Fund IBEW*, 95 A.3d 1264 (Del. 2014) (upon a showing of good cause, stockholder seeking to investigate breaches of fiduciary duty may obtain "necessary and essential" discovery of the company's privileged documents and communications.

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SPECIAL RULES FOR DELAWARE LIMITED LIABILITY COMPANIES

MEMBERS ONLY: Under Delaware state law, standing to bring derivative actions on behalf of an LLC is limited to a "member or assignee of a limited liability company interest." 6 Del. C § 18-1002. *See CML V LLC v. Bax*, 6 A.3d 238 (Del. Ch. 2010), *aff'd* 28 A.3d 1037 (Del. 2011).

Official Committees/Chapter 11 Trustees

- Courts applying Delaware law have often denied derivative standing to official committees and chapter 11 trustees to bring breach of fiduciary duty actions for the benefit of the estate. *See HH Liquidating, LLC*, 590 B.R. 211 (Bankr. D.Del. 2018); *In re Dura Automotive Systems, LLC*, No. 19-12378 (KBO) (Bankr. D.Del. June 9, 2020) (creditors' committee denied derivative standing).
- Judge Silverstein raised the "LLC issue" *sua sponte* at the first day hearing on DIP financing in *In re The Collected Group, LLC*, No. 21-10663 (Bankr. D.Del. April 6, 2021), requiring that the prepetition lenders stipulate not to raise the LLC standing issue against any motion by the committee seeking derivative standing to assert any challenge to the prepetition lenders' liens.
- Refusing to follow *Bax*, Southern District of New York Judge Wiles granted derivative standing to the creditors' committee in *McClatchy* to bring fraudulent conveyance, breach of fiduciary duty and equitable subordination claims, holding that federal bankruptcy law pre-empts Delaware state law on claims that are property of the estate. *In re The McClatchy Co.*, No. 20-10418 (Bankr. S.D.N.Y. July 6, 2020).

Chapter 7 Trustees

- Some courts have granted chapter 7 trustees derivative standing. See *Stanziale v. MILK072011, LLC (In re Golden Guernsey Diary LLC)*, 548 B.R. 410 (Bankr. D.Del. 2015) (as sole representative of the estate with authority to sue and be sued, chapter 7 trustee had standing to bring breach of fiduciary duty claims on behalf of LLC estate).
- Other courts have denied chapter 7 trustees derivative standing based on *Bax* and its progeny. *See Beskrone v. OpenGate Capital Corp. (In re Pennysaver USA Publishing, LLC)*, 587 B.R. 445 (Bankr. D.Del. 2018) (chapter 7 trustee lacked derivative standing because creditors were neither members nor assignees of limited liability company interests).

Can member claims be assigned?

- *Compare Smith v. Weinshanker (In re Draw Another Circle)*, 602 B.R. 878 (Bankr. D.Del. 2019) (Plan gave liquidating trustee ownership of all claims but court found trustee lacked standing to assert derivative claims against Delaware LLC debtor under Delaware LLC law) and *Dura Automotive*, No. 19-12378 (Bankr. D.Del. June 9, 2000) (Judge Owens suggesting that to work around the LLC issue, "potential claims and causes of action could be assigned to a trust").

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Potential Alternatives to LLC Derivative Standing Issue

- **Assignment of Claims**
  - *Dura Automotive*, No. 19-12378, unpublished bench decision (Bankr. D.Del. June 9, 2000) ("potential claims and causes of action could be assigned to a trust").
- **Relinquishing Standing Objections**
  - *In re The Collected Group, LLC*, No. 21-10663, Interim DIP Order ¶ 37 (Bankr. D.Del. April 6, 2021) ("The Prepetition Secured Parties stipulate and agree that each of the Prepetition Secured Parties will not raise as a defense in connection with any Challenge the ability of creditors to file derivative suits on behalf of limited liability companies under the Delaware Limited Liability Company Act.")
- **Amending LLC Agreement**
  - *In re Rudy's Barbershop Holdings, LLC*, No. 20-10746, Interim DIP Order § 5.37 (Bankr. D.Del. April 9, 2020) ("As a condition to granting the [DIP financing] Motion, the Court insisted that the Challenge Period . . . not be illusory. . . the Prepetition Lenders in their respective capacities as holders of Series A Preferred Units . . . agree that the Amended and Restated Limited Liability Company Agreement . . . is hereby amended to permit a Challenge Proceeding . . . to be commenced by a creditor or an official committee appointed in these bankruptcy cases.")
- **Limiting Who is Bound by Debtor Stipulations/Releases**
  - *In re Comcar Industries, Inc.*, No. 20-11120, Interim DIP Order ¶8 (Bankr. D.Del. May 20, 2020) ("The Debtors' Stipulations shall be binding upon the Debtors in all circumstances . . . [and] binding upon all other parties in interest . . . unless such other party in interest (including any chapter 11 trustee or any chapter 7 trustee . . .) other than the Debtors first commences" a Challenge within the Challenge Period.

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Faculty

Blaire A. Cahn is a partner in Baker McKenzie LLP's Global Restructuring & Insolvency Practice in New York, where her practice covers all areas of domestic and international restructurings, crisis management, corporate governance, and financings and acquisitions involving distressed situations. She has represented a range of distressed companies, creditors, and companies seeking to acquire distressed assets in both in-court and out-of-court restructurings. Ms. Cahn has advised companies on the development and implementation of corporate restructuring strategies and has litigated disputes before bankruptcy and appellate courts. Her creditor experience includes representing private-equity funds, hedge funds and investment banks across a variety of industries, including automotive, education, financial services, health care, oil and gas, real estate, retail, technology and transportation. Previously, Ms. Cahn was with Weil, Gotshal & Manges. She received her B.A. in 2000 from Washington University in St. Louis and her J.D. *cum laude* in 2007 from Cornell Law School.

Robin Chiu is a senior managing director with Teneo in New York and is an experienced financial advisor who has worked with clients across a broad array of industries. She plays leading roles in various Teneo restructuring, financial advisory and litigation-support engagements. Ms. Chiu has led companies through both in- and out-of-court restructurings. She is currently advising a major New York nonprofit on its restructuring, and she served as the CFO of uBiome, Inc. and CRO of Ezra Holdings. In addition, she has been a financial advisor to the Independent Advisory Committee of the Diocese of Rockville Centre, the China Fishery companies, the Big Apple Circus and creditors in Ditech, Caesars, Detroit and FiberTower. Ms. Chiu is providing litigation-support services to the former directors and officers of Toys "R" Us and has overseen the preparation of testimonial reports relating to complex disputes concerning such issues as valuation, damages and investment fund management. She has also led business-plan reviews and due-diligence assignments. Ms. Chiu joined Teneo through its acquisition of Goldin Associates. Prior to joining Goldin, she worked as an investment banker at Barclays Capital and Wasserstein Perella, advising on debt-issuance and other balance-sheet transactions. Ms. Chiu received her B.S. in economics, with a minor in environmental engineering science, from the Massachusetts Institute of Technology and her M.B.A. with honors from the Wharton School of the University of Pennsylvania.

Philip C. Dublin is a financial restructuring partner based out of the New York office of Akin Gump Strauss Hauer & Feld LLP. He represents official and ad hoc committees of unsecured and secured creditors, debtors, institutional investors, new money lenders and acquirers of assets in both in-court and out-of-court distressed situations. Mr. Dublin has played a pivotal role in some of the most complex, multibillion-dollar matters that cross borders and industries. A few of his recent engagements include the restructurings of CEC Entertainment, Centric Brands, Constellis, Dean Foods, Diamond Offshore Drilling, Fusion Connect, Frontier Communications, Global Eagle Entertainment, GTT Communications, Sears, Sungard and Travelport. Mr. Dublin received his B.A. in 1994 from the College of Charleston and his J.D. in 1998 with distinction from Hofstra University School of Law.

Michael J. Epstein is the global special situations leader for Deloitte Transactions and Business Analytics' restructuring practice in New York. His practice is centered on crisis management, financial

advisory services and insolvency consulting activities in both middle-market and large transactions. Mr. Epstein works with management teams, creditors, creditors' committees and boards of directors in many aspects of distressed businesses, operational reengineering and financial restructuring. Previously, he was CEO of the largest provider of software solutions for specialized asset-based finance and back-office support for lease administration. He helped found that company's first business unit outside of the U.K., and he held a board seat for the parent company for nearly six years. In 2017, Mr. Epstein was inducted as a Fellow into the American College of Bankruptcy. He is the author of "Own Up to The Truth," *MediaWeek* (September 2010), "Furthering Insolvency," *Institutional Investor Corporate Governance Guide* (October 2003) and "Beyond Investor Relations: Communicating with Stakeholders in a Crisis," *Investor Relations* (Spring 2003). A frequent industry panelist and an author of articles regarding corporate governance and stakeholder communications, Mr. Epstein received his B.S. from Tufts University and his M.B.A. from The Wharton School at the University of Pennsylvania.

Nicole L. Greenblatt is a restructuring partner with Kirkland & Ellis LLP in New York and represents debtors, creditors, equity-holders and investors in all aspects of complex corporate restructurings, including chapter 11 cases, out-of-court restructurings and special-situation investments or acquisitions. She has a broad range of experience across a number of industries and has represented clients in multijurisdictional and cross-border matters. Ms. Greenblatt's practice includes advising clients with respect to business operations in chapter 11, advising senior managers and boards of directors of financially troubled companies with respect to restructuring strategies, providing advice relating to mass tort and environmental liabilities of financially troubled companies, providing advice, negotiating and structuring financings and other commercial transactions, and advising clients seeking to purchase businesses and related assets out of chapter 11 proceedings. She has been recognized by *Chambers USA* and *Legal 500 US*, was named a 2017 "MVP of the Year" by *Law360* and was featured in *Crain's New York Business*'s inaugural list of the "Leading Women Lawyers in New York City" in 2018. She was recently nominated by the *International Financial Law Review* for the *Euromoney* Legal Media Group Americas Women in Business Law Award, and in 2011, she was selected as one of the top 30 nominees nationwide to participate in the inaugural Next Generation Program at the National Conference of Bankruptcy Judges. Ms. Greenblatt is a member of ABI, the Turnaround Management Association and the New York City Bar Association's Bankruptcy Committee, and she sits on the board of Her Justice. She received her B.B.A. in economics in 1999 with distinction from the University of Michigan and her J.D. *cum laude* in 2002 from Fordham University School of Law, where she was a member of the Order of the Coif.

Brian J. Lohan is a partner with Arnold & Porter Kaye Scholer LLP in Chicago, where his practice encompasses all aspects of corporate reorganizations, bankruptcy and insolvency. He has experience representing chapter 11 debtors, noteholders, bondholders, senior lenders and other creditor constituencies. He also spends significant time in the firm's New York office. In 2017, Mr. Lohan was honored in ABI's inaugural "40 Under 40" list, which recognizes bankruptcy, insolvency and restructuring professionals from around the world. Most recently, he was awarded with the International Law Office 2018 Client Choice Award for "excellent client care." Mr. Lohan is an adjunct professor at The John Marshall Law School in Chicago, where he teaches bankruptcy law. His case experience includes *Dynegy Holdings LLC*, *Dynegy Northeast Generation LLC*, *Smurfit-Stone Container Corporation*, *R.H. Donnelley Corporation*, *Neenah Corporation*, *Pliant Corporation*, *Sea Containers Ltd.*, *Meridian Automotive Systems Inc.*, *Blockbuster Inc.*, *Sentinel Management Group*,

Powerwave Technologies, *Allied Holdings* and *Ryan International Airlines*. He has been featured in *Turnarounds & Workouts* and *Outstanding Young Restructuring Lawyers* for 2018. Mr. Lohan received his B.S. from DePaul University and his J.D. from Northwestern University School of Law.

Jeffrey S. Sabin is a partner with Venable LLP's Bankruptcy and Creditors' Rights Group in New York and has more than 35 years of experience in creditors' rights, bankruptcy, debt restructuring and financial transactions involving financially distressed entities in the U.S. and globally. He manages high-profile chapter 11 and 15 bankruptcy proceedings, out-of-court restructurings and debt-restructuring transactions, and he provides and implements strategies to achieve client goals in reorganizations. Mr. Sabin assists public and private companies, lenders, committees of secured and unsecured creditors, bondholder and noteholder committees, board directors, investors and acquirers. Some of his significant matters include representing the unitholders' committee in the Woodbridge chapter 11 cases, Capital Royalty Group as secured lenders in multiple cases including Synergy Pharmaceuticals, Wexford Capital as a significant creditor and member of the creditors' committee in the Breitburn Energy chapter 11 cases, the owners and Façonnable in its successful equity out-of-court restructuring, multiple talent/artists in the Weinstein proceedings, the official creditors' committees in the Immunicon Corp. and Global Power proceedings, secured creditors in the General Motors, Chrysler, Spansion, Lyondell and Nanogen proceedings, numerous unsecured creditors and counter-parties in the Lehman proceedings, and Pimco as secured creditor and debtor-in-possession (DIP) lender in the Energy Future Holdings proceedings, among other engagements. Mr. Sabin has frequently been named a leading bankruptcy lawyer by *Chambers Global*, *Best Lawyers* and *Chambers USA*. He is a Fellow in the American College of Bankruptcy and is admitted to practice in New York and in the U.S. District Courts for the Eastern and Southern Districts of New York, as well as the Third Circuit Court of Appeals. Mr. Sabin has chaired and taught numerous legal education and professional programs. He received his B.S. and B.A. *magna cum laude* from Cornell University in 1974 and his J.D. *cum laude* from Boston College Law School in 1977, where he as executive articles editor for the *Boston College International Law Review*.

Hon. Alan S. Trust is Chief U.S. Bankruptcy Judge for the Eastern District of New York in Central Islip, initially appointed on April 2, 2008, and named Chief Judge on Oct. 1, 2020. He has been an adjunct professor of law at the St. John's University School of Law since 2009. Judge Trust served a two-year term as president of the Eastern District of New York Chapter of the Federal Bar Association, and serves as CLE Committee co-chair. He is a past chair of the Bankruptcy Law Section of the Federal Bar Association and a member of the board of directors of that Section, and has served as the CLE Committee chair. Judge Trust is a member of the *ABI Journal*'s Editorial Board and is a coordinating editor for the *Journal*, and for several years has had responsibility for its Dicta column. He is a member ABI and the National Conference of Bankruptcy Judges. Judge Trust had been previously designated by the Second Circuit Court of Appeals to mediate cases in the Southern District of New York and to sit in the District of Connecticut bankruptcy court. He has been selected by the Federal Judicial Center on several occasions to serve as a faculty member for national bankruptcy judge workshops, and he has spoken on issues such as evidence and the power of the bankruptcy courts to regulate its proceedings through sanctions and contempt. He also serves on the Judiciary Data Working Group under the auspices of the Administrative Offices of the U.S. Courts. Judge Trust is a frequent speaker and contributor for numerous CLE events and seminars, addressing bankruptcy, mediation, trial practice and ethics issues, and has participated in a number of civics programs. He was instrumental in the creation of the *Pro Bono* Mediation Program and the formation of the

Consumer Lawyer Advisory Committee adopted by the Eastern District of New York Bankruptcy Court. Judge Trust received his undergraduate degree *summa cum laude* from Syracuse University in 1981, where he was a member of Phi Beta Kappa, and his J.D. *cum laude* from New York University School of Law in 1984, having served on its law review from 1982-83.