AMERICAN BANKRUPTCY INSTITUTE

New York City Bankruptcy Conference

CONCURRENT SESSION

Distressed Corporate Governance

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American Bankruptcy Institute: 2025 New York City Bankruptcy Conference

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Panel

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Recognizing Distress

When corporate leadership and their advisors respond proactively and comprehensively to distressed situations, better outcomes can be obtained for the company and its stakeholders.

Recognizing early signs and understanding the inputs and interactions of the causes of distress enables a company to preserve optionality and act strategically for a turnaround.

Some Common Causes of Distress	
Debt Maturity, High Interest Payments	Mallinckrodt Pharmaceuticals
Declining Revenue, Increased Operating Costs	Toys R Us, Sears
Macroeconomic Downturns and Natural Disasters	24 Hour Fitness, Hertz
Mass Tort Liabilities or Regulatory Enforcement	Purdue, PG&E
Fraud, Embezzlement and Related Misconduct	FTX

Understanding and knowing when a company meets the legal definition of insolvency is key for strategic planning and several fiduciary duty analyses.

Two Definitions of Insolvency	
1. Cash Flow Insolvency	Inability to pay debts as they come due
2. Balance Sheet Insolvency	Liabilities exceed assets

Before a company meets one of these technical definitions, it is often said to be in "***the zone of insolvency***" which is may also be important for certain governance planning, because it is key to act early and proactively when a company is experiencing distress.

3

Evaluating Paths Forward

Engage the right advisors as soon as possible

- Financial distress and restructuring processes are unfamiliar to many directors and officers.
- Advisors guide company leadership's information gathering, evaluation and decision-making, so engaging these professionals early helps leadership understand options, while they are still options, and informs governance decisions.
- Circumstances will dictate what kind of advisors and what kinds of subject matter expertise are best suited:
  - Advisors: Legal, Financial Advisors, Investment Bankers, Crisis Communications, Claims Agent
  - Considerations: specialty assets to be marketed, unique regulatory or civil liabilities, cross-border issues

Understand the company's realties and strategic options

- Truly understanding all of the facts that led to distress and practical options to financially restructure helps corporate leadership make decisions that uphold their fiduciary duties:
  - Refinance debt to extend the maturity dates or reduce interest payments
  - Raise new debt or equity financing
  - Sell assets to remove unprofitable business segments and raise cash
  - Restructure operations to reduce costs and increase margins
  - Consolidate liabilities to manage resolution more efficiently
  - Winddown a business segment or entire company in an orderly fashion

Evaluate the forums to realize the best path forward

- Often with the help of advisors, corporate leadership must consider the pros and cons of several options for distressed companies and they must be mindful of the formalities, ongoing duties and timing considerations of each:
  - Out-of-court liability management transactions
  - Federal bankruptcy proceedings under chapter 7 or chapter 11 of the U.S. Bankruptcy Code
  - State law insolvency schemes, such as Assignments for the Benefit of Creditors, Receiverships, and Corporate Dissolution
  - In the case of cross-border companies, international insolvency proceedings or recognition schemes

4

Fiduciary Duties

Directors and their advisors must understand the shifting scope of fiduciary duties when a company becomes insolvent

Fiduciary Duties in Insolvency

- When a company is in distress or insolvent, the fiduciary duties owed remain the same: care, loyalty, good faith, disclosure, and oversight.
- Creditors of solvent entities are not owed fiduciary duties, but when a company becomes insolvent creditors replace stockholders as the primary beneficiaries of fiduciary duties.
- In many jurisdictions, including Delaware, the group of beneficiaries of fiduciary duties does not expand to include creditors until the company becomes insolvent; in other jurisdictions, that expansion may happen earlier, when a company is in the zone of insolvency.
    - Of course, it is often impossible, or at least very difficult, to pinpoint the moment when a corporation actually becomes insolvent.
- Upon insolvency, both shareholders and creditors can enforce fiduciary duties through derivative claims.

Practical Guidance

- Directors should consider the interests of creditors as soon as the company becomes financially distressed.
- Directors of and insolvent company can avoid or minimize liability by acting in the best interests of the corporate entity and all holders of its claims and interests, without unduly focusing on the effect on specific constituencies.
- Directors must balance pursuing high-risk strategies to benefit potentially out-of-the-money stockholders and acting conservatively to preserve corporate assets to satisfy creditors claims – until clearly insolvent, a board is not required to favor creditors over stockholders (nor should directors subject the corporation and its creditors to excessive risk by pursuing an unrealistic "swing for the fences" recovery strategy for shareholders).
- Directors should always make decisions in good faith on an informed basis after due deliberation in light of the circumstances, based on the best available information and with due regard to the risks (and potential benefits) of alternative courses of action.

5

Fiduciary Duties

Directors and their advisors must be mindful of the increased attention the board's make-up and decision-making will attract during financial distress

Heightened Scrutiny and Standards of Review

- Even when a company is in distress, directors are generally entitled to the business judgment rule, with its typical limitations on exculpation for breaches of duty of loyalty, bad faith or intentional acts, unlawful dividends and self-interested transactions.
- The business judgment rule is a judicial presumption, whereby courts give deference to the board's decision unless the presumption can be rebutted by the plaintiff.
- Where the business judgment rule does not apply, directors must defend both the substance and process of their decisions under the more severe "Entire Fairness" standard.
- In distressed situations, the importance of fair and disinterested corporate governance is heightened, both as a practical matter as publicity of corporate affairs increases and because the baseline principals of corporate law are amplified by the Bankruptcy Code's commitment to transparency.

Practical Guidance

- Corporate decision-makers must be aware of circumstances that give rise to challenges to disinterestedness and their duty of loyalty in distressed situations, such as transactions with insiders or directors too closely affiliated with a portfolio company's sponsor.
- Directors can proactively structure the board and establish processes to ensure disinterested decisions in both form and substance, such as appointing independent directors, establishing special committees to handle specific matters or bringing on a new Chief Restructuring Officer.
- Board duties in distressed contexts can quickly escalate above and beyond ordinary course responsibilities or demands, so appointing directors and officers with experience in these unpredictable situations can provide substantial value.
- Disinterested and subject matter expert directors or officers should be brought on as early as possible to ensure informed, disinterested in both substance and appearance.

6

Fiduciary Duties

Case Study: GWG Litigation Trust claims against and proposed settlement agreement with Mayer Brown regarding allegedly conflicted representation

- Throughout 2018 and 2019, the Beneficent Company Group, L.P. (BEN) and GWG Holdings, Inc. (GWG) engaged in several exchange transactions to establish a strategic partnership. Pursuant to a 2019 transaction, individuals designated by BEN were appointed to the GWG board of directors such that that board became comprised solely of BEN designees.
- GWG reportedly experienced financial distress throughout 2021, when its total liabilities rose to over $2 billion. In January 2022, GWG defaulted on interest and maturity payments on certain bonds. On April 20, 2022, GWG filed for chapter 11 bankruptcy in SDTX.
- Mayer Brown advised GWG throughout the BEN strategic transactions, advised incoming BEN-designated GWG directors, advised on 2021 decoupling transactions among GWG and BEN and advised GWG on post-petition transactions with the company's secured creditors. The GWG Litigation Trustee alleged conflicts of interest, malpractice and aiding and abetting breach of fiduciary duty claims against Mayer Brown and sought disgorgement of some or all of Mayer Brown's fees.
- Many of the Litigation Trustee's claims focus on the allegation that Mayer Brown failed to identify or advise against conflicts of interest that arose because BEN-designated directors preferenced BEN's interests over GWG's interests in certain transactions, without proper safeguards and documentation, such as Special Committee protocols.
- The GWG Litigation Trustee and Mayer Brown agreed to settle all of GWG's claims against Mayer Brown for $30 million pursuant to a Bankruptcy Rule 9019 Motion to Approve a Compromise Agreement. The Motion and settlement agreement has not yet been approved by the bankruptcy court.

D&O Liability & Insurance

Directors should ensure adequate insurance coverage and understand the intricacies of accessing D&O insurance in distressed situations

- Federal bankruptcy does offer the protection of an "automatic stay" of self-help debt collection, litigation and certain other acts against a debtor. However, out-of-court transactions and other insolvency proceedings do not offer such protection. Additionally, the bankruptcy automatic stay, in most instances, does not prevent the initiation or continuation of litigation against the directors and officers of a corporation, but only the debtor company itself.
- Most companies indemnify directors, officers and employees for expenses incurred in the defense of litigation, but parties cannot necessarily rely on such indemnifications in distressed situations or bankruptcy; thus, directors should ensure they have adequate D&O insurance coverage limits and an adequate tail period policy.
- Types of D&O Insurance Coverage
  - Side A: directly covers D&Os against personal liability in the absence of indemnification
    - Proceeds should not be property of the debtor's estate in bankruptcy
  - Side B: reimburses the entity when it indemnified D&Os
    - Proceeds likely are property of the debtor's estate in bankruptcy
  - Side C: covers the entity for its own wrongful-act claims
    - Proceeds are property of the debtor's estate in bankruptcy
- To allow insurers to advance defense costs to D&Os during a bankruptcy proceeding, some courts will modify the automatic stay or enter a "comfort order" for the limited purpose of paying defense costs from policy proceeds.

Employment & Compensation Issues

Corporate leadership must balance the benefits to the company and legal implications of incentive plans when in distress or bankruptcy

Insider Retention Plans

- The Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) was enacted in 2005 in response to perceived abuses of the Bankruptcy Code, including "Enron-style bonuses", designed to avoid court and creditor scrutiny.
- BAPCPA imposes significant restrictions on a debtor's use of retention plans and severance payments to "insiders" in the context of a bankruptcy proceeding, as well as any payments out of the ordinary course.
  - The term "insider" of a corporation includes (i) director of the debtor; (ii) officer of the debtor; (iii) person in control of the debtor; (iv) partnership in which the debtor is a general partner; (v) general partner of the debtor; or (vi) relative of a general partner, director, officer, or person in control of the debtor.
- Due to the strict requirements of the statute, pre-petition retention payments and key employee incentive plans have become popular alternatives to retention plans.

Practical Guidance

- Attrition can erode company value or leave gaps in management during critical inflection points for a distressed company.
- Where bankruptcy is planned or possible, leadership must factor in BAPCPA to their retention strategies:
  - Option 1: Pre-paid, prepetition bonuses
    - No court approval is required
    - Usually include a clawback mechanism if the executive leaves prior to end of the applicable retention period
  - Option 2: Post-petition Key Employee Incentive Plans
    - KEIPs are designed to replace pre-petition long-term incentive compensation during post-petition period
    - Require court-approval, subject to an intense review of calculation of payments and goals for the organization
- Complications
  - Negative media attention, esp. upon public disclosure in bankruptcy schedules or a public company's 8-K
  - Bad impression with or objections from the court, the creditors' committee and the U.S. Trustee's office

9

Employment & Compensation Issues

Directors and their advisors must be aware of their statutory obligations to employee wages and agreements, even in the ordinary course

Unpaid Wages and Benefits

- Some states impose personal liability on directors for unpaid wages.
- In bankruptcy, unpaid pre-petition wages and benefit plan contributions, up to a combined cap of $15,150 may have priority status among general unsecured claims and post-petition wages have administrative expense priority.

Mass Layoffs

- The Worker Adjustment and Retraining Notification ("WARN") Act requires written notice of mass layoffs and covered plant closings, requiring advance notice or pay in lieu of notice to affected employees.
  - Federal WARN Act requires 60 days notice
  - States may have additional "mini-WARN" statutes as well, with longer notice periods
  - There are exceptions, such as for unforeseeable business circumstances, but generally, filing for bankruptcy does not excuse an employer's obligation.

Employment Agreements

- Pre-petition Employment Agreements and Collective Bargaining Agreements are executory contracts which a debtor in bankruptcy may assume or reject, although the process to reject a CBA is more cumbersome than other executory contracts and requires a good faith attempt at renegotiation with union representatives in the first instance.

10

Independent Directors & Special Committees

Appointing and appropriately delegating decisions is a helpful tool to avoid conflicts of interest and uphold the fiduciary duty of loyalty

- For many years now, it has been common for independent directors to be appointed to the boards of companies in financial distress and/or preparing to file a chapter 11 case. Typically, they are "professional" independents with experience in restructuring and chapter 11. Additionally or alternatively, a "special committee" of independent or otherwise unconflicted directors may be appointed to make decisions about certain matters where other directors may be conflicted, including approving transactions, filing for bankruptcy or investigating misconduct that led to insolvency.
    - **Independent Director** - A person appointed to a board of directors (or managers in an LLC) that is independent of management and shareholders.
    - **Special Committee** – A committee of one or more directors (typically, existing) that help companies with the restructuring process and with investigating potential conflicts of interest, major transactions, and making decisions on issues requiring independent oversight.
- When independent directors (and special committees) are tasked with approval of a transaction pre-bankruptcy or an investigation before or during a bankruptcy case, various issues have arisen specifically with respect to the independent directors, including: independence of the directors; independence of counsel/other professional advisors; scope of the mandate and limitations; intercompany issues - who is benefitting and who is not, including other stakeholders (debt holders, vendors or other creditors/contract parties); diligence undertaken.

11

Independent Directors & Special Committees

Practical Guidance: Questions Independent Directors and Special Committee members should consider when vetting proposed transactions

1. What is the asserted purpose of the transaction?
    a. Who will benefit from the transaction?
2. What is the nature of the conflict calling for independence?
3. Has appointment of the independent director or special committee alleviated the conflict concern?
    a. Are there any parent-subsidiary conflicts or dual fiduciary conflicts?
4. If there are multiple related entities, what is the effect on the overall corporate family, different entities within the family, different business silos, the debt at such places?
5. Can the entities be separately represented by directors/advisors?
    a. How to reconcile cost versus conflicting views?
    b. What other factors should play into analysis?
6. Should an independent third-party investigation be completed in addition/instead?
    a. What was the timing of appointment of the independent director or special committee?
    b. Do they have any material ties to the sponsor/appointer to impair their independence?
7. In an investigation, what are the directors' or special committees' findings based on?
    a. Was the analysis conducted independently? Or did it rely on information provided by potentially conflicted parties?
    b. How do these findings affect proposed releases, settlement, or fiduciary duties owed?

12

Independent Directors & Special Committees

Case Study: Incora / Wesco Aircraft Holdings, Inc.

Background

- The independent director was appointed to the board of the Debtor's parent company in early February 2022, and an uptier transaction that was nearly fully negotiated by the time he was appointed was approved by him in March 2022.
- The company asserted the transaction created critical liquidity. Certain noteholders outside before the ensuing chapter 11 case and in it challenged the transaction on contractual and other grounds, including that it benefitted the sponsor – at the complainants' expense.
- A chapter 11 case ensued in June 2023 and the bankruptcy court, after a lengthy trial, issued a decision in August 2024 that the uptier transaction breached the indenture and restored the liens securing the previous notes.

Independent Director & Special Committee Issues

- **Independence –** Equity sponsor appointed the independent director and could terminate at any time.
- **Timing –** With the uptier negotiations at an advanced stage by the time of the independent's appointment, the independent did not have a reasonable opportunity to vet the transaction.
- **Separate advisors –** The independent director did not retain separate counsel or financial advisors to advise him about the uptier transaction.

13

Independent Directors & Special Committees

Case Study: Neiman Marcus

Background

- The private-equity sponsor had moved Neiman's MyTheresa business via a series of stock dividends, taking it beyond the reach of the creditors.
- Two independent directors were appointed just before the chapter 11 filing to investigate claims related to the transfer of Neiman's MyTheresa business. There was various squabbling in the case about an investigation and who should lead it.
- The judge concluded that there was no need for a third-party investigation since the independent directors (and official committee) would investigate.
- The independent directors then approved the MyTheresa transfer and handed over control of Neiman Marcus to creditors without requiring payment by the sponsor for taking the MyTheresa business. Ultimately, the sponsor exited the bankruptcy with a substantial amount of the MyTheresa value for itself after striking settlements with the vast majority of creditors.

Independent Director & Special Committee Issues

- **Independence –** Independent directors were appointed by the sponsor and only two weeks before the bankruptcy filing, and sponsor retained the ability to exert control over the directors and could terminate and replace the independent directors at will.
- **Diligence –** During a hearing to determine if an independent third-party should be appointed to review the transaction, the court became frustrated with one of the directors and asserted that he did not perform proper diligence, was unprepared, and uneducated on the main issues.
- **Counsel Independence –** Debtors' counsel was also the sponsor's counsel during the MyTheresa transaction. The independent directors, however, retained separate counsel for the investigation.

14

Independent Directors & Special Committees

Case Study: Tops Holding LLC

Background

- Post-confirmation trustee brought claims against investors and directors of Tops, alleging their actions drove the grocery chain into bankruptcy by causing it to pay more than $375 million in dividends despite the company's unfunded pension liabilities.

Independent Director & Special Committee Issues

- **Independence –** Complaint asserted that the lead investor placed the independent directors on the board and could remove them if they did not follow directives. Notably, the court ultimately held that being nominated by lead investor was not enough to show that the independent directors were not truly independent – must have substantial, material ties (like family, financial dependence, or deep business ties) that can impair a director's impartiality.

15

Independent Directors & Special Committees

Case Study: Franchise Group, Inc.

Background

- In chapter 11 case, counsel to lenders to debtors Freedom VCM Interco Inc. and Freedom VCM Inc. ("Freedom Holdco debtors") argued that the case (with an RSA) had been negotiated with no fiduciary looking out for the interests of the Freedom Holdco debtors and its creditors (e.g., their clients).
- The debtors appointed an independent director to the boards of the Freedom Holdco debtors to investigate claims against the opco debtors and directors in addition to investigating releases in favor of first lien or DIP lenders.
- Ultimately, the independent director concluded that the Freedom Holdco debtors had plausible claims for breaches of fiduciary duty against current directors and officers and those same directors and officers should not be released, as contemplated in one version of the plan.
- The independent director and the non-Freedom Holdco debtors then engaged in extensive, arms-length negotiations resulting in a holistic settlement, with an amended plan that did provide releases of the claims.

Independent Director & Special Committee Issues

- **Debtor law firm independence/appointment issues –** A law firm was disqualified as bankruptcy counsel for Franchise Group because of potential conflicts of interest. The firm had previously represented Franchise Group's ex-CEO, who was involved in the 2023 buyout that triggered the bankruptcy.
- **Importance of appointing an independent director –** This case illustrates the value in appointing an independent director in a conflicted restructuring scenario. The director's investigation helped surface fiduciary issues and led to a more robust, negotiated resolution that took creditor and lender concerns into account.

16

Independent Directors & Special Committees

Case Study: Mountain Express Oil

- **Background**
  - Shortly after filing for bankruptcy, the debtors asked the court to ratify prepetition appointment, made only a week before they filed, of two independent directors, in order, they asserted, to give parties the chance to consider, probe, and evaluate the propriety, purpose, and terms of appointment.
- **Debtor's Arguments for Court Approval**
  - Appointment of two independent directors would improve the debtors' transition into chapter 11.
  - Motion to ratify provided transparency and integrity, particularly, given growing criticism of the prepetition appointment of independent directors, who often are viewed as a shield for the sponsor.
  - It provides a forum earlier in the case to shed light on independent directors instead of waiting until directors have become too involved.
- **UCC and UST Arguments against Court Approval**
  - No authority in the Bankruptcy Code for the court to ratify prepetition appointment of directors.
  - Investigation into independent directors should be done through a Rule 2004 application or other filing.
- **Ruling**
  - Court approved the motion because it provided transparency and clarity to the appointment process.
  - The judge dismissed concerns about whether or not he has authority to rule on this issue, stating that the lack of a specific statute or rule did not prevent the court from acting in the interest of equity here. He emphasized that he routinely removes individuals and to say he does not have the ability to appoint them because there was no specific authority was a weak argument.

17

Takeaways

Monitor the company's solvency and liquidity situation closely	• Increase financial reporting • Conduct regular scenario planning and risk assessments • Engage and consult with advisors
Maximize the company's value	• Be clear on the entity or entities to which fiduciary duties are owed • Don't give stockholders preferential treatment over creditors • Balance preservation of value with legal limitations on risky or expensive strategies • Don't wait until it is too late to take action
Avoid conflicts of interest	• Establish disinterested parties and process early • Insider transactions should be entirely fair to company (with an appropriate record) • Be sure the company is receiving fair value in all significant transactions • Consider PR and communications strategies in consultation with advisors
Pay attention to administrative details	• Ensure the company has adequate D&O insurance and other coverage • Ensure the company has adequate funds to pay ordinary course wages, professional fees and fund a restructuring process
Work with stakeholders	• In appropriate circumstances, seek consent of relevant equity-holder and creditor groups before approving significant transactions

18

Faculty

John R. Ashmead is a partner with Seward & Kissel LLP and heads its Corporate Restructuring and Bankruptcy Group in New York. He specializes in workouts, chapter 11 liquidations and foreign insolvency proceedings, where he represents trustees, agents, creditors committees, lenders, bondholders and other creditors, borrowers, equityholders, directors, acquirers and debtors. In addition to restructurings, his engagements include bankruptcy litigation, private equity and strategic investments, acquisitions, plan sponsorship and structured finance transactions. Mr. Ashmead was recognized as a leading lawyer in bankruptcy by *New York Super Lawyers* from 2010-24 and *The Best Lawyers in America from* 2022-25, and he was highly ranked by *Chambers USA* from 2019-24. He also is a Fellow of the American College of Investment Counsel. Mr. Ashmead has been involved in numerous distressed shipping matters advising company-side, lenders, investors and creditors in workouts, chapter 11 and chapter 15 cases and in foreign insolvency proceedings, including in matters involving TOISA, International Shipholding, Nautilus Holdings, OSG, TMT, Harvey Gulf and Hanjin. He appears before bankruptcy courts nationwide. Mr. Ashmead regularly authors articles in and lectures on the bankruptcy and restructuring area. In addition, he is a contributor to Seward Kissel's Corporate Restructuring Bankruptcy blog, Back in (the) Black. Mr. Ashmead previously clerked for Hon. Cornelius Blackshear of the U.S. Bankruptcy Court for the Southern District of New York from 1990-992 He is empaneled as a mediator in the U.S. Bankruptcy Court in Delaware. Mr. Ashmead received his B.S. in 1987 from St. John's University and his J.D. from Brooklyn Law School in 1990.

Mark P. Kronfeld is a managing director at Province, LLC in New York and has 30 years of experience as a litigator, restructuring advisor, fiduciary, bankruptcy lawyer, investor and professor. He has led hundreds of successful distressed investments and restructurings, and has significant expertise in high-stakes litigation, negotiations, investigations and corporate governance. Mr. Kronfeld regularly serves in a variety of key fiduciary roles, including independent director on corporate boards and special committees, as well as trustee for post-confirmation litigation and liquidating trusts. He focuses on trustee and fiduciary services, investigations, litigation consulting, credit/distressed/workout advisory services, restructuring and expert services. Mr. Kronfeld has experience in bankruptcy, restructuring and workouts, as well as distressed and special-situations investing across the capital structure, often with an emphasis on complex litigation, governance and other process-drivers. He also has experience in private credit, litigation finance and leveraged finance. Mr. Kronfeld has served on numerous ad hoc and official creditor committees, typically in a leadership capacity, in corporate, municipal and sovereign restructurings across the world. He also has led numerous activist situations in shareholder and creditor capacities and has led many successful litigation and liquidating trusts. Most recently, Mr. Kronfeld was the global head of Restructuring at BlackRock and served on BlackRock's Global Credit Oversight Committee. He was responsible for overseeing workouts and restructurings across the platform as well as related corporate governance, litigation and risk-management functions. Prior to joining BlackRock through its acquisition of Tennenbaum Capital (TCP), Mr. Kronfeld was a managing director at TCP and a portfolio manager at Plymouth Lane Capital, where he launched and led the firm's credit strategy. Before his career in finance, he was a restructuring attorney and litigator, representing debtors, creditors, trustees and corporate boards in complex restructurings. As a litigator, he handled a wide variety of commercial and corporate litigation. Mark also served as a prosecutor in New York City, where he was a member of its elite Investigations Division and prosecuted cases involving complex white-collar crime, fraud, money-laundering, organized crime and murder. Mr. Kronfeld is a frequent lecturer, panelist, author and thought leader on bankruptcy, corporate governance, distressed investing, litigation, restructuring and credit markets. He also is an adjunct professor at NYU Stern, where he teaches Corporate Bankruptcy & Reorganization in its MBA program, as well as topics in credit risk and corporate governance for the TRIUM MBA program, and he teaches distressed value investing at Columbia Business School. He also taught financial restructuring at Boston University School of Law and has guest lectured at Wharton, Duke, Yale, UVA and Oxford. Mr. Kronfeld is an active ABI member and served on the advisory committee (Governance and Supervision of Chapter 11 Cases and Companies) for ABI's Commission to Study the Reform of Chapter 11. He is also a member of the National Association of Corporate Directors, TMA and ABA. Mr. Kronfeld received his B.A. from the State University of New York at Albany, his M.B.A. in finance from New York University and his J.D. from Boston University School of Law, where he was an Edward F. Hennessey Scholar and a research assistant.

Hon. Kyu Y. (Mike) Paek is a U.S. Bankruptcy Judge for the Southern District of New York in New York, sworn in on July 29, 2024. From 2008-12, he had practiced with the law firm of Schulte Roth & Zabel LLP in New York, then from 2012-21, he worked for two Southern District Bankruptcy Judges: first with Hon. James M. Peck (ret.) as a term law clerk, then with Hon. Stuart M. Bernstein (ret.) as a career law clerk. Leading up to his appointment, Judge Paek served as the chief deputy clerk of court for the Southern District Bankruptcy Court. Judge Paek was honored as one of ABI's "40 Under 40" in 2021 and was awarded the Honorable Denny Chin '78 Alumni Award for Excellence in the Legal Profession. He has written several articles for such publications as the *ABI Journal*, *Norton Journal of Bankruptcy Law & Practice* and *Norton Bankruptcy Law Adviser*. He also co-authors a chapter in the *Collier Bankruptcy Practice Guide*. Judge Paek has been an adjunct professor at Fordham University School of Law, where he taught advanced business bankruptcy. He received his B.A. from the University of Texas at Austin in 2004 and his J.D. from Fordham University School of Law in 2008.

Stephanie Wickouski is a managing director of Pivot > and leads its New York office. She has more than 40 years of experience in bankruptcy, restructuring and insolvency law, providing expert guidance on complex financial and operational challenges and navigating high-stakes bankruptcy litigation, restructuring transactions and distressed-asset sales. Ms. Wickouski's experience spans numerous industries, including fintech, digital assets, energy, real estate, consumer products and health care. She has served as lead counsel in high-profile reorganization cases, advised on credit defaults, and provided comprehensive services for § 363 asset sales. She also has held roles as an independent fiduciary, mediator and expert witness. Before joining Pivot, Ms. Wickouski was a senior partner at an AmLaw 100 firm and served as a trial attorney for the U.S. Department of Justice, Civil Division, Commercial Litigation Branch, where she earned recognition for her work in airline bankruptcies. She is a panel mediator for the U.S. Bankruptcy Court for the Southern District of New York and has authored three influential books, including *Bankruptcy Crimes*, *Mentor X: The Life-Changing Power of Extraordinary Mentors* and *Indenture Trustee Bankruptcy Powers & Duties*. A recognized thought leader, Ms. Wickouski frequently speaks and writes on bankruptcy and restructuring topics. She has been honored by *Turnarounds & Workouts* as an "Outstanding Restructuring Lawyer," and by *Super Lawyers* and *The Best Lawyers in America Judicial Edition* for her contributions to the field. Ms. Wickouski is admitted to the bars in New York, the District of Columbia, Maryland and Virginia. She previously clerked for Hon. Roger M. Whelan, a former U.S. Bankruptcy Judge for the District of Columbia. Ms. Wickouski received her A.B. from the College of William and Mary and her J.D. from Franklin Pierce Law Center.

Paul H. Zumbro is a partner in Cravath, Swaine & Moore LLP's Corporate Department in New York and heads the firm's Financial Restructuring & Reorganization practice. His practice focuses on restructuring transactions and related financings, both in and out of court, as well as on bankruptcy M&A transactions. Mr. Zumbro's practice includes advising the firm's corporate and financial institution clients on bankruptcy issues and advising on debtor/creditor rights in a variety of contexts. His restructuring experience includes both debtor- and creditor-side representations, and also includes work in the fields of municipal and sovereign debt restructuring, as well as insolvency-related litigation matters. Mr. Zumbro is a member of ABI, the International Bar Association (IBA) and the IBA's Banking Law and Insolvency, Restructuring and Creditors' Rights Committees, and he was elected to serve on the Thomson Reuters Practical Law Bankruptcy Advisory Board. He is a frequent participant at bankruptcy and restructuring conferences, speaking on a broad range of complex topics from stalking-horse buyers to DIP best practices. Mr. Zumbro also recently testified on divisional merger bankruptcies (also known as the "Texas Two-Step" bankruptcy practice) before the U.S. Senate Committee on the Judiciary's Subcommittee on Federal Courts, Oversight, Agency Action and Federal Rights, and he recently authored a viewpoint piece for the *Wall Stree Journal*, "How Congress Can Minimize the Cryptopocalypse." Mr. Zumbro chairs the New York City Bar Association's Bankruptcy and Corporate Reorganization Committee. He received his B.A. *cum laude* and with distinction from Yale College in 1992 and his J.D. from Columbia Law School in 1997, where he was a Harlan Fiske Stone Scholar.