American Bankruptcy Institute
Annual Spring Meeting

Evidence Workshop: Effective Use of Experts

Luis E. Rivera, Moderator
GrayRobinson, P.A. | Fort Myers, Fla.

Kyle F. Arendsen
Squire Patton Boggs | Cincinnati

Hon. Lisa G. Beckerman
U.S. Bankruptcy Court (S.D.N.Y.)
New York

Marguerite Lee DeVoll
Watt, Tieder, Hoffar, & Fitzgerald, LLP
McLean, Va.

Kathleen L. DiSanto
Bush Ross, P.A. | Tampa, Fla.

Hon. Brian T. Fenimore
U.S. Bankruptcy Court (W.D. Mo.)
Kansas City

Hon. Paul R. Hage
U.S. Bankruptcy Court (E.D. Mich.)
Detroit

Hon. Thomas M. Horan
U.S. Bankruptcy Court (D. Del.)
Wilmington

Christopher A. Jones
Whiteford, Taylor & Preston LLP
Falls Church, Va.

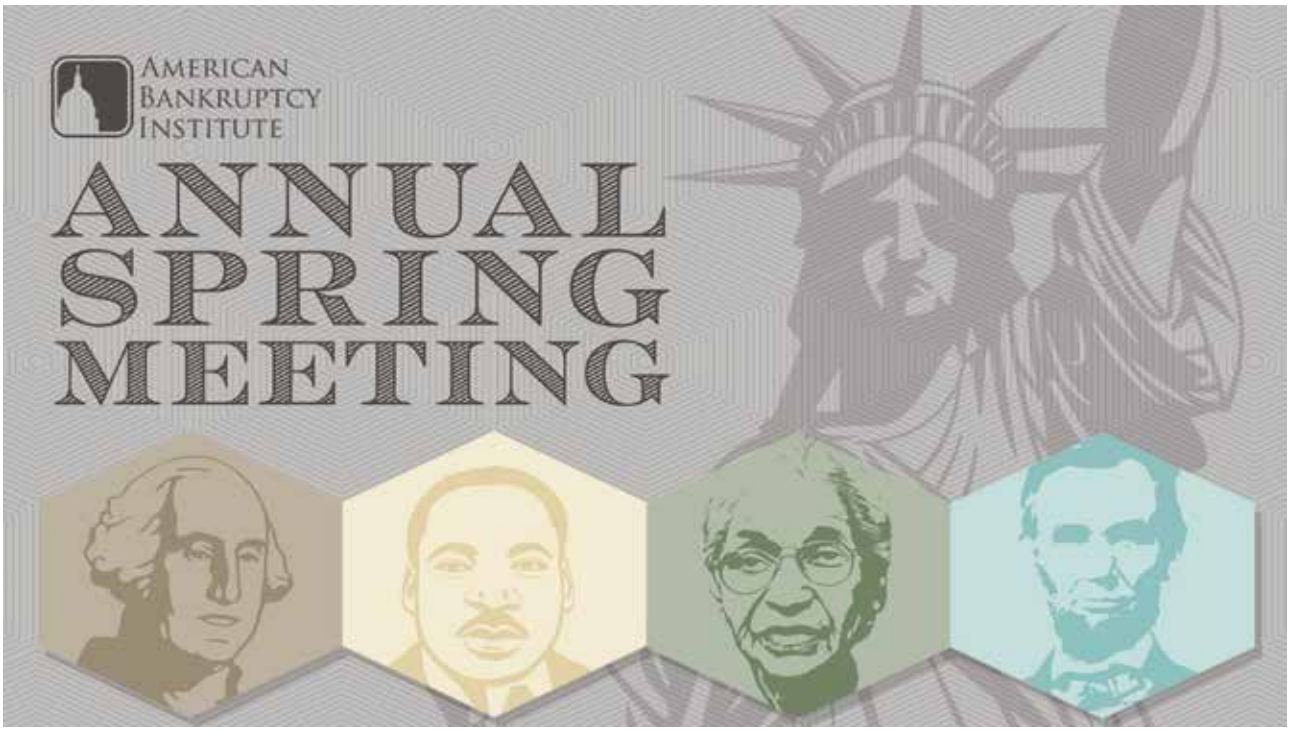
Hon. Christopher M. Lopez
U.S. Bankruptcy Court (S.D. Tex.)
Houston

Cynthia Romano
FTI Consulting, Inc. | New York

Hon. Sage M. Sigler
U.S. Bankruptcy Court (N.D. Ga.)
Atlanta

Andrew M. Simon
Oxford Restructuring Advisors
Cincinnati

2025



EVIDENCE WORKSHOP
THE EFFECTIVE USE OF EXPERTS

Question 1

How should the Court rule on the motion in limine?

Question 2

In the context of a bench trial, presumably concerns about prejudicing the trier of fact are less than cases tried before a jury. What are the reasons a party might file a motion in limine in a bench trial, from the perspective of the proponent of the evidence or the objector?

Question 3

Are there any reasons not to file a motion in limine or disadvantages to filing a motion in limine in a bench trial?

Question 4

Should Dr. Schuyler be permitted to testify as an expert?

Question 5

In attempting to qualify the expert, what did Mr. Hamilton do well? What could he have done better?

AMERICAN BANKRUPTCY INSTITUTE ANNUAL SPRING MEETING

Question 6

What makes for an effective voir dire challenge? What topics are better saved for cross examination?

AMERICAN BANKRUPTCY INSTITUTE ANNUAL SPRING MEETING

Question 7

Did the Court rule properly on the *Daubert* motions?

Question 8

Is it a good strategy to hold something back from a pretrial *Daubert* attack?


AMERICAN BANKRUPTCY INSTITUTE
ANNUAL SPRING MEETING
THE Room WHERE IT HAPPENS
HAMILTON
THANK YOU FOR PARTICIPATING!

EVIDENCE WORKSHOP: EFFECTIVE USE OF EXPERTS

Kyle F. Arendsen
Squire Patton Boggs

Hon. Lisa G. Beckerman
U.S. Bankruptcy Court (S.D.N.Y.)

Kathleen L. DiSanto
Bush Ross, P.A.

Hon. Brian T. Fenimore
U.S. Bankruptcy Court (W.D. Mo.)

Hon Paul R. Hage
U.S. Bankruptcy Court (E.D. Mich.)

Hon. Thomas M. Horan
U.S. Bankruptcy Court (D. Del.)

Christopher A. Jones
Whiteford, Taylor & Preston, LLP

Marguerite Lee DeVoll
Watt, Tieder, Hoffar, & Fitzgerald, LLP

Hon. Christopher M. Lopez
U.S. Bankruptcy Court (S.D. Tex.)

Cynthia Romano
FTI Consulting, Inc.

Hon. Sage M. Sigler
U.S. Bankruptcy Court (N.D. Ga.)

Andrew M. Simon
Oxford Restructuring Advisors

Luis E. Rivera
GrayRobinson, P.A.
Moderator

Fact Pattern

Jefferson Thomas (the "**Trustee**"), the post-confirmation trustee of Eden on the River, LLC ("**Eden**"), represented by Alex Hamilton, initiated an adversary proceeding against New York Enterprises, Inc., seeking to set aside payments as actually fraudulent to creditors. New York Enterprises, Inc. ("**NYE**"), a subsequent transferee represented by Erin Burr, asserted "good faith for value defenses." The bankruptcy court scheduled a trial, and both the Trustee and NYE have retained experts to provide written reports and testimony regarding whether NYE's principal, Jimmy Madison, performed appropriate due diligence in connection with investments managed by NYE. Dr. Angelica Schuyler was retained by the Trustee, and George King was retained by NYE.

The Trustee has filed a motion in limine, seeking a determination from the bankruptcy court that certain email correspondence which Dr. Schuyler considered and upon which she based her expert opinions is admissible. NYE does not believe Dr. Schuyler is qualified to provide expert testimony and makes a voir dire challenge, based on some potential misstatements of educational background and lack of prior experience as an expert witness. Both the Trustee and NYE filed Daubert motions.

PROBLEM SET # 1
Motion in Limine – The Room Where it Happens

Court: Good morning. Mr. Hamilton, please make your appearance.

Hamilton: Alexander Hamilton. My name is Alexander Hamilton. And there's a million things I haven't done. But just you wait, just you, wait…

Court: Umm, Mr. Hamilton, wrong script—please make your appearance.

Hamilton: Oh, sorry about that, your honor. Alexander Hamilton on behalf of Jefferson Thomas, the post-confirmation trustee of Eden on the River, LLC.

Court: Okay, Attorney Burr. Why don't you go ahead and make your appearance, please.

Burr: And I am the damn fool who shot him—I am sorry, I couldn't help myself your honor. It is not every day Erin Burr finds herself appearing adverse to Alexander Hamilton. Erin Burr, for New York Enterprises, Inc.

Court: I would implore counsel to talk less and smile more, though this is the room where it happens…Mr. Hamilton, please proceed. Your motion is interesting—the Court often considers motions in limine where an objecting party seeks to exclude evidence—but if I am understanding your motion correctly, Mr. Hamilton, it seems like you are looking for a determination that certain evidence is admissible at trial.

Hamilton: That's exactly right your Honor. The Trustee is asking the Court to determine that certain email correspondence between Mr. Madison and others is admissible, as Dr. Schuyler is relying on the email correspondence in connection with her report. The email correspondence is admissible, as statements of the party. Mr. Madison's statements can and should be imputed to New York Enterprises.

Court: I imagine you object to this, Ms. Burr?

Burr: Yes, your honor. The Trustee essentially seeks to bootstrap in evidence that would otherwise be inadmissible hearsay and to rule on the imputation issues, which is a mixed question of fact and law that should be determined on summary judgment, rather than in the context of this motion.

Discussion Questions

1. How should the Court rule on the motion in limine?

Motion *in Limine* Primer:

a. "Motions *in limine* may be used to exclude or admit evidence in advance of trial." *See United States v. Haig*, 365 F.Supp.3d 1101, 1105 (D. Nev. 2019).

b. "Although the Federal Rules of Evidence do not explicitly authorize *in limine* rulings, the practice has developed pursuant to the district court's inherent authority to manage the course of trials." See *Luce v. United States*, 469 U.S. 38, 41 n.4 (1980).

c. A motion *in limine* affords a trial court an opportunity "to rule in advance of trial on the relevance of certain forecasted evidence, as to issues that are definitely set for trial, without lengthy argument at, or interruption of, the trial." *See Palmieri v. Defaria*, 88 F.3d 136, 141 (2d Cir. 1996) (quotation and citation omitted).

d. "Motions *in limine* are designed to avoid the delay and occasional prejudice caused by objections and offers of proof at trial . . . ." *See Wilson v. Williams*, 182 F.3d 562, 566 (7th Cir. 1999) (en banc).

Motion *in Limine* Factors to Consider:

a. Is the Trial Imminent? A party generally should file a motion *in limine* only when a trial is imminent. *See Betts v. City of Chicago*, 784 F. Supp. 2d 1020, 1023 (N.D. Ill. 2011) (noting that evidentiary rulings usually should be deferred until closer to trial "so that questions of foundation, relevancy and potential prejudice may be resolved in proper context"); *Jones v. Harris*, 665 F. Supp. 2d 384, 404 (S.D.N.Y. 2009) (denying a motion *in limine* without prejudice as premature because *in limine* "motions deal with evidentiary matters and are not to be filed until" trial is imminent); *see also United States v. Goodale*, 831 F. Supp. 2d 804, 808 (D. Vt. 2011) (noting that courts sometimes reserve judgment on motions *in limine* "until trial to ensure the motion is considered in the proper factual context").

b. Local Rules: Local rules may require parties to first confer and discuss whether opposing counsel objects to the admission of a particular exhibit and to attempt in good faith to resolve the issue. *See, e.g.*, N.D. Fla. Loc. R. 7.1(B).

c. Identification of Specific Emails: To ensure that the parties and the court can discuss particular exhibits intelligently, the Trustee should mark each discrete item with an exhibit sticker prior to moving for an *in limine* ruling. Without such markings, it would be difficult for the court and the parties to have an intelligent discussion about these items.

d. Motion *in limine* Cannot be Used as Trial to Weigh Evidence: A motion *in limine* cannot "be used to resolve factual disputes or weigh evidence." *See C & E Servs., Inc. v. Ashland Inc.*, 539 F. Supp. 2d 316, 323 (D. D.C. 2008); *Bowers v. Nat'l Collegiate Athletic Ass'n*, 563 F. Supp. 2d 508, 532 (D. N.J. 2008) (noting that motions *in limine* should be used to "address evidentiary questions and are inappropriate devices for resolving substantive issues, such as the sufficiency of the evidence to support a claim or defense"). Motions *in limine* cannot be used to elicit a ruling that certain facts or statements in exhibits are "accepted" or "established" for purposes of establishing elements of a claim or defense. *See TVT Records v. Island Def Jam Music Group*, 250 F. Supp. 2d 341, 344-45 (S.D.N.Y. 2003) ("[I]n the guise of addressing limited evidentiary issues, the parties' motions *in limine* would effectively serve as a form of advance trial of substantive portions of the case, or indeed as a substitute for the trial itself.").

Inadmissible Hearsay or Admissible Statement by a Party Opponent Factors to Consider:

a. Fed. R. Evid. 801(c) – Hearsay: "Hearsay" means a statement that: (1) the declarant does not make while testifying at the current trial or hearing; and (2) a party offers in evidence to prove the truth of the matter asserted in the statement.

b. Example: "Hearsay is a statement, other than one made by the declarant while testifying at trial, offered in evidence to prove the truth of the matter asserted. Fed. R. Evid. 801(c). The government argues that the radio dispatch was not hearsay because it was not offered to prove the truth of the matter asserted—that there was in fact a black male dressed in all black with a gun on the 2500 block of North Franklin Street. According to the government, the contents of the radio call were introduced only as background to explain why the officers went to North Franklin Street and acted as they did. Whether evidence is hearsay is a question of law subject to plenary review. *See United States v. McGlory,* 968 F.2d 309, 332 (3d Cir.1992)." See *United States v. Sallins*, 993 F.2d 344, 346 (3d Cir. 1993).

c. Fed. R. Evid. 801(d)(2)(A) – Statement by a Party Opponent: The statement is offered against an opposing party and: (A) was made by the party in an individual or representative capacity.

d. Relevance: How is each email relevant for the report and/or demonstrating lack of Madison's good faith for value defense?

e. Authentication: How does Hamilton intend to authenticate the email?

Possible Outcome:

a. The court will most likely not want to be blindsided by this argument at trial.

b. The question of whether otherwise inadmissible hearsay is admissible in the context of an expert report where the hearsay was relied on as statements of the party is a rare and novel issue that most likely justifies filing a motion *in limine* and would be helpful to the judge.

c. As the proponent of the evidence, if you know your opponent will object to the expert report on this basis, filing the motion *in limine* is advisable.

d. Alternatively, if you are concerned that the judge will be annoyed by another motion, include language in the motion (or contact chambers if allowed by chambers protocol) to suggest that the court could rule on the motion *in limine* orally at the trial, but that you are filing the motion so that the court has advance notice of the dispute, arguments, and relevant case law.

2. ***In the context of a bench trial, presumably concerns about prejudicing the trier of fact are less than cases tried before a jury. What are the reasons a party might file a motion in limine in a bench trial, from the perspective of the proponent of the evidence or the objector?***

Trier of Fact Consideration: Concerns about prejudicing the trier of fact are greatly diminished in a bench trial.

Judge-Dependent: Judges may differ on whether they would rather handle evidence challenges via (a) a motion *in limine* or (b) with other objections as presented as part of the entire story during the trial.

How Does the Evidence at Issue Impact Your Case:

a. If you have a legitimate basis to exclude an opponent's evidence because of late discovery, etc., a motion *in limine* may be appropriate.

b. However, think about whether this evidence truly negatively impacts your case before filing a motion *in limine*.

> Example: Sometimes lawyers get caught up in their client's "story" and want to present extensive testimony and/or documents that tell that story, but much or all of it is really irrelevant to the elements of the claim the Court has to decide.

3. ***Are there any reasons not to file a motion in limine or disadvantages to filing a motion in limine in a bench trial?***

Threat of Denial without Review of the Merits:

a. It is possible that the court denies the motion *in limine* solely because the court holds that such motions are improper in non-jury cases.

b. Example: "First, this is a bench trial, making any motion *in limine* asinine on its face. Motions *in limine* are intended to prevent allegedly prejudicial evidence from being so much as whispered before a jury prior to obtaining the Court's permission to broach the topic. In a bench trial, such procedures are unnecessary, as the Court can and does readily exclude from its consideration inappropriate evidence of whatever ilk." *See Cramer v. Sabine Transp. ¥Co.*, 141 F. Supp. 2d 727, 733 (S.D. Tex. 2001).

c. Example: "The rationale underlying pre-trial motions *in limine* does not apply in a bench trial, where it is presumed that the judge will disregard inadmissible evidence and rely only on competent evidence. *See id.* In fact, courts are advised to deny motions *in limine* in non-jury cases. *See* 9 Charles A. Wright & Arthur R. Miller, Federal Practice and& Procedure Civil 3d § 2411 (3d ed. 2008). When ruling on motions *in limine*, a court is forced to determine the admissibility of evidence without the benefit of the context of trial." *Laconner*

Assocs. Ltd. Liab. Co. v. Island Tug & Barge Co., No. C07-175RSL, 2008 WL 2077948, at *2 (W.D. Wash. May 15, 2008); *Rettiger v. IBP, Inc.*, No. 96-4015-SAC, 1999 WL 318153, at *1 (D. Kan. Jan. 6 1999) (recognizing that a court is almost always better situated during the actual trial to assess the value and utility of evidence). The more prudent course in a bench trial, therefore, is to resolve all evidentiary doubts in favor of admissibility. *See Commerce Funding Corp. v. Comprehensive Habilitation Servs., Inc.*, No. 01 Civ 3796 (PKL), 2004 WL 1970144, at *5 (S.D.N.Y. Sept. 3, 2004) (citation omitted). *See Alan L. Frank L. Assocs., P.C. v. OOO RM Inv.*, 2016 WL 9348064, at *1 (S.D. Fla. Nov. 30, 2016).

Do you have a winning argument with the law and facts on your side, or are you trying to take advantage of a procedural technicality?

If the latter, how does your judge usually handle "procedural technicalities" (*i.e.*, will the court want to get to the merits regardless of technicalities)?

Is the evidence you are trying to exclude truly harmful to your case?

If not, consider not filing the motion so as not to burden the court. You can object to the admission of the evidence at trial or, particularly in situations where there is an imbalance of power (litigation against a *pro se* debtor), if the evidence doesn't hurt your case, just let it in.

Would allowing the evidence help the court create a record for appeal?

The court is creating the record for appeal and the fewer objections the court sustains, the fewer bases there are for appeal.

PROBLEM SET # 2
Qualifying Your Expert – Not Going to Miss My Shot

Hamilton: Dr. Schuyler, please introduce yourself to the Court.

Schuyler: Good afternoon, I am Angelica Schuyler. I hold a Ph.D. in mathematics and have nearly twenty years of experience in investment research.

Hamilton: Dr. Schuyler, you were retained by the Trustee to opine as to whether NYE's principal, Jimmy Madison, performed appropriate due diligence in connection with investments managed by NYE?

Schuyler: Yes, that's correct.

Hamilton: What were you asked to do?

Schuyler: I was asked to describe the appropriate due diligence entails and form an opinion as to whether Mr. Madison's practices conformed to the due diligence standards.

Hamilton: Did you do that?

Schuyler: Yes.

Hamilton: And you were able to form an opinion as to whether Mr. Madison's practices conformed to the due diligence standards?

Schuyler: Yes.

Hamilton: Before we get to your opinion, let's learn a little about you. How did you become a turnaround professional?

Hamilton: Tell us about your work and educational experience.

Hamilton: Have you ever been asked to provide an expert opinion pertaining to the management of investment funds?

Schuyler: Yes.

Hamilton: How many times have you ever done that?

Schuyler: I have served as an expert about five times in the past ten years.

Hamilton: Have you ever testified in court as an expert on matters pertaining to the management of investment funds?

Schuyler: Yes, twice.

Hamilton: Your honor, we tender Dr. Schuyler as an expert.

Court: Any objection?

Burr: Yes, your honor. May I voir dire the witness?

Burr: Exhibit 1 to your report is your resume, Dr. Schuyler?

Schuyler: Yes, I wrote it.

Burr: You did so by typing the resume on a word processing program?

Schuyler: Yes.

Burr: And you have reviewed it?

Schuyler: Yes.

Burr: At your deposition, you testified under oath this resume was true and correct?

Schuyler: I did.

Burr: Please look at the fourth line. It says Education, right?

Schuyler: Yes.

Burr: And you have Harvard University listed there?

Schuyler: Yes.

Burr: But you did not receive your B.S. from Harvard, did you? Or your masters? Or your Ph.D.?

Schuyler: No, but I received a leadership certificate from Harvard.

Burr: Your resume does not say that, does it?

Schuyler: No, but it does not say that I received a degree from Harvard.

Burr: That was a yes or a no question, Dr. Schuyler. Your honor, I would ask that you strike Dr. Schuyler's statement after the "but"—it is a non-responsive narrative, as the question called for a yes or no answer.

Court: So stricken.

Burr: And Dr. Schuyler, this is only the second time in your nearly twenty year career you have provided expert testimony with respect to matters pertaining to the management of investment funds, isn't that right?

Schuyler: We all have to start somewhere. I am just trying to take my shot.

Burr: Your honor, Dr. Schuyler is not qualified to testify as an expert.

Court: Mr. Hamilton, any response?

Hamilton: Dr. Schuyler's boots on the ground experience in the investment research give her the requisite knowledge to testify as an expert on matters of business valuation. The mere fact that she is not a "hired gun" does not mean that she lacks the qualifications and experience to testify as an expert witness.

Discussion Questions

1. ***Should Dr. Schuyler be permitted to testify as an expert?***

2. ***In attempting to qualify the expert, what did Mr. Hamilton do well? What could he have done better?***

3. ***What makes for an effective voir dire challenge? What topics are better saved for cross examination?***

Qualifying the Expert Witness

A. Rule 702. Testimony by Expert Witnesses. A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

1. the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; it is not necessary that the witness possess all five so long as he possess one. *Cooper v. Laboratory Corp. of America Holdings, Inc.*, 150 F.3d 376, 380 (4th Cir. 1998). "The testimony must be both relevant and reliable, considering a number of factors including whether the theory or technique "can be (and has been tested)," whether it "has been subjected to peer review and publication," whether it has been "generally accept[ed]" in the "relevant scientific community," and "the known or potential rate of error." *Rivera v. SeaWorld Parks & Ent. LLC*, 2022 WL 1421848, at *2 (E.D. Va. May 5, 2022) (quoting *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 589, 593-94 (1993))

2. "Generally, the test for exclusion [based on qualification] is a strict one, and the purported expert must have neither satisfactory knowledge, skill, experience, training nor education on the issue for which the opinion is proffered." *Thomas J. Kline, Inc. v. Lorillard, Inc.*, 878 F.2d 791, 799 (4th Cir. 1989). The Court is to construe broadly the five bases upon which an expert can be qualified. *In re Young Broad. Inc.*, 430 B.R. 99, 122 (Bankr. S.D.N.Y. 2010); *In re Paoli R. Yard PCB Litig. (Paoli I),* 916 F.2d 829, 855 (3d Cir.1990)("[V]arious kinds of 'knowledge, skill, experience, training, or education' qualify an expert as such." (quoting Fed. R. Evid. 702)). "The words 'qualified as an expert by knowledge, skill, experience, training, or education" must be read in light of the liberalizing purpose of [Rule 702] . . . ." *United States v. Brown*, 776 F.2d 397, 400 (2d Cir. 1985).

3. The testimony is based on sufficient facts or data; quantitative rather than a qualitative analysis. Fed. R. Evid. 702 advisory committee's note; can rely on facts or data that are inadmissible under other rules of evidence, so long as the fact or data is of a kind reasonably relied upon by experts in the field.

4. The testimony is the product of reliable principles and methods; and

5. The expert has reliably applied the principles and methods to the facts of the case.

B. The proponent of any expert testimony must establish its admissibility by a preponderance of the evidence. *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 592 n.10 (1993).

C. "Rule 702's 'helpfulness' standard requires a valid scientific connection to the pertinent inquiry as a precondition to admissibility." *Daubert* 509 U.S. at 591-92. *See Carroll v. Otis Elevator Co.*, 896 F.2d 210, 212 (7th Cir. 1990) ("Whether a witness is qualified as an expert can only be determined by comparing the area in which the witness has superior knowledge, skill, expertise, or education with the subject matter of the witness's testimony."); *see also In re WorldCom, Inc.*, 371 B.R. 33, 42 (Bankr. S.D.N.Y. 2007) (court denied admissibility of an expert because "[t]here is no nexus between his credentials and the subject matter of his testimony.") and *In re Citadel Broad. Corp.*, No. 09-17442-BRL, 2010 Bankr. LEXIS 1606 (Bankr. S.D.N.Y. May 19, 2010) (court denied admissibility of an expert because there was no nexus between expert's background and the valuation of a radio broadcasting company).

D. A dispute regarding the credentials of an expert goes to the weight accorded the testimony but not its admissibility. *McCullock v. H.B. Fuller Co.,* 61 F.3d 1038, 1043 (2d Cir.1995); *see also SR Int'l Bus. Ins. Co. v. World Trade Ctr. Props., LLC,* 467 F.3d 107, 134 ("To the extent that there are gaps or inconsistencies in [the expert]'s testimony, those issues go to the weight of the evidence, not to its admissibility.")(internal quotations omitted).

E. Expert witness testimony is much broader than a fact witness. A judge must rule on expert qualifications before an expert witness testifies. "[T]he trial judge has broad discretion in the matter of the admission or exclusion of expert evidence, and his action is to be sustained unless manifestly erroneous." *Salem v. United States Lines Co.*, 370 U.S. 31, 35, 82 S. Ct. 1119, 1122, 8 L.Ed.2d 313 (1962)

F. The lawyer must prove that the expert has the training, education, experience, or background that qualifies the expert to offer specialized opinion testimony. Witnesses need not have graduate degrees or come from Ivy League backgrounds. Extensive experience with computers may go farther to qualifying someone as an expert on computers than someone who has a Ph.D. degree in technology.

1. *In re Aphton Corp.*, 423 B.R. 76, 89 (Bankr. D. Del. 2010) (expert admitted to testify on valuation); *In re Am. Classic Voyages Co.*, 367 B.R. 500 (Bankr. D. Del. 2007) (same); *In re Flintkote Co.*, 486 B.R. 99, 143 (expert testimony admitted for plan feasibility); *In re W.R. Grace & Co.*, 475 B.R. 34, 114 (D. Del. 2012), aff'd (July 24, 2013) (same); *In re Fed.-Mogul Global, Inc.*, 330 B.R. 133, 164 (D. Del. 2005) (relying on expert testimony applying discount rate); *In re Zenith Electronics Corp.*, 241 B.R. 92, 104 (Bankr. D. Del. 1999) (accepting discount rate supplied by expert testimony).

G. Example of Expert Witness Qualification Voir Dire

1. Please state your name.
2. Where do you work?
3. What is your title there?
4. How long have you been at that job?
5. What are some of your duties at that place of employment?
6. Where did you attend school?
7. What degrees do you possess?
8. Have you given any lectures?
9. Are you a member of any professional associations?
10. Have you received any honors or awards?
11. Did you specialize in any particular field?
12. Do you have a resume or CV? (admit resume or CV into evidence)
13. What specific training do you have in the area of your specialty?
14. Do you have any publications or research?
15. What licenses do you possess?
16. How long have you had those licenses?
17. Do you have any board certifications?
18. If so, how long have you had those certifications?
19. Please list your previous places of employment, including each position.
20. Please state the duties you had at each of your previous positions.
21. What type of scientific or technical studies have you conducted?[If relevant]
22. Has your work been peer-reviewed? [If relevant]
23. Have you previously testified as an expert witness in a Court? If so, when, which Court and what area of expertise were you qualified in?

24. Other than in this case, have you previously been deposed? If so, when, in connection with what legal matter and which Court and/or arbitrator was the matter pending before at the time of the deposition.

25. Were you deposed in connection with this case/matter/proceeding? If so, when?

26. Did you prepare a report in this case?

27. Can you please explain the materials that you reviewed in creating your report?

28. After you completed your report did you arrive at a conclusion?

29. Outline the specific facts and data that you relied on in coming to your conclusion.

30. Describe the principles or methods that you used in coming to your conclusion.

31. Explain the way that you relied on those principles or methods.

32. When coming to your conclusion, did you rely on specific principles or methods that are widely used in your field?

33. Do you believe that your testimony will be helpful in assisting the jury understand the facts of this case?

34. Your honor, at this time I tender this witness as an expert in the field of (state-specific field of expertise).

PROBLEM SET # 3
Daubert Challenge – Wait for It

Court: Mr. Hamilton, you may proceed with your *Daubert* motion.

Hamilton: Thank you, your honor. Under Federal Rule of Evidence 702, an expert may testify if "(1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case."

As the Court knows, the key inquiry under *Daubert* is whether the expert testimony is both relevant and reliable. Here, Mr. King's reports and the testimony he will give is neither relevant nor reliable. In concluding that Mr. Madison's due diligence was adequate, he provides no analysis or reference to specific documents to support his conclusions. The report is replete with conclusions regarding Mr. Madison's state of mind and factual narratives, which have no place in an expert report. Additionally, Mr. King applied the wrong due diligence standard to Mr. Madison.

These deficiencies demand the exclusion of Mr. King's testimony.

Court: Ms. Burr, does it make sense to take up your response and *Daubert* motion together?

Burr: Yes, your honor. Mr. King's report and testimony is both relevant and reliable and satisfies the *Daubert* standard—Mr. Hamilton faces an endless uphill climb. And he does have something to prove—as the Trustee bears the burden of proof with respect to his *Daubert* challenge. There is no way for NYE to establish that Mr. Madison performed appropriate due diligence without referencing Mr. Madison's state of mind. To the extent the Court is inclined to agree with the Trustee's position, Dr. Schuyler's reports suffer from the very same defects and should likewise be excluded. The real issue here is whether the general subject of due diligence is one that is the appropriate subject for expert testimony and whether any of this expert testimony is relevant. The majority of the Dr. Schuyler's reports focuses immaterial issues—namely what constitutes appropriate due diligence and what red flags Mr. Madison would have discovered if he had conducted the due diligence recommended by Dr. Schuyler. But this is not a negligence case, your honor. Whether Mr. Madison failed to conduct appropriate due diligence or breached a fiduciary duty to his investors is irrelevant and the issue is not before the Court. Rather, at the crux of this case is whether Madison subjectively believed that Eden on the River was not trading securities.

Court: Thank you, counsel. After considering the arguments and papers, I am not going to make you wait for it—my ruling, that is. I am going to grant both *Daubert* motions and exclude the testimony of both experts, except that I will allow Dr. Schuyler to testify with respect to the willful blindness industry, to the extent that the opinion is based on specific instances where Madison acquired information and what Madison should have done based on industry custom and practice.

Relevant Authorities

Federal Rule of Evidence 702 governs the admissibility of expert testimony in court. It allows an expert witness to testify if:

- Qualifications: The expert is qualified by knowledge, skill, experience, training, or education.
- Relevant: The testimony is relevant to the case, helping the court understand the evidence or determine a fact in issue.
- Sufficient Facts or Data: The testimony is based on sufficient facts or data—the expert's opinion must be grounded in solid, verifiable information.
- Reliable Principles and Methods: The expert's testimony is the product of reliable principles and methods. This means that the expert's methodology must be scientifically sound, industry-recognized, or otherwise proven to be credible.
- Application of Methods: The expert applies these principles and methods reliably to the facts of the case.

Daubert v. Merrell Dow Pharms., Inc., 509 U.S. 579 (1993). The Supreme Court held that the trial court has to perform a "rigorous gatekeeping function" to ensure that an expert is qualified, the proposed testimony is reliable and concerns matters requiring scientific, technical, or specialized knowledge, and that the expert's testimony is "sufficiently tied to the facts of the case." This is a flexible standard that affords significant discretion to the trial court.

Kumho Tire Co., Ltd. v. Carmichael, 119 S.Ct. 1167 (U.S. 1999). In overturning an 11th Circuit decision, the Supreme Court agreed with the trial court who held that the *Daubert* factors are relevant in evaluating expert testimony from non-scientists. The Court stressed that trial courts should review evidence to ensure that it is reliable and not overly prejudicial and remain flexible to ensure that different types of evidence are given appropriate review. In a concurring opinion, Justice Scalia described a trial court's gatekeeping function as "discretion to choose among reasonable means of excluding expertise that is false and science that is junky." This is important to keep in mind by bankruptcy practitioners, as much expert testimony utilized in our cases are for determining solvency or valuation and the experts are often practitioners, not scientists.

Cohen v. Cohen, 125 F.4th 454 (3d Cir. 2025). The Third Circuit held that the district court erred in allowing expert testimony on recalled memory in a child sex abuse case and failed to satisfy the rigors imposed by *Daubert* and Federal Rule of Evidence 702. The district court considered four *Daubert* motions in a single hearing of a little more than an hour. The district court shirked its gatekeeping responsibilities under *Daubert* by failing to evaluate the qualifications of each of the experts, independently. In addition to determining that the expert

is qualified, a court must also conclude that the expert's testimony is support by "good grounds." In evaluating whether "good grounds" support an expert's testimony, trial courts can consider "(1) whether a method consists of a testable hypothesis; (2) whether the method has been subject to peer review; (3) the know or potential rate of error; (4) the existence and maintenance of standards controlling the technique's operation; (5) whether the method is generally accepted; (6) the relationship of the technique to methods which have been established to be reliable; (7) the qualifications of the expert witness testifying based on the methodology; and (8) the non-judicial uses to which the method has been put." The district court failed to apply any of the factors, and after analysis under the factors, the Third Circuit concluded that the expert's testimony was not supported by "good grounds" and, therefore, lacked the reliability required under *Daubert* and Federal Rule of Evidence 702.

Klein v. Meta Platforms, Inc., No. 20-CV-08570-JD, 2025 WL 489871 (N.D. Cal. Feb. 13, 2025). The district court excluded an economist's opinions in an in antitrust case because the expert's opinion was based on guesswork, and was not grounded in scientific knowledge, in that each step of the expert's analysis was not supported by "good grounds." The court noted that the 2023 amendments to Federal Rule of Evidence 702 did not modify the court's gatekeeping role under Daubert or Rule 7-2, citing to the Advisory Committee notes, which indicate that the amendments "were intended to amplify, but not displace the existing requirements of Rule 702."

SRQ Taxi Mgmt, LLC v. Sarasota Manatee Airport Authority (In re SRQ Taxi Mgmt, LLC), 2023 WL 473225 (Bankr. M.D. Fla. Jan. 26, 2023). In granting *Daubert* motion following the conclusion of a trial, bankruptcy court concluded expert testimony regarding lost profits was unreliable and excluded the testimony because it was not based on sufficient facts or data. As the finder of fact, a bankruptcy judge does not have the same gatekeeping concerns as a judge who is conducting a jury trial. A bankruptcy judge may decline a pretrial evidentiary hearing on a *Daubert* motion and, instead, permit a party to put on its expert testimony at trial and then be in a more optimal position to evaluate whether the testimony meets the requirements of Federal Rule of Evidence 702.

Discussion Questions

1. Did the court rule correctly when it excluded King and Schuyler's testimony?

Expert testimony is admissible under Federal Rule of Evidence 702 if the following four criteria are satisfied: (1) the opinion testimony will help the trier of fact to understand or to determine a fact in issue; (2) the testimony is based on sufficient facts or data; (3) the testimony is the product of reliable principles and methods; and (4) the expert has reliably applied the principles and methods to the facts of the case.[1] The party offering the expert bears the burden of establishing Rule 702's admissibility requirements.[2] Under the facts of the hypothetical, for the most part, the expert testimony is not based on sufficient facts or data, nor is its reliable.

2. Why would the court have nonetheless permitted Schuyler to testify regarding willful blindness?

To the limited extent that Schuyler's testimony is based on industry standards and what Madison should have done, the testimony is potentially appropriate expert opinion testimony within the confines of Federal Rule of Evidence 702.

Courts are cautioned not to set the admissibility bar too high.[3] In *Moore v. Intuitive Surgical, Inc.*, 995 F. 3d 839, 854 (11th Cir. 2021), the 11th Circuit overruled a trial court who had excluded expert testimony on robotic surgery from a medical doctor who had never completed training on or operated using the robotic system in question. The court found that there is no "bright line rule that an expert witness is qualified to testify regarding the cause of an injury only if he personally has used the allegedly defective product." To do so could overly restrict the field of potential experts to those with the precise experience being litigated. This reasoning applies beyond medical expertise. In valuation or solvency disputes, courts should evaluate the proffered expert's qualifications and reliability of methodology but should not set the bar so high to include those with special knowledge of the circumstances at issue.

3. Why not permit King to testify about willful blindness too?

King applied the wrong due diligence standard, and from the facts provided, his report does not seem to address any industry standards and focuses solely on Madison's state of mind. King's opinions are based on inadmissible sources. Though, as the finder of fact, it is worth noting that a bankruptcy judge does not have the same gatekeeping concerns as a judge who is conducting a jury trial.[4] A bankruptcy judge may decline a pretrial evidentiary hearing

---

[1] Fed. R. Evid. 702; *Securities Investor Protection Corp. v. Bernard L. Madoff Investment Securities, LLC (In re Madoff)*, 581 B.R. 370, 379 (Bankr. S.D. N.Y. 2017); *SRQ Taxi Mgmt, LLC v. Sarasota Manatee Airport Authority (In re SRQ Taxi Mgmt, LLC)*, 2023 WL 473225, at *6 (Bankr. M.D. Fla. Jan. 26, 2023) (citing *Rink v. Cheminova, Inc.*, 400 F.3d 1286, 1291 (11th Cir. 2005)).

[2] *Id.; see also Allison v. McGhan Medical Corp.*, 184 F.3d 1300, 1306 (11th Cir. 1999) (non-moving party has the burden of establishing, by a preponderance of proof, that a proper foundation exists for the admissibility of that party's proffered expert testimony).

[3] *Allison*, 184 F.3d at 1321.

[4] *SRQ Taxi Mgmt*, 2023 WL 473225, at *1.

on a *Daubert* motion and, instead, permit a party to put on its expert testimony at trial and then be in a more optimal position to evaluate whether the testimony meets the requirements of Federal Rule of Evidence 702.[5]

4. What could the court have done to more narrowly tailor its ruling?

The Court could have followed the *Daubert* standard while still admitting a narrow, tailored form of expert testimony from both sides. For instance, the Court could have limited both experts to:

a) Testimony grounded in industry custom;
b) Opinions tied to specific documents or facts in the record;
c) Excluding ultimate conclusions about Madison's intent or legal culpability.

Such tailoring might have balanced the need for relevant expertise against the risks of prejudicial or speculative opinion.

5. Is it a good strategy to hold something back from a pretrial Daubert attack?

Generally, it is advantageous for both the court and the lawyers for evidentiary issues to be raised and fully addressed in advance of trial. Particularly in the context of a bench trial, where the concerns regarding prejudice of the trier of fact are somewhat less, it is best to make a full argument. An advance ruling also allows the attorney to make strategic decisions for trial.

[5] *Id.*

Faculty

Kyle F. Arendsen is a member of Squire Patton Boggs US LLP's Restructuring & Insolvency Practice Group in Cincinnati. He focuses his practice on companies and creditors in all aspects of corporate restructurings, including in chapter 11 cases, out-of-court restructurings, cross-border insolvencies and supply chain matters. Mr. Arendsen's restructuring matters encompass a wide variety of industries, including mining, real estate, aviation, manufacturing, oil and natural gas, health care and pharmaceutical. He is a member of ABI and the Turnaround Management Association. Mr. Arendsen received his B.S. in 2013 from Cornell University and his J.D. in 2016 from the University of Virginia School of Law.

Hon. Lisa G. Beckerman is a U.S. Bankruptcy Judge for the Southern District of New York in New York, sworn in on Feb. 26, 2021. From May 1999 until she was appointed to the bench, she was a partner in the financial restructuring group at Akin Gump Strauss Hauer & Feld LLP. From September 1989 until May 1999, she was an associate and then a partner in the bankruptcy group at Stroock & Stroock & Lavan LLP. Prior to her appointment, Judge Beckerman served as a co-chair of the Executive Committee of UJA-Federation of New York's Bankruptcy and Reorganization Group, as co-chair and as a member of the Advisory Board of ABI's New York City Bankruptcy Conference, and as a member of ABI's Board of Directors of from 2013-19. She is a Fellow and a member of the board of directors of the American College of Bankruptcy, as well as a member of the National Conference of Bankruptcy Judges (NCBJ) and the 2021 NCBJ Education Committee. She also is a member of the Dean's Advisory Board for Boston University School of Law. Judge Beckerman received her A.B. from University of Chicago in 1984, her M.B.A. from the University of Texas in 1986 and her J.D. from Boston University in 1989.

Marguerite Lee DeVoll is a partner in Watt, Tieder, Hoffar & Fitzgerald, LLP's Creditors' Rights, Bankruptcy and Insolvency Practice in McLean, Va. Her practice focuses on business restructurings, bankruptcy and creditors' rights, as well as complex commercial disputes in state and federal courts across the U.S. She has handled complex chapter 11 cases and out-of-court workouts involving a variety of industries, including real estate, hospitality and services, education and construction. Ms. DeVoll has represented creditors in corporate and individual chapter 7, 11 and 13 cases. In addition, she frequently represents commercial landlords and national retail tenants in commercial real property and bankruptcy litigation, sureties and creditors who must protect their rights in connection with construction and other types of real estate related loans and other types of obligations that are either in default or at risk of default. She also has experience defending fraudulent transfer and preference actions. Ms. DeVoll previously clerked for Hon. William R. Sawyer of the U.S. Bankruptcy Court for the Middle District of Alabama from 2010-12. She received her B.A. with distinction from the University of Virginia and her J.D. from Emory School of Law, where she served as editor-in-chief of the *Emory Bankruptcy Developments Journal*.

Kathleen L. DiSanto is a shareholder with Bush Ross, P.A. in Tampa, Fla., where she focuses her practice on bankruptcy and insolvency matters. She also is an experienced litigator in state and federal courts throughout Florida. Ms. DiSanto began her career as the first law clerk to Chief Judge

Caryl E. Delano of the U.S. Bankruptcy Court for the Middle District of Florida. Prior to joining Bush Ross, she practiced at boutique bankruptcy firm in Tampa. Ms. DiSanto regularly represents debtors and assists them in navigating the complexity of business bankruptcies. She has helped more than 30 chapter 11 debtors successfully reorganize, including many closely held family businesses and individuals. She also is experienced in representing creditors and trustees in the bankruptcy process and has specialized expertise in defending trustees on *Barton* doctrine issues. In addition to her role as a client advocate, Ms. DiSanto is a Florida Supreme Court Certified Circuit Mediator and serves as a subchapter V trustee in small business cases filed under the Small Business Reorganization Act of 2019. She was appointed by the Office of the U.S. Trustee in April 2022, and assists parties in small business cases in facilitating the expeditious and economical confirmation of a plan. Ms. DiSanto has been Board Certified in Business Bankruptcy Law by the American Board of Certification since 2014 and has held an AV rating from Martindale-Hubbell since 2015. She also was the youngest president of the Tampa Bay Bankruptcy Bar Association. Ms. DiSanto received her B.S. in 2005 from the University of Virginia and her J.D. in 2008 from Stetson University College of Law. During law school, she interned with Hon. Alexander L. Paskay.

Hon. Brian T. Fenimore is a U.S. Bankruptcy Judge for the Western District of Missouri in Kansas City, appointed on Aug. 31, 2017. Previously, he was a partner in the Kansas City, Mo., office of Lathrop & Gage LLP for more than 25 years and co-chaired its Banking & Creditors' Rights practice area, representing debtors, creditors and many other parties in interest. He also represented borrowers and lenders in problem loan matters, including loan enforcement, guarantor liability, workouts, reorganizations and bankruptcies throughout the U.S. Judge Fenimore is admitted to practice in Kansas and Missouri, and before the U.S. Bankruptcy Courts for the Eastern and Western Districts of Missouri and the District of Kansas, as well as the U.S. District Courts for the District of Kansas and the Eastern and Western Districts of Missouri. He is AV-rated by Martindale-Hubbell and has been listed in *The Best Lawyers in America* every year since 2003, among other listings. He is also a frequent speaker and ABI member. Judge Fenimore received his B.S. *magna cum laude* in 1988 in agricultural economics from the University of Missouri-Columbia and his J.D. in 1990 from the University of Michigan Law School, after which he clerked for Hon. Arthur B. Federman.

Hon. Paul R. Hage is a U.S. Bankruptcy Judge for the Eastern District of Michigan in Detroit, sworn in on Sept. 30, 2024. Prior to his appointment to the bench, he was co-chair of the bankruptcy group at Taft, Stettinius & Hollister, LLP. Judge Hage is a member of ABI's Executive Committee and serves as Executive Editor of the *ABI Journal*. He is a Fellow in the American College of Bankruptcy and serves as co-director of the Conrad B. Duberstein National Bankruptcy Moot Court Competition. In 2017, Judge Hage was selected as a member of ABI's inaugural "40 Under 40" class. He received his bachelor's degree from James Madison College at Michigan State University, his J.D. from Loyola University Chicago School of Law and his LL.M. in bankruptcy from St. John's University School of Law.

Hon. Thomas M. Horan is U.S. Bankruptcy Judge for the District of Delaware in Wilmington, appointed in 2023. He previously practiced law in Wilmington for 18 years, focusing on financial restructuring and bankruptcy litigation. Most recently, Judge Horan had been a member of the Bankruptcy, Insolvency and Restructuring group at Cozen O'Connor, a national firm headquartered in Philadelphia with a Wilmington office. His national practice included representing debtors and of-

ficial unsecured creditor committees in complex chapter 11 proceedings, and he represented secured creditors and other parties in litigation. He also frequently provided opinion letters on commercial transactions and represented parties before the state's Court of Chancery and Superior Court. Last year, Judge Horan was named to *Lawdragon*'s list of the Top 500 U.S. bankruptcy and restructuring lawyers. He also serves on ABI's Board of Directors. Judge Horan received his B.A. in 1989 and his M.A. in 1992 from Fordham University, and his J.D. *cum laude* from St. John's University School of Law in 2002, where he was executive notes and comments editor for the *ABI Law Review*.

Christopher A. Jones is a managing partner of Whiteford Taylor & Preston, LLP's Falls Church, Va., office and serves on the firm's Executive Board. He focuses his practice in the insolvency area, regularly dealing with financial restructuring, distressed-asset transactions, business turnarounds and bankruptcy law, including related litigation. His experience includes representing all major constituencies in the distressed-business arena, including companies and their owners, directors and officers, ad hoc and official committees, trade creditors and vendors, and court-appointed fiduciaries. During his nearly 30 years in practice, Mr. Jones has worked with clients in a variety of industries, including commercial real estate, retail, automotive, government contracting, mortgage lending, consumer electronics, hospitality, convenience store, construction and electrical contracting. He has been involved in many of the "mega" chapter 11 cases filed in Virginia, including Paper Source Inc., Intelsat, SA, Le Tote Inc. (Lord & Taylor), Pier 1 Imports Inc., Guitar Center, Chinos Inc. (J Crew), Toys "R" Us, Gymboree, LandAmerica Financial Group, Circuit City Stores, RoomStore Inc. and Heilig-Meyers Corp. He also has represented bankruptcy trustees and liquidating agents in a variety of litigation matters. In addition to his work in the insolvency arena, Mr. Jones has trial experience in commercial litigation matters in federal court. He has been recognized by *Chambers and Partners* as a leading bankruptcy attorney in Virginia, and is listed in *Virginia Business Magazine*'s "Legal Elite – Virginia's Best Lawyers" and in *The Best Lawyers in America*. He also has been selected as a *Super Lawyer* in Virginia. Mr. Jones is AV-Rated by Martindale-Hubbell. He received his undergraduate degree in 1992 from Duke University and his J.D. in 1996 from the University of Richmond School of Law.

Hon. Christopher M. Lopez is a U.S. Bankruptcy Judge for the Southern District of Texas in Houston, appointed on Aug. 14, 2019. He previously was a member of the Business, Finance & Restructuring Group of Weil, Gotshal & Manges LLP and focused on representations ranging from top global corporations in mega-restructurings to middle-market debtor and creditor representations. Judge Lopez lectures across the country on bankruptcy issues. He also serves as an adjunct professor at Thurgood Marshall School of Law. Judge Lopez currently serves as a council member of the State Bar of Texas's Bankruptcy Law Section, an advisor to the State Bar of Texas Young Lawyers Committee, a member of the Nominations Committee for the National Conference of Bankruptcy Judges, and a member of the National Bankruptcy Conference. He received his B.A. in psychlogy in 1996 from the University of Houston, his M.A. in religion in 1999 from Yale Divinity School and his J.D. from the University of Texas School of Law in 2003.

Cynthia Romano, CTP is a senior managing director at FTI Consulting, Inc. in New York, and she has specialized in transformations, turnarounds and transactions that enhance liquidity, profitability and enterprise value for more than 25 years. Her industry experience spans health care, manufacturing, technology, energy and oil and gas, distribution, restaurants, professional services and nonprofit engagements. Partnering with CEO-level management, Ms. Romano helps companies transform their

bottom line to maximize value for owners, investors and other stakeholders. Her expertise includes liquidity management, profit improvement through operational restructuring, organizational and process redesign, capital-sourcing, and business and creditor workout and management. Ms. Romano has been recognized with multiple prestigious industry awards, including the 2021 Turnaround of the Year by Global M&A Network, the 2020 Turnaround and Transaction of the Year by the Turnaround Management Association, and the 2020 Out-of-Court Restructuring of the Year by Global M&A Network. In 2021, she was named one of the top women in asset-based lending by the *ABF Journal*. Ms. Romano is a frequent speaker for various industry associations on a wide range of topics and is regularly quoted in major news and business outlets, including Bloomberg, Debtwire, CFO.com, *Accounting Today* and *Modern Healthcare*. She received her B.A. in educational policy in 1993 and her M.B.A. in international management from the Massachusetts Institute of Technology Sloan School of Management in 2002.

Luis E. Rivera, II is the deputy chair of the Bankruptcy and Creditors' Rights practice group at GrayRobinson, P.A. in Fort Myers, Fla. He is experienced in counseling clients in business litigation, bankruptcy, creditors' rights and insolvency. A 2017 ABI "40 Under 40" honoree, Mr. Rivera serves as a trustee of Florida Gulf Coast University and a director of numerous community organizations, including the Middle District of Florida *Pro Se* Legal Assistance Clinic, Inc. and the Bankruptcy Law Education Series Foundation, Inc. Since 2010, he has served as a panel trustee for the Middle District of Florida. Mr. Rivera received his B.A. *magna cum laude* from Loyola University New Orleans, where he was an Ignatian Scholar, and his J.D. from Washington and Lee University School of Law, where he was editor-in-chief of the *Washington and Lee Journal of Civil Rights and Social Justice*.

Hon. Sage M. Sigler is a U.S. Bankruptcy Judge for the Northern District of Georgia in Atlanta, appointed in March 2018. She succeeded Hon. Mary Grace Diehl, for whom she clerked after graduating from law school. Prior to her appointment to the bench, Judge Sigler was a partner in Alston & Bird LLP's Bankruptcy Group. She is an active member of ABI's Board of Directors, NCBJ, IWIRC, TMA and the Bankruptcy Section of the Atlanta Bar Association, and she has been a volunteer presenter for the Credit Abuse Resistance Education (CARE) program. Judge Sigler was an honoree in ABI's inaugural class of "40 Under 40" in 2017, and she served on the program's steering committee from 2022-23, the publications committee in 2023 as the judicial chair for ABI's Southeast Bankruptcy Workshop in 2024. She received her B.A. in political science from the University of Florida in 2001 and her J.D. in 2006 from Emory University School of Law, where she was the executive symposium editor of the *Emory Bankruptcy Developments Journal*.

Andrew M. Simon is a managing director with Oxford Restructuring Advisors in Cincinnati and is an experienced restructuring advisor who has been consulting troubled companies and their stakeholders for more than 20 years. He has practiced both as an attorney and as a certified public accountant in bankruptcy cases and other insolvency proceedings for debtors and creditors. Mr. Simon has particular experience representing buyers and sellers of distressed assets, as well as troubled companies, lenders, indenture trustees and creditor groups in both § 363 transactions and out-of-court asset sales. He recently represented a secured lender group in the successful appointment of a receiver for the repayment of a health care group's $75 million loan. Additional recent engagements include advisory work to companies in the mining (three separate gold mining companies, including two publicly traded), oil and gas (E&P company with more than $2 billion in debt), environmental

services (privately held remediation company), food (multi-billion dollar cooperatively held beef and pork producer) and hospitality (privately held restaurant group) industries, among others. Mr. Simon received his B.B.A. in accountancy from the University of Notre Dame in 1998 and his J.D. in 2008 from Northwestern University Pritzker School of Law.