AMERICAN BANKRUPTCY INSTITUTE

New York City Bankruptcy Conference

CONCURRENT SESSION

Impacts of the Global Pandemic on Valuation: "An Invitation for a Fight"

Suzzanne Uhland, Moderator
Latham & Watkins

Ronen A. Bojmel
Guggenheim Securities, LLC

Kristopher M. Hansen
Paul Hastings, LLP

Marc J. Heimowitz
Coda Advisory Group

Mark P. Kronfeld
Province LLC

Hon. Jil Mazer-Marino
U.S. Bankruptcy Court (E.D.N.Y)

Robert J. Stark
Brown Rudnick LLP

Arthur J. Steinberg
King & Spalding

2022

Panel on Valuation in Volatile Markets

ABI New York City Bankruptcy Conference
June 10, 2022

Overview

- Valuation Basics
- Issues
  - Statutory Context for Valuation
  - Standards for Valuation
  - Timing for Valuation
  - Valuation Methods
  - Allocation of Value

Statutory contexts for valuation

- § 506(a)(1): An allowed claim of a creditor secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to setoff is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

- **Key Questions**:
  - What is the purpose of valuation?
  - What is the proposed disposition or use?

3

Statutory contexts for valuation

- **Early in a chapter 11 case:**
  - Determining whether a secured creditor is adequately protected under § 361 of the Bankruptcy Code because the creditor has an **"equity cushion**". The equity cushion is expressed as a percentage of the collateral's value.
    - Existence of an equity cushion, in and of itself, can be sufficient to constitute adequate protection. *See In re Fortune Smooth (U.S.) Ltd.*, No. 93-40907 (JLG) (Bankr. S.D.N.Y. July 6, 1993); *In re Mellor*, 734 F.2d 1396, 1400 (9th Cir. 1984).
    - "The bankruptcy court must necessarily (1) establish the value of the secured creditor's interest, (2) identify the risks to the secured creditor's value resulting from the debtor's request for the use of cash collateral, and (3) determine whether the debtor's adequate protection proposal protects value as nearly as possible against risks to that value consistent with the concept of indubitable equivalence." *In re Martin*, 761 F.2d 472, 477 (8th Cir. 1985).
    - "Case law has almost uniformly held that an equity cushion of 20% or more constitutes adequate protection … . Case law has almost as uniformly held that an equity cushion under 11% is insufficient to constitute adequate protection." *In re James River Assocs.*, 148 B.R. 790, 796 (E.D. Va. 1992)
  - Whether a junior creditor has value in property proposed to be sold free and clear of all liens under § 363.
    - E.g. *Ill. Dep't of Revenue v. Hanmi Bank*, 895 F.3d 465 (7th Cir. 2018): The court considered whether a junior creditor was entitled to adequate protection in connection with a § 363 sale where the senior lender was undersecured and therefore would not be paid in full. The Seventh Circuit assumed, without deciding, that the junior creditor's ability to pursue the purchaser by way of a successor liability claim was an interest entitled to adequate protection, but held that adequate protection was not required due to the failure of the junior creditor to satisfy its burden of providing evidence on the value of its interest.

4

Statutory contexts for valuation (cont'd)

- **Later in a chapter 11 case:**
  - Whether a secured creditor is recovering the value of its collateral for the purposes of a plan of reorganization
    - § 1129(b):
    - (1) Notwithstanding section 510(a) of this title, if all of the applicable requirements of subsection (a) of this section other than paragraph (8) are met with respect to a plan, the court, on request of the proponent of the plan, shall confirm the plan notwithstanding the requirements of such paragraph if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.
    - (2) For the purpose of this subsection, the condition that a plan be fair and equitable with respect to a class includes the following requirements:
      - (A) With respect to a class of secured claims, the plan provides—
        - (i)
          - (I) that the holders of such claims retain the liens securing such claims, whether the property subject to such liens is retained by the debtor or transferred to another entity, to the extent of the allowed amount of such claims; and
          - (II) that each holder of a claim of such class receive on account of such claim deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the effective date of the plan, of at least the value of such holder's interest in the estate's interest in such property;
        - (ii) for the sale, subject to section 363(k) of this title, of any property that is subject to the liens securing such claims, free and clear of such liens, with such liens to attach to the proceeds of such sale, and the treatment of such liens on proceeds under clause (i) or (iii) of this subparagraph; or
        - (iii) for the realization by such holders of the indubitable equivalent of such claims.

5

Valuation Standards

- ***Associates Commercial Corp. v. Rash* 520 U.S. 953 (1997).**
  - A debtor may retain possession and use of collateral while reducing the principal value of the secured debt to that collateral's present value. **This requires a valuation of the collateral at the time the bankruptcy plan is approved.**
  - The Supreme Court held in *Rash* that for the purposes of a cram down, the relevant valuation of a piece of collateral is not foreclosure value but rather the **replacement value**, i.e. the amount a similarly situated debtor would pay to obtain a similar asset.
  - Replacement value usually results in a higher valuation than a hypothetical foreclosure sale, so creditors have generally been satisfied with the *Rash* decision.
- ***In re Sunnyslope Housing Limited Partnership*, No. 12-17241 (9th Cir. May 26, 2017).**
  - In *Sunnyslope*, the Ninth Circuit dealt with a situation in which the foreclosure value exceeded replacement value.
  - Naturally, the creditor in question wanted to use the method that yielded the higher valuation, arguing that the point of a cram down plan is to provide the highest and best value for a creditor.
  - The court disagreed with the creditor, saying that to respect the *Rash* decision, property must be valued **in light of the debtor's continued use of the property**.

6

Timing for Valuation

- Common valuation questions:
  - What is the appropriate date for a valuation?
  - Does the date differ based on the purpose of the valuation?
  - How do courts deal with valuation in volatile markets?

Timing for Valuation – Adequate Protection

- Generally, if a business will continue (or be sold) as a going concern, going concern value is applied
- In *ResCap*, a valuation dispute centered on whether creditors' collateral should be valued according to foreclosure value in the hands of the creditor, or fair market value in the hands of the debtors. The court determined that fair market value was the more appropriate valuation method. *In re Residential Capital, LLC*, 501 B.R. 549 (Bankr. S.D.N.Y. 2013).
- The court's rationale is that "the proper valuation methodology must account for the proposed disposition of the collateral," thereby staying true to section 506(a) of the Bankruptcy Code. *Id at 594*.

Timing for Valuation

- In volatile markets, valuation and availability of capital can change materially between the petition date and effective date.
  - *In re Houston Regional Sports Network, L.P.*, 886 F.3d 523 (5th Cir. 2018) (holding that bankruptcy courts have flexibility in selecting the date on which to value collateral, "so long as the bankruptcy court takes into account the purpose of the valuation and the proposed use or disposition of the collateral at issue.").
  - The moving valuation target issue also becomes magnified when thinking about whether collateral should be valued based on foreclosure, liquidation, or going concern approach
  - A frequent related debate is whether a post-petition rise in enterprise value ("EV") is attributable to collateral or non-collateral assets (or put differently, is the positive change distributable value for secured or unsecured creditors)

9

Timing for Valuation - Plan

- The valuation date issue from *Houston Regional Sports* is a commonly discussed one.
- The flexibility referred to in that case is important, since the appropriate valuation date (e.g. deciding between petition date or confirmation date) varies on a case by case basis.
- While in certain situations, the petition date is the appropriate date at which to value a creditor's collateral, for plan confirmation purposes, the confirmation date is more appropriate for collateral that the debtor will retain for its post-confirmation business operations.

10

Timing for Valuation – *S-Tek*

- The Bankruptcy Court in the District of New Mexico issued an opinion regarding the valuation of a debtor's property that it planned to retain after confirmation of the plan of reorganization. *See In re S-Tek 1, LLC*, (Bankr. D. N.M. Dec. 9, 2021).
- The case was filed under Subchapter V of the Bankruptcy Code by S-Tek on December 2, 2020.
- Surv-Tek was a secured creditor whose claim was secured by property of S-Tek. In its schedules, S-Tek listed the debt to Surv-Tek as approximately $1.5 million and the value of the collateral securing the debt as $350,000.
- S-Tek filed a plan on March 2, 2021 (and a plan modification on October 26, 2021), which contemplated that it would retain Surv-Tek's collateral, and pay Surv-Tek's claim in deferred cash payments.

11

Timing for Valuation – *S-Tek* (cont'd)

- To settle the uncertainty over how Surv-Tek's collateral should be valued, the court relied on the text of secion 506(a)(1) (which states that valuation must be done in light of the purpose of the valuation and proposed use of collateral), and *Houston Regional Sports*.
- "A per se ruling requiring valuation as of the petition date does not adequately take into account the last sentence of § 506(a)(1)…the amount of the allowed claim determined under § 502(b) is fixed as of the petition date, whereas the value of the collateral securing the claim determined under § 506(a) can vary over the life of the case depending on the purpose of the valuation and the proposed use or disposition of the collateral." *S-Tek*, p.3.

12

Valuation Methods – "Comps"

- Comparable Company
  - Values a company based on the market, rather than measuring intrinsic value
  - Estimates value by analyzing similar publicly traded companies
- Comparable Transaction (similar to Comparable Company)
  - Value is based on purchase price of comparable companies in recent acquisitions
  - Purchase priced expressed as a multiple of a performance metric (usually EBITDA); multiple in similar transactions is used to determine a multiple for the debtor
  - Not as commonly used as comparable company method because these types of "comps" are harder to find.
- Pros and cons of Comps methods:
  - **Pros:** easy to use and understand
  - **Cons**: unclear what should count as a "comparable" company; hard to use if debtor has little to no earnings; market may not be accurate; unclear what time period should be used to find comps.
  - **Note**: Valuation methodology, timing, and approach can differ depending on contexts such as adequate protection, collateral valuation, feasibility, best interest test, cramdown, avoidance action, solvency analysis for PPI, etc.

13

Valuation Methods – Discounted Cash Flow (DCF)

- DCF rests on the idea of present value – current value of an asset based on the expected future cash flows it generates.
- Debtor's projected cash flows for some period of time are discounted to present value using weighted average cost of capital (WACC).
  - Cash flows are usually based on EBITDA
  - WACC is a number that reflects the cost of funding, including both debt and equity.
  - Also takes into account "terminal value", i.e. cash flows that occur after the projection period, into perpetuity. Terminal value is also discounted to present value using WACC.
  - Terminal value plus present value of projection period cash flows equals **total enterprise value (TEV).**
- Pros and Cons of DCF
  - **Pros:** calculations are more specific to the company being valued; not vulnerable to inaccuracy of comparable valuations in the market
  - **Cons**: projections are typically prepared by management; management may be more tempted to give projections beneficial to largest group of post-emergence stakeholders

14

Allocation of Value

- Allocation of EV between secured and unsecured creditors
  - EV may be allocated between secured and unsecured creditors within a corporate entity. This is more complex when there are important assets (e.g. IP, regulatory licenses) that are outside the collateral package and not "discrete" but relate to the going concern.
- Allocation of EV among different debtors/affiliates, corporate entities
  - The same issues exist when key related assets sit at different corporate entities.
  - This becomes an issue for many situations:
    - Third party bids for a going concern
    - Credit bid by a creditor for entire company where lien doesn't cover all assets
    - 1129(a) and 1129(b)
    - Adequate protection
    - 506(b) and postpetition interest
    - Solvent debtor determinations and PPI for unsecureds
    - Deficiency claim calculation
    - Fraudulent transfer insolvency analysis
  - Multiple debtor value allocation has arisen in cases like *ResCap, Nortel, Nine West, American Airlines, Adelphia*.

15

Allocation of Value

Value allocation statutes

- § 506(a): secured creditor's claim is the extent of its interest in the estate's interest in property. Value is determined in light of the purpose.
- Adequate protection: a condition to (i) maintain the automatic stay, (ii) use, sell, or lease property, and (iii) provide postpetition secured interests in prepetition secured creditor's collateral (priming).
- § 362(k): secured creditor may credit bid on its collateral.
- § 1111(b)(2): converts the secured creditor's entire claim, including its deficiency, into a secured claim.
- § 1129(b)(2)(A): permits confirmation over secured creditor's objection provided the secured creditor's liens are preserved, is afforded the right to credit bid in a plan sale, or receives indubitable equivalent.

Purpose

- Provides flexibility in determining valuation time and method in light of the proposed use or disposition of the secured creditor's collateral.
- A balance between the debtor's ability to use a secured creditor's collateral and protecting the secured creditor in light of inability to enforce remedies. Protects against market decline during the bankruptcy.
- Protects against the risk that collateral is sold at an artificially low price.
- A secured creditor's lien is not stripped down to an artificially low valuation, especially when collateral value is expected to rise over time.
- Permits the debtor to retain collateral needed for reorganization or extract its value, provided the secured creditor is afforded bargained-for protections.

16

Tools for re-allocating value (in a plan)

- Misalignment of incentives in the modern chapter 11 case:
  - Secured creditors may assert that they are the fulcrum security and that value does not clear their debt.
  - Secured creditors may be financing a 363 sale in which they are a credit bidder
    - Stalking horse bidders for a 363 sale have an interest in a fast process.
  - Junior creditors and other stakeholders will want a longer process.
    - Is there a conflict of interest with regard to maximizing value?

17

Value Allocation

- Unsecured and junior creditors will argue that they should be compensated for redemption option value…the possibility of future appreciation.
  - Option value refers to an amount being paid to a creditor in a bankruptcy that reflects the value of a hypothetical option to purchase the debtor's business.
    - Options are typically priced using the **Black-Scholes model**.
    - Black-Scholes uses 5 inputs: the option's strike price, the current stock price, the time to expiration, the risk-free rate, and the volatility.
    - While it is not perfect and relies on a number of assumptions, the model uses the 5 inputs to indicate a rational price for the option in question.
  - The effective date of a plan of reorganization crystallizes the value of the debtor, and accordingly forecloses the possibility that certain "out of the money" stakeholders could obtain a recovery from the appreciation in firm value that could result from the firm's continuance as a going concern.
    - Such stakeholders may lose their rights against the estate and receive no value on account of their claims simply because of the timing of the valuation of the enterprise in the chapter 11 case

18

Valuation case study – Tailored Brands

- On August 2, 2020, Tailored Brands, the owner of Men's Wearhouse and Jos. A. Bank, filed for chapter 11 as a result of both the COVID-19 pandemic's impact on brick and mortar retail and the more longstanding disruptions to the retain industry.
- Before, the pandemic, the business had already been struggling with competition from other brands and a shift to e-commerce away from brick and mortar, but these problems were seriously exacerbated by the COVID-19 pandemic lockdowns, which especially harmed apparel retailers, whose businesses were deemed "non-essential" and had to close early in the pandemic.
- The company announced before its filing that it would reduce its workforce by 20% and shut up to 500 stores.
- On October 7, 2020, Tailored Brands released projections prepared by management, which anticipated negative EBITDA in 2020 and positive EBITDA in 2021.
- These projections took into account the impact of COVID-19, and were thus lower than historical earnings in 2019, as well as projected earnings in 2022 and beyond.

19

Valuation case study – Chesapeake Energy

- On June 28, 2020, Chesapeake Energy Corporation ("Chesapeake") filed for chapter 11. Chesapeake is an Oklahoma-based exploration and production company that drills for shale oil and natural gas in the US.
  - Like many of its competitors, Chesapeake was badly harmed by the Russia-Saudi oil price war that drove down oil prices in early 2020, immediately followed by the COVID-19 lockdowns and halting of travel.
- Chesapeake's business was very capital-intensive and by the time it filed for chapter 11, it had funded debt obligations of $9.169 billion.
- During the chapter 11 case, the debtors filed a plan that initially valued Chesapeake at $3.25 billion. They subsequently raised that estimate to between $3.5 billion and $4.7 billion.
- Management's projections were for the next 50 years, but were based on oil prices at the time the projections were prepared, resulting in a higher discount rate being applied to earnings long into the future.
  - Unsecured creditors of Chesapeake argued that this valuation was too low, saying that it did not take into account rebounding energy prices and recent oil and gas mergers, which they said put Chesapeake's value at $7.1 billion.
- During a confirmation trial that lasted one month, Judge Jones rejected the valuations of both the debtors and the unsecured creditors, eventually settling on a valuation of $5.129 billion, which was the valuation used in the confirmed plan of reorganization.

20

Valuation case study - Hertz

- On May 22, 2020, Hertz Corporation ("Hertz" or the "HTZ"), a leading global vehicle rental company, filed for chapter 11 as a result of the COVID-19 pandemic's impact on travel demand.
- With an extensive network of on-airport and off-airport rental locations in the US and all major European markets, Hertz historically benefitted from favorable long-term travel industry trends.
  - Strong growth and performance trajectory prior to 2020 economic disruption.
- At the onset of the COVID-19 pandemic, lockdowns, border closures and mandatory quarantines sent shockwaves throughout the travel industry as both business and leisure travel came to a halt.
- Yet, as the Chapter 11 case continued, Hertz benefitted from recovering rental car demand, increasing used vehicle demand and a shift away from public transit use.
  - In addition to rental services, Hertz is one of the largest used car dealers in the U.S.
- The initial Plan of Reorganization provided for a 70% cash recovery to unsecured claims and no recovery to common equity holders. The ultimate Plan provided for 100% cash recovery to unsecured claims and meaningful recovery to common equity.

Market Implied Enterprise Value ($BN)

21

ABI Commission Proposal - ROV

- ABI Commission recommended that section 1129(b) be amended to provide that, subject to certain other conditions:
  - A chapter 11 plan may be confirmed over the non-acceptance of the class immediately junior to the "fulcrum" class if and only if such immediately junior class receives not less than the "redemption option value" (as defined below), if any, attributable to such class, and
  - A chapter 11 plan may be confirmed over the non-acceptance of a senior class of creditors, even if the senior class is not paid in full within the meaning of the absolute priority rule, if the plan's deviation from the absolute priority rule treatment of the senior class is solely as a result of the distribution to an immediately junior class of the redemption option value, if any, attributable to such class.

Term		
Redemption Option Value	The value of a hypothetical option to purchase the entire firm with an exercise price equal to the redemption price (as defined below) and a duration equal to the redemption period (as defined below)	• May be in the form of cash, debt, stock, warrants, or other consideration • Form of consideration subject to the election of the senior class being required to give up such value
Redemption Price	The full face amount of the claims of the senior class, including any unsecured deficiency claim, plus any interest at the non-default contract rate, plus allowable fees and expenses unpaid by the debtor, in each case accruing through the hypothetical date of exercise of the redemption option	• Strike price of the option determined such that the senior class or classes must be repaid in full before any redemption option value exists
Redemption Period	The third anniversary of the petition date	• Assumed to be a reasonable time period over which most economic cycles, industry events, operational issues, etc. may be resolved

22

Faculty

Ronen A. Bojmel is a senior managing director and head of Restructuring at Guggenheim Securities, LLC in New York and has more than 25 years of investment banking and management experience. He has advised a wide variety of domestic and international clients in out-of-court and chapter 11 restructurings, recapitalizations, mergers and acquisitions, leveraged buyouts and capital-raising activities. Mr. Bojmel has been recognized repeatedly by the Turnaround Management Association (TMA) for his achievements as lead banker in designing and orchestrating successful restructuring transactions. Since 2004, Mr. Bojmel has received TMA's Transaction of the Year Award four times in the Mid-Sized Company, Large Company and Mega Company categories for the Grupo TMM (2005), Simmons Bedding (2010), Neff Corp. (2011) and General Growth Properties (2011, "GGP") transactions. GGP was also named "Real Estate Deal of the Year" by *Investment Dealers' Digest* in 2009. As the lead banker in GGP, Mr. Bojmel architected a landmark CMBS restructuring agreement with a group of the nation's most prominent special servicers and a multi-staged exit strategy from chapter 11. Additionally, as the lead banker representing Vulcan Capital in Charter Communication's pre-arranged chapter 11 case, he designed the strategy to reinstate Charter's $8 billion credit facility, resulting in billions of dollars of value creation to Charter's junior stakeholders, including a very favorable outcome for Vulcan Capital. Previously, Mr. Bojmel was a partner and managing director at Miller Buckfire and a vice president in the financial restructuring group of Dresdner Kleinwort Wasserstein and its predecessor, Wasserstein Perella & Co. His experience in providing financial advisory services to distressed companies and their stakeholders, inside and outside of chapter 11. Prior to his investment banking career, Mr. Bojmel worked in aviation security operations under the Consul General of the Government of Israel while simultaneously obtaining his B.B.A. in finance *magna cum laude* from Hofstra University. He also served as a field officer in the Israeli Defense Forces and is currently the chairman of the board of Circ MedTech, a medical device company committed to preventing the spread of AIDS in Africa. He received his B.B.A. *summa cum laude* from Hofstra University.

Kristopher M. Hansen is co-chair of the Financial Restructuring practice at Paul Hastings LLP in New York. Throughout his career, he has guided clients through proceedings in bankruptcy and appellate courts across the country, as well as through many out-of-court situations. Mr. Hansen helps sophisticated investors in distressed credit formulate and execute complex strategies involving mergers and acquisitions, financing and litigation in and outside of actual bankruptcy. He represents official creditors' committees in complex corporate chapter 11 cases, and corporate debtors in connection with formal bankruptcy proceedings and informal negotiations to restructure their debt obligations. Mr. Hansen is admitted to practice before the courts of the State of New York, the Southern and Eastern Districts of New York, the U.S. Courts of Appeals for the Second and Third Circuits, and the U.S. Supreme Court. He frequently lectures and has published articles on the distressed marketplace. Mr. Hansen received both his B.S. in finance in 1992 and his J.D. in 1995 from Fordham University.

Marc J. Heimowitz, CFA is the founder and managing member of Coda Advisory Group LLC in New York, where he focuses on providing advice to and advocating for parties-in-interest involved in restructurings and special situations, and acting as an unconflicted professional fiduciary for liti-

gation and liquidation trusts. Prior to founding Coda, Mr. Heimowitz was a portfolio manager for Claren Road Asset Management, a long-short credit hedge fund owned by The Carlyle Group. Prior to Claren Road, he was a managing director, head of Credit Special Situations, and co-head of the Distressed Trading Desk for Citigroup Global Capital Markets. Mr. Heimowitz has nearly 25 years of buy-side and sell-side experience managing and analyzing investments related to companies in stress or reorganization, including bankruptcy reorganizations and liquidations, out-of-court restructurings, rescue financings and distressed acquisitions. He has steered multiple creditor committees and actively advanced or opposed the interests of restructuring constituencies on behalf of institutional investors, debtors, bank groups, securityholders, broker-dealers and underwriters. In his personal capacity, Mr. Heimowitz also acts as independent board director for multiple businesses operating in diverse sectors. He is an advisory board member of ABI's New York City Bankruptcy Conference and a founding advisory board member of the University of Pennsylvania Institute for Restructuring Studies. Mr. Heimowitz received his B.S.B.A. in finance with high honors from the University of Florida and his J.D. from Columbia University School of Law in 1993, where he was a Harlan Fiske Stone Scholar.

Mark P. Kronfeld is a managing director at Province, LLC in New York and has over 27 years of experience as a bankruptcy lawyer, litigator, distressed investor, restructuring advisor and professor. He has led hundreds of successful restructurings, workouts and distressed transactions, and has significant expertise in high-stakes litigation and negotiations, investigations, corporate governance and investor activism. Mr. Kronfeld focuses on trustee and fiduciary services (*e.g.*, litigation trustee, independent director, special committees, examiner, etc.), investigations, litigation services, restructuring and expert testimony. He has experience in restructuring and distressed investing across the capital structure across a wide range of industries and jurisdictions. Mr. Kronfeld has led numerous ad hoc and official creditor committees in corporate, municipal and sovereign restructurings around the world. He has also been involved in numerous activist situations and has led many litigation trusts. Most recently, Mr. Kronfeld was a senior executive at BlackRock, where he was the global head of Restructuring and served on BlackRock's Global Credit Oversight Committee, where he was responsible for overseeing restructurings across the platform as well as related governance, litigation, credit-monitoring and risk functions. He was also as a senior member of the Office of the CIO, where he managed various U.S. special situations funds and credit mandates, and he led BlackRock's internal credit training programs, as well as external training programs for such clients as foreign central banks, pension funds and sovereign wealth funds. Prior to Blackrock, Mr. Kronfeld was a portfolio manager at Plymouth Lane Capital, a managing director at BlueMountain Capital, a partner at Owl Creek Asset Management and a senior analyst at Aurelius Capital. Before his career in finance, he was a bankruptcy attorney and litigator, representing debtors, creditors, trustees and boards in complex chapter 11 cases. As a litigator, he handled a wide variety of commercial and bankruptcy litigation. He also served as a prosecutor in New York City, where he was a member of the elite Investigations Division and prosecuted cases involving complex white-collar crime, fraud, money laundering, corruption, organized crime and murder, achieving a 100% jury trial conviction rate. Mr. Kronfeld is a frequent lecturer, panelist and published author on corporate governance, distressed investing, litigation, restructuring and the credit markets. He also is a professor at NYU Stern, where he co-teaches Corporate Bankruptcy & Reorganization, and he is a lecturer at Columbia Business School, where he teaches Distressed Value Investing. He was also a bankruptcy law professor at Boston University School of Law and has guest lectured at Wharton, Duke, Yale, UVA and Oxford. Mr. Kronfeld is an active member of the Turnaround Management Association and ABI,

for which he served as a member of the advisory committee for its Commission to Study the Reform of Chapter 11, which submitted its 2015 Report to the U.S. Congress. He 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. Jil Mazer-Marino is a U.S. Bankruptcy Judge for the Eastern District of New York in Brooklyn, sworn in on Oct. 23, 2020. She previously was a partner at Cullen and Dykman LLP's Bankruptcy and Creditors' rights department, where her practice was nearly entirely bankruptcy-focused. Judge Mazer-Marino has chapter 11 experience representing debtors, creditors and creditor committees in chapter 11 business reorganizations. She also served as a chapter 7 panel trustee for the Southern District of New York for more than 10 years. Before joining Cullen and Dykman in 2019, Judge Mazer-Marino practiced with Meyer, Suozzi, English & Klein, P.C. from 2008-19, Rosen Slome Marder LLP from 2003-08 and Willkie Farr & Gallagher LLP from 1991-99. She also clerked for former EDNY Chief Bankruptcy Judge Conrad B. Duberstein. Judge Mazer-Marino received her undergraduate degree from the State University of New York at Albany and her J.D. from St. John's University School of Law.

Robert J. Stark is a partner with Brown Rudnick LLP in New York and the practice group leader for the firm's Bankruptcy & Corporate Restructuring Practice Group in the U.S. He leads the firm in some of the largest and most important chapter 11 cases in the U.S., many of which often require contests over the value of the bankruptcy estates, complex avoidance or other bankruptcy-related litigation, a change in the case dynamic and philosophy, or arguments toward a change in the case law. Mr. Stark represents debtors/borrowers, secured and unsecured creditors, official creditor/equity committees, and other significant parties-in-interest in large corporate insolvency matters. He has been recognized and profiled by numerous directories and publications, including *Chambers Global*, *Chambers USA*, *The Legal 500 US*, *The Best Lawyers in America*, *Benchmark Litigation*, *Law360*, *Turnaround & Workouts*, *Global M&A Network*, *IFLR1000*, *Lawdragon*, *Who's Who Legal*, *Super Lawyers*, *PLC Which Lawyer*, *National Law Journal* and *Bloomberg/Business Week*. In addition to his case work and many recognitions, he is a contributing editor of *Collier on Bankruptcy* (LexisNexis 2020) and was the lead editor of two other legal treatises, *Contested Valuation in Corporate Bankruptcy* (LexisNexis 2011) and *Admitting Expert Valuation Evidence Before the U.S. Bankruptcy Courts* (ABI 2017). He wrote or co-wrote articles appearing in, among other academic periodicals, the *American Bankruptcy Law Journal*, *Business Lawyer*, *California Law Review* and *Journal of Corporation Law*, that have been quoted/cited in trial and appellate court decisions and in the published writings of leading legal scholars. His most recent law review article, "Bankruptcy Hardball," was selected by law school faculty around the country as among the "Top 10 Corporate and Securities Articles of 2020" (announced in the *Corporate Practice Commentator*). He also has guest-lectured on restructuring topics at numerous seminars and graduate schools around the country. Mr. Stark is admitted to the Bars of New York and New Jersey, the U.S. District Courts for the Southern and Eastern Districts of New York, the District of New Jersey and the Eastern District of Michigan, and the U.S. Court of Appeals for the Third Circuit. He received his B.A. in 1992 from Lafayette College and his J.D. in 1995 from Vanderbilt University Law School.

Arthur J. Steinberg is a senior financial restructuring partner in the New York office of King & Spalding LLP. In his 42 years of practice, he has represented a broad range of clients, including examiners, trustees, corporate monitors, debtors, creditors' committees, secured and unsecured creditors' groups/individuals, distressed investors and asset-buyers, and parties to bankruptcy-related litigation. He also has acted as a receiver and Investment Company Act trustee for failed hedge funds and investment advisors. Mr. Steinberg has participated in many of the largest bankruptcy cases, and played an important role in forging a compromise among the key creditor constituencies. Listed in *Chambers USA* and *New York's Best Lawyers*, he is a frequent lecturer and speaker on a variety of bankruptcy issues. Mr. Steinberg received his B.A. in economics *cum laude* from Columbia University and his J.D. from New York University School of Law, where he was elected to the Order of the Coif.

Suzzanne Uhland is a partner in the New York office of Latham & Watkins and represents companies, creditors and investors in chapter 11 reorganizations and out-of-court restructurings. She has an established track record that includes advising parties to § 363(b) sales and other types of distressed transactions. Ms. Uhland is experienced in real estate, energy, technology and municipal financings and restructurings. Her practice also includes international insolvencies and debt restructurings. Ms. Uhland regularly represents debtors-in-possession, creditors and DIP lenders in chapter 11 cases of public and private companies, businesses in connection with out-of-court restructurings and debt renegotiations, private-equity and hedge fund clients in distressed investments and portfolio company restructurings, and financial institutions and public and private companies in connection with credit financing transactions. In addition, she has represented licensors and licensees of intellectual property in connection with preserving or acquiring intellectual property rights in distressed situations. Ms. Uhland has been listed in *Benchmark Litigation* as a Local Litigation Star for Bankruptcy (2019-21) and a National Litigation Star (2021), and in *Lawdragon* as one of the 500 Leading Global & Insolvency Lawyers (2020), as well as in *Chambers USA* (2019). She also received the Global M&A Network's Top USA Woman Dealmakers Award in 2019 and has been listed in *The Best Lawyers in America* for 2020 in Bankruptcy & Creditor/Debtor Rights/Insolvency & Reorganization Law. Ms. Uhland received her A.B. in 1984 with distinction and Phi Beta Kappa, and her M.A. in 1986, from Stanford University, and her J.D. from Yale University in 1988, where she was co-editor-in-chief of the *Yale Journal on Regulation*.