AMERICAN BANKRUPTCY INSTITUTE

VALCON 2024

Industry Overviews

Retail

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2024

Challenges and Opportunities Facing Retail

Overview

- Despite a 40-year inflationary high in June 2022 and 11 Federal Reserve rate hikes by July 2023, consumers have continued their spending binge, surprising analysts' conventional wisdom
- Households have funded consumption through increased wages, tapping savings, and/or accumulating debt
- Outlook continues to remain broadly uncertain, with trends reflecting a shift in consumer tastes away from discretionary items and towards discount retailers

Challenges and Opportunities Facing Retail (cont.)

Tailwinds

Consumer spending resilience: Despite high debt, consumer spending remains resilient, marked by record-breaking participation during Black Friday-Cyber Monday and a 7.3% YoY increase in retail sales

Improved inventory management: Retail inventories show significant improvement, with a 1.6% YoY reduction in Q3 2023, contributing to positive revenue growth and improved profit margins

Shipping cost relief: Container shipping costs from Asia to US have decreased by 90% in 2023 compared to early 2022, providing relief to retailers

Economic and job market positivity: The labor market is expected to remain stable in 2024, with resilient but potentially slower job growth compared to previous years. A stable job market will likely help maintain spending levels

Challenges and Opportunities Facing Retail (cont.)

Headwinds

Capital markets and finance: Bankers' reluctance in syndication for debt securities poses challenges leading to higher financing costs for retailers. Additionally, increases in interest rates have exposed many companies with floating rate capital structures to significant default risk

Consumer financial strain: Household debt increased by 4.8% YoY. Consumers face a cost-of-living squeeze, with a 20% increase in rent, 25% rise in groceries and electricity rates since January 2020

Weight-loss drugs (GPL-1): Prescription volumes for these drugs surged by 300% between early 2020 and late 2022, impacting consumers' lifestyles, including shopping habits, with grocers reporting declines in food sales

Post-Covid Uncertainty: The COVID-19 pandemic brought volatility to the retail space through forced shutdowns followed by increased demand from stimulus checks. The return to normalcy elevates uncertainty regarding the retail landscape's recovery in a post-COVID environment. For instance, many retailers increased headcount and cost structure and may face issues restructuring operations amid slowing demand growth

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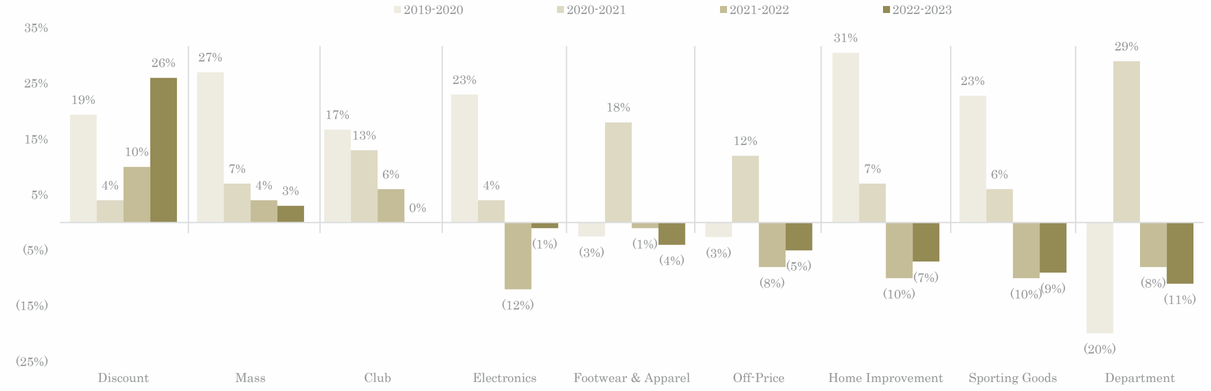
Challenges and Opportunities Facing Retail (cont.)

YoY Retail Growth by Sector



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Valuation Considerations Facing Retailers in Distress

Whether in Chapter 11 or out-of-court, stressed or distressed retailers need to be analyzed on

(i) a going concern basis (with or without footprint reconfiguration if in Chapter 11) and

(ii) a liquidation or piecemeal valuation

Valuation Considerations Facing Retailers in Distress (cont.)

Going-Concern

- Going concern valuation utilizes typical valuation methodologies such as the capitalization of earnings, cash flow or revenue or a discounted cash flow with appropriate risk-adjusted discount rates
  - Impact of changes to footprint could have material impacts
  - Excess assets or other assets need to be included, which for retailers can include:
    - Excess inventory;
    - Owned land or real estate (stores or distribution centers);
    - Below market leasehold assets; and
    - IP related to trademarks and licenses
- Multiple Selection – cyclicality of retailers results in multiple movements; peak multiples; trough multiples or average multiples throughout a cycle or historic cycle
- Depending on segment, comp store sales and average ticket price can be strong leading indicators of upcoming continued negative performance trends, which needs to be reviewed in order to make sure the projections appropriately reflect these trends

Valuation Considerations Facing Retailers in Distress (cont.)

Liquidation / Piecemeal

- In evaluating retailers which are stressed or distressed, a liquidation or piecemeal valuation must also be performed
- The timing of the liquidation (time of year and duration) must be carefully considered
- A proper assessment of the costs to liquidate is also a key element which can influence the result
  - Key asset categories to review are:
  - Inventory – Categories and location
  - Accounts Receivable – Collectability and potential offsets depending on how remaining orders are delivered
  - IP, Brands, Trade Names & Licenses – Transferability and ability to use for other purposes
- Real Estate / Leaseholds – Often need outside services to assess value vs. market and value for other uses. Value can be significantly higher if a cluster or group of leases / locations in a specific area can be marketed together
  - Key liabilities to assess in a liquidation context are:
  - Has lease been assumed in Chapter 11 and liquidation will require rejecting it, resulting in an administrative claim
    - Costs to liquidate:
    - Employee / severance costs
    - WARN act payments
    - Gift cards / returns
    - Wind down costs
    - Broker / liquidator fees

Valuation Considerations Facing Retailers in Distress (cont.)

- In most retail restructurings, lenders achieve greater recovery value through reorganization rather than liquidation of assets, given that retailers generally have limited hard assets
  - Inventory comprises a retailer's most valuable asset and typically serves as collateral for asset-based credit facilities
  - Intellectual property (including brands, trademarks, customer information, domain names, etc.) is also typically a valuable asset for retailers due to high consumer brand awareness/recognition; as a result, retailers are frequently able to raise significant amounts of funded debt using IP assets as collateral

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Valuation Considerations Facing Retailers in Distress (cont.)

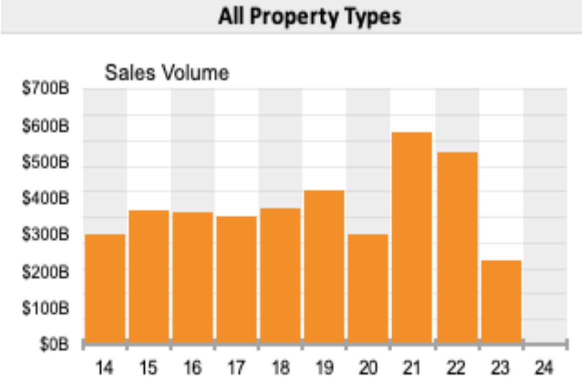
- Real estate assets are generally not a meaningful driver of value for retail companies as stores are typically leased unless the leased store base has significant remaining term and options or there are large real estate owned portfolios
  - In the Kmart restructuring (the company filed Chapter 11 in 2002 and emerged in 2003), Kmart was able to generate substantial cash proceeds from real estate transactions post-emergence given its valuable property portfolio, which was comprised of thousands of owned and leased store locations with extremely favorable lease terms
    - While fresh start accounting rules had required Kmart to record the value of its property and equipment at approximately $10mm upon emergence in 2003, the subsequent sales of 128 stores to Home Depot and Sears in 2004 for proceeds of $1.6bn led analysts and investors to project the actual value of Kmart's real estate portfolio to be in excess of $18bn
  - In May 2013 and again in 2016, J.C. Penney used its substantial owned real estate portfolio as collateral to issue a term loan, which provided the company with necessary liquidity to fund its ongoing transformation strategies. This was the central theme in the restructuring, which split the business into an OpCo and a PropCo
  - J.C. Penney was one of many retail stores impacted by the COVID-19 pandemic, filing chapter 11 bankruptcy on May 15, 2020. Neiman Marcus, J. Crew, Brooks Brothers, Forever 21, and Lucky Brands also filed for bankruptcy in 2020
    - J.C. Penney was able to recoup value through its brick-and-mortar stores. Its assets were split into two, with its remaining operating unit sold to Simon Property and Brookfield Asset Management, with its valuable real estate portfolio sold to a REIT formed by certain of its existing secured lien holders. The value of J.C. Penney's real estate was a key factor in the company being rescued from bankruptcy. The reorganization saved roughly 60,000 jobs and restructured over $6 billion in claims
  - NOL: Many retailers with sustained loses over long periods may build up substantial Net Operating Losses, that may also have significant value to potential purchasers and/or strategic investors as part of a restructuring plan

Valuation Considerations Facing Retailers in Distress (cont.)

- Chapter 11 protection affords a distressed retailer the valuable opportunity to eliminate unfavorable arrangements and resolve business inefficiencies by allowing the debtor to cancel contracts, renegotiate lease terms and implement other operational improvements without the same penalties or recourse that would otherwise apply
- Past bankruptcy cases for large retailers have had common characteristics, and most retailers in Chapter 11 tend to deal with similar contractual, structural and operational issues

Commercial Real Estate Industry Overview

Enormous Sales Volume Drop-Off



- Sales volume rebounded +11 following '20 Covid Shut down Era
- Trailing 12 months '23 down 60% from '21 high
- Raising interest rates + declining values given higher CapRate requirements = Limited trade activity

Source: CoStar

Industrial: Remains Strong

- Sales volume fell off sharply in 2023 following post-covid surges
- Price/SF has increased 32% from 2020 and is holding
- CapRates fell sharply during Covid but rebounded to historical levels due to new construction
- Demand for industrial space remains strong with ~5% vacancy nationwide

Source: CoStar

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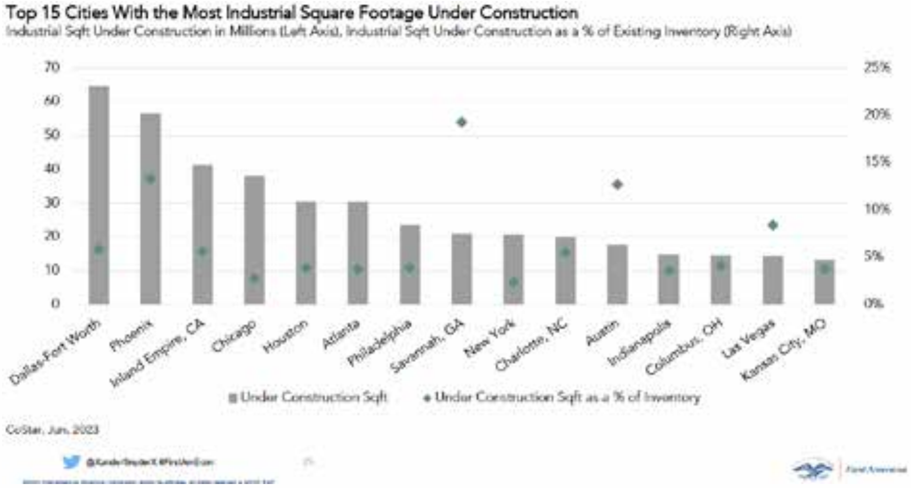
Industrial Growth Markets



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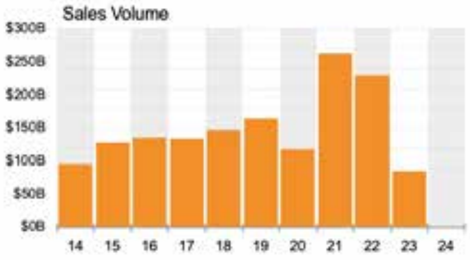
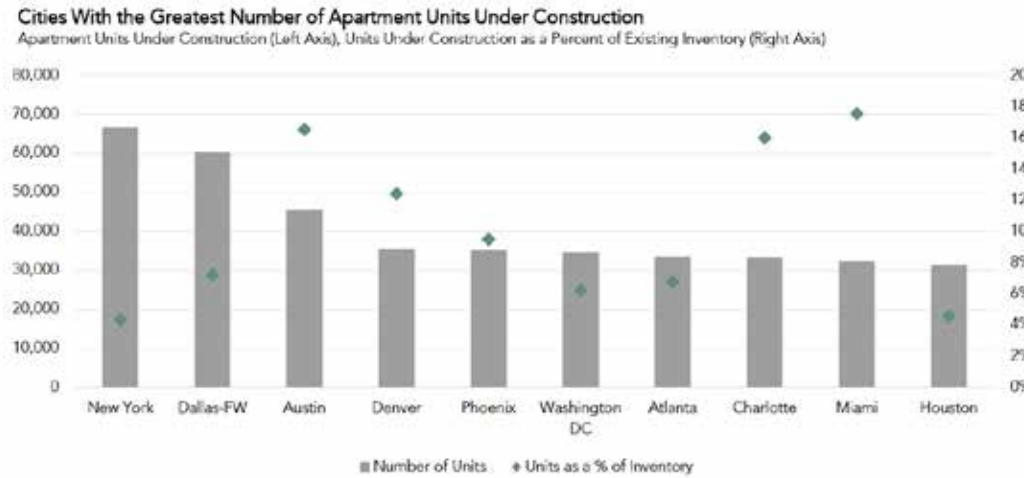
Multi-Family: New Construction Price Pressure



- Sales volume off 67% from 2021 peak
- Demand increased during covid, leading to new construction, particularly in the suburbs
- Surplus in supply placing downward pressure on price/unit sales.

Source: CoStar

Migration to Warmer Weather, Lower Taxes



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Retail: General Retail Benefitting from Consumer Spending

Source: CoStar

Axios: *"The Retail Apocalypse Did Not Happen"*
https://www.axios.com/2024/01/31/cre-retail-commercial-real-estate-crash-vacancy

- General Retail: Wal-Mart, Target, Home Depot, Kroger, Costco
- Overall CRE sales volume -45% from '22 peak
- Strong consumer spending has boosted sector making investments attractive
- Avg. CapRate 6.8% - Sector beating trends as limited trades favor cash-rich investors (i.e. 1031 Exchange) for credit tenant NNN investments and hopes rental rates continue to rise
- **Overall Vacancy ~5%**

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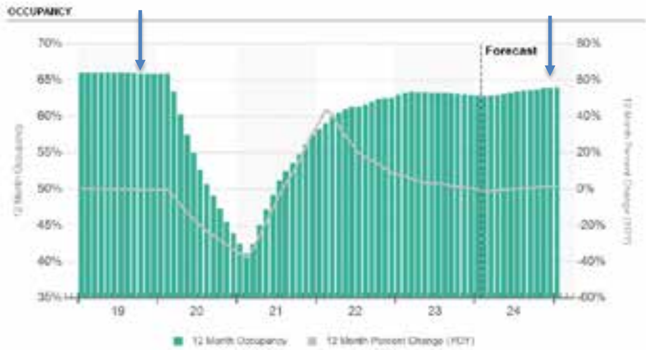
Hospitality: Recovery Stalled + Cost Increases

12 Mo Occupancy	12 Mo ADR	12 Mo RevPAR	12 Mo Supply	12 Mo Demand
62.9%	$156.05	$98.11	2B	1.3B



- Pre-Covid Occupancy ~66%
- Drop to 63% Occupancy = 60 mil room nights or **-$9.3B in room revenue** at $156 ADR
- EBTIDA margins squeezed by higher operating costs

Source: CoStar

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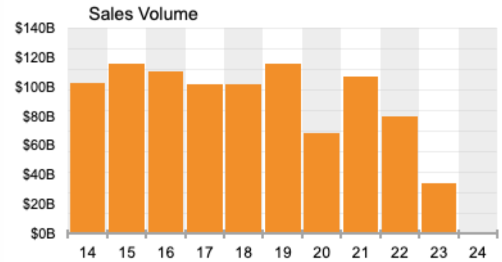
Office: WFH Has Decimated Demand for Space



Source: CoStar

- Sales volume down 67% from $117B in '19 to $35B in '23
- Remote work has dramatically reduced overall demand for office space
- Kastle Barometer data shows occupancy hovering around 52%
- Hybrid working model has taken hold, Wednesday occupancy risen to 61%
- Trades are quality assets so CapRates holding at 8.3%

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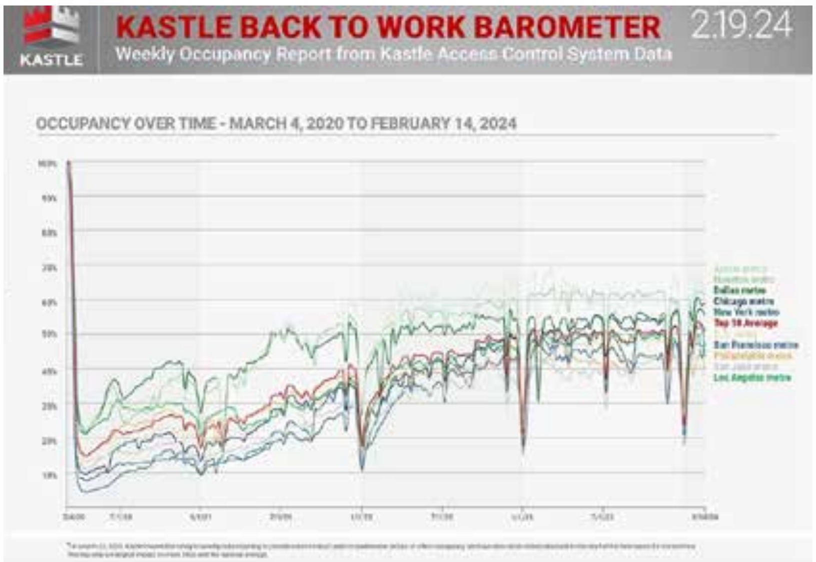
Office Buildings: In-Office Attendance Trends



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Office Buildings – Green Street's Sector-Level Indexes

Commercial Property Price Index® – February 6, 2024

Green Street CPPI®: Sector-Level Indexes

Green Street

	Index Value	Change in Commercial Property Values		
		Past Month	Past 12 Mos	Recent Peak
All Property	121.8	0.3%	-9%	-21%
Core Sector	121.1	0.5%	-9%	-24%
Apartment	136.9	1.8%	-10%	-28%
Industrial	213.6	0.0%	-1%	-16%
Mall	78.1	0.0%	0%	-20%
Office	73.4	0.0%	-22%	-35%
Strip Retail	108.7	0.0%	-6%	-18%
Health Care	120.5	0.0%	-11%	-20%
Lodging	105.4	0.0%	-2%	-7%
Manufactured Home Park	274.9	0.0%	-5%	-15%
Net Lease	94.1	0.0%	-4%	-19%
Self-Storage	248.1	0.0%	-11%	-21%

Green Street's Commercial Property Price Index® is a time series of unleveraged U.S. commercial property values that captures the prices at which commercial real estate transactions are currently being negotiated and contracted. Features that differentiate this index are its timeliness, its emphasis on high-quality properties, and its ability to capture changes in the aggregate value of the commercial property sector.

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Office Buildings – Relative Market Size

SECTOR	VALUE ($Trillions)
Multi-Family	$3.8
Office	$3.2
Retail	$2.9
Health Care	$2.3
Specialty, Sports and Other	$3.4
Hospitality	$1.6
Industrial	$2.4
Data Centers	$0.2
Self-Storage	$0.4
Towers	$0.4
ESTIMATED TOTAL	**$20.7 ***

The dollar value of commercial real estate in the U.S. is estimated at $20.7 trillion, with the office sector representing approximately 15% of this total

VS.

SINGLE-FAMILY HOUSING SEGMENT:	
Estimated U.S. Single Family Housing Units	80-90M
Median U.S. Home Price, 2022	$440K
Estimate: Value of U.S. Single Family Homes ($Trillions)	**=$35-40T**

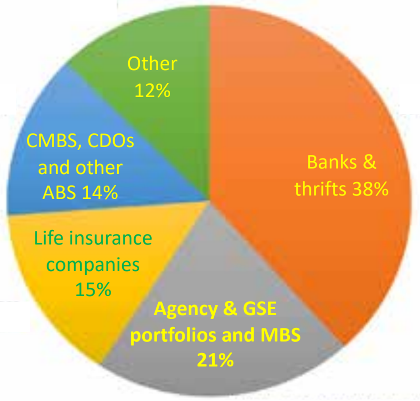
Takeaway: The relative value of Office as a percentage of single-family housing value: **8-9%**

Office Buildings – Lender Exposure

Parsing the $4.5 trillion CRE mortgage market: Loans on office buildings are spread across numerous lending sources …

- According to **Goldman Sachs**: an estimated **55%** of office loans sit on banks' balance sheets
- According to **UBS**, loans on office buildings account for less than **5%** of U.S. banks' total loan portfolios

Loan Exposure by Lender



Source: Mortgage Bankers Association

Office Buildings – Conversion Potential

The optimal candidates for office-to-residential conversions are older, lower-end buildings with small floors (and high vacancy rates)

Conversion Candidates as a Share of Total Office Space	
Manhattan	.7%
Chicago	.9%
Dallas/Fort Worth	.3%
Los Angeles	1.4%
Houston	.5%
Minneapolis/St. Paul	.4%
San Francisco	3.5%

Source: Avison Young

Impediments:
- Lack of surrounding residential infrastructure (parks, schools, etc.)
- High crime rates
- Back-to-work has stalled
- Physical issues:
  - Non-operable windows
  - Minimal exterior exposures
  - Huge retrofit costs (especially building systems including elevators, HVAC, electrical, plumbing)

Office Buildings – The WeWork Effect

wework

- **WeWork** is a provider of co-working office spaces, including physical and virtual shared spaces, headquartered in New York City
- The company operates over **43 million square feet in 700+ spaces** around the world, including **19 million square feet in 300+ locations across 35 metro areas** in the United States
- WeWork represents an outsized portion of demand in the major metro areas where it has a significant presence:

Full-Year 2022 Leasing Activity

Market	2022 Traditional Market SF Leased	2022 WeWork SF Leased	Equivalent % of 2022 Traditional SF Leased
Boston	4,800k	860k	**18%**
New York	24,270k	4,280k	**18%**
Miami	3,540k	340k	**9%**
San Francisco	11,000k	1,500k	**14%**
Chicago	5,570k	610k	**11%**

Source: WeWork 2023 Proxy Statement

[WeWork's trouble is] ***"one more thing on the office market that it doesn't need;*** **[The office market has]** ***already gotten beat up left and right. This is just another headwind for the office sector. ... They are not big enough to move the market. ... [But] there's an unknown for current owners."***

- Chad Littell
CoStar's National Director, Capital Markets Analytics

Debt Maturity Crisis Brewing

Value Vaporization: CapRates Increasing While NOI Falling

Increase in CapRates

Percent Change in NOI

	5.5	5.7	5.9	6.1	6.3	6.5	6.7	6.9	7.1
0%	0%	-4%	-7%	-10%	-13%	-16%	-18%	-21%	-23%
-2%	-2%	-6%	-9%	-12%	-15%	-17%	-20%	-22%	-24%
-4%	-4%	-8%	-11%	-14%	-16%	-19%	-21%	-24%	-26%
-6%	-6%	-10%	-13%	-16%	-18%	-21%	-23%	-25%	-27%
-8%	-8%	-12%	-15%	-17%	-20%	-22%	-25%	-27%	-29%
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-16%	-16%	-19%	-22%	-25%	-27%	-29%	-31%	-33%	-35%
-18%	-18%	-21%	-24%	-26%	-29%	-31%	-33%	-35%	-37%
-20%	-20%	-23%	-26%	-28%	-30%	-33%	-35%	-36%	-38%
-22%	-22%	-25%	-28%	-30%	-32%	-34%	-36%	-38%	-40%

Source:
KC Conway, ACRE

Value Vaporization

CoStar – 5.9.22

"Average decline in value of 42%..."

New York City Hotel Investment Activity Accelerates

3.1.23 – *The Real Deal*

Purchased for $55.4M 2019, Sold for $24.9M!

LaSalle sells OC office building at 55% loss

3.21.23 – GlobeSt.

Hughes Center acquired 2013 for $13 billion!

Blackstone Stops Making Payments on $325M Las Vegas Office Loan

4.18.23 - *The Real Deal*

Construction cost $2.5 billion!

Century Plaza's price tag? $1 billion

Rueben Brothers acquire Century Plaza for 40% of development cost

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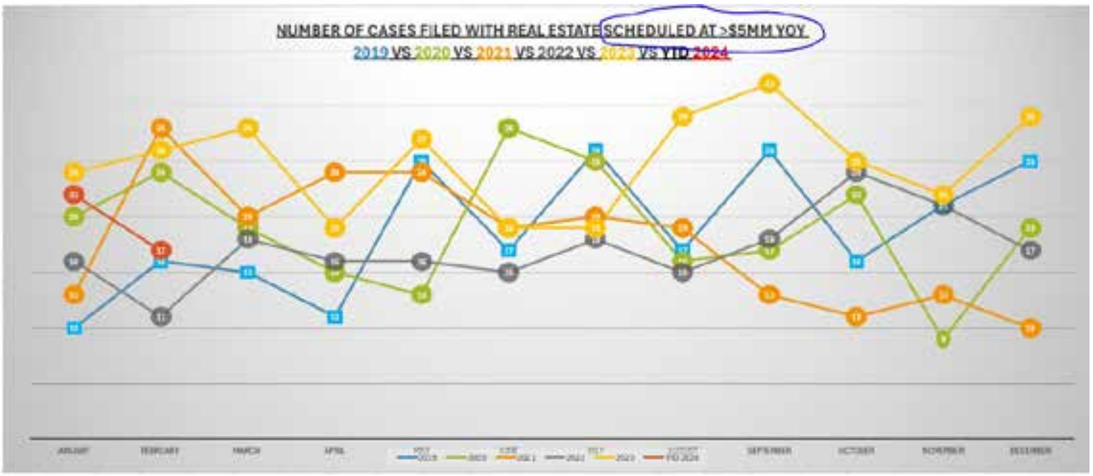
Value Vaporization: CapRates Increasing While NOI Falling



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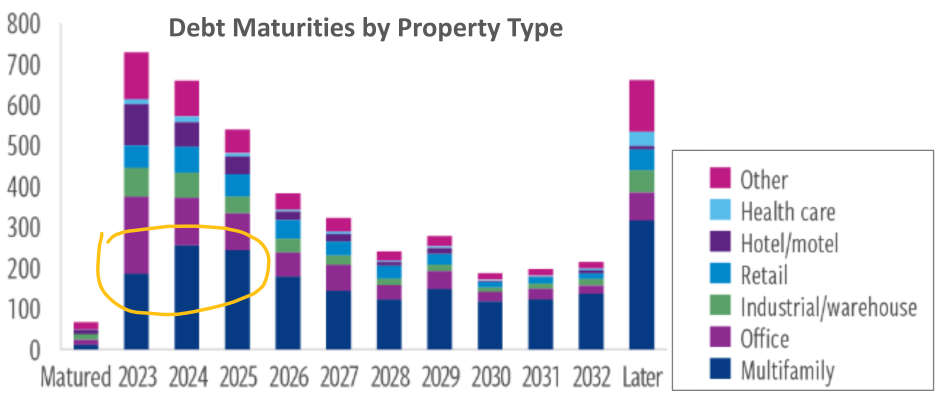
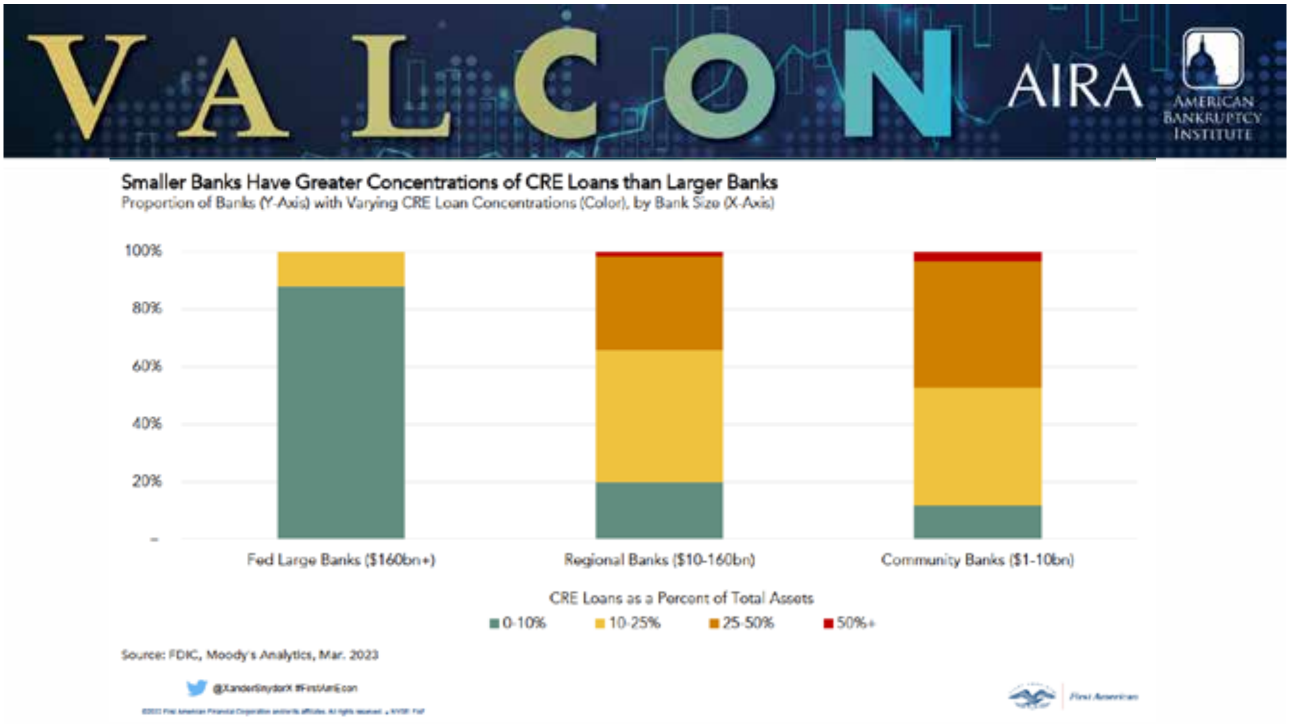
Office Buildings – Debt Maturities

Office is the most exposed property sector in the near term:



At March 10, 2023. Source: Mortgage Bankers Association, Cohen & Steers.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Smaller Banks Have Greater Concentrations of CRE Loans than Larger Banks
Proportion of Banks (Y-Axis) with Varying CRE Loan Concentrations (Color), by Bank Size (X-Axis)
100%
80%
60%
40%
20%
-
Fed Large Banks ($160bn+)
Regional Banks ($10-160bn)
Community Banks ($1-10bn)
CRE Loans as a Percent of Total Assets
0-10%
10-25%
25-50%
50%+
Source: FDIC, Moody's Analytics, Mar. 2023
@XanderSnyderX #FirstAmEcon
First American

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Healthcare Industry Panel

- Senior Living/Hospitals
- Physician Practices
- Case Studies

Senior Living / Hospitals

- Practical/Valuation Matters
  - Geographic Location
    - Rural Designation
    - Value of Business Impacted by Location and Patient Pool
    - Staffing Capabilities

Senior Living / Hospitals

- Real Estate Ownership
  - CCRCs / Rural Hospitals – value tied to real estate
  - Refinancing tied to real estate
    - Restructuring options can be enhanced or limited depending on real estate market

Senior Living / Hospitals

- Staffing
  - Shortage of healthcare professionals getting worse
  - Labor costs increasing (competitive)
  - Rural facility staffing challenges
  - Physician alignment strategies (larger systems)

Physician Practices

- Similar Workforce Shortage Challenges
  - As many as 122,000 physicians by 2032
  - Over-65 population will grow by 48% by 2032
  - Matched by aging physician workforce

Physician Practices

- Antitrust Trends
  - Kick-off with DOJ's withdrawal of antitrust healthcare policy statements
  - Followed-up by FTC/DOJ proposed rule re. non-competes
  - PE roll-ups getting scrutiny
  - DOJ examination of mergers
  - New focus on retroactive review (and potential unwind) of transactions
  - State law mini Hart Scott notice
  - FTC opposition of state laws granting immunity for healthcare mergers

Physician Practices

- Acquisitions and Investment Trends
  - Hospitals
  - Insurers
  - Private Equity
  - Joint Ventures

Physician Practices

- 2023 of strong private equity fundraising with record amounts of capital on the sidelines – approximately $3 trillion – 65% of physician deals (AHA data)
- Regulatory drivers: Can they last forever?
  - HIG Capital 25M settlement (2021);
  - Blackstone Team Health 4.4M settlement (2023)
- Interest rate challenges
  - Normalized into dealmakers' thinking and modeling
  - Alternative lenders – private credit sources - debt funds, mezzanine lenders, PE investing in debt instruments – have filled the gap
- Specialty trends
  - Growing interest: oncology, cardiology, podiatry, orthopedics, infertility …
  - Continued strength in ophthalmology and retina, GP's, dental, allergy/ENT

Behavioral Health Case Study

Revenue vs. Expenses

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Behavioral Health Case Study

FOR THE CALENDAR YTD ENDED AUGUST 27, 2019

	Jan	Fed	March	April	May	June	July	Aug	Total	Average
Income										
MCR, MCD, Commercial	$ 767,174	$ 670,013	$ 491,404	$ 745,764	$ 576,895	$ 767,384	$ 840,133	$ 520,561	$ 5,379,329	$ 672,416
Managing Entity/State/Local	$ 1,088,221	$ 754,816	$ 843,130	$ 1,044,814	$ 1,146,536	$ 1,127,718	$ 1,029,155	$ 747,793	$ 7,782,183	$ 972,773
Total Earned Income	$ 1,855,395	$ 1,424,829	$ 1,334,534	$ 1,790,578	$ 1,723,431	$ 1,895,103	$ 1,869,288	$ 1,268,353	$ 13,161,511	$ 1,645,189
Debt Incurred	$ 672,901	$ 495,521	$ 992,500	$ 883,246	$ -	$ -	$ 392,000	$ 787,000	$ 4,223,168	$ 527,896
Total Income with debt	$ 2,528,296	$ 1,920,350	$ 2,327,034	$ 2,673,824	$ 1,723,431	$ 1,895,103	$ 2,261,288	$ 2,055,353	$ 17,384,680	$ 2,173,085

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Hot Topics in Bankruptcy

- Changes in Medicare Advantage creating challenges with cash flow and solvency.
- Entities are over-levered as private equity makes a bigger push into the sector.
- Staffing costs and other medical expenses and putting pressure on margins.

ENERGY PANEL

Megatrends create volatility in the energy market.
In 2024, elections, various regional conflicts, concerns about climate change, government subsidies, and the feasibility and marketability of various forms of energy make the valuation of "energy" a potentially critical endeavor.

Lorie Beers
Intrepid Investment Bank

Ken Malek
Malek Capital Advisors

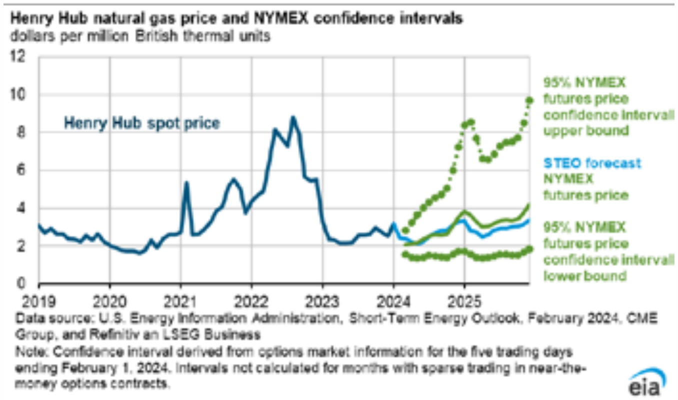
Matt Moran
Vinson & Elkins

Top 4 Producers:
- U.S.
- Russia
- Iran
- Canada

Top 4 Consumers:
- U.S.
- Russia
- China
- Iran

Price projections recently slashed due to warm winter

NATURAL GAS



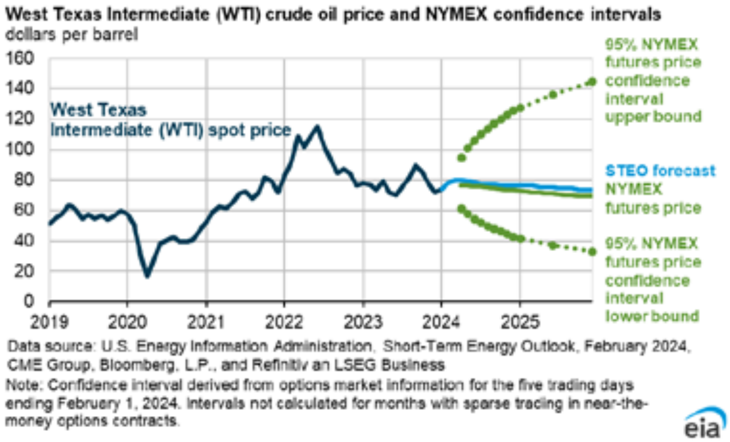
Prices and Projections

OIL

Top 4 Producers:
- U.S.
- Saudi Arabia
- Russia
- Canada

Top 4 Consumers:
- U.S.
- China
- India
- Russia

Prices recently affected by attacks on ships in the Red Sea

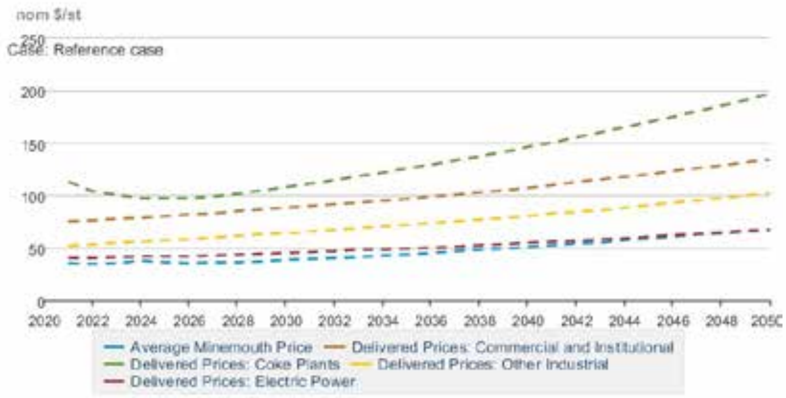


COAL

Top 4 Producers:
- China
- India
- U.S.
- Australia

Top 4 Consumers:
- China
- India
- U.S.
- Germany

Renewables projected to outpace coal generation for first time.



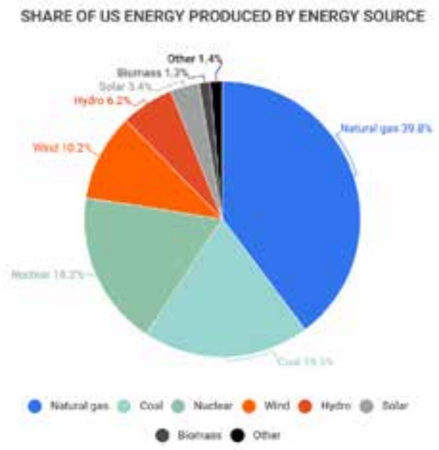
Prices and Projections

U.S. ENERGY SOURCES

SOURCE	2018	Apr. 2023
Petroleum	36%	36%
Natural Gas	31%	33%
Coal	13%	10%
Nuclear	8%	8%
Renewables	11%	13%
Other	1%	

U.S. ENERGY PRODUCTION

Natural Gas	39.8%
Coal	19.5%
Nuclear	18.2%
Wind	10.2%
Hydro	6.2%
Solar	3.4%
Biomass	1.3%
Other	1.4%



NO SENSITIVITY ROADMAP FROM EIA DATA

Methodology[1]

- Model uses "nearly 600 equations"
- Mostly linear regressions

$$\hat{y} = w_0 + w_1 x_1 + w_2 x_2 + \cdots + w_n x_n$$

- Variables include monthly prices, production, inventory, demand drivers, etc.
- Uses forecasts of macroeconomic and weather variables
- Model parameters are opaque

[1] EIA Handbook of Energy Modeling Methods

Potential Shortcomings

- Upper and lower bounds of price forecast is extremely remote with a probability of $p = 0.025^k$ where *k* is a number of months projected
- Model complexity comparable to observations $\rightarrow$ memorization?
- Linear inductive bias ignores 2nd-order affects $\rightarrow$ high variance?
- No error analysis $\rightarrow$ confidence?
- Historical point estimates $\rightarrow$ ignores distributional properties?
- Role of categorical variables unclear $\rightarrow$ ignores bifurcations?

COURTS PREFER CONTEMPERANEOUS PROJECTIONS OVER 20:20 HINDSIGHT

1. **Judge Wedoff – In re Longview Aluminum, 2005 WL 3021173, at *7, aff'd., 548 F. 3d. 579 (7th Cir. 2008).**

"[A] powerful indication of contemporary, informed opinion as to value" comes from private investors who "[w]ith their finances and time at stake, and with substantial professional expertise, concluded at the time that the business was indeed one that could be profitably pursued."

2. **Judge Peck – Statutory Committee of Unsecured Creditors ex rel. Iridium Operating, LLC v. Motorola, Inc. (In re Iridium Operating LLC), 373 B.R. 283 (Bankr. S.D.N.Y. 2007).**

The Committee's experts "based their opinion on restated cash flow projections that were tailored to litigation purposes well after commencement of this adversary proceeding…The Committee's experts have created their own projections that have been cut drastically to account for overly optimistic projection of subscribers with the category of professional business travelers, but there has not been a persuasive showing that the methods used and the adjustments made are appropriate…."

COURTS PREFER CONTEMPERANEOUS PROJECTIONS OVER 20:20 HINDSIGHT

3. **Judge Shannon – Kravitz v. Samson Energy Co. (In re Samson Resources Corp.), Case No. 15-11934, Adv. No.17-51524, (U.S.B.C. Delaware).**

Judge Shannon ruled that Samson received reasonably equivalent value and that Samson met all three solvency tests, despite the Trustee's assertions that KKR and its sponsors were blinded by enthusiasm for the deal and ignored red flags, and that the lenders punted on due diligence "either out of deference to KKR's storied reputation, or out of a desire to earn the large fees that would come from a multibillion-dollar deal." The court didn't buy the trustee's argument that the LBO loaded the company down with debt, which together with flaws in the post-sale business plan sent the newly formed company into a pre-ordained "catastrophic death spiral."

In Judge Shannon's opinion, the parties performed extensive due diligence to validate the LBO purchase price, "the record demonstrates that all parties were acutely aware of the effect of oil and gas prices on SIC's business, and the Deal Model and Business Plan each accounted for pricing volatility in a famously cyclical industry…[T]he record shows that the Sponsors and Participating Lenders all independently evaluated the projections and the attendant market risk."

SAMSON ENERGY

- "A thing is worth what a willing buyer will pay to a willing seller following a proper marketing process. The standard places primacy on the reliability of a transaction where parties have evaluated risk and placed their own money on the line. Buyers and sellers may be right or wrong about what the future may hold, but the value is fixed and conclusively established by the price paid at closing."
- *Samson* applies when a robust and fully-vetted marketing and due diligence process establishes a clear fair market value for a leveraged buyout of a business that later underperformed reasonable expectations at the time of the acquisition.
- LBO was mortally wounded by two separate downturns, natural gas prices in first-half 2012 and crude oil prices in second-half 2014.

SAMSON ENERGY – A Different Approach that Avoided the Age-Old Battle of Experts

Do not get to the three tests if there is reasonably equivalent value.

Three tests for insolvency:

- Balance sheet (based on expected value)
- Cash flow test (sensitivity testing)
- Capital adequacy (sensitivity testing)

SAMSON ENERGY

- Plaintiffs had three expert witnesses – Defendants had none.
- Strength of Defendant's case was the factual record – thorough and comprehensive marketing and due diligence process; robust and highly vetted
- Vernier calipers -- numerous stress test cases that accounted for business risks
- Measurement of equity cushion to withstand shortfalls
- Stress testing lower production volumes
- Stress testing commodity prices
- Use of engineers to support due diligence
- Due diligence risk modeling

Best Practices vs Untested Practices for Performing the Sensitivity Test

Samson authorized:
Measure the equity cushion and assess extent to which that equity cushion allows for lower production volumes and lower commodity prices. *Kravitz v. Samson Energy Co. LLC, et al. (In re Samson Resources Corp.)*, Ch. 11 Case No. 15-11934, Adv. No. 17-51524, 2023 WL 4003815 at 2 (Bankr. D. Del. June 14, 2023).

Not yet addressed by the courts:

Monte Carlo Simulation
- Sampling of input distributions
- No point estimates
- Handles bifurcations
- Generates an output distribution (automatic confidence interval)
- More general inductive bias
- Forward looking

Feed Forward Neural Network
- Universal function approximator

Faculty

Lorie R. Beers is head of Special Situations at Intrepid Investment Bankers LLC in New York. She has more than 30 years of professional experience that encompasses the full spectrum of restructuring. Primarily working with companies, Ms. Beers has completed numerous distressed M&A transactions, chapter 11 reorganizations and out-of-court workouts. Prior to joining Intrepid, she was a managing director and head of Special Situations at Cowen for seven years and served in a senior-level capacity at such firms as Storm Harbour Securities, Variant Capital Advisors, Seabury Group, KPMG Corporate Finance and Gordian Group. Beginning her career as a bankruptcy attorney, Ms. Beers ultimately became a partner in the Bankruptcy Group at Kasowitz, Benson, Torres & Friedman. She also served as CRO and COO for a middle-market marketing and branding organization. Ms. Beers has written thought-leadership pieces and spoken extensively on many aspects of restructuring. She is a former ABI Board member and recevied the 2019 M&A Advisor Leadership Award. Ms. Beers received her B.A. in economics from Dickinson College and her J.D. from the University of Pittsburgh School of Law.

Jonathan P. Goulding, CIRA, CFA is a managing director at Alvarez & Marsal in Century City, Calif., and co-head for the West Region with the firm's North American Commercial Restructuring Practice. He specializes in financial and strategic planning, liquidity management and the implementation of financial strategies for corporate turnarounds and restructuring. He has worked in a variety of industries, including retail, energy, technology, transportation and logistics, agriculture, manufacturing, telecommunications and financial services. With more than 20 years of management consulting, financial restructuring and interim management experience, Mr. Goulding has advised debtor and creditor clients, both in court and outside of bankruptcy. He has assisted clients in reviewing and preparing business plans, analyzing product profitability, assessing cash flow and liquidity, and developing restructuring and reorganization strategies. Mr Goulding's notable retail engagements include serving as the CRO for Forever 21, Inc.; restructuring advisor to Toys "R" Us, Savers/Value Village, Haggen, Fresh & Easy Neighborhood Markets, Movie Gallery and Gymboree; advisor to the lenders to JC Penney; and advisor to the UCC in Bed, Bath and Beyond and Lucky Brand, among others. Prior to joining A&M, Mr. Goulding spent two years in the San Francisco office of the Corporate Restructuring Group of a Big Five firm, where he served as an associate. Prior to that, he was a business strategist with Viant Corp. and an associate at SRI Consulting. Mr. Goulding is a member of the Association of Insolvency and Restructuring Advisors (AIRA), the Southern California Chapter of the Turnaround Management Association and the CFA Institute. He received his bachelor's degree in chemical engineering from the University of Michigan.

Surbhi Gupta is a member of Houlihan Lokey's Financial Restructuring Group in New York and has experience in a wide variety of engagements, including chapter 11 and out-of-court restructurings, debt-for-equity exchanges and raising capital. She joined the firm in 2005 and worked on numerous European restructurings at the firm's London office before transferring to New York. Ms. Gupta has worked on transactions across various industries, including but not limited to automotive, real estate and retail. In recent years, she has been primarily focused on the retail sector and has provided restructuring advice to a major party of interest in transactions such as as Barneys New York, Hancock Fabrics, Delta Air Lines, Inc., Mark IV LLC, Extended Stay Hotels and Herbst Gaming Inc. Ms.

Gupta received her B.A. in economics from Swarthmore College and her M.S. in accounting and finance from the London School of Economics and Political Science.

Hon. Thomas M. Horan is U.S. Bankruptcy Judge for the District of Delware 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. He joined Cozen in a group-wide 2020 defection from Fox Rothschild, for which he had worked since its own 2018 merger with Wilmington-based Shaw Fishman Glantz & Towbin. Judge Horan's national practice included representing debtors and official 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*.

David Levy, CAI, CCIM is a managing director at Summit Investment Management and Keen-Summit Capital Partners and heads their combined Chicago/Midwest office. He is responsible for all aspects of business development and execution with Keen-Summit's special situations real estate brokerage, auction, investment banking, lease modification and restructuring, and lender services platform, plus Summit's distressed-debt acquisition, rescue bridge and debtor-in-possession financing and asset-acquisition transactions. Mr. Levy has more than 16 years of experience in real estate advisory and transactions, with particular expertise in workout, bankruptcy and other special situations. He holds both the Certified Commercial Investment Member (CCIM) and Certified Auctioneers Institute (CAI) designations and is a frequent speaker and moderator on real estate restructuring programs. Mr. Levy is a licensed real estate broker and auctioneer and serves as the Special Projects – Education Leader for ABI's Real Estate Committee. He received his M.B.A. from Miami University in Oxford, Ohio.

David Light is an operations and sales consultaant with Florida Healthcare Law Firm in Delray Beach, Fla., and has more than two decades of management/clinical/consulting experience. He has worked in multiple health care systems as an employee, consultant and/or owner in both for-profit and nonprofit entities. Mr. Light focuses on growing existing programs, developing new programs, directing multiple revenue-producing clinics and programs, exceeding regulatory compliance standards and beating budgeted expectations in markets throughout the U.S. Previously, he was COO of the American IV Association and a physical therapist. Mr. Light received his B.S. in 1995 in kinesiology and exercise science from the University of Florida, and an Executive Education Certificate from Florida Atlantic University College of Business.

Kenneth J. Malek, CRA, CIRA, CDBV, CFF, CGMA, CTP, CPA is the president of MalekRemian LLC in Libertyville, Ill., a consulting firm near metropolitan Chicago. He has more than 40 years of experience assisting companies with transactions, corporate strategy, fairness opinions, disputes and complex financial and operational restructurings, including mergers and acquisitions, valuation, debt-rationalization, turnaround and expert testimony. Mr. Malek has been engaged as an advisor in a number of industries, encompassing airlines/travel and leisure, construction, extractive industries, financial services, manufacturing and distribution, power, real estate and retail. He has performed valuation and/or transaction advisory services for a number of well-known public and privately held companies, and he has been a transaction and valuation advisor in over $20 billion in completed transactions. He has also served a number of family and entrepreneur-owned businesses and is well versed in addressing the sometimes-special circumstances and value-drivers of these businesses and their owners. The matters on which Mr. Malek has provided valuation services comprise valuations of business enterprises, equity interests and intangible assets. In addition, he has served as a neutral valuation expert. Mr. Malek has been retained as an examiner and has testified as an expert in the U.S. District Courts of Delaware, Illinois and Texas, in the U.S. Bankruptcy Courts of Illinois, Indiana, Louisiana, Michigan and Virginia, in the U.S. Court of Federal Claims, and in arbitration proceedings. He has been retained as an expert in complex commercial litigation cases in a number of state courts. The matters on which he has been engaged as an expert include valuation, business plans and business viability, economic damages and causation, avoidance actions and Ponzi Schemes, professional practice standards and accounting investigations. He has been retained as a testifying or consulting expert in over 60 cases. The out-of-court and chapter 11 cases in which Mr. Malek has played major roles include Allis Chalmers, Anvan Development, ATA Airlines, Bally Total Fitness, Delta Petroleum, Dornier Aviation (North America), Energy Future Holdings, Fansteel, Funding Systems Railcars, Global Crossing, Goss Graphic, InfoVest / CCC, Longview Aluminum, LTV Steel, Mercury Finance, Paul Harris Stores, Pick-Congress Hotel, St. Francis Health Systems, TXCO, USA Commercial Mortgage, Washington-St. Tammany Electric Cooperative, Westell, Wickes Furniture and Wildman. He has served as chair of the Board of Trustees and chair of the Audit Committee of Lake Forest Funds, a value-oriented mutual fund, through the date of merger with Profit Funds Group. Mr. Malek received his B.S.C. in accounting in 1976 and his M.S. in taxation in 1978 with distinction from DePaul University.

Matthew W. Moran is a partner with Vinson & Elkins LLP in Dallas. He is an accomplished trial lawyer who represents plaintiffs and defendants in a wide array of complex commercial disputes. Mr. Moran serves as head of V&E's Restructuring Litigation Practice Group and co-head of V&E's Professional Liability practice. He represents debtors and creditors in bankruptcy matters, as well as has defended attorneys against professional liability claims. He also represents financial institutions, private-equity firms and private-equity portfolio companies involved in complex litigation. Mr. Moran has been listed in *Chambers USA*, *Legal 500 U.S.* and *Euromoney's Benchmark Litigation*. Among other activities, he secured summary judgment dismissing a legal malpractice suit in Dallas County State District Court, successfully defended an international bank in Dallas County State District Court in a breach-of-contract lawsuit brought by two hedge funds relating to various swap transactions, was one of the lead litigators representing four individuals in an ICDR arbitration against a private-equity fund, obtained a multimillion dollar (net) arbitration award on behalf of a bank client against various obligors and guarantors, defended district court litigation brought by two United Mine Workers of America funds that sought to recover Coal Act liabilities by reopening a decades-old bankruptcy case to argue that all Coal Act liabilities had previously been discharged, and obtained favorable settlement on behalf of the bank in a lender liability lawsuit based on embezzlement by a bank customer's employee. Mr. Moran received his B.A. summa cum laude in 1994 from Texas A&M University and his J.D. with honors in 1997 from the University of Texas School of Law, where he was admitted to the Order of the Coif.

Navin Nagrani is an executive vice president and principal of Hilco Global in Northbrook, Ill., where he has served as a central dealmaker in many of Hilco's largest principal and advisory-related transactions for more than 15 years. Over the 19 years he has been with Hilco, he has served as a central dealmaker in many of Hilco's largest transactions. Mr. Nagrani's primary responsibilities included leading several key strategic initiatives for the firm, including shaping the real estate business development strategy and execution, as well as overseeing deal origination, deal qualification and transaction structuring. He currently serves on the executive board of directors for the Real Estate Investment Association (REIA) and is a former president. He also is a member of the National Board of Trustees for the Turnaround Management Association (TMA) and previously served on the board of directors for Kohls Children's Museum. Mr. Nagrani spent more than 12 years as a member on the Restaurant Leadership Advisory Council. He received his undergraduate degree in business, finance and economics from Loyola University in Chicago and is a licensed real estate broker in the State of Illinois.

Stuart Neiberg, CPA, ABV, CFA is a partner with CohnReznick LLP in Boca Raton, Fla., and has an extensive background in business valuation and financial analysis. His background includes transaction advisory, valuation, intangible assets, complex derivative analysis and corporate planning for businesses. Mr. Neiberg has 17 years of experience in professional services and consulting, including time with a Big Four firm, another large accounting firm and a national health care consulting firm, where he was named to *Becker's Hospital Review* list of Rising Stars: 50 Healthcare Leaders Under 40 in 2016. He also spent several years consulting with various family offices where he held CFO and Chief Development Officer titles with several early-stage health care technology companies. Mr. Neiberg holds active Series 7, 79, 63 and 24 licenses. He has completed numerous transactions as a sell-side advisor for physician services entities, ambulatory surgery centers, diagnostic testing facilities and behavioral health entities, among others. Mr. Neibwerg received his B.S. in management with concentrations in finance and accounting from Tulane University A.B. Freeman School of Business and his Master's in accounting from the University of Florida Fisher School of Accounting.

Kelly E. Singer is a partner with Squire Patton Boggs' Restructuring & Insolvency Practice Group in Phoenix. He practices nationally in all transactional and litigation aspects of commercial bankruptcy, restructuring and workout matters. Mr. Singer has experience representing debtors and creditors in bankruptcies and out-of-court restructurings, buyers in bankruptcy asset sales, trustees, and lenders in bankruptcy financings. His practice encompasses both general corporate and litigation matters, including receiverships, and he has served as trustee/agent for liquidating and reorganized entities. Through two decades of practicing law, in addition to advising on restructuring matters, Mr. Singer has experience in navigating a variety of legal and business issues. He advises clients in a broad spectrum of industries, including health care, energy, real estate and private equity. He also has represented sovereign and cooperative organizations, as well as various Japanese, Chinese and European companies in U.S. and foreign matters. Mr. Singer was recognized in *The Best Lawyers in America* in 2023 and 2024 for Bankruptcy and Creditor/Debtor Rights/Insolvency and Reorganization Law, and Commercial Litigation, and he has been recognized as a Top Rated Bankruptcy Attorney by *Southwest Super Lawyers*. He received his B.S. *summa cum laude* in 1999 from the University of Arizona and his J.D. *magna cum laude* in 2002 from Arizona State University, where he was admitted to the Order of the Coif.

Douglas E. Spelfogel is a partner at Mayer Brown and co-leader of its Restructuring practice in New York. He concentrates his practice on the representation of financial institutions, indenture trustee banks, lenders, private-equity and hedge funds, creditors and creditors' committees, landlords, trustees, officers, directors and debtors in complex financial restructurings, asset sales, workouts and business reorganizations, often involving multibillion-dollar transactions, both out of court and through chapter 11. Mr. Spelfogel also represents digital currency service providers, payment processors, banks, venture funds, officers, directors and investors in connection with technology transactions, regulatory compliance, fraud and related investigations, enforcement actions, financial restructurings, and litigation outside of court and through bankruptcy and other formal proceedings. He has appeared as counsel of record in dozens of reported decisions and has served as counsel for various parties, often leading the teams in national reorganizations and liquidations, including Bernard L. Madoff Investment Securities LLC, FTS International, JCPenney, Peabody Energy, General Growth Properties, Inc. and American Airlines, among others. He also has represented Fortune 100 companies, financial institutions and fiduciaries in various roles in bankruptcy proceedings, cross-border cases and bankruptcy-related litigation, including the special SIPA trustee for the largest Ponzi scheme in U.S. history, indenture trustees and plan trustees in national bankruptcies involving billions of dollars of secured and unsecured debt, banks in connection with large cryptocurrency-related transactions, and an ad hoc creditor group in connection with a billion-dollar fraud litigation. Previously, Mr. Spelfogel was a partner with another international law firm, where he was head of its Restructuring practice. He also has also been engaged by government-appointed fiduciaries with respect to proceedings relating to financial crimes, Ponzi schemes and securities fraud. Earlier in his career, Mr. Spelfogel was appointed senior counsel with the Office of the U.S. Trustee, where he oversaw many of the largest chapter 11 cases in New York. He has lectured before bar associations and trade organizations, including the New York State Bar Association on bankruptcy law, ABI, and the National Business Institute on revised Article 9 secured transactions, commercial lending and bankruptcy law. Mr. Spelfogel coauthored a chapter for the *American Bar Association Business Law Journal*, "Reorganizing Failing Businesses: A Comprehensive Review," and for *Analysis of Financial Restructuring and Business Reorganization, Third Edition*, and he has taught bankruptcy law courses at Hofstra University and Lehman College, City University of New York, as well as served as a moot court competition judge at Touro University Law School and St. John's University Law School. He received his B.A. from George Washington University and his J.D. from New England Law.

Sidney S. Welch is a partner with the national health care practice of Bradley Arant Boult & Cummings, LLP in Atlanta. She serves as counsel to physicians, physician practices and health care companies across the country, providing them advice and counsel on sophisticated legal matters ranging from private equity and other business transactions to digital health ventures to health information protection, and from privacy and security to high-stakes government investigations, False Claims Act cases, and peer-review and licensure matters. Ms. Welch works with clients to structure and achieve their business objectives against the constantly developing health care regulatory environment. She has been actively involved in working on such health equity initiatives as payor/provider collaboratives, clinical research, health information and digital health, corporate board advice and obligations, and peer-review and employment matters. Ms. Welch is a frequent speaker and author on cutting-edge topics in health care, has served in leadership roles for the American Bar Association and American Health Lawyers' Association, and is recognized as a leading specialist in health law by *Chambers USA*, *The Best Lawyers in America* and *Super Lawyers*, and she is a Fellow of the American Bar Association and the American Health Law Association. She also serves as an adjunct professor at Georgia State University College of Law's Health Law Program and has co-chaired health care innovation efforts for two national law firms. Ms. Welch received her B.A. in 1990 from Davidson College, her M.P.H. in 1993 from George Washington University, and her J.D. in 1995 from Stamford University Cumberland School of Law at Samford University, where she served as associate editor of the *American Journal of Trial Advocacy*.