



AMERICAN
BANKRUPTCY
INSTITUTE

Mid-Atlantic Bankruptcy Workshop

Navigating Insolvency Issues in Cryptocurrency

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CRYPTOCURRENCY AND BANKRUPTCY

August 5, 2022

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Darren Azman is a member of the firm-wide Management Committee and a partner in the Business Restructuring group. Darren's practice focuses on corporate restructurings, creditors' rights and distressed acquisitions. His clients include troubled companies, official creditors' committees, private equity sponsors, financial and strategic purchasers of distressed assets and others in connection with in-court and out-of-court restructurings.

Darren is a recognized leader in the cryptocurrency space, having led the representation of the official committee of unsecured creditors in the first-ever crypto chapter 11 case, Cred. Inc. Darren's efforts in Cred have led to the development of novel case law that has generated millions of dollars of recoveries for creditors, including obtaining a court order requiring Cred's former chief capital officer to return more than \$6m of stolen cryptocurrency within 30 minutes after the court hearing concluded. Darren is frequently asked to speak around the country on the intersection of bankruptcy and cryptocurrency, including presenting on this topic at the FDIC's Annual FinTech Symposium, which is attended exclusively by FDIC attorneys and other personnel. Darren also regularly publishes articles on cryptocurrency, including in the American Bankruptcy Institute Journal and Law360.

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THE HONORABLE JOHN K. SHERWOOD

John K. Sherwood graduated from James Madison University in 1983 and Seton Hall University School of Law in 1986. In June 2015, he was appointed as a United States Bankruptcy Judge for the District of New Jersey.

In private practice, Judge Sherwood had over 25 years of experience in bankruptcy and debtor-creditor matters including related litigation. Some of his noteworthy engagements were Ocean Place Development Resort (counsel to debtor), MagnaChip Semiconductor Finance Company (counsel to creditors' committee), Quebecor World (USA), Inc. (litigation counsel), Le Nature's Inc. (counsel to creditors' committee) and the City of Detroit (counsel to union).

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Vinni has been active in numerous fraud and forensic accounting investigations. His experience includes numerous investigations of financial crimes, such as misrepresentation of financial facts, bankruptcy fraud, and computer fraud. Vinni is experienced in reconstructing accounting records to verify the reliability of underlying books and records and the accuracy of financial reporting systems. Vinni leads the computer forensic and eDiscovery service team providing eDiscovery and litigation support services that include electronic data acquisitions, forensic data examinations, digital asset tracing, data mining and analysis, and document management and review.

Vinni has developed and presented numerous training courses on topics that include forensic accounting, computer forensics, data analysis, and fraud detection. Vinni is a member of the Government Investigation and Civil Litigation (GICLI) Advisory Board.

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Jolene Wee is Managing Director and Founder of JW Infinity Consulting, LLC ("JWI"). With almost 20 years of consulting and finance experience, she has served as trustee, financial advisor, forensic consultant, valuation advisor, and expert witness. Her past engagements have included representing debtors, committees, fiduciaries, distressed companies, high net worth individuals, and public agencies on cross-border insolvency, restructuring, bankruptcy, litigation, fraud, financing, merger, and buyout matters. Jolene's case experience included companies in agriculture, banking, e-commerce, healthcare, insurance, logistics, manufacturing, real estate, retail and technology industries with revenues of up to \$15B. Her Chapter 11 bankruptcy experience includes Aleris International, Smurfit-Stone Container, 1031 Tax Group, Blue Water Automotive, and Hawkeye Gold.

The American Bankruptcy Institute named Jolene as an honoree of its 2020 "40 Under 40" class. In 2018, she was named Valuation Adviser of the Year by Finance Monthly Global Awards. She is a subchapter V Chapter 11 trustee in Region 2 covering Eastern and Southern Districts of New York and Region 4 covering Maryland, the District of Columbia and the Eastern district of Virginia. Prior to starting JWI in 2012, she began her restructuring career at a publicly-held global management consulting company in its New York office more than 15 years ago. She has a BA in Mathematics (Computer Science), a BS in Business Administration (Finance), an MBA, and attended the Wharton Economics of Blockchain and Digital Assets Executive Education program.

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KEY AREAS WE WILL COVER TODAY

- What is blockchain
- What are digital assets
- Crypto market trends and valuation considerations
- Crypto investigations and forensics
- Key concerns for bankruptcy professionals
- Litigation and discovery strategies

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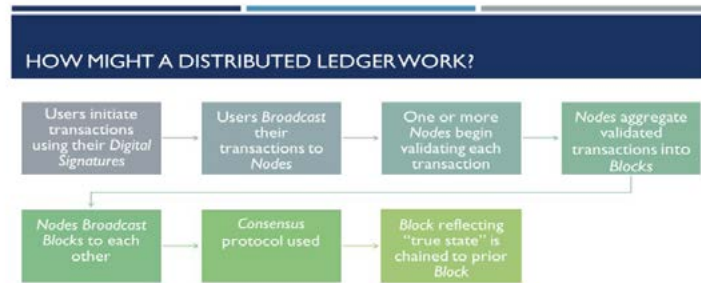
WHAT IS BLOCKCHAIN?

- Blockchain is a ledger that records transactions
 - Digital public ledger
 - Transactions recorded anonymously
 - Transactions are traceable
- There's more than one ledger
 - Bitcoin, Ethereum
 - Private ledgers
- Blockchain has many more uses than just digital assets
 - Logistics
 - Smart contracts

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WHAT IS A DISTRIBUTED LEDGER?

A distributed ledger is simply a database that exists across several locations or among multiple participants. Most companies use a centralized database that exists in a fixed location. But a distributed ledger removes third parties from the process, which makes them quite attractive.



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TYPES OF DIGITAL ASSETS

- Virtual Currency
- Smart Contracts
- NFTs
- Stablecoin

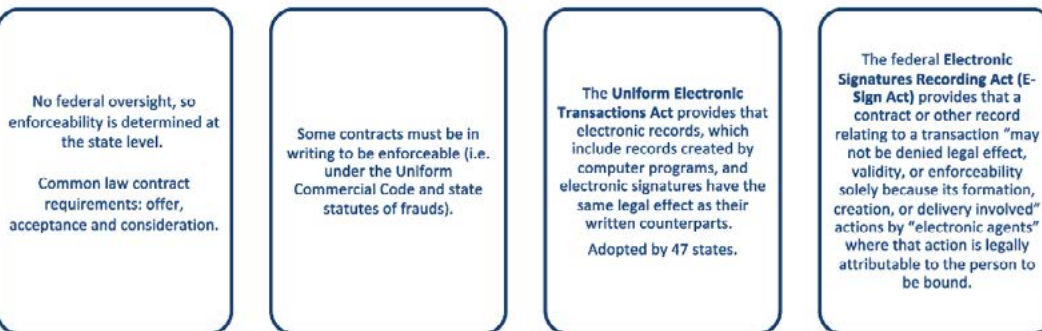
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SMART CONTRACTS

- Ethereum is an open-source blockchain technology in the form of software.
- Programs written on the Ethereum blockchain use self-executing, self-enforcing protocols called smart contracts. The blockchain's network of computers executes the smart contract by performing specified actions when the conditions of the contract are met. Since blockchain data can't be modified after it's created, that gives users confidence in the technology itself and that the contractual elements have been met.
- Blockchain-based contracts are becoming more and more popular as sectors like government, healthcare and the real estate industry discover the benefits.
- Walmart has been testing the use of blockchain to track the distribution of food from its suppliers, making it potentially easier to isolate outbreaks of foodborne illness.
- Starbucks piloted a blockchain project for its coffee growers in Costa Rica, Colombia, and Rwanda to improve pricing transparency.

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ENFORCEABILITY OF SMART CONTRACTS: CURRENT LEGAL FRAMEWORK



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SMART CONTRACT – EXAMPLES



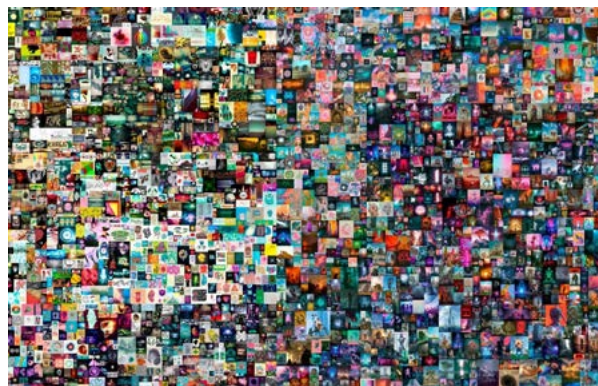
Conceptual Vending Machine Example:

1. To purchase a snack from a vending machine, certain conditions must be met: money must be inserted, and a selection must be made.
2. If these conditions are met, the snack will automatically dispense.
3. The cashier (i.e. a third-party intermediary) is not needed to complete the transaction.
4. The logic programmed into the vending machine is the same logic behind smart contracts.

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NON-FUNGIBLE TOKENS (NFT)

- Non-Fungible Tokens (NFTs) have been the hottest blockchain application since cryptocurrency. 2021 brought a rise in these digital items that are currently taking the world by storm. NFTs are simply digital items, like music, art, GIFs, videos, etc., that are sold on a blockchain, ensuring that a sole owner can claim full rights to it. Thanks to blockchain technology, consumers can now claim sole ownership over some of the most desirable digital assets out there.
- The global market for NFTs hit \$22 billion in 2021. Hollywood, sports celebrities and big brands like Coca-Cola, Gucci, Nike, and Adidas, made their dent in the space, providing NFTs with a new level of exclusivity.
- Up to 2020, the digital artist “Beeple” never sold anything over \$100. In March 2020, his digital work The First 5000 Days sold for an astounding \$69 million.



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STABLE COINS?

- Digital currency backed by physical assets or FIAT currency
- The main characteristics of backed stablecoins are:
 - Their value is fixed to one or more commodities and redeemable for such (more or less) on demand,
 - There is a promise to pay, by unregulated individuals, agorist firms, or even regulated financial institutions,
 - The amount of commodity used to back the stablecoin has to reflect the circulating supply of the stablecoin.
 - Holders of commodity-backed stablecoins can redeem their stablecoins at the conversion rate to take possession of real assets.
- Digital Gold coins
- USD stablecoin

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MAJOR EXCHANGES

Top ten virtual currency exchanges:

1. Coinbase
2. Gemini
3. BlockFi
4. Kraken
5. Robinhood
6. eToro
7. Bitcoin IRA
8. Crypto.com
9. Binance
10. Coinmama

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CRYPTOCURRENCY MARKET

Current crypto market value is over \$1 trillion (50% decline in 6 months), with over 20,000 (2x increase in 6 months) different crypto currencies trading on various platforms

Cryptos: 20,268 Exchanges: 498 Market Cap: \$1,023,806,345,617.533 24h Vol: \$106,942,858,892.47 Dominance: BTC: 41.0% ETH: 18.3%
 ETH Gas: 47 Gwei

- <https://coinmarketcap.com/>

#	Name	Price	1h %	24h %	7d %	Market Cap	Volume(24h)	Circulating Supply
1	Bitcoin BTC	\$22,089.45	▼0.42%	▼0.20%	▼10.99%	\$420,503,912,396	\$46,146,203,072 2,095,777 BTC	19,097,618 BTC
2	Ethereum ETH	\$1,550.65	▼0.15%	▼5.35%	▼44.55%	\$187,785,105,871	\$28,641,753,107 18,548,510 ETH	121,610,390 ETH
3	Tether USD	\$0.9999	▼0.00%	▼0.00%	▼0.06%	\$65,861,552,943	\$78,758,416,823 78,764,046,783 USDT	65,866,277,710 USDT
4	USD Coin USDC	\$1.00	▼0.00%	▼0.01%	▼0.04%	\$54,769,770,337	\$9,573,064,948 8,573,727,993 USDC	54,773,559,197 USDC
5	BNB BNB	\$261.75	▼0.20%	▼0.68%	▼16.43%	\$42,077,989,858	\$1,722,542,040 6,604,646 BNB	161,337,261 BNB
6	Binance USD BUSD	\$1.00	▼0.07%	▼0.19%	▼0.05%	\$17,536,078,966	\$8,355,465,798 8,360,776,286 BUSD	17,547,224,379 BUSD

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CRYPTOCURRENCY MARKET PREDICTIONS

While mainstream media is claiming that we are in “crypto winter”, industry analysts claim that market trends and data suggest that the blockchain technology is in a “building” phase.

- The upcoming Ethereum merge, the world's biggest smart contract blockchain transition from the energy-intensive proof-of-work consensus mechanism to a more environment-friendly proof-of-stake mechanism.
 - Ethereum Foundation member, Tim Beiko suggested September 19, 2022 as the provisional launch date for the merge.
 - Since Beiko's announcement, ether has rallied roughly 22%, hitting a one-month high of \$1,475, according to CoinDesk data. The token registered a 15% gain in the seven days to July 17, the biggest jump since March.

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CRYPTOCURRENCY MARKET PREDICTIONS (CONT)

- Rapid proliferation of promising projects and developers in the smart contract space.
 - “Altcoins,” scalable blockchain innovations, increased in share of crypto market value over the past few years.
 - Developers continue to move into Web3 at an impressive rate, with most of them focused on innovations other than ETH.
 - Web3 companies have a lot of capital to fund development through this downturn, having raised ~\$25B in 2021 and another \$15B so far in 2022.
- Continued governmental regulations. For example, the Lummis-Gillibrand crypto bill.
 - The proposed legislation lays out a framework for many parts of the crypto ecosystem. Key proposals include provisions for bank-like supervision of stablecoin issuers, requiring them to maintain high quality liquid assets fully backing the liabilities from issued stablecoins.
 - Another key proposal is for the SEC to modernize existing rules and adopt new ones related to the custody of securities, digital assets, and client funds.

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TERMS TO KNOW

- Wallet types-cold/hot, software/hardware
- Address
- Exchange transactions-private ledgers
- Privacy coins
- Keys

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BLOCKCHAIN/CRYPTO FORENSICS AND FRAUD INVESTIGATIONS

Forensic examiners and accountants can investigate blockchain/crypto transactions related to the following types of issues:

- Insurance claims
- Cyber loss
- Investigations
- Valuation of damages
- Fraud and corruption



CoinTracking

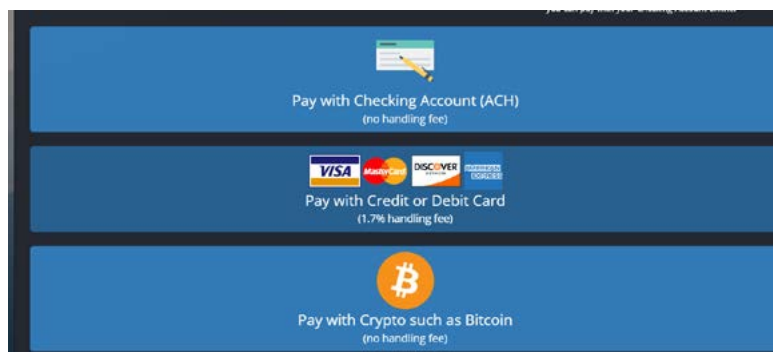


<https://www.blockchain.com>

<https://www.blockchain.com/btc/address/3JgfqZmwGFseH7hpkmrejyoryUkXaXriyE>

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EVERYONE ACCEPTS CRYPTO-EVEN THE LOCAL FENCE COMPANY



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RECOVERY OF CRYPTO ASSETS – HOW TO FIND CRYPTO

- Forensic Investigation and Inquiries
- Locating the Wallet and Cryptographic Keys
- Search jpeg files for pictures of private keys
 - Office - computer, server, desk, vault, files, flash drives
 - Home - computer, server, desk, files, safe, dresser, flash drives
 - Smart devices - cell phones, computers, tablets
 - Safe deposit box
 - Online project vault
 - Hardware security module
 - Key management service
- Analyzing the General Ledger
- Review tax filings

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LITIGATION - AVOIDANCE ACTIONS

- **Value of Transfer**: The value of avoidance actions can be dependent upon the commodity vs. currency determination.
- **Identify of Transferee**: Cryptocurrency transactions are logged on a blockchain under pseudonyms, making it difficult to determine the identity of a transferee.
 - Bankruptcy Rule 2004 can be helpful to obtain the identities of the transferee account holder.
 - It is also possible to compel exchanges to turn over the identities of account holders through “John Doe” proceedings.
 - Sue an unknown John Doe defendant and then issue third party subpoenas to an exchange or other source to obtain discovery of the John Doe’s real identity.

LITIGATION – DISCOVERY ON MAJOR EXCHANGES

Most major cryptocurrency exchanges have adopted “know your customer” rules that require users to provide proof of identity before being allowed to trade.

It is possible to seek injunctive relief directly against an exchange (if known) for information on a debtor's accounts.

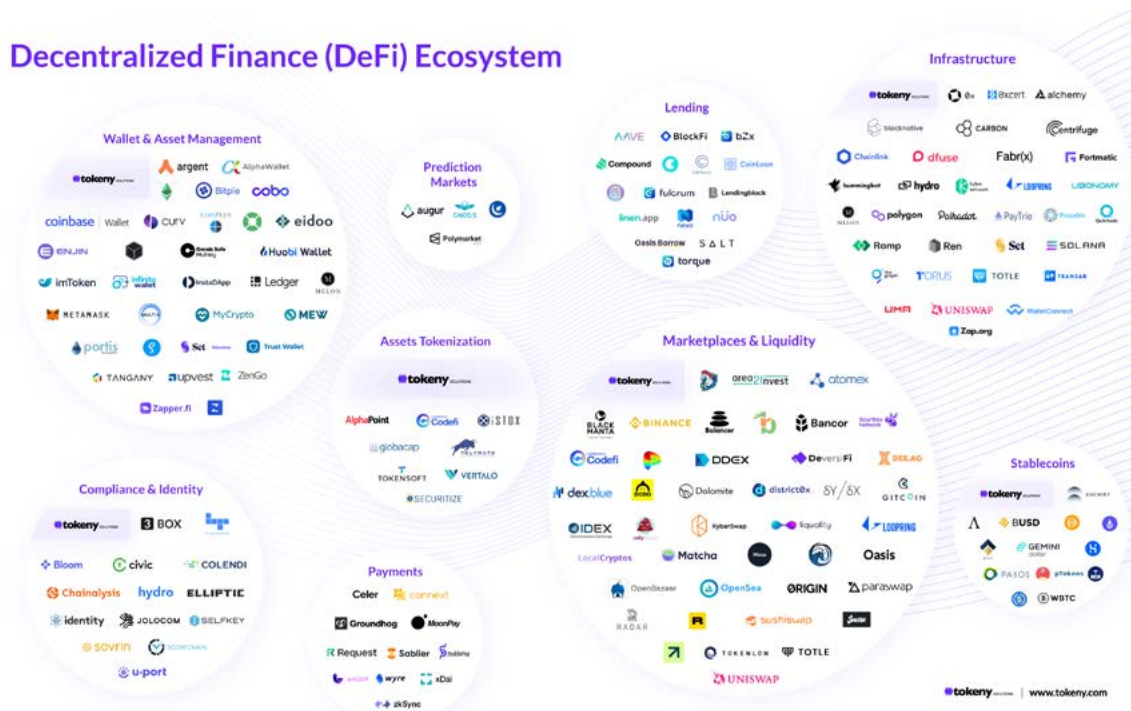
Some exchanges have processes established for bankruptcy trustees to request information.



Coinbase has a guide for bankruptcy trustees available on their website.

- The guide includes, among other things, what information is necessary to search for a Coinbase account:
 - Full legal name and all known aliases
 - Date of birth
 - Email address is helpful
 - Additional personal information is helpful

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LITIGATION – VALUATION CONSIDERATIONS

- Valuation Considerations
 - Volatility
 - Risks of holding cyber-currencies
 - ensuring continued freeze/control
 - unauthorized access/hacking
 - Risks of selling
 - How/Where to sell
 - Date of Valuation
 - Liquidity of Assets

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LITIGATION – VALUATION METHODOLOGIES

- Potential Valuation Methodologies
 - Currency Model
 - To be used with blockchain-based cryptocurrencies
 - Based on consensus and the scale of use
 - Stoke Model
 - Stock model
 - Represents the revenue right of the business on the blockchain of a project
 - Holding this type of token is similar to holding the stock of a company
 - Point Model
 - Point system is a method taken by the sellers to stimulate consumers' repeated purchase or actions that the sellers want
 - When a new project issues a point token, it is pre-selling their services on the chain.
 - Can be calculated based on the following formula:
The value of tokens circulated = the value of products (services) circulated

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NOTABLE CASES...SO FAR

- **MtGox Co., Ltd., No. 14-31229 (Bankr. N.D. Tx)**
 - Japanese company and one of the first Bitcoin exchanges.
 - Handled over 80% of all Bitcoin. Missing 744,408 Bitcoin valued at \$473 million which was approximately 7% of all Bitcoin in circulation at the time.
 - Filed a Chapter 15, with a corresponding insolvency proceeding in Tokyo.
 - “The cause of the theft or disappearance is the subject of intensive investigation. It is believed to have been caused [by] ... a defect or ‘bug’ in the bitcoin software algorithm, which was exploited by one or more persons who had ‘hacked’ the bitcoin network.”
 - Trading was soon thereafter suspended and the Trustee was eventually able to recover approximately 200,000 of the missing Bitcoin (found in an offline wallet).

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NOTABLE CASES...SO FAR

- **Cred Inc., No. 20-12836 (Bankr. D. Del.)**
 - Founded in 2018, Cred Inc. described itself as a “global financial services platform” and “licensed lender” that delivered lending and borrowing services to customers in approximately 140 countries. Filed for Chapter 11 bankruptcy protection in November 2020.
 - According to its filings, the primary driver of Cred’s unfavorable financial situation was the rise in Bitcoin’s price, which spiked 200% in USD terms from a low of \$4,944.70 on March 16, 2020, to \$14,783.98 as of November 9, 2020. This negatively impacted Cred’s balance sheet since customer deposits, in the form of cryptocurrency like Bitcoin, were a liability on Cred’s balance sheet. Second, Cred suffered a hack, leading to the freezing of customer cryptocurrency funds while law enforcement worked to recover the lost assets. Third, was the “material loss [of funds] connected with the onboarding of a fraudulent asset manager,” James Alexander, and his misappropriation of 800 BTC (\$15.6 million as of December 3, 2020).

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SUMMER...COMING IN HOT

- Three Arrows Capital, Ltd., No. 22-10920 (Bankr. S.D.N.Y.)
 - TAC operated as a regulated fund manager until last year, when it shifted its domicile to the BVI, as part of a global corporate plan to relocate operations to Dubai.
 - TAC's business ultimately collapsed in the wake of extreme fluctuations in cryptocurrency markets and on June 27, 2022, TAC commenced a liquidation proceeding before the BVI Court.
 - July 1, 2022, Chapter 15 filed in the Bankruptcy Ct, for the Southern District of New York
 - The chapter 15 filing was precipitated by cryptocurrency platform Voyager Digital Ltd.'s announcement on June 27, 2022, that it issued a notice of default to TAC for its "failure to make the required payments on its previously disclosed loan of 15,250 BTC and \$350 million USDC." In a separate release, Voyager said it was "actively pursuing all available remedies for recovery from 3AC, including through the court-ordered liquidation process in the British Virgin Islands."

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WHAT YOU DID THIS SUMMER...

- Voyager Digital Holdings, Inc., No. 22-10943 (Bankr. S.D.N.Y.)
 - On July 6, 2022, Voyager filed for Chapter 11 bankruptcy protections in the U.S. Southern District Court of New York, estimating that it had more than 100,000 creditors and somewhere between \$1 billion and \$10 billion in assets. It also recorded the same range for its liabilities.
 - Recognition of the chapter 11 cases in Canada under the Companies' Creditors Arrangement Act; Voyager Digital Ltd. is a public company traded on the Toronto stock exchange.
 - Voyager claimed that it had \$110 million in cash, \$350 million in cash at Metropolitan Commercial Bank, \$1.3 billion in crypto and was owed \$650 million from Three Arrows.
 - On July 1, announced that it would be suspending trading, deposits, withdrawals and loyalty rewards distributions.
 - the first day declarant, attributes the bankruptcy filing to a "short-term 'run on the bank' due to the downturn in the cryptocurrency industry generally and the default of a significant loan made to a third party." Ehrlich stresses that the debtors are not filing a "free-fall" filing without direction," having "worked tirelessly ... over the last three weeks" to put forth a plan that contemplates a stand-alone restructuring that the debtors can effectuate without a sale or strategic partner.

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AND EVEN MORE RECENTLY...

- Celsius Network Ltd., No. 22-10964 (Bankr. S.D.N.Y.)
 - On July 13, 2022, Celsius Network, and certain affiliates entered chapter 11 to “stabilize [Celsius’] business” while continuing to operate with \$167 million in cash on hand.
 - As a result of the company’s asset-preservation strategies, Debtors claim to hold approximately \$4.3 billion in assets and \$780 million in “non-user liabilities”.
 - The debtors intend that a chapter 11 plan “will provide users with choices” and enable “a return to normal operations” for the company. To fund recoveries, the debtors “may sell one or more of its financial investors in exchange for equity in a ‘reorganized’ Celsius.”
 - The debtors use “DeFi loans” to finance their operations, and that those loans are “overcollateralized loans supported by the Company’s digital assets and governed by smart contracts.

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QUESTIONS?

Thank You!

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Faculty

Darren T. Azman is a restructuring partner in the New York office of McDermott Will & Emery and a member of the firm's Management Committee. He was lead counsel to the unsecured creditors' committee in the first U.S. crypto chapter 11 case, Cred Inc., and is currently leading the firm's representation of the Cred Liquidation Trust in pursuing recoveries of lost and stolen cryptocurrency around the world. Mr. Azman's clients also include private-equity sponsors, troubled companies, official creditors' committees, financial and strategic purchasers of distressed assets, and other constituents in connection with in-court and out-of-court restructurings. In addition, he has restructuring experience in the fields of energy, manufacturing, health care, technology, maritime and transportation and cross-border restructurings, including insolvency proceedings in Brazil, Germany, Japan and Korea. Mr. Azman acts as a trusted advisor to emerging companies by helping them navigate a wide range of business and legal issues, including capital-formation, licensing, developing and leveraging intellectual property, strategic alliances, regulatory compliance, employee and labor matters, litigation and general corporate matters. During law school, he took a leave of absence to start a health care technology company in New York, which still exists today. His clients include emerging companies in the technology, health care, energy, blockchain, cryptocurrency, telecommunications and media space. Mr. Azman was honored as a member of ABI's 2021 class of "40 Under 40" and has been recognized in *The American Lawyer* as Litigator of the Week Runner-Up (February 2021), *The Best Lawyers in America* as one of the "Ones to Watch" for Bankruptcy and Debtor Credit Rights/Insolvency and Reorganization Law for 2021, and Turnarounds & Workouts as a 2021 Outstanding Young Restructuring Lawyer. He also was part of the team that won the ABI Asset Sales Committee's Asset Sale of the Year for his work as lead debtor's counsel in *In re Agera Energy*. Mr. Azman received his B.S. *magna cum laude* from Bentley University and his J.D. *cum laude* from Georgetown University Law Center.

Eric J. Monzo is a partner with Morris James LLP in Wilmington, Del., where he focuses on issues relating to business restructuring and insolvency. He regularly represents a wide range of stakeholders with a focus on official and unofficial committees, indenture trustees, commercial creditors and lender groups, in addition to corporate debtors and their independent and special committee management. Mr. Monzo handles matters relating to the restructuring and liquidation of companies in a broad range of industries with experience in health care, construction, energy, finance, food and beverage, pharmaceuticals, technology, transportation, real estate and retail. While many of the matters pertain to matters pending in courts located in Delaware and involve issues of Delaware law, he also represents clients in multi-jurisdictional and international insolvency proceedings and litigation outside of Delaware. Mr. Monzo is a member of the American Bar Association's Business Law Section and chairs its Chapter 11 Subcommittee, and he is an Education Director for ABI's Unsecured Trade Creditors Committee. He also is a member of the Delaware Bankruptcy American Inn of Court, Delaware State Bar Association, Federal Bar Association and the Turnaround Management Association. Mr. Monzo is admitted to practice in Delaware, Maryland, New Jersey and Pennsylvania, and before the U.S. District Courts for the Districts of Delaware, New Jersey and Maryland, as well as the Eastern and Western Districts of Pennsylvania, and before the U.S. Bankruptcy Court for the District of Delaware. He received B.A.s in psychology and business administration with a con-

centration in finance in 1999 from Washington & Jefferson College, and his J.D. with honors from Widener University Delaware Law School.

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by *Finance Monthly Global Awards*. Ms. Wee is a subchapter V trustee in Region 2, covering the Eastern and Southern Districts of New York, and Region 4, covering Maryland, the District of Columbia and the Eastern District of Virginia. She received her bachelor's degrees in mathematics and business administration with a focus on finance from Berea College, and her M.B.A. from Miami University of Ohio.