



AMERICAN  
BANKRUPTCY  
INSTITUTE

## 2017 Midwest Regional Bankruptcy Seminar

### **Restructuring Rules of the Road: Making the Right Decision as a Restructuring Professional**

**Stephen D. Lerner**  
*Squire Patton Boggs; Cincinnati*



## 2017 ABI MIDWEST REGIONAL BANKRUPTCY SEMINAR

### Restructuring Rules of the Road: Lessons Learned Over 30 Years

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Global Chair, Restructuring & Insolvency  
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#### Making the Right Decisions as a Restructuring Professional

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- **Doing the Most with the Cards You are Dealt**
- **Intangibles Count**
- **Know When to Defer to Your Client**
- **Know When to Stand Up to Your Client**
- **Communications**
- **Preparation**
- **Handling Setbacks**

## Making the Right Decisions as a Restructuring Professional

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- **Doing the Most with the Cards You are Dealt**
  - Restructuring outcomes are typically determined by factors outside the control of professionals
    - Capital structure
    - Amount and nature of debt
    - Cash flow
    - Inter-creditor arrangements
    - Market value of company
    - State of the industry
    - Overall macroeconomic and financial conditions
    - Quality of management
    - Positions of other stakeholders

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## Making the Right Decisions as a Restructuring Professional

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- **Doing the Most with the Cards You are Dealt**
  - Restructuring professionals, however, can materially enhance or impair the likelihood of a successful restructuring
  - How a restructuring professional approaches a representation matters and sometimes as much as the financial, operational and economic factors facing a client

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## Making the Right Decisions as a Restructuring Professional

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- **Intangibles Count**

- While the objective factors (capital structure, debt levels, cash flow, etc.) are obviously important to the restructuring process, intangible factors matter.
- Intangible Factors
  - Know your client
  - Know your judge
  - Know your adversaries
  - Know your co-professionals

## Making the Right Decisions as a Restructuring Professional

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- **Intangibles Count**

- What is the most important intangible factor that can drive a successful restructuring or impair it?

## Making the Right Decisions as a Restructuring Professional

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### ▪ Intangibles Count

- TRUST
- Trust is derived from integrity
- Create trust:
  - between you and your client
  - between you and your fellow professionals
  - in you by the Court
- Set and manage reasonable expectations
- If your adversaries behave badly, don't stoop to their level

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## Making the Right Decisions as a Restructuring Professional

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### ▪ Know When to Defer to Your Client

- You will never know more about your client and her circumstances/business than your client will – defer to your client in this regard
- Listen to your client
  - Don't be presumptuous
  - Take the time to fully understand and appreciate the client's goals

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## Making the Right Decisions as a Restructuring Professional

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- **Know When to Stand Up to Your Client**

- Your client can be her own worst enemy
- Never tell your client what the client wants to hear unless it's the truth
- Have the confidence to deliver the right advice even if you know your client won't like it
- Confidence and honesty breed trust

## Making the Right Decisions as a Restructuring Professional

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- **Communications**

- Communicate openly and honestly
- Communicate both good news and bad news
  - Know how to deliver bad news and turn it into a positive
- The phone call you least want to make is the first phone call you should make
- Open communications fosters trust
- Manage expectations

## Making the Right Decisions as a Restructuring Professional

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### ▪ Preparation

- Prepare early and thoroughly
- Anticipate the unexpected and prepare for your response
- Use your partners and colleagues as sounding boards
- Know when to cut a deal and when to fight
- Always “solve for yes”

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## Making the Right Decisions as a Restructuring Professional

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### ▪ Handling Setbacks

- Setbacks or bad outcomes are inevitable in any restructuring whether you are advising debtors or creditors
- It's good to be invested in your client, but learn how not to take client setbacks personally
- It helps to have set reasonable expectations
- Take responsibility for your actions
- Learn from any mistakes made

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## Stephen D. Lerner



- Partner and Chair, Restructuring and Insolvency (Cincinnati/New York)
  - Stephen has been a restructuring and insolvency lawyer for more than 30 years. He currently leads the firm's representation of Dana Gas PJSC in the United Arab Emirates and Midway Gold and has led the firm's representation of significant clients in the bankruptcy cases of Enron, WorldCom, Chrysler, Lehman Brothers, City of Detroit, Westinghouse Electric, Patriot Coal, AmFin Financial, Station Casinos and EaglePicher, among many others.
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