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BANKRUPTCY  
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# Annual Spring Meeting

## **Rethinking the Asset Sale**

*Hosted by the Asset Sales and Diversity,  
Equity & Inclusion Committees*

### **Charvi Gupta**

Getzler Henrich & Associates LLC | New York

### **Emily F. Shanks**

Gray Reed | Dallas

### **Sarah Beth Wilson**

Phelps Dunbar LLP | Jackson, Miss.

### **Christopher K.S. Wong**

ArentFox Schiff LLP | Los Angeles

**ABI Spring Meeting 2025 – Rethinking Asset Sales Presentation Outline**

**Topic:** Rethinking Asset Sales: Strategies to Modernize, Innovate, and Improve Marketing, Communications, Auctions, and Value

**Learning Objectives:**

- To learn about how social media has been and can be used in increasing and maximizing value in bankruptcy
- To think about how barriers to entry in participation in asset sales can be mitigated
- To explore different ways to improve communications with prospective bidders leading up to and during auctions
- To recognize how opening and improving access can lead to better results in asset sales
- To consider whether “maximizing value” can or should include more than monetary value.

**Moderator:** [●]

**Panelists:** Charvi Gupta, Christopher Wong, Emily Shanks, and Sarah Beth Wilson

**Presentation:**

[Presented in a timeline format, beginning with optimizing asset value both in and out of court, moving to marketing, bid solicitation, and due diligence process, and ending with the auction and sale process.]

1. Social media and maximizing value of assets both in and out of court
  - a. Out of court: leveraging social media to increase asset value or increase brand recognition
    - i. Tik Tok – Chili’s Mozzarella sticks example
    - ii. Stanley Cups
  - b. In Court:
    - i. Examples of bankruptcy cases with significant social media assets or issues
      1. Buca di Beppo bankruptcy case
        - a. Issues with internet domain names
        - b. Popular in popular culture
          - i. Netflix show “Running Point”
      2. Alex Jones bankruptcy case
      3. Vital Pharmaceuticals bankruptcy
        - a. Ownership of social media accounts
      4. In re CTLI case – business social media accounts could be considered property of the bankruptcy estate and Facebook and Twitter account at issue provided “valuable access to customers and potential customers.”
    - ii. Drawbacks of social media in bankruptcy
      1. Red Lobster bankruptcy case – “All you can eat shrimp” viral social media campaign

2. Social media posts can be used to discovery undisclosed assets
    - a. LaPier bankruptcy case – valuable jewelry etc. of the debtor were found on social media posts and through the debtors’ appearance on the reality tv show Rodeo Girls on A&E.
2. Leveraging social media to market assets
  - a. Using social media as a deal marketing tool
    - i. Targeting the right buyers using social media
      1. Industry specific groups and forums
        - a. LinkedIn / X / Facebook / Instagram / Reddit
      2. Hashtags and trends
    - ii. Expanding buyer pools – can target buyers not on traditional auction lists
    - iii. Speed and efficiency when time is critical
    - iv. Global reach
  - b. Creating competitive bidding process
    - i. Generating market hype
    - ii. Content strategies for maximum engagement
      1. Using high quality videos and images (property walk-throughs, asset highlights)
      2. Hosting Q&A sessions / webinars to discuss auction process
      3. Creating compelling content that highlights investment opportunities
  - c. Paid advertising and social media analytics
    - i. Facebook and LinkedIn ads
    - ii. SEO
    - iii. Reminders
    - iv. Using social media analytics to track engagement and adjust strategy
  - d. Enhancing due diligence and buyer confidence
    - i. Video walkthroughs
    - ii. Transparency in communication
    - iii. Encouraging pre-bid discussions (forums)
3. Using AI and other technology in the sale and auction process
  - a. How AI tools can be used in asset sales
    - i. Examples:
      1. Managing large files in data rooms to locate key contracts, conditions of assets, and summarizing financial information.
      2. Diligence rules,
      3. Use in drafting primer and marketing materials and pitchbooks,
      4. Use in drafting or comparing bidding procedures
  - b. Demonstration of using AI in the sale process
  - c. Use of remote / virtual auctions
    - i. Barriers in participating in asset sales can be mitigated
  - d. Explore different ways to use technology to improve communications with prospective bidders leading up to and during auctions
  - e. Concerns

- i. Accuracy, privilege and the need to verify that AI run marketing and auction process meets the requirements under the Bankruptcy Code (market tested), Article 9 sales (commercially reasonable).

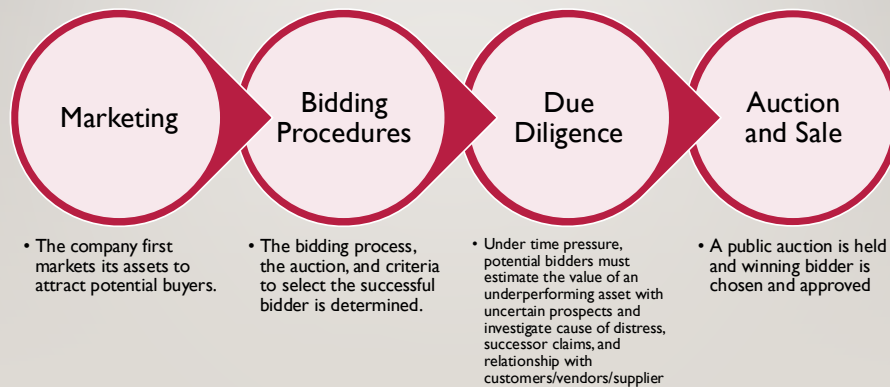
# ABI SPRING MEETING 2025 – RETHINKING ASSET SALES

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STRATEGIES TO MODERNIZE, INNOVATE, AND IMPROVE MARKETING,  
COMMUNICATIONS, AUCTIONS, AND VALUE

## LIFE CYCLE OF A DISTRESSED ASSET SALE

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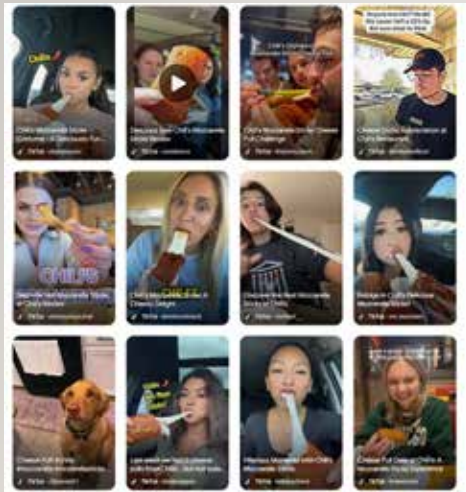
# MAXIMIZING VALUE

OVERARCHING DUTY TO MAXIMIZEVALUE



## STEP I: MARKETING

## SOCIAL MEDIA



## CHILI'S TRIPLE DIPPER

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## STANLEY TUMBLERS

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## HOW DO WE APPLY THIS IN THE BANKRUPTCY SALE SETTING?

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## SOCIAL MEDIA AS AN ASSET

How To Determine Whether A Social Media Account Is Property Of The Estate:

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- *In re Vital Pharm.*, 652 B.R. 392 (Bankr. S.D. Fla. 2023)

“Determining ownership of these rights has potentially significant consequences because with the account go the followers, sometimes numbering in the millions. Although the value of the rights to an account is difficult to assess, it may be substantial given its direct product marketing potential. Thus, the determination of ownership may have a considerable impact on the outcome of a bankruptcy case, not to mention in other legal contexts.” *Id.* at 396

“Social media influencers “have perfected the art of self-commoditization, turning their personal image or reputation (also known as their ‘brand’ or ‘persona’) and their recommendations into highly valuable tools.” In 2023, influencer marketing is projected to be a \$21.1 billion industry.” *Id.* 397



## SOCIAL MEDIA AS AN ASSET CONT.

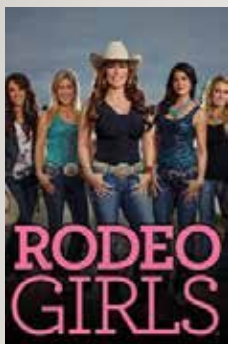
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- *In re CTLI, LLC*, 528 B.R. 359 (Bankr. S.D.Tex. 2015)
  - Case of first impression re whether social media can ever be property of the estate
  - Held that business social media accounts are property of a company's bankruptcy estate.



## RISKS – SOCIAL MEDIA / POP CULTURE

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## LEVERAGING SOCIAL MEDIA TO MARKET ASSETS

- Targeting the right buyers using social media
- Expanding buyer pools
- Speed and efficiency when time is critical
- Global reach
- Creating competitive bidding process



- Generate marketing materials
- Social Media content creation
- Use algorithms to target certain audiences
- Create a database for FAQs
- Analyzing Results



## STEP 2: BIDDING PROCEDURES

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## USING AI RE: BIDDING PROCEDURES

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- Drafting bidding procedures
- Comparing bidding procedures

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## DUE DILIGENCE



## STEP 3: DUE DILIGENCE

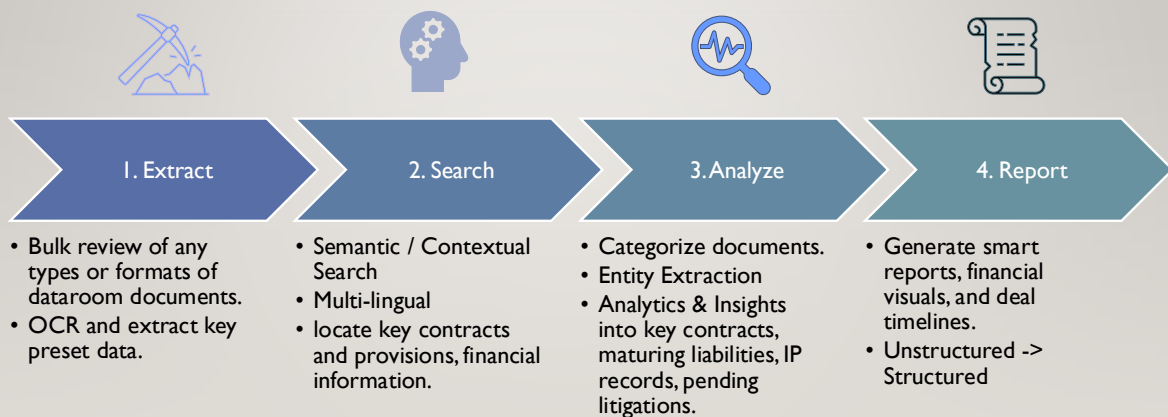
## DUE DILIGENCE (AI) - CHALLENGES

### Challenges

- Time-consuming and expensive
- Human errors
- Manual data reconciliation
- Slow document drafting and review



## DUE DILIGENCE (AI)

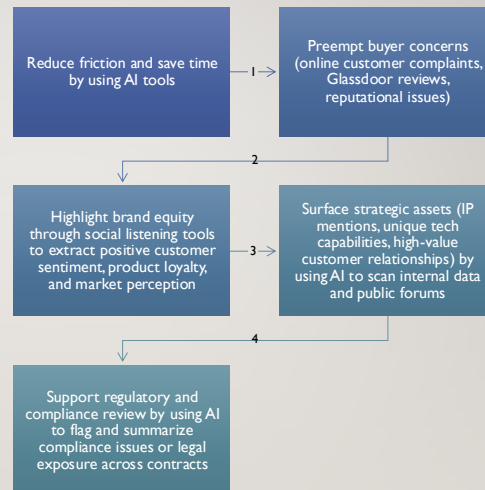




## DUE DILIGENCE (AI TOOLS)



## USING AI TOOLS TO ASSIST WITH DUE DILIGENCE





## RISKS - AI

- Accuracy
  - a common complaint has been AI citing fabricated sources, incomplete analysis, or missing key liabilities.
- Privacy and Data Protection;
  - Breach of confidentiality or non-disclosure terms.
  - Exposure of personal identifiable information.
- Compliance
  - Verify that AI run marketing and auction process meets the requirements under the Bankruptcy Code (market tested), Article 9 sales (commercially reasonable).



END OF PRESENTATION

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# Faculty

**Charvi Gupta** is a senior director at Getzler Henrich & Associates in New York and has more than 10 years of experience in turnaround, restructuring, M&A and bankruptcy situations. Her expertise includes business plan analysis, performance improvement, cash and vendor management, operations restructuring, workouts, bankruptcy consulting and interim-management engagements. She also works with law firms on forensic and litigation support assignments in bankruptcy cases. Ms. Gupta's experience spans multiple industries, including health care, food and beverage, retail, commercial real estate and hospitality, security alarm, automotive, consumer products and restaurants. She is a board member of the New York Institute of Credit as well as Legal Aid Society's New Leadership Program. In 2023, Ms. Gupta was honored as one of ABI's 40 Under 40 Emerging Leaders in Insolvency Practice. She is a member of the Turnaround Management Association and serves on the NOW committee (NY chapter), and she is a member of IWIRC and serves on its Finance committee. Ms. Gupta received her B.A. in economics and statistics from St. Xavier's College in Mumbai, her M.S. in finance from the University of Rochester and her M.B.A. from Columbia Business School.

**Emily F. Shanks** is an associate in the Bankruptcy section at Gray Reed in Dallas, and she has represented debtors, secured creditors and unsecured creditors in a wide range of corporate restructurings in various industries. She has also frequently represented secured lenders through in- and out-of-court workouts, and she has worked on a variety of bankruptcy-related litigation. Ms. Shanks has experience in general commercial litigation, representing clients in both federal and state court matters. Previously, she clerked for Justice Paul Green at the Supreme Court of Texas and served as Judge Scott Everett's first term law clerk at the U.S. Bankruptcy Court for the Northern District of Texas. Ms. Shanks was selected for and participated in the National Conference of Bankruptcy Judges' 2023 NextGen class, and in 2020, she participated in the John C. Ford Inn of Court Dallas area chapter 11 restructuring course, where she tied as "Runner Up" for the "Rookie of the Year" Award. She also has served as the vice chair of the State Bar of Texas Bankruptcy Section's Young Lawyers Committee (YLC), for which she assisted with its "Starting Out Right Program." Additionally, she is co-chair of Events for the Dallas-Fort Worth Chapter of the International Women's Insolvency & Restructuring Confederation (IWIRC), and she serves as a member of the Pipeline Programs Subcommittee for the State Bar of Texas Bankruptcy Law Section's DEI Committee. She also is member of the John C. Ford Bankruptcy Inn of Court. Ms. Shanks is a 2024 ABI "40 Under 40" honoree. She received her B.A. *cum laude* in psychology from the University of Texas at Austin and her J.D. *summa cum laude* from Texas Tech University School of Law.

**Sarah Beth Wilson** is a partner with Phelps Dunbar LLP in Jackson, Miss., where she focuses her practice on bankruptcy and reorganization, business and litigation, and leads the firm's Bankruptcy and Creditor's Rights group. She assists clients with complex transactions, financings and restructuring projects both in and out of court. Ms. Wilson is Board Certified in Business Bankruptcy Law by the American Board of Certification and specializes in the representation of direct and institutional lenders, private equity and other key stakeholders in large commercial transactions, unique and distressed asset acquisitions and dispositions, real estate development projects involving special situations financings, intercreditor and interlender issues, collateral rights and priorities enforcement, and secured creditor and bankruptcy rights. She regularly advises committees, boards, lending institu-

tions and entities on issues impacting the structuring of real estate and business transactions involving secured and unsecured financing facilities. Handling a wide range of real estate, business and asset sales transactions, Ms. Wilson's practice involves structuring and negotiating agreements involving real estate acquisition, development and operation. She also has experience negotiating and litigating lien perfection and priority disputes in the context of commercial real property, and she is a licensed issuer of real property title insurance policies. Ms. Wilson recently completed a term as chairman of the Board of Banking Review for the State of Mississippi, a position to which she was elected after being appointed by Gov. Phil Bryant and unanimously confirmed by the senate. She continues to serve in legislative and policy advising roles, including in her role on the Bank Attorneys Committee of the Mississippi Bankers Association, a position to which she has been appointed every year since 2018 by each incoming president of the state's banking association. She also played a leading role on the official transition team for Mississippi Attorney General Lynn Fitch from her prior office as Treasurer for the State of Mississippi. Ms. Wilson's practice spans all industries and has led her to represent clients in such sectors as banking, aviation, health, oil and gas, agricultural, telecommunications and information technologies, construction, real estate and retail. She also serves as a member of the firm's Operations Committee. Ms. Wilson received ABI's Asset Sale of the Year Award for 2023, is rated AV-Preeminent by Martindale-Hubbell, and has been listed in *Chambers USA*, *The Best Lawyers in America* and *Super Lawyers*. She received her B.B.A. in accounting and economics *cum laude* in 2007 from Millsaps College, and her J.D. *magna cum laude* in 2010 from Mississippi College School of Law.

**Christopher K.S. Wong** is an associate in the Bankruptcy & Financial Restructuring group of Arent-Fox Schiff LLP in Los Angeles. He specializes in business and financial restructuring matters, and advises companies in navigating the chapter 11 process, out-of-court workouts, and corporate and debt financing transactions. For clients looking for opportunities in the distressed market, a sizable portion of his practice is dedicated to representing sellers, stalking-horse bidders and over-bidders in court-supervised § 363 asset sales. Mr. Wong's recent cases involve sales of the going-concern assets of an automotive driving experience company in Las Vegas, an open-air shopping mall in Southern California, and the intellectual property assets of a pharmaceutical company based in Northern California. He works with creditors' committees, trustees and institutional clients, conducting corporate governance and financial mismanagement-related investigations of companies in various industries, including sports, nonprofit, retail, entertainment, health and fitness, and technology. In this capacity, he regularly serves as outside counsel to the United States Olympic & Paralympic Committee in conducting investigations of national governing bodies on their compliance with the Ted Stevens Olympic and Amateur Sports Act and the USOPC Bylaws. Previously, Mr. Wong clerked for Hon. Maureen Tighe of the U.S. Bankruptcy Court for the Central District of California and as a legal intern in the corporate in-house department for SunPower Corp., a publicly traded renewable energy company. He also worked as a legal intern at the fifth-largest law firm in China, AllBright Law Offices, in Shanghai in the firm's general commercial, corporate and M&A department. Mr. Wong is a member of ABI and the California Bankruptcy Forum, Sports Lawyers Association and Southern California Chinese Lawyers Association. He also is a member of the Small Business Reorganization Task Force of the Central District of California Bankruptcy Court, with particular emphasis on outreach to Los Angeles-based businesses in minority communities. Mr. Wong is a 2022 ABI "40 Under 40" honoree and has been listed in *Legal 500* as a "Key Lawyer" (2024) and in *Super Lawyers* as one of the "Ones to Watch" for Bankruptcy and Creditor/Debtor Rights/Insolvency and Reorganization Law (2022-24). He received his B.A. in political science and international relations from the University of California,

Los Angeles and his J.D. from the University of California, San Francisco College of the Law, where he served as editor-in-chief of the *Hastings International and Comparative Law Review* and as vice president of the Asian Pacific American Law Student Association.