Bankruptcy 2023:
Views from the Bench

Sales: § 363 Developments

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Section 363 Sales: Recent Developments Related to Section 363 Sales

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Section 363 Sales Generally

Section 363 of the Bankruptcy Code provides a statutory framework for a debtor in bankruptcy to obtain court approval of an asset sale outside the ordinary course of business

- A section 363 sale allows for a sale of assets "free and clear" of liens and most claims and other interests, including litigation claims
  - Buyers may be willing to offer greater value for assets through a section 363 sale, as the debtor and buyer have greater flexibility to agree on the specific assets to be sold and liabilities to be transferred
- The debtor has a fiduciary duty to obtain the highest and best price
- To satisfy this requirement to get the "highest and best price," the sale is usually subject to a court-supervised auction, even if the debtor already held a prepetition marketing and sale process
- Typically, the process involves a "stalking horse" bidder entering into an agreement to purchase the assets in question, subject to higher and better offers
  - The "stalking horse" generally structures the auction's bidding procedures alongside the debtor and is often entitled to receive expense reimbursement and a break-up fee in the event that it is outbid (subject to court approval of these protections)
  - The "stalking horse" benefits from additional time to conduct diligence and additional control over the terms and conditions of the purchase agreement

Section 363 Sale Considerations

Some Advantages of a Section 363 Sale

- A purchaser takes the assets free and clear of liens, claims and interests, which can lead to higher purchase prices
- Avoids potential fraudulent conveyance liability
- State law shareholder approval requirements and bulk sales laws (primarily requiring notice to creditors when all or substantially all of the seller's assets are being sold) are inapplicable
- Buyers have greater flexibility to choose which assets to acquire and which liabilities to assume (and which to leave behind)

Some Disadvantages of a Section 363 Sale

- The debtor's representations and warranties regarding the assets are usually non-existent or minimal, and the purchase is made on an "as is, where is" basis
- The time frame to conduct due diligence may be shorter than in a typical M&A transaction
- The process is inherently more uncertain than a typical M&A transaction due to the various court approvals required (approval of bid procedures, stalking horse protections and the sale itself)
- Consummating a section 363 sale does not complete a debtor's restructuring or liquidation process and must ordinarily be followed by a chapter 11 plan that reorganizes remaining assets or liquidates the estate (including any sale proceeds)

Section 363 Notice Procedures

- Generally, the Bankruptcy Code & Bankruptcy Rules require an open marketing and solicitation process to obtain the "highest and best" price for the debtor's assets
- Bankruptcy Rule 2002(a) and 6004(a) require the debtor to provide at least 21 days notice of a motion to sell assets not in the ordinary course of business
- Bankruptcy Courts, upon a showing of cause, may allow for shortened notice for approval of bidding procedures and/or the approval of a sale
- Notice period allows for more robust sale process; also provides interested parties with opportunity to object to the sale
- Many bankruptcy courts have local rules addressing sale procedures, often providing proposed sale must be on at least 21 days notice absent evidence of "compelling circumstances"

The Section 363 Sale Process

Section 363 sales are typically conducted via a double sale process to gain the "highest and best" offer for the debtor's assets with the first often occurring prior to the chapter 11 filing and the second occurring during the chapter 11 process

- *Step #1: Selection of the Stalking Horse Bidder**
  - The debtor solicits interest from certain potential bidders to serve as the initial "stalking horse" bidder
    - The stalking horse bid will serve as the floor price and terms that the bidders in the court-supervised auction must compete against
    - In return for submitting a binding offer, the stalking horse bid will receive buyer protections, which typically include a break-up fee, expense reimbursement and a minimum overbid
  - While this first step of the sale process can be completed after filing for bankruptcy, doing so beforehand can reduce time pressure on the debtor and potentially improve the debtor's negotiating position
    - In addition, while stalking horse bidders do sometimes get outbid, being the stalking horse bidder provides advantages and more likelihood of being the ultimate purchaser

**This scenario assumes selection of a stalking horse bidder prior to the debtor filing bidding procedures, but it is worth noting in some cases a debtor files bid procedures and then subsequently selects a stalking horse.*

The Section 363 Sale Process (Cont'd)

- *Step #2: Debtor Seeks Approval of Bidding Procedures**
  - Following selection of the stalking horse bidder, the parties negotiate bidding procedures for the court-supervised auction and a stalking horse asset purchase agreement
    - The debtor generally seeks to make the bidding procedures as flexible as possible, while the stalking horse bidder seeks to insulate itself from competition
  - After negotiating the documents, the debtor then files a motion with the bankruptcy court seeking court approval of the asset purchase agreement and bidding procedures
  - The standard for approving a debtor's proposed sale of property is governed by the business judgment rule

**It is also worth highlighting here that a section 363 sale may be conducted without a stalking horse; in that case, there would be no step # 1 and instead the debtor would start with step #2.*

The Section 363 Sale Process (Cont'd)

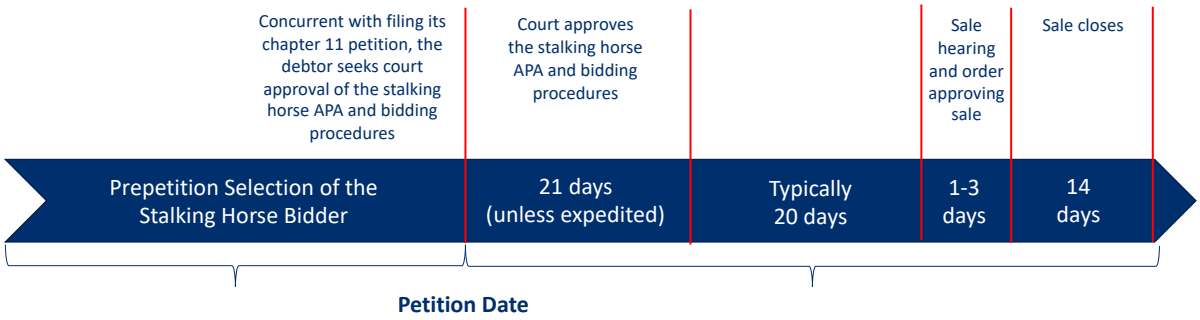
- *Step #2 Continued: Court-Supervised Sale Process*
  - Bids from interested parties are submitted in accordance with the bankruptcy court-approved bidding procedures
    - Bidders must meet the qualifications under the bidding procedures to be "qualified bidders" eligible to participate in the auction
  - A final auction is held among all "qualified bidders" and the debtor and its legal and financial advisors analyze each bid to identify the "highest and best offer"
    - If there is an official committee of unsecured creditors, the committee often is involved at this stage and are a consultation party
  - Most bidders (usually other than any stalking horse bidder) have an informational disadvantage because they have limited opportunity to conduct diligence prior to the auction
  - The bankruptcy court must approve the winning bid and enter the sale order in order for the transaction to be authorized to close
  - Proceeds of the sale are then generally distributed upon effectiveness of a plan of reorganization or liquidation according to statutory and contractual priorities

The Section 363 Sale Process (Cont'd)

- "Highest and Best" Offer:
  - Like any M&A transaction, price is generally the most important consideration, but "highest and best" means that the debtor (and its board of directors) may consider both financial and non-financial elements (*e.g.*, deal certainty) in evaluating offers. *In re Tresha-Mob, LLC*, No. 18-52420-RBK, 2019 WL 1785431, at *2 (Bankr. W.D. Tex. Apr. 3, 2019) (citing *Lawsky v. Condor Capital Corp.*, 2015 WL 4470332, at *9 (S.D.N.Y. July 21, 2015)
  - The debtor's secured creditors are permitted to "credit bid," which means, subject to some exceptions, they can use the full-face value of their secured claims as currency to bid on assets (*see* U.S.C. § 363(k))
    - This right is designed as a protection against "low-ball" bids that would undervalue the secured creditors' collateral

Illustrative Example of Section 363 Sale Timing

While the timing of the section 363 sale process can vary based on buyer interest, the debtor's level of distress, the complexity of the assets, regulatory approvals, the prepetition process and other factors, an illustrative timeline is shown below:



Equitable Mootness and Section 363

- The court-fashioned remedy of "equitable mootness" bars adjudication of an appeal when a comprehensive change of circumstances has occurred such that it would be inequitable for a reviewing court to address the merits of the appeal
- In bankruptcy cases, equitable mootness has traditionally been invoked as a basis for precluding appellate review of an order confirming "substantially consummated" chapter 11 plans
- However, equitable mootness has come up in other bankruptcy contexts, most notably, section 363(m)
  - Section 363(m) provides that "the reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal." *See* 11 U.S.C. § 363(m)
- The doctrine of equitable mootness is controversial and has come under fire, with litigants and courts alike arguing that it abrogates the federal courts' obligation to hear appeals within their jurisdiction

Equitable Mootness and Section 363 (Cont'd)

- The Supreme Court recently held that section 363(m) is only a "statutory limitation" to accessing appellate relief in disputed bankruptcy sales. *MOAC Mall Holdings LLC v. Transform Holdco LLC*, 598 U.S. 288, 143 S. Ct. 927, 937 (2023).
  - In its opinion, the Supreme Court disagreed with the Second Circuit's interpretation of section 363(m) as a jurisdictional limitation (in other words, the Court determined that section 363(m) does not govern a court's adjudicatory capacity). *Id.* at 936.
  - Rather than a jurisdictional bar, the Court found that section 363(m) is a "mere restriction on the effects of a valid exercise of [appellate] power when a party successfully appeals a covered authorization." *Id.* at 939.

Consent and Section 363(f)

- Section 363(f) provides that a debtor may sell property free and clear of liens and other interests only if at least one of certain conditions is met
  - One such condition, section 363(f)(2), is that the entity that holds an interest in the property consent to the free and clear sale
- Courts, however, have disagreed as to what "consent" means under section 363(f)
  - Some courts have found that silence means consent:
    - For example, in *In re TE Holdcorp LLC*, No. 22-1807, 2023 WL 418059, at *3 (3d Cir. Jan. 26, 2023), the Third Circuit followed the Seventh Circuit's lead that "lack of objection [provided of course there is notice] counts as consent."
  - Other courts have found that proof of expressed consent is required to satisfy the requirements of section 363(f)(2):
    - The Bankruptcy Court for the Western District of New York, recognizing that courts have divided on the issue, held that consent and failure to object are not synonymous. *In re Arch Hosp., Inc.*, 530 B.R. 588, 591 (Bankr. W.D.N.Y. 2015).

Assumption and Assignment of Executory Contracts

- When a debtor sells assets pursuant to section 363, a valuable right that it may utilize is the assumption and assignment of lucrative executory contracts under section 365
- Under section 365(b)(1)(A), a debtor must first cure any defaults prior to assuming, or assuming and assigning, an executory contract
- These cure claims are provided administrative priority in the bankruptcy – resulting in their payment prior to all other claims against the debtor, and requiring payment prior to the assumption
- The Second Circuit recently decided in *In re George Washington Bridge Bus Station Development Venture LLC*, 65 F.4th 43 (2d Cir. 2023) the limitations of which party is entitled to a cure claim under a contract:
  - The Second Circuit held that only parties who have a direct contractual relationship with the debtor through the executory contract to be assumed are entitled to cure payments under section 365(b)(1)(A)
  - This requirement to "cure" did not include entities whose damages are incidental to the assumed contract, and such entities would be treated as a general unsecured creditor for purposes of priority and not entitled to a "cure" before the contract could be assumed

Limitations on Assignability of Executory Contracts

- As previously discussed, buyers in section 363 sales generally have greater flexibility to determine which assets are sold and which liabilities are to be assumed
- However, a debtor's ability to transfer certain contracts pursuant to a section 363 sale may be limited by section 365(c)(1) of the Bankruptcy Code
  - Section 365(c)(1) provides that a debtor "may not assume or assign any executory contract or unexpired lease of the debtor . . . if applicable law excuses a party, other than the debtor, to such contract or lease from accepting performance from or rendering performance to an entity other than the debtor (*see* 11 U.S.C. § 365(c)(1))
- For example, a contract for personal services (a "personal services contract"), is unassignable under various states' law, which means that a debtor will not be able assign such a personal services contract to a buyer in a section 363 sale transaction, absent consent of the non-debtor party
  - Though state law determines whether a contract is a personal services contract, a personal services contract is generally defined as a contract in which a special relationship exists between the parties or the skill possessed by the performing party is specialized or unique such that no replacement performance could satisfy the contractual requirements

Limitations on Assignability of Executory Contracts (Cont'd)

- The Bankruptcy Court for the Southern District of New York recently addressed this issue *In re Vice Group Holding Inc. et al.*, No. 23-10738, 2023 WL 4414596 (Bankr. S.D.N.Y. July 7, 2023):
  - The debtors and Showtime were parties to an agreement for the production and licensing of a television documentary series, which the debtors sought to assume and assign to a purchaser of substantially all of the debtors' assets
  - Given the agreement was governed by California law, which prevents the assignment of personal services contracts, the dispute centered around whether the relevant agreement was such a contract
  - The court, looking to California law and against the backdrop that exceptions to assignability under section 365(c)(1) are to be narrowly construed, determined that the agreement was not a personal services contract for the following reasons:
    - Showtime contracted with a corporate entity rather than an individual, which is evidence that the contract is not one for personal services
    - The contract only required the debtors to "produce, deliver, and license" the series to Showtime, which is not sufficiently specific to qualify as personal services

Vice Group, 2023 WL 4414596, at *5.

Section 363 Sales in Crypto Bankruptcies

- Over the past couple of years, crypto companies have increasingly filed for bankruptcy, leading to novel issues and disputes
- Recently, in the Celsius bankruptcy case**,** the bankruptcy court determined that the debtors (the "Celsius Debtors") had shown sufficient cause to permit the sale of stablecoins outside of the ordinary course of business in accordance with section 363(b)(1) due to the need to generate liquidity. *In re Celsius Network LLC*, 647 B.R. 631 (Bankr. S.D.N.Y. 2023):
  - However, the Celsius Debtors were only able to sell these cryptocurrency assets because the bankruptcy court first determined that such assets were property of the estate, despite being held in customer accounts
  - The question of whether customer assets are part of a debtor's estate turns on whether the assets are held in custody for the benefit of the customer
    - The existence of a purely custodial relationship depends on the terms of the agreement between the customer and the debtors
    - The Court in *Celsius* found that the terms of use unambiguously transferred ownership of the assets to the Celsius Debtors, having granted to the Celsius Debtors "all right and title to such Digital Assets, including ownership rights"

Section 363 Sales in Crypto Bankruptcies (Cont'd)

- As cryptocurrency companies will undoubtedly continue to file for bankruptcy in the future, customers of such companies should be careful to review their agreements and consider steps to ensure that their assets will not become part of a potential debtor's estate
  - Otherwise, they may be shocked to find out that assets that they thought belonged to them are being sold pursuant to a section 363 sale and that what they are left with is an unsecured claim against the estate, which may only receive pro rata limited recovery, depending on the case

Good Faith

- In analyzing section 363 sales, a bankruptcy court must sometimes examine the conduct of the buyer in determining whether it is a "good faith" purchaser
- While the Bankruptcy Code does not define good faith, it is generally marked by an absence of fraud, collusion, attempts to take grossly unfair advantage of other bidders, or bribes to insiders of the debtor
- The Fifth Circuit recently examined whether a purchaser's knowledge of an "adverse claim" invalidates good faith. *Matter of RE Palm Springs II, L.L.C,* 65 F.4th 752, 756 (5th Cir. 2023):
  - The Fifth Circuit held that under the notice-definition of a good faith purchaser, the threshold for an "adverse claim" is knowledge of a dispute in ownership interest
  - The Fifth Circuit further held that neither a mechanic's lien on property nor an adversary proceeding seeking to void a transfer constituted an "adverse claim" affecting the purchaser's good faith

Successor Liability

- Perhaps the most important benefit afforded to buyers in 363 sales is the ability to acquire assets "free and clear" of claims and interests of third parties
- Section 363(f)(5) of the Bankruptcy Code provides that a debtor can sell property "free and clear" of any interest in such property when a third party "could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest"
- While an "interest" is not defined in the Bankruptcy Code, "courts generally take a broad approach, finding "interests" includes "other obligations that may flow from ownership of the property." *See In re Old Mkt. Grp. Holdings Corp*., No. 20-10161 (JLG), 2022 WL 4371544, at *9 (Bankr. S.D.N.Y. Sept. 21, 2022)
- What constitutes an "interest" remains the subject of some debate, particularly as it relates to successor liability claims
- In *In re Norrenberns Foods*, 642 B.R. 825, 827 (Bankr. S.D. Ill. 2022), the Bankruptcy Court for the Southern District of Illinois had occasion to rule on the "interest" belonging to a pension fund arising from withdrawal liability under the Multiemployer Pension Plan Amendments Act of 1980
  - The Court ruled, consistent with the majority trend of courts, that the pension fund's withdrawal liability was considered an "interest in property" and therefore property subject to such an interest could still be sold "free and clear" from such interest under section 363(f)

Successor Liability (Cont'd)

- Selling property "free and clear" of successor liability under section 363(f) sometimes comes into conflict with other Bankruptcy Code provisions
- One such provision where there is sometimes a conflict is section 365(h)(1):
  - This provision provides that if the trustee or debtor-in-possession rejects an unexpired real property lease under which the debtor is the lessor, the nondebtor lessee (and any permitted successor or assign, pursuant to subsection (h)(1)(D)) has the option of retaining its rights under the lease for the balance of the lease term "to the extent that such rights are enforceable under applicable nonbankruptcy law"
- In *Precision Industries, Inc. v. Qualitech Steel SBQ*, 327 F.3d 537 (7th Cir. 2003), the Seventh Circuit held that a real property lease can be extinguished in a free-and-clear sale of the property under section 363(f), subject to some specific factual issues in that case
  - In *In re Royal Street Bistro, L.L.C.,* 26 F.4th 326 (5th Cir. 2022), was the latest circuit court to examine this issue allowing sale "free and clear," but cautioning courts against "blithely accepting Qualitech's reasoning and textual exegesis"
- Courts have also followed the Southern District of New York's decision in *Dishi & Sons v. Bay Condos LLC,* 510 B.R. 696 (S.D.N.Y. 2014), reasoning that section 363(f) and section 365(h) conflict when they overlap, but that the more specific section 365(h) trumps section 363(f), and the legislative history of the former clearly indicates that lawmakers intended to protect a tenant's leasehold estate when the landlord files for bankruptcy. *See also Matter of Spanish Peaks Holdings II, LLC*, 872 F.3d 892, 900 (9th Cir. 2017); *In re Southland Royalty Co. LLC*, 623 B.R. 64, 98 (Bankr. D. Del. 2020).

Successor Liability (Cont'd)

- Whether a section 363 sale can be "free and clear" of claims and other interests sometimes turns on due process and notice issues and whether notice was proper
- There are often differences in notice requirements for known and unknown creditors with respect to 363 sales; s*ee In re Motors Liquidation Co*., 829 F.3d 135, 159 (2d Cir. 2016) (discussing that the adequacy of the notice can depend on whether the interested party is "known" or "unknown")
- *In re HNRC Dissolution Co*., 3 F.4th 912 (6th Cir. 2021), the Sixth Circuit held that the bankruptcy court did not clearly err in finding that prepetition purchaser's interest in gas was reasonably ascertainable by debtor and thus publication notice was insufficient to satisfy due process

Biopharmaceutical Bankruptcy Bonanza

- A large number of biopharmaceutical companies have recently filed for bankruptcy seeking to sell substantially all of their assets in a 363 sale:
  - *Athenex, Inc.* – Case No. 23-90295 (S.D. Tex.) – Cancer treatment company filed on May 14, 2023 and contemplated a sale no later than fifty (50) days from the petition date
  - *Novan, Inc.* – Case No. 23-10937 (Del.) – Skin treatment company filed on July 17, 2023 and contemplated a sale no later than seventy (70) days from the petition date
  - *Sorrento Therapeutics* – Case No. 23-90085 (S.D. Tex.) – Pain and cancer treatment company filed its bidding procedures on April 10, 2023. The case contemplates the final bid for an asset sale no later than eighty (80) days from the filing of the bidding procedures
  - *Clovis Oncology Inc.* – Case No. 22-11292 (Del.) – Oncology treatment company filed on December 13, 2022 and contemplated a sale of certain of its assets no later than 101 days from the filing of the bidding procedures

Bidding Protections

- One type of bid protection which sometimes appears in bankruptcy cases are breakup fees
  - Many cases utilize a 3% rule for a breakup fee, although the amount may vary
- A breakup fee (together with an expense reimbursement provision) is often included for the benefit of the stalking horse buyer in the section 363 sale process to provide protections to the buyer in case the debtor pursues a deal with another potential purchaser
- In *Official Comm. of Unsecured Creditors v. Bouchard Transp. Co. (In re Bouchard Transp. Co., Incorporated)*, No. 22-20321 (5th Cir. Jul. 25, 2023), the Fifth Circuit tackled a novel problem regarding breakup fees and whether they should be governed as administrative expenses subject to the heightened scrutiny under section 503(b) or if they should be governed by the business judgment standard of section 363(b)
- Ultimately, the Fifth Circuit did not definitively resolve the issue and agreed with the bankruptcy court that on the facts the breakup fee would satisfy either the section 503(b) or 363(b) standards

Bidding Protections and Milestone Payments

- It is sometimes customary in many biopharmaceutical cases, at least outside of bankruptcy, for the sale price to be structured with milestone payments
- In the Clovis bankruptcy, Case No. 22-11292 (Del.), the Office of the United States Trustee objected to the breakup fee bid protection
- The bankruptcy court had to address a scenario for bid protections where there was an initial payment followed by milestones
- Ultimately, the bankruptcy court approved the bid protections on the basis that "[t]he structure of the milestone events here is consistent with market terms given the developmental nature of the [] assets and the size and complexity of this transaction." *See hearing transcript* from Jan. 20, 2023, at pg. 97.

Faculty

Rosa J. Evergreen is a partner in the Washington, D.C., office of Arnold & Porter Kaye Scholer LLP in its Bankruptcy and Restructuring group. She has experience in all aspects of bankruptcy and corporate restructuring, including complex chapter 11 cases, asset dispositions and bankruptcy litigation, as well as out-of-court restructurings and receivership cases. Ms. Evergreen has been involved in bankruptcy cases in a wide range of industries across the country, including financial services, retail, real estate, environmental, oil and gas, hospitality and health care, among others. She is active in many bankruptcy-related professional organizations, including ABI, the International Women's Insolvency & Restructuring Confederation and Turnaround Management Association. Ms. Evergreen has been recognized in *Chambers USA*, *The Best Lawyers in America*, *Washington, DC Super Lawyers* and *Washingtonian Magazine*. She was named one of 12 "Outstanding Young Restructuring Lawyers" by *Turnarounds & Workouts* for 2017, and she was named one of ABI's "40 under 40" emerging leaders for 2018. Ms. Evergreen maintains an active *pro bono* practice and received the DC Bar's Laura N. Rinaldi Pro Bono Lawyer of the Year Award for 2018. Prior to joining Arnold & Porter, she was a law clerk to Hon. Stephen C. St. John of the U.S. Bankruptcy Court for the Eastern District of Virginia. Ms. Evergreen received her B.A. from Georgetown University and her M.B.A. and J.D. from William & Mary.

Hon. Elizabeth L. Gunn is a U.S. Bankruptcy Judge for the District of Columbia in Washington, D.C., appointed on Sept. 4, 2020. A COVID-era selection and appointment, she was sworn in by Zoom from her living room. Prior to her appointment, Judge Gunn served as an Assistant Attorney General for the Commonwealth of Virginia as the bankruptcy specialist for the Division of Child Support Enforcement. She also practiced law in Richmond, Va., at Sands Anderson PC and McGuireWoods LLP. In 2017, Judge Gunn was honored as a member of ABI's inaugural class of "40 Under 40." In 2022, she was recognized by the Bar Association of the District of Columbia as its Judicial Honoree and recipient of the BADC's Suzanne V. Richards Foundation Grant. Judge Gunn serves on the advisory board of the *American Bankruptcy Law Journal* and is a coordinating and associate editor of the *ABI Journal*. In addition, she sits on the boards of the Federal Bar Association Bankruptcy Section, International Women's Insolvency & Restructuring Confederation, American Bar Association, National Conference of Federal Trial Judges and the Chesapeake Chapter of the Turnaround Management Association. She also is a member of the Walter Chandler Bankruptcy Inn of Court and is Board Certified in Consumer Law by the American Board of Certification. Judge Gunn received her B.A. *cum laude* from Willamette University and her J.D. *cum laude* from Boston College Law School.

Hon. Stacey G. C. Jernigan is Chief U.S. Bankruptcy Judge for the Northern District of Texas in Dallas, initially appointed on May 12, 2006. Prior to her appointment, she practiced for 17 years in the Business Reorganization and Bankruptcy Practice Group of Haynes and Boone LLP in Dallas, where she represented debtors, committees and purchasers in large, complex chapter 11 cases and out-of-court workouts, particularly with regard to energy companies, regulated entities, real estate businesses and public companies. She was also an advisor to the California Legislature in Sacramento in connection with the California utility financial crisis in 2001. Judge Jernigan is Board Certified in Business Bankruptcy Law by the American Board of Certification, a Fellow of the American College of Bankruptcy and a Fellow of the Texas and Dallas Bar Foundations. She is a frequent author

and has been recognized by *Chambers USA*, *D. Magazine* and *Texas Monthly Law & Politics*. Judge Jernigan received her B.B.A. *magna cum laude* from Southern Methodist University in 1986 and her J.D. from the University of Texas Law School in 1989.

Lauren A. Moskowitz is a partner in Cravath, Swaine & Moore LLP's Litigation Department in New York and a member of the firm's Financial Restructuring & Reorganization practice. Named a "Bankruptcy MVP" by *Law360*, she has experience representing clients in litigation related to bankruptcy and restructuring matters, in addition to general commercial, antitrust, securities and intellectual property litigation. Among other matters, Ms. Moskowitz has represented Blackstone's global credit business in an adversary proceeding and chapter 15 case brought by the bankruptcy estate of Norske Skogindustrier; Fifth Season Investments, an Owl Rock life insurance investment portfolio company, in a dispute against GWG in connection with Fifth Season's role as replacement DIP lender in GWG's pending chapter 11 proceedings; Stanley Black & Decker in a lawsuit against Sears related to the administrative consent program in its chapter 11 proceedings; Credit Suisse in connection with litigation relating to the pre-packaged chapter 11 proceedings for Quorum Health Corp.; and Dutch retailer HEMA B.V. in a controlled debt restructuring and recapitalization transaction, including obtaining chapter 15 recognition of creditors' scheme of arrangement. Notably, she represented The Weinstein Co. in its high-profile chapter 11 bankruptcy proceedings. After years of extensive negotiations, she helped secure a global settlement and chapter 11 plan, which was confirmed by the bankruptcy court in 2021. Ms. Moskowitz has been repeatedly recognized as a leading lawyer by numerous professional publications, including *Benchmark Litigation*, *Chambers USA*, *Law360*, *New York Law Journal* and *The Legal 500 US*. Recently, she was named to *Benchmark Litigation*'s "Top 250 Women in Litigation" list, *Crain's New York Business*'s list of "Notable Women in Law" and *Lawdragon*'s lists of "500 Leading Bankruptcy & Restructuring Lawyers," "500 Leading Global Litigators" and "500 Leading Litigators in America." Ms. Moskowitz received her B.A. with distinction in all subjects from Cornell University and her J.D. *magna cum laude* from Fordham University School of Law, where she was a member of the National Moot Court Competition team and the Moot Court Editorial Board.

Hon. Karen B. Owens is a U.S. Bankruptcy Judge for the District of Delaware in Wilmington. Prior to her appointment, she was a director in the Bankruptcy and Insolvency group of Ashby & Geddes, P.A., where she maintained a diverse practice, representing corporate debtors, estate professionals, various secured and unsecured creditor constituencies, and other interested parties in reorganization and liquidation proceedings and bankruptcy-related litigation. Prior to joining Ashby & Geddes, Judge Owens started her career at Skadden, Arps, Slate, Meagher & Flom as a corporate restructuring associate, and later went on to clerk for Hon. Brendan Linehan Shannon of the U.S. Bankruptcy Court for the District of Delaware. She is an adjunct professor in the Bankruptcy L.L.M. Program at St. John's University School of Law in New York, co-president of the Delaware Bankruptcy American Inn of Court, a member of the board of directors of the Philadelphia/Wilmington Chapter of the Turnaround Management Association, and a member of the International Women's Insolvency & Restructuring Confederation. Judge Owens received her Bachelor's degree from Pennsylvania State University, where she was Phi Beta Kappa, and her J.D. *summa cum laude* from American University's Washington College of Law, where she served as an associate managing editor for the *American University Law Review* and as legal intern to Hon. Stephen S. Mitchell of the U.S. Bankruptcy Court for the Eastern District of Virginia.

Hon. Michael E. Wiles is a U.S. Bankruptcy Judge for the Southern District of New York in New York, sworn in on March 3, 2015. Previously, he was a partner with Debevoise & Plimpton LLP, where he focused on general commercial litigation and bankruptcy. Judge Wiles co-authored the *Collier Business Workout Guide* (Mathew Bender 2007) and has appeared on panels organized by the Association of the Bar of the City of New York, the American College of Investment Council and others to discuss current issues in bankruptcy litigation. He is a former member of the Committee on Bankruptcy and Reorganization of the Association of the Bar of the City of New York. His publications and written CLE materials include "May Parties Consent to Bankruptcy Court Adjudication of '*Stern* Claims'" (September 2014) (presented at a continuing legal education session at the Association of the Bar of the City of New York); "Ponzi Schemes and Avoidance Actions: 3 Issues," *Law360* (March 7, 2011); "The Good Faith Defense to Fraudulent Transfer Claims" (December 2010) (presented at a continuing legal education session at the Association of the Bar of the City of New York); and "At the Crossroads: The Intersection of the Federal Securities Laws and the Bankruptcy Code," *The Business Lawyer* (November 2007). Judge Wiles received his A.B. from Georgetown University in 1975 and his J.D. from Yale Law School in 1978.