



AMERICAN
BANKRUPTCY
INSTITUTE

VALCON 2023

Valuation of Tangible vs. Intangible Assets

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May 1-3 | New Orleans, LA



VALUATION OF TANGIBLE VS. INTANGIBLE ASSETS

CHALLENGES AND OPPORTUNITIES IN
VALUING ASSETS IN UNIQUE CATEGORIES AND CONTEXTS

TUESDAY, MAY 2, 2023 * 9:00AM – 10:00AM

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MODERATOR:



George W. Shuster, Jr.
WilmerHale

PANELISTS:



Teresa C. Kohl
SSG Capital Advisors



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Rob Vanderbeek
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<u>UNIQUE ASSET CATEGORIES</u>	<u>UNIQUE VALUATION CONTEXTS</u>
Intellectual Property Assets	Financings v. Sales
Consumer & Service Assets	Bankruptcy 363 Sales v. Chapter 11 Plans
Payment Streams	Litigation v. Transactional



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VALUING ASSETS IN UNIQUE CATEGORIES: INTELLECTUAL PROPERTY

- Life sciences sector – residual assets from struggling or failed drug programs
 - Program assets for program continuation or relaunch (PhaseBio, Argos)
 - Data from failed programs to support other development efforts (Allena)
 - Non-exclusive licenses to support other development efforts (Allena)

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VALUING ASSETS IN UNIQUE CATEGORIES: CONSUMER & SERVICE ASSETS

- Failed brick & mortar retail transitioning to online presence or B&M relaunch
 - Recurring insolvencies in toy sector (Toys ‘R Us / FAO / KB Toys / eToys)
- Direct to Consumer (“DTC”) companies
 - Social media presence & valuing “followers” (Twitter)
 - Consumer lists, URL addresses
- Service Companies – Contract & Non-contractual Relationship Value (*e.g.*, recruiters)


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VALUING ASSETS IN UNIQUE CATEGORIES: REVENUE STREAMS

- Life sciences sector
 - Current v. future revenue streams
 - Preclinical, clinical, and commercial revenue streams
 - Actual v. synthetic revenue streams
- Project finance & real estate
 - Travel & entertainment revenue streams in the pandemic environment
 - Commercial rent in the post-pandemic environment
 - Dedicated private & public revenue streams (airport fees, taxes, etc.)




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VALUING ASSETS IN UNIQUE CONTEXTS: FINANCINGS V. SALES

- Financing Transactions
 - Valuation of investor return – likelihood and amount
 - Valuation of investor recovery – collateral value and liquidity
 - Cost of capital – absolute & relative; extent of dilution
- Sale Transactions
 - Valuation of total consideration: financial and strategic buyers
 - Valuation of non-cash and contingent consideration



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**VALUING ASSETS IN UNIQUE CONTEXTS:
 BANKRUPTCY SALES V. CHAPTER 11 PLANS**

<ul style="list-style-type: none"> ➤ Section 363 Sales <ul style="list-style-type: none"> ➤ Valuation often “in hands of new owner” ➤ Sale process may itself validate value ➤ Primary goal may be sale justification; claim treatment may be secondary 	<ul style="list-style-type: none"> ➤ Chapter 11 Plans (non-liquidating) <ul style="list-style-type: none"> ➤ Valuation often “in place” ➤ Plan process may not validate value ➤ Primary goal may be plan confirmation; focus on fulcrum class
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**VALUING ASSETS IN UNIQUE CONTEXTS:
LITIGATION V. TRANSACTIONAL VALUATION**

- | | |
|---|--|
| ➤ Valuation in the Litigation Environment | ➤ Valuation in the Transactional Environment |
| ➤ More adversarial; rigid process | ➤ More cooperative; open process |
| ➤ Subject to immediate challenge | ➤ Focused on current deal & future risk |
| ➤ Experts more visible | ➤ Experts less visible |
| ➤ Polarization tendency | ➤ Centering tendency |
| ➤ Often a piece of a larger puzzle | ➤ Often a stand-alone task |

Faculty

Teresa C. Kohl is a managing director for SSG Capital Advisors, LLC in West Conshohocken, Pa., and is responsible for originating and leading investment banking transactions, as well as managing SSG's litigation advisory practice. She has completed more than 150 restructuring matters, including refinancing and sale transactions for middle-market companies in bankruptcy proceedings and out-of-court workouts. Prior to her transition to investment banking, Ms. Kohl led financial and operational restructuring engagements for boutique advisory firms. Her past clients include publicly traded, privately held, private-equity sponsored and family-owned companies in the health care, retail, manufacturing, building products and financial services industries. Ms. Kohl is a frequent speaker on financial and operational restructuring issues, bankruptcy, and special-situation transactions, as well as a contributing author to the *Norton Journal of Bankruptcy Law and Practice*. She is a Fellow of the American College of Bankruptcy, and she has served on ABI's Board of Directors and in leadership positions of the Turnaround Management Association (TMA Global), for which she was the first woman to lead TMA's largest global chapter (New York City) as president and co-founded TMA Global's Network of Women. She also is the immediate past board chair of Living Beyond Breast Cancer, a national nonprofit that connects people with trusted breast cancer information and a community of support. Ms. Kohl is a member of the Association of Insolvency and Restructuring Advisors, INSOL International, the International Women's Insolvency and Restructuring Confederation and The Forum of Executive Women. She serves on the steering committee of the Eastern District of Pennsylvania Bankruptcy Conference, and as a mentor for ABI's Diversity and Inclusion Working Group Mentoring Program. Ms. Kohl has received numerous awards, including the Global M&A Network's SHE for SHE Leader Award, the Top Restructuring Investment Banker (2022), The M&A Advisor's Distressed M&A Dealmaker of the Year Award (2021 and 2019) and TMA Global's Outstanding Individual Contribution Award (2017). In addition, she was named a U.S.A. Top Women Dealmaker by the Global M&A Network (2019). Ms. Kohl received her B.S. from Villanova University School of Business.

Alton Lo is a managing director at J. Wood Capital Advisors LLC in Santa Rosa, Calif., where he helps companies evaluate capital structure and raise capital. He is focused on the health care sector and advises clients on convertible debt, royalty/synthetic royalty transactions, clinical trial financings, and other forms of structured financings for life sciences companies. Prior to joining the firm, Mr. Lo worked in the renewable energy industry, and before that, he held a number of positions with J.P. Morgan in San Francisco and has expertise across the entire capital structure. As part of the firm's Corporate Finance Advisory group, he has helped clients evaluate their businesses and access the capital markets best suited for their stage of growth. He also has held roles in equity-linked and derivative capital markets, investment banking, and corporate banking, where he focused on debt financing for health care companies. Mr. Lo is a FINRA-Registered Representative holding Series 7, 79 and 63 licenses. He received his B.A. in economics from Dartmouth College and his M.B.A. from the Tuck School of Business at Dartmouth.

David W. Prager, CFA is a managing director of Kroll in New York, where he leads the company's efforts focused on complex financial situations, restructuring advisory and corporate valuation disputes. He works with clients with complex needs involving corporate value and solvency disputes,

forensic and trading investigations, bankruptcy and restructuring matters, and other complex commercial litigation. Mr. Prager has more than 20 years of experience focusing on restructuring advice and complex commercial litigation, and he has testified extensively and served as a consulting expert in such matters. He recently testified as the primary witness on behalf of Assured Guaranty in its victory in a half billion dollar valuation dispute with Lehman Brothers International respecting credit default swap insurance during the Financial Crisis. He also testified recently with respect to the value available under the Puerto Rico restructuring plan. Mr. Prager has testified in such high-profile, highly contentious bankruptcy disputes as Adelphia, Tribune and Patriot Coal on the fairness of the plans of reorganization, valuation, reasonableness of projections and evaluation of complex value allocation. He also has served as consulting expert on multiple fraudulent conveyance actions. During the Enron bankruptcy, Mr. Prager investigated and valued highly complex and varied assets and formulated proposals for Enron's reorganization. His other testimonial experience includes the value of a Platinum Partners private-equity portfolio (and the solvency conclusions emerging therefrom), and of a medical devices start-up and testimony on behalf of the SEC in a successful enforcement action. Mr. Prager has served as a financial advisor in restructuring matters involving extensive quantitative analysis. In the structured products industry, he served as the interim CFO of Syncora Guarantee and represented creditors in the MBIA restructuring. He also has supported creditors in various corporate (such as Ditech and SemGroup) and municipal (including Detroit and Jefferson County) restructuring matters. Prior to joining Kroll, Mr. Prager spent more than 18 years at Goldin Associates, where he most recently served as a managing director. He also was formerly employed at McManus & Miles, an investment bank specializing in the power-generation industry. Mr. Prager received his B.S. in 1996 from the University of Pennsylvania Wharton School of Business.

George W. Shuster, Jr. is a partner in WilmerHale's Bankruptcy and Financial Restructuring and Debt Finance Groups in New York. He advises companies with respect to financial distress and insolvency matters, both assisting with the structuring of transactions to mitigate financial risk and addressing financial risk when it arises. Mr. Shuster has a particular focus on companies with strong intellectual property assets, specifically regarding financial risk in the life sciences sector. He also advises investors and other creditors with respect to bankruptcy and financial restructuring matters. Mr. Shuster's debt-finance practice focuses on specialty finance arrangements, including receivables, revenue and royalty monetizations, development finance, and structured finance transactions, as well as lending in the distressed environment. He has also published articles on chapter 15 and related issues for the *ABI Journal* and other publications. Mr. Shuster received his undergraduate degree from Columbia College in 1997 and his J.D. from the University of Virginia School of Law in 2000.

Rob Vanderbeek, CIRA, CDBV is a managing director in Grant Thornton LLP's Restructuring Advisory practice in New York. He has 30 years of restructuring, performance improvement and due diligence experience, as well as litigation, valuation and forensic experience in a broad range of industries, including health care, energy, financial services, transportation trucking, manufacturing, mortgage products, real estate, retail, hospitality, equipment leasing and distribution. Mr. Vanderbeek has led many distressed companies through the restructuring and sales process, both in and out of court. He has served managements, boards, secured and unsecured creditors, and other stakeholders with complex corporate restructurings. He also has played key roles in cost reduction and rationalization efforts, as well as liquidity management. Mr. Vanderbeek has served as interim COO and other interim mandates related to complex restructuring cases. He has provided expert testimony in bankruptcy court on DIP financing and cash-collateral needs, and he has served as an expert in support

of as well as in defense of fraudulent conveyance actions. Mr. Vanderbeek has performed solvency analyses and prepared fair-value analyses and reports in support of less than reasonably equivalent value provided for pre-petition businesses transferred. Mr. Vanderbeek served as a board member and audit chair for a New York nonprofit guardianship agency to stabilize operations and reorganize its business. Prior to joining Grant Thornton, he was a managing director at Goldin Associates, a financial advisory boutique, where he was as a member of its Management Committee and ranked in the Top 25 Crisis Management Professionals in Deal League Tables for six years. Before joining Goldin, he was a managing director in the Restructuring Turnaround practice at Huron Consulting Group, worked in the restructuring practices of AlixPartners and PwC Earlier in his career, and was a bank examiner at the Federal Reserve Bank of New York for several years. Mr. Vanderbeek is a member of ABI, the Association of Insolvency Restructuring Advisors, and the Turnaround Management Association. He received his B.S. in finance from Lehigh University, his M.B.A. from NYU Stern School and his J.D. from Pace School of Law.