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Bankruptcy Committees: Strategies to Maximize Distribution to All Creditors

DIP/Cash Collateral Challenges, Ensuring Adequate Disclosures, Opposing Incentive Programs, Blocking Unreasonable Backstop Fees

WEDNESDAY, MARCH 2, 2022

1pm Eastern | 12pm Central | 11am Mountain | 10am Pacific

Today's faculty features:

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BANKRUPTCY UNSECURED CREDITORS' COMMITTEES

Strategies to Maximize Distribution to Creditors

Stephen B. Selbst & Steven B. Smith

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UNSECURED CREDITORS' COMMITTEES: *OVERVIEW*

ROLE OF THE CREDITORS' COMMITTEE

- The Official Committee of Unsecured Creditors (UCC) represents the interests of all unsecured creditors in a chapter 11 case. The UCC does not represent the interests of its members or individual unsecured creditors.
- The UCC influences the chapter 11 case. The UCC consults with the debtor's counsel on all issues relating to the administration of the case.
- The UCC also investigates (i) the debtor's pre-petition actions and conduct, (ii) the pre-petition transfer of any assets, and (iii) the debtor's pre-petition financial condition and analyzes whether claims may be brought.
- If there is a plan of reorganization, the UCC has a strong hand in drafting the disclosure statement and plan.
- Additionally, a UCC can be instrumental in appointing a trustee or examiner to oversee the chapter 11 case.

HOW ARE UCCS FORMED?

- The Office of the United States Trustee (UST), an agency of the Department of Justice, solicits interest in the formation of a UCC in every chapter 11 bankruptcy case except for small business cases or subchapter V cases. 11 U.S.C. § 1102(a)(1)-(3).
- The Bankruptcy Administrator Program
  - Established in 1986 in response to complaints and dissatisfaction with the UST Program.
  - Instituted in the six federal judicial districts in the states of Alabama and North Carolina.
  - In the *LTL Management, LLC* chapter 11, the Bankruptcy Administrator appointed the Official Committee of Talc Claimants.
- The Bankruptcy Court may also appoint other statutory committees, such as equity committees or committees for special classes of creditors to assure adequate representation of a particular group. 11 U.S.C. § 1102(a)(2)-(3).
- Creditors independently may also form "ad hoc" committees. Ad hoc committees are not statutory committees and are not bound by the same obligations as statutory committees. Nor do they enjoy the same privileges.

UCCS FORMED (CONT.)

- A debtor's bankruptcy petition, which is publicly filed, includes the debtor's 20 largest unsecured creditors, including names, contact information, and claim amount (Top 20 List).
  - In multi-debtor cases, the debtor may file a matrix with a larger number of creditors.
- The UST runs the UCC formation process. The UST solicits interest in serving on the UCC from the Top 20 List (or larger number).
- For creditors interested in serving on the UCC, the UST interviews candidates and selects 3 to 7 creditors (depending on the size and complexity of the case) to serve on the UCC.
- The UST tries to form a UCC that reflects the mix of the debtor's unsecured creditors, *i.e.*, trade creditors, landlords, bondholders, etc.

HOW UCCS OPERATE

- UCCs govern themselves.
  - Elects a chair.
  - Adopts bylaws.
- Most UCC meetings are held telephonically.
- The frequency of meetings is dictated by the status of the case.
  - Early in the case there may be more frequent meetings to analyze first-day motions or 363 sale procedures.
  - Subsequent meetings may be more infrequent.

UCCS OPERATE (CONT.)

- The Bankruptcy Code authorizes the UCC to retain counsel, financial advisors, and other professionals. *See* 11 U.S.C. § 1102(a).
- The UCC's professionals are paid by the bankruptcy estate. Those fees have administrative expense status, so the UCC's professionals are paid before unsecured creditors. *See* 11 U.S.C. § 503(b)(4).
- The Bankruptcy Code also specifically authorizes the reimbursement of "actual and necessary" expenses of individual members of the UCC. *See* 11 U.S.C. § 503(b)(3)(F).

RETENTION OF PROFESSIONALS

- Representing a UCC can be lucrative and prestigious for professionals, so there is competition for all UCC professional retentions.
- The UCC interviews multiple candidates for the role of legal counsel and/or financial advisor to the UCC.
- Professionals seeking to be retained make short presentations that emphasize their qualifications, experience and views on the issues that will drive the case.
- Professionals retained by the UCC must be free of conflicts.
  - If retained, they represent the UCC and not individual members.
  - If they represented an individual creditor before the chapter 11 case, they must resign that representation to act for the UCC.

DUTIES OF THE UCC

- A UCC may—
  - Consult with the trustee or debtor in possession concerning the administration of the case;
  - Investigate the financial condition of the debtor, the operation of the debtor's business and any other matter relevant to the case or to the formulation of a plan;
  - Participate in the formulation of a plan and advise unsecured creditors of the UCC's determinations as to any plan formulated;
  - Request the appointment of a trustee or examiner under 11 U.S.C. § 1104; and
  - Perform such other services as are in the interest of those represented.

See 11 U.S.C. § 1103(c).

DISCLOSURE TO ALL UNSECURED CREDITORS

- The UCC has a duty to keep all unsecured creditors informed about the status of the case. *See* 11 U.S.C. § 1102(b)(3)(A).
- The UCC must provide access to information for unsecured creditors who are not appointed to the UCC. *See* 11 U.S.C. § 1102(b)(3)(A)(i)-(ii).
- The UCC must solicit and receive comments from the creditors concerning any disclosures it makes. *See* 11 U.S.C. § 1102(b)(3)(B).

DISCLOSURE (CONT.)

- The amount of information the UCC must share depends on the nature of the case.
- The UCC acts as the voice of all unsecured creditors, many of whom lack the resources to speak for themselves.
  - UCC members may receive commercially sensitive or proprietary information from the debtor and other parties, often in the context of settlement discussions.
  - UCC members' fiduciary duties of loyalty and care to the unsecured creditor body require such information to be held in confidence. *In re Refco Inc.*, 336 B.R. 187, 196 (Bankr. S.D.N.Y. 2006).
  - Maintaining parties' reasonable expectations of confidentiality is often critical to a UCC's performance of its oversight and negotiation functions, compliance with applicable securities laws, and the proper exercise of UCC members' fiduciary duties. *Id.* at 197.

DISCLOSURE (CONT.)

- In the *Refco* case, the Court ordered that the UCC maintain a website that included:
  - General information concerning the chapter 11 case;
  - Monthly reports from the UCC;
  - Highlights of significant events;
  - A calendar with upcoming significant events;
  - Access to the claims docket;
  - A general overview of the chapter 11 process;
  - A form for creditors to request "real-time" case updates;
  - A form for creditors to submit questions, comments, and requests for access to information;
  - Responses to creditor questions; and
  - Answers to frequently asked questions.

Refco, 336 B.R. at 200.

- UCCs can sometimes "piggyback" off of the website maintained by the debtors' claims agent or, in larger cases, retain their own claims agent.

UCC MEMBERS' DUTIES

- UCC members are fiduciaries. They have a duty of loyalty and a duty of care.
- The duty of loyalty requires UCC members to act in good faith for the benefit of unsecured creditors and to avoid any self-dealing and conflicts of interest.
- The duty of care requires the UCC members to be informed of all material information reasonably available before making a decision.
  - The UCC members must act with the level of care that careful and prudent persons would use in similar circumstances.

DUTIES (CONT.)

- UCC members do not owe fiduciary duties to the debtor. *Pan Am Corp. v. Delta Air Lines, Inc.*, 175 B.R. 438, 513 (S.D.N.Y. 1994).
- UCC members are protected by qualified immunity. Defeating that qualified immunity requires proof that the UCC member engaged in "willful misconduct" or "*ultra vires* activity." *Id*. at 514.

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NEIMAN MARCUS AND MARBLE RIDGE CAPITAL LP

CASE STUDY: NEIMAN MARCUS

- Neiman Marcus filed for bankruptcy in the Southern District of Texas in May 2020.
- Marble Ridge Capital LP (Marble Ridge), a hedge fund, was appointed to the UCC and Daniel Kamensky, the principal of Marble Ridge, was co-chair of the Neiman Marcus UCC.
- The UCC negotiated with Neiman Marcus to obtain 140,000,000 shares of MyTheresa, a profitable Neiman Marcus affiliate (the MYT Securities) to be distributed to unsecured creditors as part of a plan.
- In July 2020, Kamensky was negotiating with the UCC for Marble Ridge to offer $.20 cents per share to purchase the MYT securities from any unsecured creditor who wanted to receive cash for its MYT Securities.

NEIMAN MARCUS (CONT.)

- On July 31, 2020, Kamensky learned that an investment bank (Investment Bank) notified the UCC that it would bid $.30-$.40 to purchase the MYT Securities from any unsecured creditor.
- Kamensky sent messages to a senior trader at the Investment Bank, telling him not to place a bid.
  - He allegedly threatened to use his position as co-chair of the UCC to prevent the Investment Bank from acquiring the MYT securities.
  - He also stated that Marble Ridge had been a client of the Investment Bank, but that Marble Ridge would cease doing business with the Investment Bank if the Investment Bank placed a bid.
- The Investment Bank thereafter decided to not make a bid to purchase MYT Securities.

NEIMAN MARCUS (CONT.)

- The Investment Bank informed the UCC of its decision and told the UCC's counsel that it had made its decision at Kamensky's request.
- UCC counsel informed counsel for Marble Ridge of the call with the Investment Bank. After speaking with Kamensky, counsel for Marble Ridge falsely claimed that Kamensky had not asked the Investment Bank not to bid.
- Marble Ridge resigned from the UCC and was sanctioned by the Neiman Marcus bankruptcy judge.
- Kamensky was charged in September 2020 with federal criminal charges: securities fraud, wire fraud extortion and bribery in connection with a bankruptcy case, and obstruction of justice.
- On February 3, 2021, Kamensky plead guilty to one count of bankruptcy fraud and on May 7 he was sentenced to six months in prison, six months of supervised release on home confinement and ordered to pay a fine of $55,000.
- Marble Ridge announced that its funds would close down and that it would be returning funds to investors.

https://www.justice.gov/usao-sdny/pr/new-york-hedge-fund-founder-arrested-and-charged-fraud-extortion-and-obstruction

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STRATEGIES TO MAXIMIZE DISTRIBUTIONS

FIRST DAY MOTIONS

DEBTOR SEEKS RELIEF TO KEEP BUSINESS OPERATING IN BANKRUPTCY

- **What are first day motions in a Chapter 11?**
- First day motions seek authority to take actions necessary to allow the debtor's business operations to function smoothly in Chapter 11.
- Examples of typical first day motions include:
  - Motion to Use Cash Collateral;
  - Motion to Pay Prepetition Payroll;
  - Motion for Order Fixing Utility Deposits; and/or
  - Motion for Order Authorizing Payment of Critical Vendors.
- The UCC plays an important role in making sure the first day motions don't harm the interests of unsecured creditors.

CASH COLLATERAL AND DIP CREDIT

DEBTORS NEED ACCESS TO EXISTING CASH AND OFTEN BORROW NEW FUNDS

- The debtor typically finds itself in need of credit -- called debtor in possession or DIP financing -- immediately after initiating a Chapter 11 case.
- While its pre-bankruptcy liabilities are frozen, the debtor is likely to need cash immediately to cover payroll and the up-front costs of stabilizing the business.
- Although post-bankruptcy credit extended by vendors is granted administrative expense priority, vendors often place Chapter 11 debtors on C.O.D. until the debtor stabilizes.
- DIP financing helps the company restore vendor and customer confidence in the company's ability to maintain its liquidity.
- Debtor typically files motions to use cash collateral and/or enter into DIP financing arrangements.

CASH COLLATERAL (CONT.)

- Bankruptcy Code Section 363(a) defines cash collateral, which includes cash, negotiable instruments, securities, deposit accounts, as well as proceeds, and rents.
  - Cash collateral also includes money collected on accounts receivable as well as money received or new accounts created from the sale of inventory.
- Section 363(c)(2) of the Code prevents a debtor from using cash collateral without the consent of all parties that have an interest in the collateral or a court order.

CASH COLLATERAL (CONT.)

- Secured creditors may try to take advantage of the debtor's need to use cash collateral, and demand unfair and/or unfavorable provisions in a cash collateral order as "adequate protection".
- The UCC's role is to object to unfair provisions.
- The purpose of adequate protection is not to allow a secured lender to ***improve its position***. Adequate protection can be necessary to ensure that secured creditors receive the security they bargained for prepetition. *See In re WorldCom, Inc.*, 304 B.R. 611, 618-19 (Bankr. S.D.N.Y. 2004).

CASH COLLATERAL (CONT.)

- Bankruptcy Rule 4001(c)(1)(B) contains a list of provisions that a cash collateral motion must highlight, which may be used as a checklist for UCC objections:

  - A determination of the validity, priority, or amount of a claim or lien;
  - A waiver or modification of the automatic stay;
  - Limitations on any party's right to file a plan, seek an extension of exclusivity, use cash collateral, or obtain DIP financing;
  - Deadlines for filing a plan, approval of a disclosure statement, or for confirmation;
  - A release of any estate claim or cause of action;
  - The indemnification of any party;
  - A release or waiver of any right under § 506(c); or
  - The granting of a lien on any claim arising under the Bankruptcy Code.

DIP FINANCING

- As with cash collateral, DIP lenders often ask for extraordinary relief as the price of new credit.
- The UCC should review and negotiate the terms of any DIP financing and may object to terms it considers to be unfair or unreasonable.
- DIP financing objections often cover the same issues as cash collateral objections.

363 SALES

ENSURING AN OPEN AND COMPETITIVE SALE PROCESS

- **The 363 Sale Process:** Many chapter 11 cases are filed to facilitate a sale of a debtor's business. The 363 sale process is straightforward, although the exact procedures may vary.
- Most 363 sales are run as follows:
  - Debtor markets the assets to potential purchasers.
  - The 363 sale starts with the debtor marketing its assets to attract potential purchasers, a process that may start pre-petition.
  - If the debtor has found a potential buyer, that party is the "stalking horse". The stalking horse bid serves as the base price for the auction bids, and the other bidders will use this bid as a benchmark.

363 SALES (CONT.)

ENSURING AN OPEN AND COMPETITIVE SALE PROCESS

- The debtor and the stalking horse bidder work together to draft an asset purchase agreement that outlines the terms of the auction sale.
- The debtor offers the stalking horse perks such as breakup fees, reimbursement of expenses, or bidding terms favorable to the stalking horse bidder.
- A stalking horse bidder helps set a “floor” price for assets to be sold at auction, thereby protecting the debtor from a situation where they might only receive unreasonably low bids for their assets.

363 SALES (CONT.)

ENSURING AN OPEN AND COMPETITIVE SALE PROCESS

- **Debtor files a bid procedures motion with the bankruptcy court.**
  - The motion seeks court approval for the procedures to govern the auction.
  - The motion also seeks approval for any incentives offered to the stalking horse bidder.
  - The UCC's role is to police the sale process to ensure that:
    - the terms of the sale process are fair;
    - there is adequate time for the sale process;
    - the sale is designed to reach all prospective bidders; and
    - the auction rules are designed to ensure competitive bidding
- **Typical objections to bid procedures motion:**
  - More time needed for effective sale process;
  - Insufficient UCC consultation rights; and
  - Compensation to stalking horse bidder is excessive.

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INVESTIGATING PREPETITION TRANSACTIONS

INVESTIGATION OF PRE-PETITION TRANSACTIONS

ENHANCING RECOVERIES

- Part of the UCC's mandate is to examine the debtor's prepetition conduct to determine whether there are claims to be asserted.
- Recovery sources include:
  - Preferential transfers (known as preference actions);
  - Fraudulent conveyance claims;
    - Intentional fraudulent transfers
    - Constructive fraudulent transfers
  - Claims against third parties; and
  - Claims for excessive compensation.

PRE-PETITION TRANSACTIONS (CONT.)

ENHANCING RECOVERIES

- The UCC's financial advisor and counsel examine the debtor's books and records to analyze:
  - Payments made to creditors within 90 days of the debtor's bankruptcy;
  - Payments made to insiders within two years of the debtor's bankruptcy; and
  - Transfers of assets outside of the ordinary course of business.
- In many recent cases, these claims and causes of actions are assigned under a plan of reorganization to a post-confirmation litigation trust.
- In some cases, recoveries from the post-confirmation trust will be the principal or sole source of recovery for unsecured creditors.

PREFERENCE ANALYSIS

- Section 547(b) of the Bankruptcy Code permits the debtor in possession or a trustee to recapture preferences.
- The policy goal is to further equality of treatment of creditors of the debtor.
- Elements of a preference:
  - The transfer *to* or *for the benefit of* a creditor;
  - The transfer made on account of an antecedent debt;
  - The transfer made while the debtor was insolvent;
  - The transfer was made 90 days before the date of the bankruptcy filing (extended to one year if the transfer was made to an insider); and
  - The transfer enables the creditor to receive more than it would have received if the case were a Chapter 7 liquidation.

FRAUDULENT CONVEYANCE CLAIMS

- Fraudulent conveyance claims can be brought under Section 548 of the Bankruptcy Code or state law.
- An intentional fraudulent conveyance is where a debtor makes a transfer to hinder, delay, or defraud creditors.
- A constructive fraudulent conveyance is a transfer made for less than fair consideration that:
  - Was made while transferor was insolvent;
  - Rendered the transferor insolvent; or
  - Left the transferor with inadequate capital to conduct its business.
- UCC often investigates potential fraudulent conveyance claims as part of its analysis of prepetition conduct by the debtor.
- Fraudulent conveyance claims are often assigned to post-confirmation trusts for the benefit of creditors.

CASE STUDY: NEIMAN MARCUS

- MyTheresa (MyT) was a European business focused on online luxury sales owned by Neiman Marcus.
- In 2018, Neiman Marcus conveyed MyT to Neiman Marcus Group, Inc. (NMG, Inc.), which did not have any creditors. NMG, Inc. did not pay any consideration for these assets, which were estimated to be worth $1 billion.
- In the Disclosure Statement, Neiman Marcus admitted that they received no value in exchange for the MyT interests and that a court would conclude that Neiman Marcus was insolvent at the time of the distribution. Neiman Marcus concluded that it had a constructive fraudulent conveyance claim against NMG, Inc.
- The Plan provided for creditors to receive shares of stock of MyT.

INSIDER CLAIMS

PURSUING CHAPTER 5 AND OTHER ACTIONS

- One of the basic functions of the UCC is to investigate for potential claims against insiders. *See In re Cumberland Farms*, 154 B.R. 9, 12 (Bankr. D. Mass. 1993).
- Claims may exist against a chapter 11 debtor's directors and officers, but typically the debtor is unwilling to sue its insiders.
- Where a debtor fails to bring a claim, the UCC can pursue it, but must first seek standing from the Bankruptcy Court. *In re STN Enterprises*, 779 F.2d 901, 904 (2d Cir. 1985).
- To obtain standing, the UCC must satisfy a two-part test:
  - Colorable claims for relief; and
  - The "debtor unjustifiably failed to bring suit."

  In re Sabine Oil & Gas Corp., 547 B.R. 503, 514-15 (Bankr. S.D.N.Y. 2016).

CASE STUDY: LYONDELL

- The plan provided for the formation of two separate trusts -- the Litigation Trust and the Creditor Trust -- to pursue claims.
- The Litigation Trust brought a $300 million preference action.
- After a 14-day trial, the Bankruptcy Court awarded only $12 million in damages.
- The trusts brought malpractice claims against the trustee and his law firm alleging that the firm bungled the preference action.
- The firm settled the suit.

PRE-PETITION BONUSES AND PAYOUTS

- Senior executives of distressed companies often receive bonuses immediately before a bankruptcy filing.
- Those payments may be subject to clawback by the UCC.
- **Hertz Chapter 11**
  - Hertz's retention program provided approximately $16,221,000 to senior executives.
  - The pre-petition Key Employee Retention Letter Agreement (KERP) stated: "As a condition to receiving the Retention Bonus you hereby waive any and all participation in the Company's annual bonus plan for 2020."
  - When Hertz filed a postpetition bonus program (KEIP), the UST objected, arguing that the KEIP replicated the KERP.
  - The UCC supported the UST, and requested that Hertz modify the KEIP to reset the bonus criteria and delay the payments.
  - In response, Hertz withdrew the KEIP, reduced bonuses, and increased bonus thresholds.

PRE-PETITION BONUSES AND PAYOUTS
CONTINUED

- **Whiting Petroleum Chapter 11**
  - Whiting paid $14.6 million in bonuses to key executives on the eve of its bankruptcy filing.
  - Whiting's plan proposed to release any claims to recover these payments.
  - The UCC and other creditors investigated whether the payments were fraudulent transfers.
  - Questions the UCC considered:
    - Did Whiting receive reasonably equivalent value in exchange for paying the executives?
    - Were the payments market standard?
    - Were the payments necessary?
  - Ultimately, the UCC determined not to pursue any claims to recover the payments.

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AD HOC COMMITTEES

AD HOC COMMITTEES

WHAT IS AN AD HOC COMMITTEE?

- Ad hoc or unofficial committees are informal groups of similarly situated stakeholders which coordinate action to defray professional fees and to speak with a unified voice, assert greater influence, and gain leverage in bankruptcy proceedings.
- Ad hoc committee members do not owe fiduciary duties to other creditors outside the group or even to fellow creditors within the group. Group members are motivated to protect their own interests, which may conflict with the interests of other members of the group.
- Ad hoc committees are not entitled to reimbursement of their professional fees and expenses unless (i) they can show that they made a "substantial contribution" to the bankruptcy case or (ii) they negotiate for reimbursement as part of a settlement.

AD HOC COMMITTEES (CONT.)

- Privilege Issues
  - Counsel may represent individual members or may represent the ad hoc committee itself.
  - Counsel's engagement letter and/or committee by-laws should confirm the members' agreement that they share a common interest.
  - Keeping holdings information private is difficult because Fed. R. Bankr. P. 2019 requires disclosure of the name and individual holdings of each group member.
- Rule 2019
  - Bankruptcy Rule 2019 governs disclosure by ad hoc committees.
  - Fed. R. Bankr. P. 2019(b)(1) applies to "every group or committee that consists of or represents, and every entity that represents, multiple creditors or equity security holders that are: (A) acting in concert to advance their common interests, and (B) not composed entirely of affiliates or insiders of one another."

CASE STUDY: LORAL SPACE & COMMUNICATIONS (SDNY)

- Debtor and UCC filed a joint plan calling for the substantive consolidation of Loral entities as part of a global settlement pursuant to Bankruptcy Rule 9019.
  - Plan proposed to pay trade creditors just 33%.
  - At least one of the entities proposed to be consolidated was wholly solvent and had its own trade creditors.
- Hedge funds purchased the trade claims against the solvent entity, formed an ad hoc committee of trade claims, and interposed an objection to the debtor's disclosure statement.
  - Plan was patently unconfirmable because it sought substantive consolidation through a 9019 settlement.
  - Judge Drain agreed and rejected the disclosure statement.
- Debtor and Ad Hoc Committee reached a settlement which gave trade creditors (i) 100% distribution, (ii) post-petition interest at 6% and (iii) attorneys' fees.

RECHARACTERIZATION & EQUITABLE SUBORDINATION

- **Recharacterization**
  - Bankruptcy Code Section 105
  - Focus is on substance of transaction rather than form
  - No wrong, inequitable conduct or harm is necessary
  - No alteration of substantive rights; instead, merely recognizes the true nature of the transaction and the relative rights stemming therefrom
  - *In re SubMicron Systems Corp.*, 432 F.3d 448 (3d Cir. 2006)
- **Equitable Subordination**
  - Bankruptcy Code Section 510(c)(1)
  - Alters substantive right, "subordinating" an otherwise valid claim to other claims
  - Focus is on the conduct of the parties; must have a "bad act" and actual harm to creditors
  - *In re 80 Nassau Associates*, 169 B.R. 832 (Bankr. S.D.N.Y. 1994)
  - *In re LightSquared Inc.*, 511 B.R. 253 (Bankr. S.D.N.Y. 2014)

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Stephen Selbst has more than 30 years of experience representing debtors, creditors, official committees, distressed investors and asset purchasers in bankruptcies and out-of-court restructurings. Stephen advises clients from a wide range of industries, including financial services, telecommunications, government agencies and real estate. A skilled commercial litigator, Stephen also has significant experience in district and state courts, where he regularly represents clients in separate litigation arising out of bankruptcy. He also advises clients on structured finance and derivative transactions.

He is a frequent lecturer on bankruptcy and restructuring topics and has published articles and book chapters on bankruptcy-related topics. He has been frequently quoted in newspaper articles on insolvency related topics and has appeared on CNBC.

Prior to joining Herrick, Stephen was a partner at McDermott Will & Emery LLP and Berlack, Israels & Liberman LLP (predecessor to Brown Rudnick LLP).

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Steven Smith focuses his practice on complex corporate restructuring and bankruptcy litigation, including in-court Chapter 11 and Chapter 15 cases and out-of-court workouts. He has extensive experience representing distressed debt investors, bondholders, official and ad-hoc creditor committees, administrative and collateral agents, indenture trustees, stalking horse and other asset purchasers, trade and tort claimants, and other significant parties-in-interest in a variety of jurisdictions across the United States.

Steven is also experienced in the analysis of true sale, non-consolidation, and bankruptcy remoteness principles in opinion and related contexts and has lectured on the topic on numerous occasions.

Prior to joining Herrick, Steven was a partner at Brown Rudnick LLP.

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Special thanks to **Rachel Ginzburg**, associate in Herrick's Restructuring & Finance Litigation Group, for helping to prepare this presentation.