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Cracks in the Market: Subprime Lending Under Pressure

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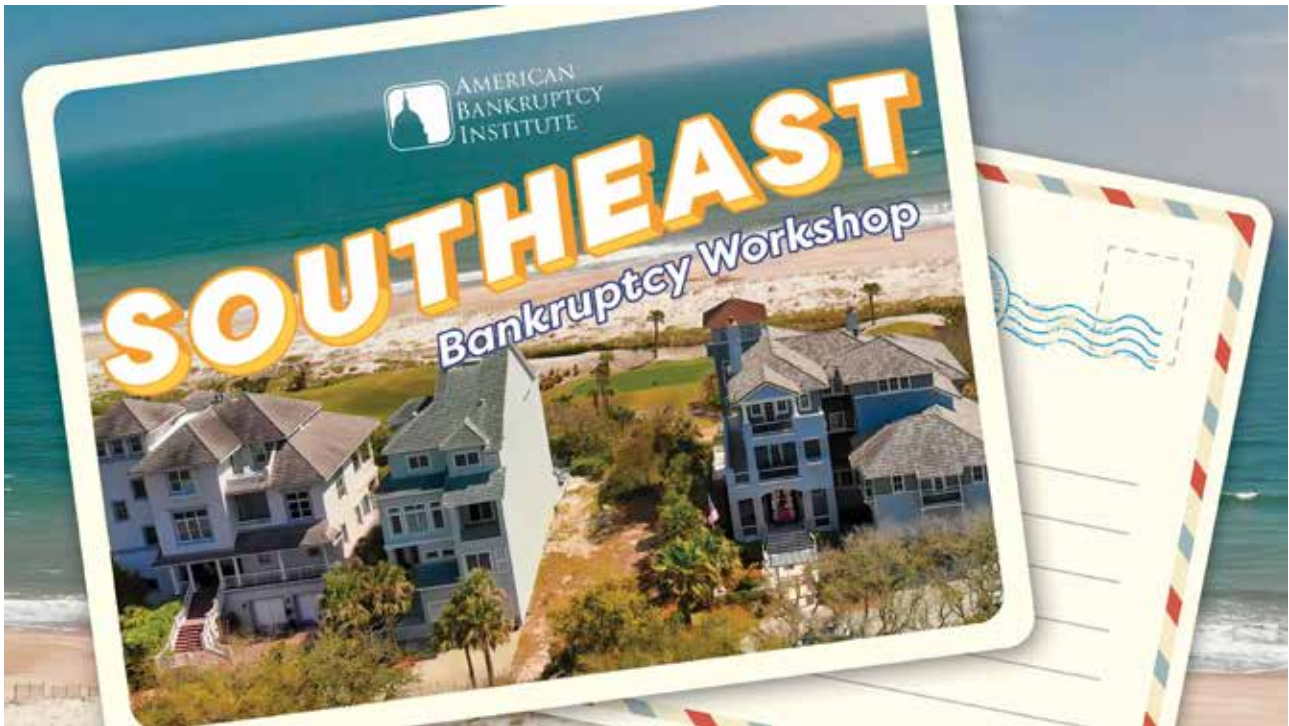
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Cracks in the Market: Subprime Lending Under Pressure



2026 SOUTHEAST BANKRUPTCY WORKSHOP



PANEL

Your Panelists

MODERATOR

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35+ years in insolvency, CRO, trustee, and fiduciary. Stabilizes failing platforms.

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Why This Panel Matters: The Coming Auto Credit Stress Cycle

Subprime Auto Lending Risks

Subprime borrowers face rising delinquencies and defaults, signaling stress in the auto credit market.

Impact on Bankruptcy Professionals

Increasing distressed auto loan cases are affecting bankruptcy and restructuring workflows significantly.

Market Size and Economic Importance

Over \$1.5 trillion in auto loans highlights the sector's critical role in economic participation.

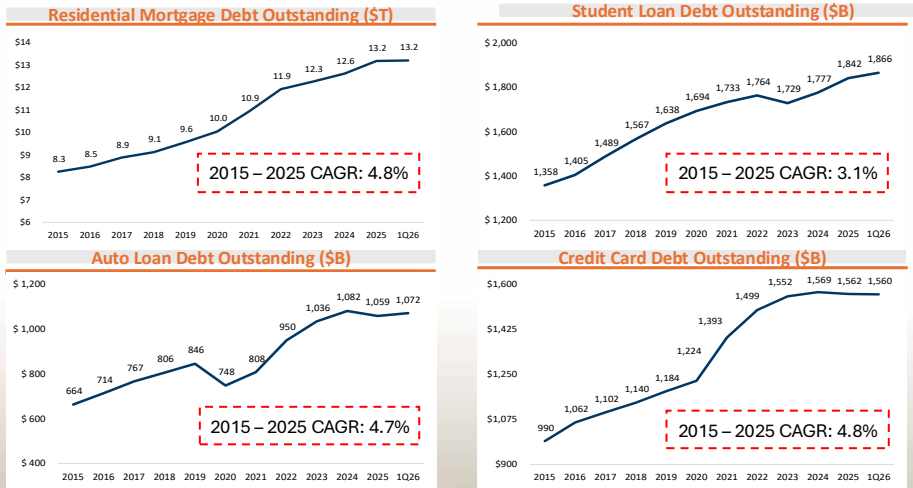
Widening Borrower Divide

Loosened underwriting has created a gap between prime and subprime borrowers, increasing risk for low-income Americans.

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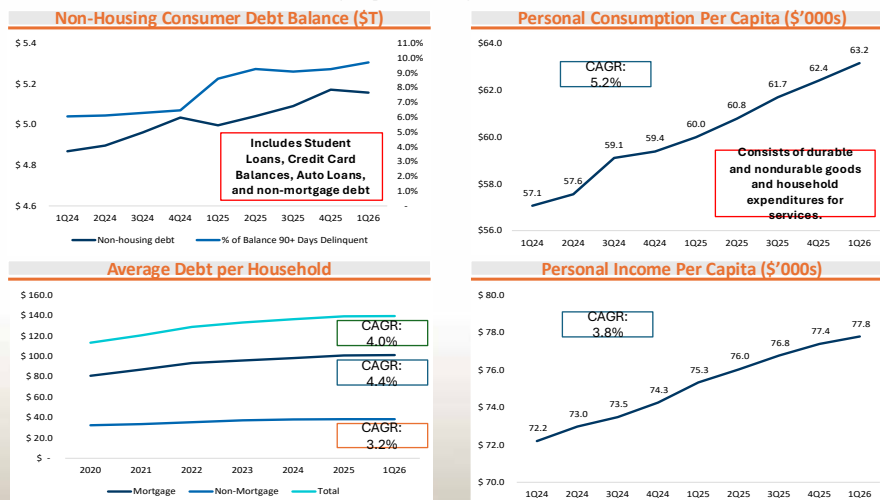
Historical Consumer Debt Trends



5



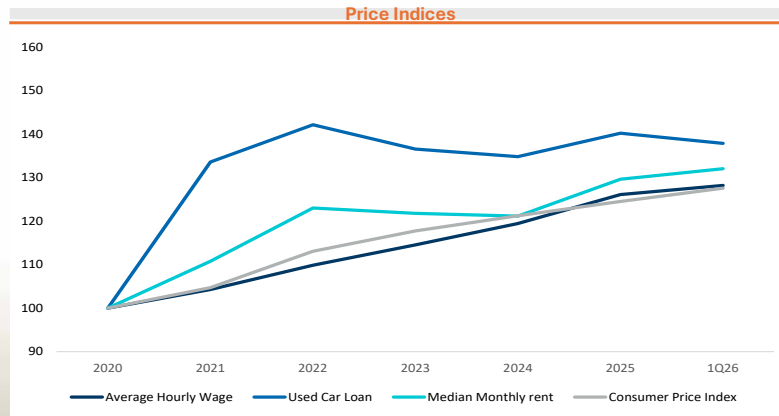
Consumer Debt, Spending & Income Trends



6



Rise in Cost of Living



7



BLOCK 1

Who Is the Subprime Borrower?

Subprime = sub-620 FICO, but also thin-file, income-volatile, post-bankruptcy, immigrant/no-file

A car is not a luxury — it is the asset that preserves income

Subprime borrowers: 17% of active auto accounts, -65% of delinquent auto loans

Chapter 13 filings at 211,700 — the car is often the reason for filing

\$531/mo

Average used-vehicle payment
(Experian Q1 2026)

Joseph Luzinski

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The Big Picture: Market Exposure and Borrower Divergence



Market Size and Lender Distribution

The U.S. auto lending market surpasses \$1.5 trillion, split between banks and various non-bank lenders.

Loan Underwriting and Risk Trends

Loosened underwriting over the past decade increased delinquency and default rates significantly.

Borrower Divergence and Economic Impact

Prime borrowers access favorable credit, while subprime face financial distress and higher interest rates.

Systemic Risk and Financial Stability

Subprime defaults threaten lender stability and broader financial system health.



BLOCK 2

Current Market Stress

Subprime 60+ day delinquency: 6.9% — highest in 32 years of tracking (Fitch)
 1.73 million vehicle repossessions last year — most since the Great Recession
 Average new-vehicle payment: \$770/mo | 35% of new-vehicle loans now exceed 6 years
 U.S. bankruptcy filings up 11.9% — Chapter 13 is a core part of the credit lifecycle
 Fed funds at 3.50–3.75% — banks tightening standards for nonbank lenders

6.9%

Subprime 60+ day delinquency
 32-year record (Jan 2026)

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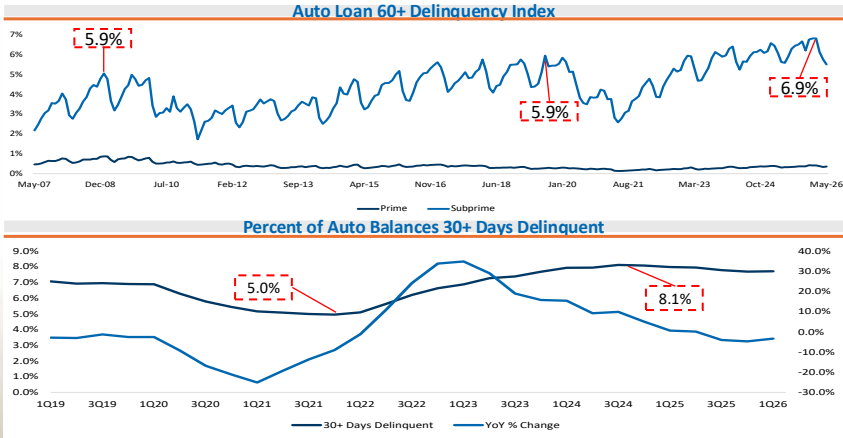
Panelist — FTI Consulting

Brian Rich

Panelist — Berger Singerman



Auto Loan Delinquency



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Auto Loan Lifecycle:
Stress Points and
Failure Modes

Stage	Key Risk	Failure Mode
Origination	Loose underwriting	High default rates
Dealer Sale	Negative equity	Consumer overextension
Warehouse Facility	Liquidity stress	Covenant breaches
Securitization (ABS)	Credit enhancement erosion	ABS tranche losses
Servicing	Operational disruption	Collateral value loss
Default/Repo	Market value drop	Loss allocation to investors



What is Breaking First: ABS Performance and Originator Liquidity

ABS Performance Decline

Rising delinquency and default rates in asset-backed securities signal weakening credit conditions and stress ABS credit supports.

Negative Equity Loans

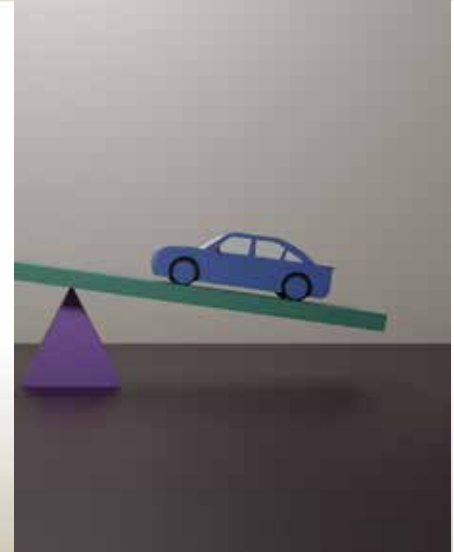
Loans where borrowers owe more than vehicle value increase default risk and loss severity in the auto loan market.

Originator Liquidity Stress

Loan originators face liquidity challenges due to slowing cash flows and tightened funding sources, risking covenant breaches.

Systemic Risk Impact

Losses at consumer level can quickly spread through the ABS market, impacting investors and financial institutions.



Auto ABS Losses and Downgrades Rising

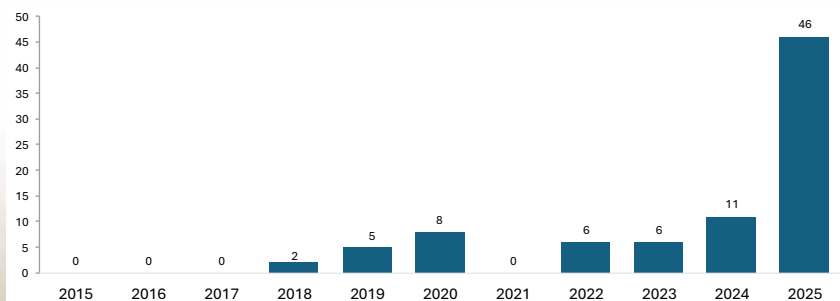
Cumulative Net Loss Increasing

Increasing Number of ABS Ratings Downgrades

— More delinquencies, loan extensions, and longer terms are raising lifetime loss expectations.

— 46 securitizations were downgraded in 2025 — driven largely by subprime exposure.

ABS Downgrades



Source: S&P Global Ratings

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ABS Waterfall Structure: Loss Absorption and Trigger Events

Tranche	Loss Absorption	Trigger Event
Senior	Last	Delinquency threshold breached
Mezzanine	After subordinate	Credit enhancement erosion
Subordinate	First	Early amortization
Equity	First	Default spike



BLOCK 3

The Predatory Lending Debate

Consumer view: subprime lending is extractive by design — default is a feature, not a bug

Creditor view: we lend where banks won't — loss rates prove the risk is real

Major subprime lenders: median selling price 77% above wholesale vehicle value

CFPB withdrew from its largest subprime auto case — FTC hasn't filed a single dealer case

If the answer is 'less credit,' who loses their car? If 'any price,' who gets trapped?

"The hard question is not whether risk should be priced. The hard question is when pricing risk becomes manufacturing default."

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BLOCK 4

Institutional Blow-Ups

Tricolor Holdings – Ch. 7 (Sept 2025): federal fraud charges, 25,000 creditors, \$1B–10B in assets/liabilities

Fifth Third + JPMorgan: \$340M+ in losses from Tricolor exposure

PrimaLend – Ch. 11 (Oct 2025): \$286M in debt, liquidating.

National Auto Lenders – restructured successfully in 2019, entered runoff in 2025

American Car Center, U.S. Auto Sales – collapsed in 2023, early warnings of current wave

\$340M+

Institutional losses from Tricolor alone

Joseph Luzinski

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Legal Pressure Points: Valuation, Cramdown, and Collateral Disputes



Valuation Disputes under Section 506

Valuation disputes under Section 506 determine creditor recovery amounts in bankruptcy cases involving subprime auto loans.

Cramdown Limitations

The 'hanging paragraph' of Section 1325(a)(9) limits cramdown options for vehicles recently purchased, impacting restructuring strategies.

Servicing and Collateral Control Disputes

Disputes over servicing rights and collateral control arise as multiple parties compete for repossessed vehicles and loan portfolios.

Impact on Bankruptcy Outcomes

These legal battles shape loss distribution and restructuring success in subprime auto consumer and lender bankruptcies.



Case Study: National Auto Lenders – Indirect Model and Runoff Outcome

Indirect Lending Model

National Auto Lenders used an indirect model, buying installment contracts from many dealers, exposing it to broad market risks.

Impact of External Shocks

Hurricanes and other shocks increased borrower defaults, causing operating losses and breach of credit covenants.

Restructuring and Chapter 11

The company filed Chapter 11 and implemented a consensual restructuring plan affecting secured and subordinated debt.

Lessons on Systemic Risk

Even strong structures cannot fully protect from systemic risks; liquidity and realistic exit plans are vital.



Lessons Learned: Structure, Liquidity, and Exit Assumptions



Importance of Structural Solutions

Structural solutions help but cannot fix poor loan quality or economic downturn impacts.

Necessity of Liquidity Runway

Adequate liquidity is vital to survive stress periods and avoid fire sales of assets.

Realistic Exit Assumptions

Exit plans need realistic market condition assessments to avoid failed restructuring efforts.

Adaptability and Risk Assessment

Proactive risk assessment and adaptability are key to successful financial restructuring.



BLOCK 6

Practical Takeaways for Consumer Attorneys

Vehicle valuation — when the car is worth less than the claim, how do you land on a number the borrower can pay and the lender can defend?

Limited public transit and fewer dealer options leave subprime borrowers with no alternative to the loan they have

Proof of claim accuracy — payoff amounts, post-petition fees, payment application

Insurance, add-on products, and dealer markup — stripping the hidden cost layer

Repossession history and servicer identity — especially after lender failures

“The goal isn’t to win the valuation fight. It’s to land on a number the borrower can actually pay and the lender can actually defend.”

Joseph Luzinski

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BLOCK 7

Building a Healthier Market

Underwriting standards and disclosure requirements

Dealer compensation models and add-on product reform

Warehouse-lender diligence and risk-retention obligations

Bankruptcy claim documentation standards

Secondary-market data transparency

Loan pricing is a function of risk and rates — fed funds drive the floor, credit risk sets the spread

What should your side stop defending — and what should the other side understand?

“Bankruptcy is where the auto-finance system has to show its work.”

Joseph Luzinski

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The Takeaway: Subprime Auto as a Leading Indicator

Subprime Auto as Economic Indicator

The subprime auto sector signals broader credit stress with rising delinquencies and repossessions in the economy.

Challenges for Restructuring Professionals

Professionals must anticipate credit developments, design strategies, and promote reforms for market stability.

Importance of Liquidity and Resilience

Liquidity, realistic planning, and structural resilience are key lessons for managing credit cycle challenges.

Broader Market Implications

The subprime auto crisis reflects health of consumer credit market and financial system response to shocks.



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APPENDIX

Sources

Slide 8 — Who Is the Subprime Borrower?

Experian, State of the Automotive Finance Market, Q1 2026 (\$531/mo used-vehicle payment)
Federal Reserve Bank of Philadelphia, Auto Loan Delinquency Report, Apr 2026 (17% / -65%)
Administrative Office of the U.S. Courts, Apr 2026 (211,700 Ch. 13 filings, 12 mo. ending Mar 2026)

Slide 10 — Current Market Stress

Fitch Ratings, U.S. Auto ABS Index, Jan 2026 (6.9% subprime 60+ day DQ, 32-year high)
Cox Automotive / Experian, 2024 Repossession Data (1.73M repos)
Experian, Q1 2026 (\$770/mo new-vehicle payment; 35.6% of new-vehicle loans > 72 mo.)
Administrative Office of the U.S. Courts, Apr 2026 (filings up 11.9%)
Federal Reserve, FOMC Statement, Jun 2026 (fed funds 3.50–3.75%)

Slide 16 — The Predatory Lending Debate

CFPB / NY Attorney General v. Credit Acceptance Corp., Complaint, Jan 2023 (77% above wholesale)

Slide 17 — Institutional Blow-Ups

DOJ, S.D.N.Y., Dec 2025 (Tricolor Holdings: CEO and COO charged with fraud and conspiracy)
Bloomberg / Auto Finance News, Sep 2025 (Fifth Third + JPMorgan \$340M+ losses)
Stretto / Auto Remarketing, Oct 2025 (PrimaLend: \$286M debt, Ch. 11)
Auto Remarketing, Nov 2025 (National Auto Lenders entered runoff)
Bloomberg Law, 2023 (American Car Center Ch. 7; U.S. Auto Sales Ch. 7)

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2026 Southeast Bankruptcy Workshop

The Ritz-Carlton, Amelia Island

July 24–26, 2026

Panel:

Cracks in the Market: Subprime Lending Under Pressure

Sunday, July 26, 2026

CLE Materials — Case-Law Update

Case-Law Update: Bankruptcy Court Decisions

Related to the Subprime Auto Industry

Panel Members:

Hon. David M. Warren, U.S. Bankruptcy Court, E.D.N.C.

Joseph Luzinski, DSI Consulting (Moderator)

Tanya Meerovich, FTI Consulting

Louis Barna, Tribute Capital

Brian Rich, Berger Singerman LLP

TABLE OF CASES

1. *In re Tricolor Holdings, LLC et al.*,
2026 WL 1707252 (Bankr. N.D. Tex. June 11, 2026)
2. *American Car Center (ACC Holdings)*,
Chapter 7, D. Del. (Feb. 2023)
3. *In re Rifai*,
604 B.R. 277 (Bankr. S.D. Tex. 2019)
4. *In re Mejorado*,
605 B.R. 116 (Bankr. N.D. Tex. 2019)
5. *In re Woods*,
418 B.R. 226 (Bankr. W.D. Ky. 2009)
6. *Matter of Staggs*,
573 B.R. 898 (Bankr. N.D. Ala. 2017)
7. *In re Speedway Auto Sales 27, LLC*,
No. 8:23-bk-05737-RCT (Bankr. M.D. Fla. July 18, 2024)
8. *In re Chamberlayne Auto Sales & Repair, Inc.*,
585 B.R. 116 (Bankr. E.D. Va. 2018)
9. *Till v. SCS Credit Corp.*,
541 U.S. 465 (2004)
10. *In re McCoy*,
657 B.R. 260 (Bankr. N.D. Ill. Feb. 28, 2024)
11. *In re Lilly*,
378 B.R. 232 (Bankr. C.D. Ill. 2007)
12. *In re Ditech Holding Corporation*,
606 B.R. 544 (Bankr. S.D.N.Y. 2019)
13. *In re National Auto Lenders, Inc.*,
No. 18-24586-LMI (Bankr. S.D. Fla. 2018-2019)
14. *In re PrimaLend Capital Partners, LP*,
No. 25-90013-MXM (Bankr. N.D. Tex. 2025-2026)
15. *In re Inofin Inc.*,
Not Reported in B.R. (Bankr. D. Mass. 2012)
16. *In re Fernandez*,
674 B.R. 251 (Bankr. W.D. Tex. 2025)
17. *In re Hudson*,
671 B.R. 767 (Bankr. M.D. Fla. 2025)

18. *In re Siriphokha*,

2025 WL 1745018 (Bankr. M.D. Fla. 2025)

19. *In re Rawson*,

2026 WL 70445 (Bankr. W.D. Mich. 2026)

I. THE CONSUMER CREDITORS' DILEMMA IN COMBINED DEALER-LENDER BANKRUPTCIES

In re Tricolor Holdings, LLC et al., 2026 WL 1707252 (Bankr. N.D. Tex. June 11, 2026)

Court: United States Bankruptcy Court, Northern District of Texas

Statutory Provisions: 11 U.S.C. §§ 105(a), 341; Fed. R. Bankr. P. 9011(c)(1)(B)

Tricolor Holdings, LLC was a Texas-based subprime auto dealer and lender operating approximately 60 retail locations across the U.S. Southwest. The debtor's business model combined vehicle sales with in-house financing and auto repair services, targeting predominantly Spanish-speaking and lower-income consumers. Tricolor Auto Acceptance, LLC ("TAA") served as the primary loan servicer for tens of thousands of outstanding consumer auto loans.

Prior to the Chapter 7 filing on September 10, 2025, TAA was terminated as primary servicer, and Vervent, Inc. was designated as backup servicer. The court described what it termed the "consumer creditors' dilemma": thousands of customers held outstanding auto loans but had no clear guidance on where to send payments or how to protect their vehicles from repossession. The court rapidly appointed Vervent as successor servicer under its § 105(a) equitable powers to address the immediate consumer protection concerns.

A significant ancillary issue arose when Francisco Aguirre of Beyond Attorneys, LLC solicited approximately 1,500 former Tricolor customers via social media and filed approximately 49 consumer creditor motions. The court found that Aguirre's conduct constituted the unauthorized practice of law under Bankruptcy Rule 9011(c)(1)(B).

Significance: *Tricolor illustrates the structural vulnerability of the combined dealer-lender model in subprime auto lending. When such entities fail, consumers face a dual crisis—losing both their vehicle purchase and financing relationship simultaneously. The court's use of § 105(a) equitable powers to appoint a successor servicer demonstrates judicial willingness to intervene rapidly to protect consumers in these circumstances.*

American Car Center (ACC Holdings) — Chapter 7, D. Del. (Feb. 2023)

Court: United States Bankruptcy Court, District of Delaware

American Car Center was a large used-car dealer chain that abruptly closed all retail locations in February 2023. The company operated a buy-here-pay-here or similar subprime model, combining vehicle sales with in-house consumer financing. Like Tricolor, ACC maintained a large portfolio of subprime consumer auto loans and carried floor plan financing obligations.

Although no published bankruptcy court opinions have issued from the ACC Holdings case, the factual profile closely parallels Tricolor and Inofin—a combined dealer-lender model, a large portfolio of subprime consumer auto loans, and floor plan financing obligations that created complex creditor hierarchies upon the enterprise's collapse.

Significance: *ACC represents an ongoing example of the combined dealer-lender failure pattern. Its inclusion here provides practitioners with a reference point for similar cases likely to arise as the subprime auto market faces continued pressure from rising delinquencies and tightening credit conditions.*

II. FLOOR PLAN FINANCING DISPUTES AND NONDISCHARGEABILITY OF OUT-OF-TRUST SALES

In re Rifai, 604 B.R. 277 (Bankr. S.D. Tex. 2019)

Court: United States Bankruptcy Court, Southern District of Texas

Statutory Provisions: 11 U.S.C. § 523(a)(2)(A)

The floor plan lender's debt was held nondischargeable under § 523(a)(2)(A) based on the dealer's false representations. The debtor represented that floor plan advances would be used solely to purchase inventory and that proceeds from vehicle sales would be remitted to the lender. Instead, the debtor diverted funds for personal expenditures including food, entertainment, massages, and grocery shopping.

The court found that the lender justifiably relied on the dealer's representations because the entire purpose of the lender's business was floor plan financing exclusively to used car dealerships. The representations were made in the context of a well-understood financing structure where advance proceeds flow to vehicle acquisitions and sale proceeds flow back to the lender.

Significance: *Rifai establishes that diversion of floor plan funds for personal use constitutes actionable fraud under § 523(a)(2)(A), and that floor plan lenders can demonstrate justifiable reliance based on the structural nature of the lending relationship.*

In re Mejorado, 605 B.R. 116 (Bankr. N.D. Tex. 2019)

Court: United States Bankruptcy Court, Northern District of Texas

Statutory Provisions: 11 U.S.C. §§ 523(a)(2)(A), 523(a)(4), 523(a)(6)

The dealer failed to promptly remit to floor plan lender NextGear Capital the proceeds from vehicle sales, instead using proceeds to pay other business expenses. The court declined to find nondischargeability under either the false representation theory of § 523(a)(2)(A) or the fiduciary fraud theory of § 523(a)(4).

However, the court held the debt nondischargeable under § 523(a)(6) for willful and malicious injury. The debtor's conduct in retaining and diverting floor plan proceeds was held substantially certain to injure NextGear, satisfying the willful and malicious injury standard. The court emphasized that Mejorado knew of NextGear's security interest and understood the mechanics of floor plan financing.

Significance: *Mejorado demonstrates that even where false representation and fiduciary fraud theories fail, the willful and malicious injury exception provides an alternative path to nondischargeability for out-of-trust sales when the debtor has knowledge of the lender's security interest.*

In re Woods, 418 B.R. 226 (Bankr. W.D. Ky. 2009)

Court: United States Bankruptcy Court, Western District of Kentucky

Statutory Provisions: 11 U.S.C. §§ 523(a)(4), 523(a)(6)

The floor plan lender failed to prove that the dealer's sale of 27 vehicles out of trust fell within either the fiduciary fraud or willful and malicious injury discharge exceptions. The court found no proof that the debtor intended to deceive or harm the creditor. Critically, the debtor held only a 20% ownership interest in the dealership and relied on his brother Ken to manage day-to-day operations, including floor plan compliance. The creditor's representatives rarely communicated with the debtor about floor plan issues.

Significance: *Woods illustrates the importance of proving individual intent and participation when pursuing nondischargeability against passive or minority owners of dealerships. Mere ownership is insufficient; the creditor must demonstrate the debtor's personal knowledge and intent.*

Matter of Staggs, 573 B.R. 898 (Bankr. N.D. Ala. 2017)

Court: United States Bankruptcy Court, Northern District of Alabama

Statutory Provisions: 11 U.S.C. §§ 523(a)(2)(A), 523(a)(6)

The debtor served as nominal owner of the dealership but was not involved in day-to-day operations. The court held she could not be held personally liable for out-of-trust sales under either § 523(a)(2)(A) or § 523(a)(6). The debtor relied on her husband to manage the floor plan financing and had no direct involvement in the conduct giving rise to the lender's claims.

***Significance:** Staggs reinforces the principle from Woods that nominal ownership without active participation in the fraudulent conduct is insufficient to support nondischargeability. Floor plan lenders must identify and pursue the individuals who actually directed the out-of-trust activity.*

III. AUTOMATIC STAY VIOLATIONS BY FLOOR PLAN LENDERS**In re Speedway Auto Sales 27, LLC, No. 8:23-bk-05737-RCT (Bankr. M.D. Fla. July 18, 2024)**

Court: United States Bankruptcy Court, Middle District of Florida (Judge Roberta A. Colton)

Statutory Provisions: 11 U.S.C. §§ 362(a), 362(k); § 342(g)

Speedway was a used car dealership serving undocumented and Spanish-speaking buyers since 2019. Customers lacked social security numbers and pay stubs, and the dealership depended on subprime lenders FinBe, Lendbuzz, and Westlake Financial to provide consumer financing. Westlake provided a \$1 million revolving floor plan line of credit to Speedway.

When Speedway fell behind on its floor plan obligations, Westlake threatened repossession unless \$200,000 was paid by 2:00 p.m. on December 19, 2023. Speedway filed Chapter 11 at 4:23 p.m. that same day. Despite receiving actual notice of the filing within minutes—via a phone call to Westlake representative Andolino at 4:32 p.m., a dealership notification with a docket printout, and direct notification to Officer Goodman—Westlake proceeded to repossess 17 vehicles on December 20, initiated five ACH withdrawals totaling \$106,420.76, and emailed the COO of FinBe requesting that FinBe not fund any further Speedway sales.

The court applied the Eleventh Circuit's two-part test for willful stay violations: (1) the creditor knew the stay was invoked, and (2) the creditor intended the actions that violated it. The court found Westlake's violations willful and rejected Westlake's § 342(g) safe harbor defense because Westlake had actual notice of the filing and had not complied with the statutory requirements for designating a notice recipient under that section.

The court awarded \$43,155 in compensatory damages: \$20,910 in lost profits from repossessed vehicles, \$105 in lost interest from the ACH withdrawals, and \$22,140 in lost profits from 18 deals that FinBe refused to fund as a result of Westlake's interference. The court declined to award punitive damages, finding the conduct willful but not egregious or in bad faith. Reasonable attorney's fees were also awarded.

Key Holding: *Actual notice triggers the automatic stay regardless of whether formal written notice has been received. The § 342(g) safe harbor is unavailable where the creditor had actual knowledge of the filing but failed to comply with the statutory requirements for designating a preferred notice recipient.*

In re Chamberlayne Auto Sales & Repair, Inc., 585 B.R. 116 (Bankr. E.D. Va. 2018)

Court: United States Bankruptcy Court, Eastern District of Virginia

Statutory Provisions: 11 U.S.C. §§ 362(a), 547

The floor plan lender's practice of holding certificates of title until the dealer repaid the advance was not improper under Virginia law, and prepetition payments by the dealer to obtain titles were not avoidable preferences. However, the trustee's allegations that the lender refused to release titles postpetition unless the dealer made payments on prepetition debt stated a plausible claim for willful violation of the automatic stay.

Significance: *Chamberlayne distinguishes between permissible prepetition title-retention practices and impermissible postpetition leverage. Floor plan lenders may lawfully hold titles prepetition as security, but conditioning postpetition release on prepetition debt payment crosses into stay violation territory.*

IV. CRAMDOWN INTEREST RATES FOR SUBPRIME AUTO LOANS IN CHAPTER 13

Till v. SCS Credit Corp., 541 U.S. 465 (2004)

Court: Supreme Court of the United States

Statutory Provisions: 11 U.S.C. § 1325(a)(5)(B)(ii)

The Supreme Court adopted the formula or "prime-plus" approach for determining the appropriate cramdown interest rate under Chapter 13. The Court rejected three competing methodologies: the coerced loan approach, the presumptive contract rate approach, and the cost of funds approach.

Under the formula approach, the court starts with the national prime rate and adjusts upward to account for the risk of nonpayment. The prime-plus rate depends only on the state of financial markets, the circumstances of the bankruptcy estate, and the characteristics of the loan—not the creditor's own cost of funds or lending practices. Courts must select a rate "high enough to compensate the creditor for its risk but not so high as to doom the plan."

Significance: *Till remains the foundational authority for cramdown interest rates in Chapter 13. For subprime auto lenders accustomed to charging rates of 20-30%, Till's prime-plus framework typically results in dramatically lower rates in bankruptcy—creating a significant economic impact on subprime lender recoveries.*

In re McCoy, 657 B.R. 260 (Bankr. N.D. Ill. Feb. 28, 2024)

Court: United States Bankruptcy Court, Northern District of Illinois (Judge Donald R. Cassling)

Statutory Provisions: 11 U.S.C. § 1325(a)(5)(B)(ii)

The debtor purchased a 2019 Dodge Journey from CarMax, financed through Exeter Finance at a 26.23% interest rate. In her Chapter 13 plan, the debtor proposed an interest rate equal to the 5-year treasury bond rate plus a 2.5% risk factor.

The court held that the appropriate base rate for car-loan debt in bankruptcy is the prime rate, not the treasury bond rate. The court reasoned that treasury bills are backed by the Full Faith and Credit of the United States and are therefore inappropriate as a baseline for car loans that carry meaningful risk of non-payment. Exeter conceded willingness to accept prime rate plus a 2.5% risk adjustment, resulting in an 11% cramdown rate. The court noted that courts have generally approved risk adjustments of between 1% and 3%.

Significance: *McCoy reaffirms that the prime rate—not the treasury rate—is the proper starting point under Till, even in an environment of rising interest rates. The case provides current*

guidance on the permissible range of risk adjustments and demonstrates the substantial reduction subprime lenders face from contract rates (26.23%) to cramdown rates (11%).

In re Lilly, 378 B.R. 232 (Bankr. C.D. Ill. 2007)

Court: United States Bankruptcy Court, Central District of Illinois

Statutory Provisions: 11 U.S.C. §§ 1322(b)(2), 1325(a)(5)(B)(i), 1325(a)(9) (hanging paragraph)

The court held that Till's prime-plus approach applies even to "910 creditors"—those protected from cramdown of the principal amount by the hanging paragraph of § 1325(a)(9). While the hanging paragraph prevents modification of the allowed secured claim amount for recently purchased vehicles, the lien retention provision of § 1325(a)(5)(B)(i) does not override the debtor's power to modify interest rate terms under § 1322(b)(2). The debtor may cram down the interest rate at the Till rate while maintaining the full principal balance.

However, the court noted that the debtor remains liable for the remaining balance at the contract rate after exiting bankruptcy, providing some protection for lenders whose debtors fail to complete their plans.

Significance: *Lilly is significant for subprime auto lenders because it confirms that even the BAPCPA-era protections of the hanging paragraph do not insulate the interest rate from cramdown. Subprime lenders cannot rely on the 910-day protection to preserve high contract interest rates.*

V. SALE OF SUBPRIME AUTO LOAN PORTFOLIOS FREE AND CLEAR OF CONSUMER CLAIMS

In re Ditech Holding Corporation, 606 B.R. 544 (Bankr. S.D.N.Y. 2019)

Court: United States Bankruptcy Court, Southern District of New York

Statutory Provisions: 11 U.S.C. § 363(f); BAPCPA consumer protection provisions

The court addressed growing concerns that subprime lenders were obtaining § 363 sale orders providing that consumer loan portfolios or servicing rights were sold "free and clear" of consumer claims and defenses. Consumer creditors raised the alarm that purchasers of subprime loan portfolios were using free-and-clear sale orders to strip borrowers of their rights to assert claims and defenses against successor holders.

The court quoted congressional testimony that using § 363 to extinguish consumer claims is "flat out wrong." The opinion noted that several large subprime lenders had obtained orders from bankruptcy courts providing for the sale of loans or servicing rights under § 363 in a manner that purported to eliminate consumer protections. Consumers were told by purchasers that loans were sold free and clear of any consumer claims and defenses.

The court's analysis led to the appointment of a consumer creditors' committee to protect borrowers' interests. Significantly, under the BAPCPA provision addressing this issue, a purchaser of a consumer credit transaction interest through a § 363 sale remains subject to all claims and defenses assertible by the consumer—notwithstanding the "free and clear" language of § 363(f).

Significance: *Ditech is critical for practitioners advising both purchasers and consumers in § 363 sales of subprime auto loan portfolios. The BAPCPA consumer protection provision means that "free and clear" does not mean free and clear of consumer defenses—a fact that must be reflected in purchase price due diligence and representations.*

VI. SUBPRIME LENDER REORGANIZATION AND LIQUIDATION

In re National Auto Lenders, Inc., No. 18-24586-LMI (Bankr. S.D. Fla. 2018-2019)

Court: United States Bankruptcy Court, Southern District of Florida (Judge Laurel M. Isicoff)

Statutory Provisions: 11 U.S.C. §§ 1123, 1129

National Auto Lenders was a Florida-based indirect subprime auto lender that purchased retail installment sales contracts from approximately 500 authorized dealers. At the time of filing, it held approximately 4,323 subprime loans with outstanding principal of approximately \$58.8 million. Hurricanes Irma and Harvey caused a spike in borrower defaults in the company's Florida and Texas markets, leading to \$2.9 million in operating losses in 2017 and triggering covenant defaults under a \$36 million secured credit facility with Wells Fargo and BankUnited.

The company filed Chapter 11 in November 2018. The debtor and the Official Committee of Unsecured Creditors co-proposed a consensual plan that was confirmed unanimously in May 2019 after less than six months in bankruptcy.

The confirmed plan restructured approximately \$36 million in secured debt at Prime plus 75 basis points (capped at 6.75%), with fixed monthly payments of \$510,000 and a maturity date of July 31, 2022. Approximately \$25.8 million in subordinated debt was restructured at a 4.5% fixed rate with maturity on December 31, 2024. The plan contemplated an orderly run-off if secured debt was not repaid by the initial maturity date.

Significance: *National Auto Lenders demonstrates that subprime auto lenders can successfully reorganize through Chapter 11 when stakeholders cooperate. However, the case also serves as a cautionary tale: despite successful reorganization, the Reorganized Debtor ultimately entered run-off in 2025 due to deteriorating market conditions, suggesting that structural headwinds in the subprime auto sector may overwhelm even well-crafted reorganization plans.*

In re PrimaLend Capital Partners, LP, No. 25-90013-MXM (Bankr. N.D. Tex. 2025-2026)

Court: United States Bankruptcy Court, Northern District of Texas, Fort Worth Division

Statutory Provisions: 11 U.S.C. §§ 1123, 1129(b)

PrimaLend was a subprime auto lender headquartered in Plano, Texas, with affiliated entities including PrimaLend Capital Partners LP (PCP), Good Floor Loans LLC (GFL), LNCMJ Management LLC, and PCAP Holdings LP. The company filed Chapter 11 in 2025, and the U.S. Trustee appointed an official committee of unsecured creditors on November 6, 2025. Tanya Meerovich served as Chief Restructuring Officer.

A Second Amended Joint Plan of Reorganization was confirmed on February 25, 2026. The plan provided for: (i) sale of PCP Transferred Assets via credit bid; (ii) sale of GFL Transferred Assets via credit bid; and (iii) creation of a liquidating trust for litigation assets. The confirmation order specifically addressed the treatment of "BHPH Dealers' Rights," preserving buy-here-pay-here dealers' rights of setoff, recoupment, rescission, defenses, and counterclaims.

The plan also addressed a participation dispute with BVY Partners II LLC regarding participation interests in dealer-borrower loans. Assets were transferred free and clear under § 1123, but subject to BHPH Dealers' rights of recoupment and setoff. Multiple objections were overruled from the U.S. Trustee, Amarillo National Bank, Third Coast Bank, Merkostone, and BVY Partners II LLC. The plan satisfied cramdown requirements under § 1129(b) for rejecting classes.

***Significance:** PrimaLend provides a current template for subprime lender liquidation through Chapter 11. The preservation of BHPH dealer rights through the confirmation order reflects the court's recognition that downstream dealers and their consumers retain claims that cannot simply be extinguished through the plan process. The case also illustrates the complexity of participation interests and credit bid mechanics in subprime lending bankruptcies.*

In re Inofin Inc., Not Reported. (Bankr. D. Mass. 2012)

Court: United States Bankruptcy Court, District of Massachusetts

Statutory Provisions: 11 U.S.C. §§ 541, 544

Inofin was a Massachusetts-based subprime auto loan purchaser primarily engaged in purchasing and servicing subprime used car loans as an indirect lender. The company signed agreements with used car dealerships establishing itself as a subprime lending source, then purchased retail installment sales contracts from those dealers.

The principals diverted \$12.2 million of investor funds into their own Drive USA dealerships. The SEC filed an enforcement action for securities fraud, and the Massachusetts Division of Banks required license surrender in January 2011. The case involved \$69 million in unsecured creditor claims.

The Chapter 7 Trustee pursued accounting firm Tobin & Associates for professional negligence, alleging that Tobin issued review reports that failed to consolidate losses, thereby overstating net worth. This alleged negligence allowed Inofin to renew its state lending license and continue originating loans—a theory analogous to deepening insolvency. The Trustee held installment contracts and was listed as first lienholder on certificates of title. Dealers argued they retained rights to VSI (Vendor's Single Interest) insurance coverage, creating competing claims between the Trustee and dealers over insurance proceeds.

***Significance:** Inofin illustrates the intersection of securities fraud, state licensing, and bankruptcy in the subprime auto lending space. The deepening insolvency theory against the accounting firm, the competing claims over VSI insurance proceeds, and the diversion of investor funds into affiliated dealerships represent a pattern of fraud risk that regulators and investors in subprime auto portfolios must carefully monitor.*

VII. REAFFIRMATION AGREEMENTS AND SUBPRIME AUTO LOANS

In re Fernandez, 674 B.R. 251 (Bankr. W.D. Tex. Nov. 3, 2025)

Court: United States Bankruptcy Court, Western District of Texas, El Paso Division

Statutory Provisions: 11 U.S.C. §§ 362(h)(1), 521(a)(2), 524(c), 524(c)(3)

The debtor intended to retain a vehicle financed by Credit Acceptance Corp. (\$18,589 secured by a 2016 Honda Civic) and filed a statement of intention to reaffirm the debt under § 521(a)(2). However, the debtor's experienced bankruptcy counsel declined to certify the reaffirmation agreement under § 524(c)(3) because the proposed monthly payment exceeded the debtor's net monthly income and the vehicle was driven solely by the debtor's adult son.

The court held that it was bound by the statutory text and could not step in to render the agreement enforceable absent the required attorney certification — there is no statutory basis for the court to independently approve a reaffirmation agreement when the debtor is represented by counsel. However, the court further held that the debtor who entered into an unenforceable reaffirmation agreement nonetheless complied with § 362(h)(1)'s requirement to “enter into an agreement of the kind specified in § 524(c),” thereby preserving the automatic stay. The creditor could not repossess the vehicle, though the debtor's in rem obligations and contractual duties remained intact — creating what the court characterized as a “backdoor ride-through.”

Significance: *Fernandez is the most significant recent reaffirmation decision for subprime auto lenders. It creates a “backdoor ride-through” where a debtor can retain a vehicle by continuing payments while personal liability is discharged, even when the reaffirmation agreement is unenforceable. For subprime lenders like Credit Acceptance Corp., this means the debtor remains protected from repossession so long as payments continue, but the lender has no personal recourse upon default — only the right to repossess the collateral under state law.*

In re Hudson, 671 B.R. 767 (Bankr. M.D. Fla. June 16, 2025)

Court: United States Bankruptcy Court, Middle District of Florida, Orlando Division (Judge Grace E. Robson)

Statutory Provisions: 11 U.S.C. §§ 524(c)(6)(A), 524(c)(6)(B), 524(m)

The court was required to conduct a hearing to determine whether unrepresented Chapter 7 debtors could rebut the presumption of undue hardship arising from a proposed reaffirmation of a business debt exceeding \$1,068,845. After the hearing, the court found that the presumption of undue hardship applied because the debtors' monthly income after expenses did not leave sufficient funds to make the scheduled payments, that the debtors failed to overcome the presumption, and that reaffirmation was not in the debtors' best interests. The court held that it must disapprove the agreement even if no party opposes it.

Significance: *Hudson reinforces the mandatory nature of judicial scrutiny for unrepresented debtors — even when no party objects, the court must independently assess undue hardship and best interest. For subprime auto lenders dealing with pro se debtors, the case confirms that reaffirmation cannot be achieved by agreement alone; judicial gatekeeping is a non-waivable statutory requirement.*

In re Siriphokha, 2025 WL 1745018 (Bankr. M.D. Fla. June 23, 2025)

Court: United States Bankruptcy Court, Middle District of Florida

Statutory Provisions: 11 U.S.C. §§ 524(c)(3), 524(c)(6), 524(f)

The reaffirmation agreement's cover sheet indicated the debtor was represented by an attorney, but the attorney certification was not signed. The court held that the unsigned certification meant the debtor was not considered "represented" for purposes of the reaffirmation agreement, requiring the court to determine whether the agreement was in the debtor's best interest. Because the creditor was a credit union (exempt from the § 524(m) undue hardship presumption), the court conducted the best-interest inquiry independently. The court denied approval where the debt (\$46,525) exceeded the vehicle's value and the monthly payments equaled approximately 23% of the debtor's income. The court noted that voluntary payments on the discharged debt could continue under § 524(f) even though the reaffirmation was not approved.

Significance: *Siriphokha has direct relevance for subprime auto lenders because it addresses the common scenario where an attorney is technically "of record" but does not sign the certification — the debtor is then treated as unrepresented, triggering full judicial oversight.*

In re Rawson, 2026 WL 70445 (Bankr. W.D. Mich. Jan. 8, 2026)

Court: United States Bankruptcy Court, Western District of Michigan

Statutory Provisions: 11 U.S.C. § 524(c)(3)

The court confirmed that court approval is unnecessary when a debtor is represented by counsel who negotiates and certifies the reaffirmation agreement under § 524(c)(3). The court noted that the Official Form 427 itself instructs that the motion for court approval is to be completed and filed only if the debtor is not represented by an attorney during the course of negotiating the agreement. Creditors cannot compel court approval of agreements that have been properly certified by counsel.

Significance: *Rawson clarifies the procedural landscape for subprime auto lenders: when debtor's counsel properly certifies the agreement, the lender has a valid and enforceable reaffirmation without the need for judicial intervention. This provides certainty for lenders whose borrowers are represented by counsel willing to certify — a significant advantage over the uncertain outcomes that attend unrepresented debtor proceedings or cases where counsel declines to certify.*

Faculty

Louis Barna is a managing partner at Tribute Capital Partners in the Dallas-Fort Worth metroplex in Irving, Texas, where he has served since 2016. He focuses on investments and financial analysis. Previously, Mr. Barna was managing partner at CoBar Holdings. He received his bachelor's degree in accounting and finance from Stephen F. Austin State University.

Joseph J. Luzinski is a senior managing director of Development Specialists, Inc. in Fort Lauderdale, Fla. He has spent nearly 40 years in the workout business, serving as a financial advisor, consultant and fiduciary in advising, managing and administering matters involving public and private company workouts and restructurings, both out of court and in chapter 11 and 7 bankruptcies, as well as receiverships, assignments, and federal and state court proceedings. Mr. Luzinski has been CRO, CEO, CFO, president, director, trustee, liquidating trustee, plan agent, receiver and assignee to public and private companies involved in loan workouts, distressed situations and crisis situations. His financial advisory services include engagements involving investigations, fraud assessments, interim management, litigation support and expert witness engagements. His areas of industry expertise include banking, finance, real estate, aviation, retail, franchising, food service, manufacturing, media, law firms, wealthy individuals, fraud, Ponzi schemes and forensic matters. Mr. Luzinski's specific areas of focus include operational analysis, financial analysis, valuation assessment, budgeting and planning, crisis-management, turnaround strategy, litigation strategy and litigation support. He also makes presentations to key stakeholders, including lenders, creditors' committees and equity sponsors, and has court experience with testimony and litigation support for contested hearings or trials. Mr. Luzinski has been recognized for several M&A Advisor Turnaround Awards and as a Top Financial Professional in the *South Florida Legal Guide*. He has published articles on relevant business issues and spoken on business panels related to the insolvency profession, and he is frequently quoted in South Florida periodicals on bankruptcy and business matters. Mr. Luzinski received his B.S. from Florida Atlantic University.

Tanya Meerovich, CFA, CFE, CIRA, CTP is a senior managing director with FTI Consulting, Inc. in New York and specializes in providing financial and strategic solutions to companies, their creditors and investors. She has worked with both public and private companies across many sectors. Ms. Meerovich has industry expertise in the financial services, real estate, nonprofit, insurance, health care, education, energy, manufacturing, infrastructure, print, entertainment and retail industries. Her advisory services include assisting senior management teams and various stakeholders in developing and implementing strategic alternatives, revenue enhancement initiatives and cost-reduction initiatives. In addition, she has experience in the review and assessment of business plans and financial models, preparation of financial projections and cash-flow models, financial analysis, cash management, asset management and liquidation, claims analysis, fraud investigations and forensic accounting. Ms. Meerovich's recent engagements include advising management teams and boards of AG Mortgage Investment Trust Inc, the Government Development Bank of Puerto Rico, Impac Mortgage, MFA Financial, Ocwen Financial, Puerto Rico Highways and Transportation Authority, Residential Capital (ResCap), Three Lions Entertainment, Workflow Management and several mortgage REITs. She also has advised senior secured lenders. Prior to joining FTI Consulting, Ms. Meerovich was in the Financial Services Advisory group of RSM Cayman Islands, where she was involved in a

number of high-profile and complex cross-border insolvency engagements in the financial services sector. Prior to that, she worked for a securities broker-dealer in the Chicago area. Ms. Meerovich previously held NASD Series 24, 7 and 63 licenses and served on several boards, including the New York Chapter of the International Women's Insolvency & Restructuring Confederation and Rock & Rawhide, a nonprofit organization. She is a member of ABI, the Association for Financial Professionals, the Association of Certified Fraud Examiners, the Association of Insolvency & Restructuring Advisors, the Chartered Financial Analyst Institute, the New York Society of Security Analysts and the Turnaround Management Association. Ms. Meerovich received her B.S. in finance and business management from Roosevelt University.

Brian G. Rich is a partner with Berger Singerman LLP in Tallahassee, Fla., and leads complex chapter 11 negotiations and out-of-court reorganizations. He has overseen numerous large-scale cases with claims ranging from \$100 million to over \$1.5 billion. Mr. Rich represents bankruptcy trustees in fraud-related cases where he fights for victims of Ponzi schemes and rampant real estate fraud. He also advises real estate developers in real estate workouts and restructurings and represents clients seeking to purchase assets from troubled entities and loan portfolios. During the most recent economic crisis, Mr. Rich devoted a substantial portion of his practice to representing developers and borrowers in out-of-court restructuring matters throughout Florida, which included loan negotiations, deeds-in-lieu of foreclosure and settlements of guarantee claims. He received his B.S. in business administration with a concentration in finance from Temple University and his J.D. from the University of Miami School of Law.

Hon. David M. Warren is Chief U.S. Bankruptcy Judge for the Eastern District of North Carolina in Raleigh, initially appointed on Oct. 4, 2013, and appointed Chief Judge on July 28, 2021. He also serves as an adjunct professor at the Norman A. Wiggins School of Law at Campbell University and as a guest lecturer at the Wake Forest University School of Law. Judge Warren previously was a partner at Poyner Spruill LLP in Raleigh and Rocky Mount, N.C., for nearly 30 years and concentrated his practice in the areas of bankruptcy and commercial law. Following law school, he began a two-year clerkship with the late Hon. Thomas M. Moore, who, with Hon. A. Thomas Small, drafted legislation that became chapter 12 of the U.S. Bankruptcy Code. He served on the panel of chapter 7 bankruptcy trustees for the Eastern District of North Carolina for 24 years and is a past chair of the Bankruptcy Law Section of the North Carolina Bar Association. In addition, he served on the Local Rules Committee for the U.S. Bankruptcy Court for the Eastern District of North Carolina for more than 10 years and served as chair for more than seven years. Judge Warren is Board Certified in Business and Consumer Bankruptcy Law by the North Carolina State Bar Board of Legal Specialization and the American Board of Certification. While in private practice, he was recognized as a Tier 1 attorney in the Bankruptcy/Restructuring area for North Carolina by *Chambers USA* from 2009-13, as a "Legal Elite" in the area of Bankruptcy Law by *Business North Carolina* magazine in 2006, 2008, 2010-12 and 2014, and in *Super Lawyers* from 2009-14. He also was recognized in *The Best Lawyers in America* in the area of Bankruptcy and Creditor/Debtor Rights/Insolvency and Reorganization law in 2013 and 2014. Judge Warren is a former national president of Kappa Alpha Order, a national college fraternity headquartered in Lexington, Va. He is a member and treasurer of the National Conference of Bankruptcy Judges and a member of ABI, and he previously served on the Space and Security Advisory Group and the Bankruptcy Judges Advisory Group for the Administrative Office of the U.S. Courts. Judge Warren received his B.A. *cum laude* from Wake Forest University and his J.D. from the Wake Forest University School of Law.