Bankruptcy 2025: Views from the Bench

Retail Bankruptcy

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RETAIL BANKRUPTCY:
ISSUES, TRENDS, IN COURT VS. OUT OF COURT

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Tariffs—The Grim Reaper?

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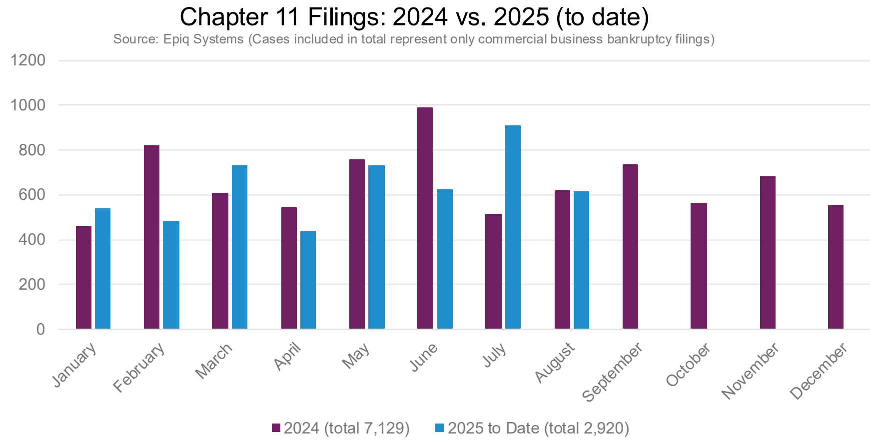
Bankruptcy Filing Trends (cont'd)



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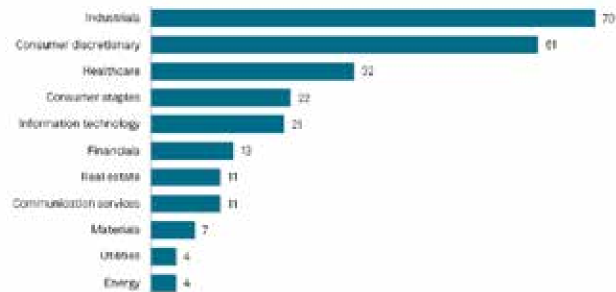
Bankruptcy Filing Trends

- The real estate sector continues to be a significant source of new Chapter 11 filings, while consumer discretionary, healthcare, and industrials sectors also show significant activity in 2025 (as in 2024)
- 2025 has seen 15 Chapter 11 cases involving DIP financing facilities of at least $100 million
- 2025 has also seen more smaller filings ($10 million to $100 million liability range), which are up 41% year-over-year from 2024.

2025 bankruptcy filings by primary sector



Data compiled Aug. 4, 2025.

Includes S&P Global Market Intelligence-covered US companies that announced a bankruptcy between Jan. 1, 2025, and July 31, 2025.

S&P Global Market Intelligence's bankruptcy coverage is limited to public companies or private companies with public debt where either assets or liabilities at the time of the bankruptcy filing are greater than or equal to $2 million, or private companies where either assets or liabilities at the time of the bankruptcy filing are greater than or equal to $10 million. Involuntary bankruptcy filings are also included.

Primary sector not available for 190 bankruptcies filed in 2025.

Source: S&P Global Market Intelligence.

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Source: Octus

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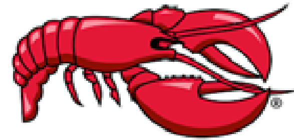
Recent retail and restaurant debtors



Retail Bankruptcy

American Bankruptcy Institute
Views from the Bench 2025

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I. Hot Topic – U.S. Tariff Policy

A. In General

A hot topic affecting the retail industry in particular is the United States' tariff policies which remain in flux. Overall, until all the dust created by the Trump Administration and other global circumstances and forces settles, it will be a bumpy ride for many retailers.

A Bouncing Ball: U.S. tariff policy has been a bouncing ball since President Donald Trump's inauguration on January 20, 2025. News headlines have regularly appeared, chronicling the volatility of the United States' trade actions. Prior to 2025, tariffs on U.S. imports averaged 2.5%-3.0% (depending on the specific analysis) in accordance with numerous international agreements negotiated by the U.S. government, with many items entering tariff-free. Then, starting in February 2025, invoking his powers by declaring a national emergency over undocumented immigration and drug trafficking, President Trump signed executive orders to impose tariffs beginning February 4 on imports from Mexico, Canada and China. These three nations, combined, reportedly account for over 40% of the United States' goods imports. President Trump has made the use of tariffs a central plank of his Administration's economic and national security policies.

Faced with outrage from numerous nations and threats of retaliatory measures, only a couple of days after the early February trade actions, President Trump then agreed to a 30-day pause on his tariff threats against Mexico and Canada. Then, after new tariffs on Chinese imports went into effect, China quickly retaliated with announcements of countermeasures, including 15% tariffs on coal and liquefied natural gas products and 10% tariffs on crude oil, agricultural machinery, and certain cars imported from the U.S. And then, in mid-February 2025, President Trump announced a plan for "reciprocal" tariffs for most other countries -- to increase U.S. tariffs to match the tax rates that other countries charge on imports "for purposes of fairness." Various economists have warned that such reciprocal tariffs are contrary to decades of trade policy and would create chaos for businesses globally. Since then, President Trump has basically shown this will be an *ad hoc* process, with the Administration unilaterally informing trade partners of new tariff rates depending on and subject to the various countries' negotiations

Fast forward to late July 2025 (just before the lapse of President Trump’s self-imposed deadline for trade deals), the Administration set forth another tariff plan under which a 15% rate will serve as the new tariff floor for countries with which the U.S. has a trade deficit (about 40 nations), excluding a number of countries whose goods will be subjected to higher rates. Mexico and Canada will continue to (at least temporarily) face higher tariffs for goods that are not exempt under the US-Mexico-Canada free-trade agreement (25% and 35%, respectively).

Basic Impact and Effects: Generally, U.S. businesses and consumers stand to suffer higher prices and lower demand. U.S. households will bear most of the burden of higher tariffs through higher prices for imported goods and, in some cases, higher prices for domestic goods that compete with imports. Various economists and policymakers do not believe that U.S. consumers will readily pay much higher prices, having been worn down by persistent inflation since 2020.

Many businesses have expressed significant concern and risks, have adjusted their strategies for the short term and beyond, and pulled their prior longer-term outlooks pending how the tariff situation develops. To mitigate adverse effects, some businesses plan to utilize existing inventory and implement selective strategic pricing adjustments, rather than implementing broader price increases. Some companies like Walmart have announced they will raise prices in the short term in response to the higher tariffs, although Walmart stated it might absorb some tariff costs to keep its prices competitive, and The Gap expects increased gross incremental cost of $250 million to $300 million due to tariffs. Indeed, many businesses will be hard hit in the short term. Some analysts predict a wave of restructurings later this year, notably among retailers and importers that rely on Chinese manufacturers. As tariff policies continue to develop and fluctuate, it will take some time to fully understand the impact of recent events. At a minimum, though, companies potentially impacted directly or indirectly by tariffs should implement immediate or expedited strategies to mitigate risks to their operations, stabilize cash flow, preserve their value, and avoid financial distress since tariffs can severely disrupt supply chains, thereby increasing costs and decreasing profitability.

As the Trump Administration's trade strategy continues to develop, the potential for additional higher tariffs remains uncertain. However, the impact on global trade and domestic industries is expected by many economists to be significant and long-lasting.. Higher tariffs are anticipated to disrupt market stability across many sectors, particularly affecting supply chains and production costs.

B. Effects on Domestic Businesses

The potential positive effects of tariffs on U.S. companies include protection of domestic suppliers and businesses from foreign competition, short-term revenue growth for the U.S. business, and potential market share gain (away from foreign competitors). Tariffs can make imported goods more expensive, encouraging consumers to buy domestically produced products, potentially facilitating domestic employment and industry growth.

The potential adverse effects of tariffs on U.S. suppliers and businesses include higher input costs (for imported materials), retaliatory tariffs (*e.g.*, China) reducing U.S. exports, and reduced efficiency due to less competition. Moreover, higher, volatile tariffs are expected to exacerbate the already inflationary environment, which will likely lead the Federal Reserve to further pause interest rate cuts and potentially consider rate increases again. Interest rates could remain higher for longer, increasing borrowing costs for businesses and investors, and delaying corporate/business transactions (*e.g.*, mergers, capital expenditures).

Specifically, the Trump Administration's high tariffs will significantly affect the U.S. retail industry, which largely depends on foreign suppliers such as China, Vietnam, Indonesia, Sri Lanka, Bangladesh, and Cambodia, with tariff rates for these countries ranging from approx. 32%-49% or more, depending on the specific country, time period, and state of the countries' negotiations. These nations make up a substantial portion of the manufacturing needs of major apparel companies in the U.S., including Nike, Gap, and Levi Strauss. High tariff costs will likely be more easily passed through by luxury retailers that have less price-sensitive customers. Retailers

that sell regular-priced discretionary products to middle- and low-income consumers are likely to have difficulties in passing on cost increases to customers and may have to partially absorb increases in order to preserve volumes.[1] High tariffs may contribute to depressed sales, potential store closures,[2] debt/bond defaults, and other financial distress. Domestic retailers with strong U.S.-based supply chains may persevere or even benefit during this tumultuous period, while box stores and department stores that depend on foreign-made imported goods may struggle with higher costs and lower consumer demand.

Importantly, there is no definite timeline for resolution of the U.S. tariff scheme, the development of which is subject to numerous adverse factors including (1) retaliation by other countries (through their own tariffs, harming export industries and global trade relationships); (2) uncertain, fluctuating market conditions; (3) decrease and delays in capital investments; (4) likely lack of interest rate cuts by the Federal Reserve; (5) potential lack of sufficient government infrastructure for inspections and collections; (6) import delays; and (7) lingering or resurging inflation.

C. Risk Mitigation Strategies (Out of Court)

Retailers and other businesses impacted by tariffs should consider expeditiously implementing strategies to mitigate risks to their operations, stabilize cash flow, and preserve their value since tariffs can severely disrupt supply chains, increase costs, and decrease profitability.

(i) Diversify Supply Sources: Sourcing from multiple countries (including establishing production facilities in different countries and locating alternative, contingent suppliers) reduces dependency on any single country affected by tariffs, minimizing exposure to trade policy changes and better-ensuring business continuity.

(ii) Increase Inventory Buffers: Maintaining higher inventory levels of critical components or finished goods can help absorb delays and cost increases caused by tariffs.

(iii) Negotiate Long-Term Contracts: Locking in prices and tariff arrangements through long-term agreements can provide more price stability and predictability.

(iv) Legal & Contractual Safeguards: Including provisions in contracts that address tariff risks and costs, such as price escalation clauses, contingency arrangements, and recoupment/setoff provisions. Reviewing existing contracts for force majeure and similar provisions that may excuse a party from performance due to unforeseen events, such as tariff increases or supply chain disruptions. Understanding how these provisions

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[1] Some analysts predict that generally in the short run, businesses and consumers are likely to share the burden of higher tariffs, with more of it falling on consumers over time.

[2] In 2024, retailers across the U.S. closed about 1,300 more stores than they opened, according to Coresight Research. Many analysts anticipate a challenging 2025 for commercial real estate, due to inflation fatigue among shoppers and consumer uncertainty. As of mid-2025, there were more than 5,800 tracked store closings, compared to less than 3,500 store closings in the comparable period last year, according to Coresight.

can be invoked or leveraged may help businesses better navigate their legal responsibilities and options.

(v) Monitor Developments / Utilize Exclusions: Staying informed about changes in tariffs and trade policies facilitates more prompt, proactive adjustments to sourcing and production strategies. Further, companies should carefully explore current options that could reduce tariff exposure, such as tariff exclusions and existing trade remedies like requesting reclassification of the company's goods for tariff purposes.

(vi) Adjust Pricing Strategies: Passing some of the increased costs onto customers, where feasible, can offset higher tariffs to some extent.

(vii) Optimize / Reassess Operations: Regularly reviewing and improving supply chain efficiency and resiliency and business strategies can lower overall costs, helping absorb tariff increases to some extent.

II. Other Hot Topics

● ***Macroeconomic Pressures:*** Persistently high interest rates and inflation continue to impact retailers' ability to service debt and maintain operations.

● ***Supply Chain Disruptions / High Costs:*** Persistent supply chain issues are hampering inventory management, leading to financial strain and bankruptcy risks. Supply chain disruptions, as well as higher material, energy, freight/shipping, and labor costs, are resulting in lower margins and working capital outflows.

● ***Shifting Consumer Behavior:*** Continued movement away from brick-and-mortar retail toward e-commerce. Weakening demand for discretionary items and mismatches between available inventory and customer demand. Other changing consumer preferences, including sustainability and experiential shopping, are also influencing retailer business strategies. Relatedly, in some retailer chapter 11 cases, increased focus on preserving e-commerce operations while shedding physical store locations and rejecting leases to reduce fixed costs.

● ***Restructuring Trends - RSAs:*** Anecdotally, larger debtors are increasingly using prepetition, out-of-court, negotiated **Restructuring Support Agreements** (RSA). According to one 2024 study, "[r]elatively uncommon prior to the mid-2000s, they now appear in nearly half of all large corporate bankruptcies." (Waldock, Casey, and Tung, *Restructuring Support Agreements: An Empirical Analysis* (revised Oct. 15, 2024). University of Chicago Coase-Sandor Institute for Law & Economics Research Paper No. 1008, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4823317) This pre-negotiation process may help to streamline, expedite and make less costly the chapter 11 process and increase the likelihood of a successful reorganization. Prepetition secured and DIP lenders, in the context of RSAs and otherwise, are also more frequently demanding shorter timelines for asset sales and exits from bankruptcy.

- ***Filing Patterns:*** Consumer discretionary and consumer staples sectors, combined, constituted more than 31% of large corporate bankruptcy filings in 2025 as of mid-2025 (July 2025 S&P Global report). Large retailer cases include At Home Group Inc. (Delaware) and JOANN Inc. (Delaware, chapter 22).

III. Administrative Solvency Challenges

Administrative insolvency has long been an important issue in large chapter 11 cases. A bankruptcy estate's administrative insolvency or approaching administrative insolvency has continued to complicate debtors' turnaround or organized liquidation especially during the pandemic, playing a major role in a number of more recent high-profile bankruptcy cases. In such cases, administrative insolvency threatened or frustrated the prospects of a successful reorganization or even a more orderly liquidation and wind-down process to be implemented through a plan.

Estate professionals and courts have tried various strategies to avoid or mitigate the debtor's administrative insolvency, which could otherwise lead to the dismissal of the chapter 11 case or conversion of the case to a chapter 7 proceeding (which is often not in the best interests of the estate and its creditors), including (i) pre-plan motions by debtors to implement "consensual" administrative claim reduction/discount procedures; (ii) pre-plan motions to temporarily defer the payment of post-petition rents and other administrative expenses; (iii) a broad "mothballing" of the debtor's operations (such as retail stores in the case of a retailer debtor) and a "freeze" of the bankruptcy case for one month to several months for the debtor to be able to cut post-petition costs and formulate or rethink a viable exit strategy; (iv) partial-payment alternative treatment provisions in a plan for administrative claimants who expressly or implicitly consent to such treatment; and (v) the use of non-priority violating "structured dismissals" to be able to preserve the preceding progress in the chapter 11 case and minimize expenses in winding down the debtor.

As a general, practical matter, allowance of an administrative claim would commonly be an effective protection for a trade vendor or landlord in the case of a meltdown of the debtor's business and chapter 11 case, because administrative claims have higher priority than general unsecured claims and the Bankruptcy Code requires the full payment of administrative claims under a confirmed plan, unless the administrative claimant agrees otherwise (*see* 11 U.S.C. §§ 507(a)(2), 1129(b)(2)). Some larger chapter 11 cases, however, have undermined to some extent these guidelines and debtors' normal practices. Notably, some bankruptcy courts in the early days of the COVID-19 pandemic were willing to move ahead with strategies to temporarily suspend the bankruptcy case and operations to "wait and see" how the pandemic and the effects thereof develop. Distressed companies that file for chapter 11 may continue to pursue some of the interim and exit strategies discussed herein, which will put pressures on trade vendors, landlords and other administrative expense claimants.

A. Pre-Plan Mechanisms

1. Administrative Claim Reduction/Settlement Motions

To avoid or mitigate administrative insolvency, some debtors have implemented court-approved pre-plan mechanisms or "protocols" to effectively settle with administrative claimants for partial recoveries. For instance, in the Southern Foods (Dean Foods) bankruptcy in the Southern District of Texas,[3] the debtors, seeking to avoid administrative insolvency, obtained approval of administrative claim "protocols" that would enable them to reduce the amount of administrative claims in exchange for accelerated payments.

Under the protocols approved by the court (Docket No. 2724), administrative claimants that affirmatively opted in received an accelerated cash distribution in exchange for reducing their claim to 80% of the reconciled claim amount. These administrative claimants received an initial cash distribution equal to 30% of the reduced administrative claim within 10 business days after opting in, with the remaining amount to be paid at a future date to be determined by the debtors with the consent of the official creditors' committee. Claimants that declined to reduce their administrative claim were subordinated to the administrative claimants that opted in. In effect, in this case, the debtors were able to leverage the risk of administrative insolvency to reduce the overall amount of administrative claims. As discussed below, some debtors have also attempted to incentivize administrative claimants to similarly accept a claim reduction in the plan context. From the claimant's perspective, such claim reduction mechanisms have some appeal because the claimant would receive some meaningful recovery and the mechanism may ultimately stave off administrative insolvency and avoid a conversion of the chapter 11 case to a chapter 7 -- which would often leave administrative claimants with even further reduced and delayed recoveries.

B. Deferral of Payments

Rather than decreasing the amount of administrative claims, some debtors have been successful in obtaining court authority to significantly, albeit temporarily, defer the payment of administrative claims including ordinary course of business vendor/supplier and landlord claims. Nothing in the Bankruptcy Code strictly requires payment of allowed administrative expenses prior to the effective date of a debtor's chapter 11 plan (*see* 11 U.S.C. § 1129(a)). The timing of payment of an administrative claim under section 503(b) of the Bankruptcy Code is a matter within the court's discretion.[4]

One example of court approval of the delay in payment of ordinary-course administrative claims was the **J. Crew Group Inc.** ("J. Crew") case. J. Crew, the popular apparel retailer, filed for bankruptcy protection in the Eastern District of Virginia in May 2020, and sought court approval on the first day of its case to defer its substantial obligations under its approximately 500 commercial leases (totaling approximately $23 million per month). According to the debtors, their DIP budget evidenced sufficient liquidity for operational costs to and after the 60-day extended period, and thus the landlords did not have any significant risk of nonpayment. In light of the exigent circumstances caused by the pandemic, the court granted the debtors' request for a 60-day

[3] *In re Southern Foods Group, LLC*, Case No. 19-36314 (Bankr. S.D. Tex.).

[4] *See, e.g., In re NE Opco, Inc*., 501 B.R. 233, 259 (Bankr. D. Del. 2013) ("courts have discretion to determine when an administrative expense is paid"); *In re Garden Ridge Corp*., 323 B.R. 136, 143 (Bankr. D. Del. 2005) (finding that timing of the payment of an administrative claim is within the discretion of the bankruptcy court); *In re Le–Mar Holdings, Inc*., No. 17–50234–RLJ–11, 2017 WL 7050634, at *2 (Bankr. N.D. Tex. Nov. 9, 2017).

rent deferral over the objections of landlords and the official committee of unsecured creditors.[5] The court ordered that any action seeking to enforce lease obligations would also be stayed during this period, and it found that no adequate-protection payments were required. *See In re Chinos Holdings Inc*., Case No. 20-32181 (KLP) [Docket Nos. 23 & 323] (Bankr. E.D. Va. May 4 & 26, 2020).[6]

While the J. Crew case ultimately succeeded with a confirmed plan, some other cases in which the payment of ordinary-course administrative claims was delayed did not work out well. For instance, in the **Pier 1 bankruptcy** (a home décor and furniture retailer) in the Eastern District Court of Virginia, the court approved the debtors' motion to delay payment of all but certain "critical expenses" (largely relating to e-commerce) included on an interim budget. Thus, Pier 1 would temporarily stop paying landlords (totaling approximately $9.4 million monthly), vendors, shippers and suppliers. In support of its motion, Pier 1 argued that nonbankruptcy law (including the Takings Clause, force majeure and frustration of purpose) would have allowed the debtor to avoid payment outside of bankruptcy. Further, objecting landlords were adequately protected by the DIP budget providing for catch-up payments after the deferral period and that insurance, utilities and similar store obligations would continue to be paid to preserve these assets. Anticipating a flood of motions seeking to compel Pier 1 to pay, or seeking relief from the automatic stay, Pier 1 requested the court to delay consideration of those motions to a later date. *See In re Pier 1 Imports, Inc*., Case No. 20-30805 (KRH) (Bankr. E.D. Va. 2020) (Docket Nos. 438, 493, 590 & 629). The Pier 1 court granted the debtor's motion in early April 2020, but after the two-month deferral period, the debtors became administratively insolvent. The debtors subsequently filed and obtained confirmation of a liquidating plan that called for administrative claimants to receive substantially reduced payments (*see* Order Confirming Amended Joint Chapter 11 Plan [Docket No. 967] ("Pier 1 Confirmation Order").

There has been criticism of the *Pier 1* court's delaying of payments:

> "At least one court holds that § 365(d)(3) does not compel a debtor to timely pay rent in accordance with a lease. [*In re Pier 1 Imports, Inc.*, 615 B.R. 196, 202 (Bankr. E.D. Va. 2020)]. In Pier 1, the Bankruptcy Court for the Eastern District of Virginia stated that, because § 365(d)(3) lacks a remedy to effect payment, '[i]f a debtor fails to perform its obligations . . . all a Lessor has is an administrative expense claim under [§] 365(d)(3), not a claim entitled to superpriority.' *Id.* (quoting In re Circuit City, 447 B.R. at 511). Because administrative claims must be paid on the effective date of a plan, 'timely' performance under § 365(d)(3) means paying

[5] Section 365(d)(3) of the Bankruptcy Code requires a commercial tenant debtor to pay rent on a timely basis during the post-filing period unless and until its lease is rejected or assumed. However, this provision allows a bankruptcy court to extend for cause the time for performance for up to 60 days following the bankruptcy petition date (with the amounts arising during this initial 60-day period being treated as an administrative expense claim).

[6] Notably, Subchapter V of chapter 11 of the Bankruptcy Code (enacted as part of the Small Reorganization Act of 2019) permits the debtor to pay administrative claims over the life of a nonconsensual plan. This ability, which is standard in chapter 12 and 13 cases, is limited in a Subchapter V case to a plan that is approved pursuant to the cramdown provisions of new § 1191(b) (*see* 26 § 1191(e)). Thus, the debtor is in the unusual position of possibly preferring a contested plan in order to take advantage of stretching out administrative payments over the life of the plan.

all accrued rent following plan confirmation. *Id.* Although landlords may ask for adequate protection if the value of their interest in real estate decreases, the Pier 1 court determined that deferring rent did not diminish property value. Id. at 203. The court supported its reading of § 365(d)(3) by noting that 'COVID-19 presents a temporary, unforeseen, and unforeseeable glitch in the administration of the Debtors' Bankruptcy Cases.' *Id.*

"Both the text and the intent of § 365(d)(3) are clear: commercial real property lessees must continue to perform after filing for bankruptcy. Section 365(d)(3) requires that the debtor timely perform its lease obligations. The provision was added to the Bankruptcy Code to prevent commercial lessors from unwillingly extending credit to debtor-lessees during the pendency of a chapter 11 case. The Court disagrees with Pier 1, although perhaps on the margins. The command of § 365(d)(3) remains. The remedy for a violation of § 365(d)(3) is beyond the scope of this opinion."

In re CEC Entertainment, Inc., 625 B.R. 344, 352-53 (Bankr. S.D. Tex. 2020). Arguably, cases like Pier 1 and J.Crew, as well as the other mechanisms discussed herein to deal with potential administrative insolvency, are and should be very narrowly applied, because most such cases occurred during the COVID-19 pandemic and its aftermath – an extraordinary period, to which some bankruptcy courts responded with unusual remedies for debtors in critical financial distress.

C. Mothballing Operations

In limited cases, debtors have also sought a temporary "mothballing" or "freeze" strategy. More specifically, the debtor seeks to pause its bankruptcy case and normal operations for one month to several months to hopefully ride out the adverse economic and business circumstances caused or exacerbated by, for example, COVID. *See, e.g., In re Modell's Sporting Goods, Inc*., Case No. 20-14179 (VFP) (Bankr. D.N.J. March & April 2020) (orders, Docket Nos. 166 & 294); *In re CraftWorks Parent, LLC*, Case No. 20-10475 (BLS) (Bankr. D. Del. Mar. 2020) (motion, Docket No. 206; orders, Docket Nos. 217 & 220); *In re Pier 1 Imports, Inc*., No. 20-30805 (KRH) (Bankr. E.D. Va. 2020) (March 2020 motion, Docket No. 438; April 2020 orders, Docket No. 493 & 629; May 2020 memorandum opinion, Docket No. 637). This pause allows the debtor to substantially reduce its expenses (*e.g*., furloughing employees, cutting store operating expenses, delaying payment of rent, although a particular debtor may continue with limited operations like online sales), while remaining under bankruptcy protection, hoping for a return to more normalized operations within a period of months.

D. Treatment Under Plans

1. Administrative Claim Settlement Process in Conjunction with Liquidating Plan

To prevent or mitigate administrative insolvency, some debtors (such as in the Forever 21, Pier 1 and ShopKo chapter 11 cases[7]) incorporated consensual settlement alternatives into their chapter 11 plans (either express consent or deemed consent due to lack of objecting), whereby commonly, consenting administrative claimants get less than a full recovery in exchange for quicker payment or other consideration (such as the estate's release of preference, fraudulent transfer and other avoidance actions against consenting administrative claimants). Under Code section 1129(b)(9), a plan must provide for the payment of all administrative claims in full on the effective date *unless* the holder of the claim agrees to different treatment. While some debtors have not been successful, some other debtors have effectively bypassed section 1129(b)(9) by requiring an administrative claimant to timely object to the plan or otherwise be deemed to accept the different treatment set forth in the plan.

Nothing in section 1129(a)(9) expressly requires administrative or priority creditors to give affirmative consent to alternative treatment. *See, e.g.,* Pier 1 Confirmation Order, ¶ 81 ("All Holders of Administrative Claims that did not opt out of the treatment under the Plan [providing for pro rata, partial payments] pursuant to the Administrative / Priority Claim Consent Form or object to the treatment under the Plan are presumed to have accepted and consented to their treatment under the Plan."); *In re Toys "R" Us, Inc*., Case No. 17-34665 (KLP) (Bankr. E.D. Va. Nov. 21, 2018) (approving a plan where administrative creditors were deemed to consent to alternate treatment when such treatment was disclosed and the affected creditor took no affirmative action). Arguably, such a result is also consistent with the Bankruptcy Code's basic policy of maximizing value for creditors.

E. Post-Confirmation Payment Reductions

Partial-payment outcomes for administrative claimants have also arisen in the post-confirmation context as well. For example, in *In re Verity Health System of California, Inc*., Case No. 18-20151-ER (Bankr. C.D. Cal. 2021), the debtors obtained post-plan confirmation approval to pay certain administrative claimants between 15% and 23%. Administrative claimants that had already been paid were not subject to this reduction.

The confirmed plan had established a $52 million reserve to satisfy non-professional administrative claims that were allowed and unpaid as of the plan's effective date (September 4, 2020). The reserve amount was based on the debtors' projections of administrative claims that were to be filed. The plan was confirmed before the bar date for administrative claims, however, and the debtors substantially underestimated the amount of administrative claims by tens of millions of dollars. The liquidating trustee sought and obtained court approval, over creditor objections, to pay administrative claimants between 15% and 23% (comprised of an initial 15% payment and then a final payment (if any) after all administrative claims were resolved). According to the *Verity* court, "The upshot is that at the time the Plan was confirmed, administrative creditors were aware of the risks associated with the Administrative Claims Reserve

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[7] *See* Pier 1 Confirmation Order; *In re Specialty Retail Shops Holding Corp.*, Case No. 19-80064-TLS (Bankr. D. Neb. June 11, 2019) (confirmation order, Docket No. 1557). As discussed further herein, finding the proposed liquidating plan with an administrative claim settlement process to be violative of Code section 1129(a)(9) and thus unconfirmable, the Forever 21 court did not even approve of the proposed disclosure statement for the debtors' liquidating plan which had in conjunction an administrative claim settlement process.

– including the possibility that the reserve would be inadequate, in which case certain administrative creditors would not receive the same distribution as other administrative creditors." *Memorandum of Decision Granting Motion to Authorize Liquidating Trustee to Undertake Final Distribution Program for Administrative Claimants* ([Docket No. 6515], at p. 9 (footnote omitted).

F. **Structured Dismissals**

An increasingly more commonplace exit strategy in chapter 11 cases, where the debtor is administratively insolvent or approaching insolvency, is the use of non-priority violating "structured dismissals." Essentially, a structured dismissal is a dismissal of the chapter 11 case coupled with some or all of the following additional, special provisions in the dismissal order or related orders: (i) broad releases of claims of the debtor's creditors against the debtor, its professionals, any creditors' committee and its professionals, and possibly other third parties such as the debtor's lenders; (ii) streamlined procedures for reconciling and paying valid claims against the debtor; (iii) potentially, the "gifting" of funds (proceeds of collateral) by the debtor's secured creditor to junior creditors (subject to *Jevic* and as discussed further below); and (iv) provisions providing for orders entered and other actions taken during the chapter 11 case to remain in full force and effect and for the bankruptcy court to retain jurisdiction over certain post-dismissal matters. The Bankruptcy Code does not expressly authorize or contemplate structured dismissals, but sections 105(a), 305(a)(1), 349(b), and 1112(b) are commonly cited as authority for this mechanism.

Generally, the benefits of a structured dismissal, which the reviewing bankruptcy court may take into account, are the preservation of estate assets, minimization of administrative costs, and enhanced efficiency, and thus the maximization of recoveries for the estate's creditors, by (a) eliminating a costly, time-consuming plan process, (b) avoiding the delay, costs and uncertainties of a chapter 7 liquidation, (c) streamlining the claims resolution process, (d) preserving bankruptcy court jurisdiction over matters the bankruptcy court is best suited to address, and (e) where applicable, effecting the terms of settlements with creditors without a burdensome plan process. Because structured dismissals expeditiously end a bankruptcy case and provide protocols for the administration of claims and any remaining estate assets, they are often a pragmatic, cost-effective alternative to converting the chapter 11 case to chapter 7 or confirming and implementing a liquidating chapter 11 plan.

Often, a structured dismissal is proposed in the context of, or promptly following, a section 363 sale of substantially all of the debtor's assets; or proposed after or in connection with a global settlement sought to be approved under Bankruptcy Rule 9019. Structured dismissals provide administratively insolvent debtors with a framework to distribute the estate's remaining assets (without the additional cost of a chapter 7 liquidation), wind down the estate, and obtain final dismissal of the case.

IV. **Releases in Sale Orders**

In January 2025, the Bankruptcy Court for the Eastern District of Virginia denied a motion for a stay pending an appeal of a settlement motion in *In re Hopeman Bros., Inc.*, No. 24-32428-

KLP, 2025 WL 297652, at *6 (Bankr. E.D. Va. Jan. 24, 2025). The settlement motion contained a provision allowing for a sale of assets pursuant to section 363 of the Bankruptcy Code.

In addressing the first element of the test for a stay (whether movant is likely to prevail on the merits), the appealing creditor argued that it was likely to prevail on appeal as a result of the Supreme Court's decision in *Harrington v. Purdue Pharma, L.P*., 603 U.S. 204 (2024), arguing that the limitations on third party releases/injunctions imposed in that case also apply to section 363 sales. The *Hopeman Bros.* court characterized this argument as "novel" noting that "injunctions and releases have long accompanied 'free and clear' sales in bankruptcy." In rejecting this argument, the bankruptcy court relied on a couple of post-*Purdue* cases. In *In re Bird Global, Inc.*, Case No. 23-20514-CLC (Bankr. S.D. Fla.), the bankruptcy court denied a motion for stay pending appeal, finding that "[n]othing in the stay motion makes the court question its interpretation of *Purdue* and its lack of an effect on this case ...." This decision was affirmed by the district court. *Wright v. Bird Global*, Case No. 24-CV-23086-RAR (S.D. Fla. Aug. 21, 2024). In another decision, rendered in *Roman Cath. Diocese of Rockville Centre*, 665 B.R. 71, 89 (Bankr. S.D.N.Y. 2024), the bankruptcy court approved, over objections, a settlement agreement containing releases and injunctions. The court was not persuaded by the argument urged by the United States Trustee that *Purdue* is applicable in the context of a section 363 sale in addition to the context of plan confirmation. *Id.* at 81-82.

Relying on such decisions, the court in *Hopeman Bros*. reasoned:

> A decision that would permit a creditor to independently pursue its claim against property of the debtor after it been sold in bankruptcy would have a chilling effect on the sale of assets in bankruptcy. *Purdue* was not intended to thwart that process. Perhaps, this is why the Court has not found, and has not been pointed to, any decision extending Purdue's decision to § 363 sales.

Hopeman Bros., 2025 WL 297652, at *4 (footnote omitted). Consequently, the bankruptcy court denied the motion to stay pending appeal.

Arguably, cases allowing releases as part of sale orders did not involve true nonconsensual third-party releases of independent claims against non-debtors. Instead, they addressed situations where the claims were derivative of the debtor's interests or involved estate property, which are fundamentally different from direct third party claims at issue in Purdue. Arguably, the Supreme Court's decision in *Purdue* provides that the Bankruptcy Code does not authorize non-consensual third-party releases in contexts outside of asbestos cases, and that any attempt to limit *Purdue* only to chapter 11 plan confirmation may be misguided.

On the other hand, it could be argued that *Purdue*'s rationale in overturning third party releases depended on lack of authority under any applicable provision of the Bankruptcy Code, including section 1123 relied upon by *Purdue*. By contrast, section 363(f) expressly permits sale of estate property free and clear of third party claims, and the well-established framework for protecting purchasers of estate property should not be undermined through an unjustified extension of *Purdue*.

V. Billing/Accrual Approaches for Leases

The legal debate between accrual (liability basis) and billing (cash basis) approaches in bankruptcy lease cases revolves around how landlords, lessors and lessees, as applicable, assert or treat claims for unpaid rent and other charges during the bankruptcy proceedings. On the one hand, the "accrual" approach requires the debtor to pay only those obligations that accrued post-petition, irrespective of when those obligations come due under the operative lease. On the other hand, the "billing date" approach requires the debtor to pay obligations once they come due under the operative lease, regardless of when the obligation can be said to have accrued. The case law still appears to be mixed on this issue, with some more recent courts espousing the billing approach although arguably the majority of courts may support the accrual approach.

A. Billing Approach

Under the **billing approach**, the rent or other charge is considered due only when it is billed or invoiced by the lessor and received or payable by the debtor lessee. Such courts believe that proration is an unwarranted exercise of judicial discretion and that the billing approach is in accord with the plain statutory language. *See, e.g., In re Montgomery Ward Holding Corp*., 268 F.3d 205, 211-12 (3d Cir. 2001) (holding that the billing date approach is appropriate because there is no ambiguity in section 365(d)(3) and that debtor must fulfill its obligations as they come due under a lease; "Congress enacted § 365(d)(3) for the purpose of altering a pre-Code practice that had created a problem for landlords of non-residential property and our task is to determine the nature of the change based on the text chosen."; the word "obligation" could only be read as requiring payment strictly in accordance with the terms of the lease); *In re Oreck Corp*., 506 B.R. 500, 505–06 (Bankr. M.D. Tenn. 2014) (holding that the debtor's obligation to pay rent for the month in which it filed for bankruptcy relief, including not only debtor's obligation for rent relating to the first 6 days of month that it occupied premises as prepetition debtor, but also for the last 25 days of month when it occupied premises as debtor in possession, arose on first of the month and was not entitled to priority under section 365); *In re HQ Global Holdings, Inc*., 282 B.R. 169, 172–73 (Bankr. D. Del. 2002) (holding that stub rent was not payable under section 365(d)(3) because the bill for rent came due on the first day of the month and thus was a prepetition claim); *Koenig Sporting Goods, Inc. v. Morse Road Co. (In re Koenig Sporting Goods, Inc.),* 203 F.3d 986, 989–90 (6th Cir. 2000) (holding that there is no ambiguity; plain meaning of section 365(d)(3) lends itself to billing date approach; debtor had a choice of when to file and could have avoided the situation it is in by making a different strategic choice).

○ *See also In re Avianca Holdings S.A. v. Burnham Sterling & Company LLC (In re Avianca Holdings S.A.),* 127 F.4th 414 (2d Cir. 2025) (discussed further below; an obligation first arises, and is entitled to priority, under section 365(d)(5) when a payment comes due under a lease, regardless of when payment obligations accrues; billing date approach is the correct interpretation).

B. Accrual Approach

In contrast, under the **accrual approach**, rent is recognized as a liability when the obligation to pay arises, regardless of whether the lessor has billed, emphasizing proration and

usage-based principles. *See, e.g., In re Stone Barn Manhattan, LLC*, 398 B.R. 359, 364 (Bankr. S.D. N.Y. 2008) (proration approach; "A significant number of district and bankruptcy courts have held proration to be appropriate." (citations omitted); "These courts stress that (i) proration is simple to apply; (ii) the method produces equitable results as it allows both landlords and tenants to get what they bargained for--current service for current payment--at the rate agreed to in the lease; (iii) proration is consistent with the long-standing, pre-amendment practice of prorating lease obligations pending rejection; (iv) neither the statute nor its legislative history indicates proration is precluded; and (v) proration is consistent with other provisions of the Bankruptcy Code, such as §§ 365(g) and 502(g)."); *In re Furr's Supermarkets, Inc.,* 283 B.R. 60, 68 (B.A.P. 10th Cir. 2002) (holding that the proration rule is the "better-reasoned approach" and "more consistent with the legislative purpose underlying § 365(d)(3)'s enactment); *In re Leather Factory Inc.*, 475 B.R. 710, 714 (Bankr. C.D. Cal. 2012) ("I find that the rent for the days after the filing of the petition until the next lease payment is due are an administrative claim under § 365(d)(3) in a prorated amount of a full monthly lease payment, in accord with … that slight majority of courts following the accrual rule. To rule otherwise would reward the estate to the detriment of the landlord, which was not the intent of Congress."); *In re Handy Andy Home Improvement Ctrs., Inc*., 144 F.3d 1125, 1126–29 (7th Cir. 1998) (holding that there is ambiguity in the statute; thus, policy considerations weigh in favor of an accrual and proration approach because taxes are accrued piecemeal, but there is always an obligation to pay them).

○ The courts that prefer the accrual approach worry that: (i) the billing date approach may give a landlord priority over other creditors with respect to obligations which accrue prepetition but are not payable until postpetition; and (ii) a bright-line rule, such as the billing approach, may allow debtors to manipulate the system by timing their bankruptcy filings to avoid paying certain obligations. Courts with this point of view contend that the accrual approach is more equitable because it is more faithful to the general principle of adjusting creditor's rights equally.

○ *See also American Bankruptcy Institute Commission to Study the Reform of Chapter 11: 2012-2014 Final Report and Recommendations* (edited version), 23 Am. Bankr. Instit. L. Rev. 4, 140, 146 (Winter 2015) ("The calculation of post-petition rent under a real property lease should be calculated under the accrual method, allowing the trustee to treat rent accrued prior to the petition date as a pre-petition claim and rent accrued on and after the petition date as a post-petition obligation. The trustee should be required to pay any such post-petition rent obligation on or before 30 days after the petition date or date of the order for relief, whichever is later. The trustee should pay all subsequent rent obligations accruing post-petition but prior to any rejection of the lease on a timely basis in accordance with the terms of the lease."; "Ultimately, the Commission decided that the accrual method, which allocates rent between the prepetition and post-petition periods based on the date of filing, was a fair method and most closely aligned with the purpose of section 365(d)(3).").

○ Courts adopting the accrual/proration rule appear split on whether the postpetition per diem portion of the landlord's claim is entitled to immediate payment under section 365(d)(3) or, alternatively, only creates an administrative claim under section 503(b)(1) and thus can be paid at the end of the case, or, as a third alternative, can be

considered for payment when a landlord makes a motion seeking to compel postpetition payment. *Compare In re UAL Corp*., 291 B.R. 121, 127 (Bankr. N.D. Ill. 2003) (holding that stub rent was entitled to an administrative claim under section 503(b) but was not to be paid currently under section 365(d)(3); however, a motion for payment of the rent was available to the landlord "to the extent that the use of rental property benefited the estate."); *In re Travel 2000, Inc*., 264 B.R. 444, 451 (Bankr. W.D. Mich. 2001) (granting a landlord's motion to compel payment of stub rent to prevent the unfairness of allowing the debtor to occupy the premises rent-free); *In re PYXSYS Corp*., 288 B.R. 309, 312–16 (Bankr. D. Mass. 2003) (discussing various case law treatment of unpaid postpetition lease obligations where the debtor's estate is administratively insolvent); *In re Jughandle Brewing Co., LLC*, 2024 Bankr. LEXIS 1305, at *15 (Bankr. D.N.J. June 3, 2024) ("I disagree that the allowance of an administrative expense is the only remedy available for a violation of § 365(d)(3). The trustee's right to assume or reject a lease does not preclude a landlord from taking affirmative action to protect its interest. A landlord may seek relief from stay pursuant to § 363(d), move to compel the trustee to assume or reject, or seek payment of post-petition rent pursuant to § 365(d)(3) or § 503(a).").

Hybrid Approach: The Third Circuit issued its decision in *In re Goody's Fam. Clothing Inc*., where the court took a modified billing theory approach in holding that while stub rent was not an obligation that must be timely performed under section 365(d)(3) since the bill came due prior to the order for relief, the landlord's claims for stub rent were also entitled to administrative expense priority under section 503(b), and the amount of such claims would be the fair market value of the debtor's use of the premises. *See In re Goody's Fam. Clothing Inc*., 610 F.3d 812, 816–19 (3d Cir. 2010). This followed the general trend of post-*Montgomery Ward* decisions in Delaware. *See, e.g., In re ZB Company, Inc*., 302 B.R. 316, 319–20 (Bankr. D. Del. 2003) (applying the "modified billing theory" approach and setting the amount of the contract rate at the fair rental value of the debtor's occupation of the premises); *In re Sportsman's Warehouse, Inc*., 436 B.R. 308, 315 (Bankr. D. Del. 2009) (same).

Under the hybrid rule of the Third Circuit, the distinction between the proration and billing theories is arguably minimized and becomes a timing issue for lease obligations other than real estate taxes. Under either theory, the landlord would have an administrative claim for the per diem benefit obtained by the debtor for postpetition use and occupancy in an amount presumed to be the amount set forth in the lease. As for the timing of payment of such stub rent and other similar obligations under the hybrid approach, the court would exercise its discretion to allow payment or require the landlord to wait until the end of the case for payment based on the facts and circumstances of the case including the debtor's administrative solvency. However, in the Third Circuit, the *Montgomery Ward* decision is still binding precedent and imposes the billing theory for real estate tax issues under section 365(d)(3). Notably, while the billing theory may appear harsh for landlords with respect to stub rent, it could be beneficial to landlords in connection with rejection claims. For example, if a debtor rejects a lease on the second day of a month in a billing theory jurisdiction, the landlord may be able to argue that the entire month of lease obligations came due and was "billed" (i.e. the claim "arose") under section 365(d)(3) and thus the debtor must pay for the entire month even though it only occupied the store for one day. In these situations, retail debtors will likely seek *nunc pro tunc* rejection of the lease to limit the claim.

C. Avianca Holdings Bankruptcy Case

Debtor Avianca Holdings S.A., an airline, agreed to pay additional rental payments to brokers under 20 aircraft leases. Avianca failed to make certain payments that were due more than 60 days after filing for bankruptcy but before the leases were assumed or rejected. The creditors moved to compel payment under § 365(d)(5), which requires timely performance of obligations arising from or after 60 days post-bankruptcy filing under an unexpired lease of personal property until the lease is assumed or rejected. The bankruptcy court granted the creditors' motion, concluding that Avianca's obligation to pay arose when the payments came due under the lease terms. Avianca appealed, arguing that the obligation arose prepetition when the leases were executed. The district court affirmed the bankruptcy court's decision, and the Second Circuit affirmed the lower courts' decisions. The Second Circuit held that under § 365(d)(5), a debtor's obligation to make payments arises when the payments come due according to the lease terms, not when the lease was executed. The Second Circuit emphasized that the statutory language requires the debtor to perform obligations that originate from or after 60 days post-petition, aligning with the billing date approach rather than the accrual approach.

> ○ According to the *Avianca* court, "[W]e must be mindful that Section 365(d)(5) speaks in terms of the debtor's obligations, not the creditor's claims…. We accordingly decline Avianca's invitation to adopt a reading of Section 365(d)(5) that would conflate when a creditor's claim arises with when a debtor's obligation arises. Instead, to account for the variation in terminology, we apply a different test to determine when a debtor's obligation arises, namely, whether payment has come due under the terms of the lease…. Section 365(d)(5) breaks with the requirements of Section 503(b)(1) and refocuses the relevant inquiry on whether the debtor has a performance obligation, instead of on whether the debtor receives a post-petition benefit. In sum, we conclude that the 'billing date' approach, not the accrual approach, best comports with the broader statutory scheme."

VI. Chapter 15 Sales

Section 363 asset sales of a foreign debtor's U.S. assets are increasingly common in chapter 15 cases:

- *In re Goli Nutrition Inc.*, 2024 Bankr. Lexis 973 (Bankr. D. Del. Apr. 23, 2024): The bankruptcy court: (i) denied a foreign representative's motion under section 363(b) of the Bankruptcy Code to approve a "reverse vesting transaction" authorized by a Canadian bankruptcy court involving a transfer of the foreign debtor's stock to a successor entity because the transaction did not involve a use, sale, or lease of the debtor's property; and (ii) held in abeyance the foreign representative's related motion to approve a non-ordinary course free and clear sale of certain equipment located in California pending resolution of a dispute over the ownership of the equipment. The court "easily" concluded that under sections 1520 and 363, the court was required to approve the sale and not simply defer to the Canadian court's prior ruling. In this case, the court concluded that the sale was the result of good faith negotiations and could generally be approved under sections 1520 and 363. Further, according to the court, the reported decisions alternated between permissive and mandatory language of when a U.S. court may or must decide a property

ownership dispute while a parallel foreign bankruptcy proceeding is ongoing. Based on the limited case law, the court ruled that either court could determine the ownership of property. Because the Canadian court already held a hearing related to this ownership dispute and had scheduled another hearing to consider the issue, the court concluded that it was appropriate for it to defer the ownership dispute to the Canadian court.

- *In re Contract Pharmaceuticals Limited*, Case No. 24-10915 (Bankr. D. Del. May 28, 2024): Foreign representative sought recognition and section 363 approval of a CCAA court's reverse vesting order and sale transaction of a Canadian entity that was a subsidiary of a Delaware entity. The U.S. Trustee objected with respect to the approval of the sale under section 363: (i) arguing that the Canadian entity shares were not located within the territorial jurisdiction of the U.S., thereby depriving the court of in rem jurisdiction; and (ii) asserting that even if the shares were located in the U.S., the court should decline to grant separate approval under section 363 because recognition of the reverse vesting order was sufficient to effectuate the sale. The court granted approval of the reverse vesting order and approval under section 363, holding that the Canadian shares owed by the Delaware entity was located within the territorial jurisdiction of the U.S. and that the proposed sale order was appropriate under a section 363 review (based on the record, "the Debtors conducted an extensive marketing and sale process … and such process was non-collusive, duly noticed, and provided a reasonable opportunity for potential buyers to make any offer" and the buyer was a good faith purchaser under section 363(m)).

- *In re Fairfield Sentry Ltd.*, 768 F.3d 239 (2d Cir. 2014): Debtor owed investment fund claims in SIPA Liquidation of BLMIS; debtor was itself placed into liquidation, and the liquidator reached settlement to sell the claims. The trustee of the SIPA Liquidation then announced a settlement that drastically increased the value of the claims. The would-be purchaser sought to compel the sale. The court held that the sale was not subject to section 363 review as the claims were located in the BVI. The Court of Appeals held under applicable nonbankruptcy law, the situs of the claims is location of BLMIS' SIPA trustee (New York) and accordingly, the sale of the claims was transfer of an interest of debtor's property in the U.S. Section 1520(a)(2) requires judicial application of section 363 review to sale of foreign debtor's assets in the U.S.

- *See also In re CDS U.S. Holdings, Inc.*, No. 20-11719 (CSS) (Bankr. D. Del. Oct. 29, 2020) (Dkt. No. 112) (applying business judgment standard in approving sale of substantially all of a foreign debtor's U.S. assets free and clear of liens); *In re Veris Gold Corp.*, Case Nos. 14-51015-gwc et al. (Bankr. D. Nev. June 4, 2015) (Dkt. No. 318) (order recognizing and enforcing Canadian court's order approving sale of debtor's assets and related relief, and approving sale free and clear of liens applying business judgment standard under 363(b)); *In re Irish Bank Resol. Corp. Ltd.*, 2014 Bankr. LEXIS 2089, at *18 (Bankr. D. Del. Feb. 14, 2014) (approving a free and clear sale of foreign debtor's assets and related assignments under 363(b)'s business judgment standard).

Takeaways from such cases include:

(i) Typically, the propriety of a sale of a foreign debtor's U.S. assets in a chapter 15 case must be assessed according to the standard applied to such sales under section 363(b) of the Bankruptcy Code, consistent with previous court decisions addressing the question and the plain language of section 1520(a)(2). A U.S. bankruptcy court should independently examine the

proposed sale, rather than deferring as a matter of comity to a foreign court order approving the sale, and ensure, for instance, lien and interest holders are adequately protected through notice and opportunity to participate. *Compare with* 8 *Collier on Bankruptcy* ¶ 1520.01, at n.13 (16th ed.) ("While there can be no dispute that section 1520 says that section 363 applies to sales of property within the territorial jurisdiction of the United States, nothing in section 1520 suggests that section 363 should apply to the exclusion of traditional principles of comity or that it cannot be satisfied by a procedurally proper foreign order. When section 1520 says that section 363 applies, it merely invokes the procedural requirement for notice and a hearing so that parties affected by a sale of property within the territorial jurisdiction of the United States get notice and an opportunity to be heard. Nothing in the statute requires the same type of 363 review that applies in chapter 11 cases while section 1508 and the need to interpret chapter 15 with a view to its international origin and to harmony with foreign proceedings militate to the contrary.").

(ii) Disputes regarding the ownership of property to be sold under section 363 must be resolved before a U.S. bankruptcy court can approve the sale, but the U.S. bankruptcy court need not necessarily adjudicate the dispute.

(iii) Section 363 transactions in a chapter 15 case must involve a use, sale, or lease of the foreign debtor's property -- as distinguished from "property of the estate," as there is no estate in a chapter 15 case).

Faculty

Matthew R. Brooks is a partner at Troutman Pepper Locke in Atlanta, where he advises debtors, creditors, investors, companies and boards of directors as they navigate distressed situations. His clients include bank and nonbank lenders, private equity, CMBS special-servicers, insurance companies, family offices, borrowers and investors. Mr. Brooks's practice spans a range of industries, including real estate, cryptocurrency, energy, health care, construction, financial services, aviation, hospitality, insurance, transportation and media. He helps lender and servicer clients throughout the U.S. collect on defaulted loans, whether through foreclosure, receivership, bankruptcy or a loan workout. He also represents private equity and other strategic buyers in distressed acquisitions and dispositions, with many of his engagements receiving recognition from leading trade groups and publications. Additionally, Mr. Brooks represents companies and boards of directors restructure their liabilities and in connection with liability-management opportunities. He also has litigated insolvency-related cases in state and federal courts throughout the U.S., including the defense of complex fraudulent conveyance, preference and lender-liability claims. Mr. Brooks is the former chair of the bankruptcy section of the Georgia State Bar Association and a frequent author and speaker on M&A and insolvency-related issues. He also has served on the events committee for the New York City chapter of the Turnaround Management Association and the advisory board for ABI's Southeast Bankruptcy Workshop. He received his B.S. *magna cum laude* from Appalachian State University in 2004 his J.D. *cum laude* from Mercer University School of Law in 2008.

Hon. Martin Glenn is Chief U.S. Bankruptcy Judge for the Southern District of New York in New York, initially sworn in on Nov. 30, 2006, and appointed Chief Judge on March 1, 2022. Previously, he was a law clerk for Hon. Henry J. Friendly, Chief Judge of the U.S. Court of Appeals for the Second Circuit, from 1971-72, and he practiced law with O'Melveny & Myers LLP in Los Angeles from 1972-85 and in New York from 1985-2006, where he focused on complex civil litigation including securities, RICO, financial and accounting fraud, and unfair competition. Judge Glenn is a member of the American Law Institute, International Insolvency Institute, New York Federal-State Judicial Council, New York City Bar, National Conference of Bankruptcy Judges and ABI. He is a past member of the Committee on International Judicial Relations of the U.S. Judicial Conference and the Bankruptcy Judge Advisory Group of the Administrative Office of the U.S. Courts. In addition, he is an adjunct professor at Columbia Law School, a contributing author to *Collier on Bankruptcy* and a frequent lecturer on bankruptcy-related issues. Judge Glenn received his B.S. from Cornell University in 1968 and his J.D. from Rutgers Law School in 1971, where he was an articles editor of the *Rutgers Law Review*.

Laura Davis Jones is a named partner and management committee member of Pachulski Stang Ziehl & Jones LLP in Wilmington, Del., and is the managing partner of the firm's Delaware office. She gained national recognition as debtor's counsel in the *Continental Airlines* bankruptcy case and has represented numerous debtors, creditors' committees, bank groups, acquirers and other significant constituencies in national chapter 11 cases and workout proceedings. Ms. Jones participates as a speaker at national bankruptcy and litigation seminars, and she has authored numerous articles. She was named "Deal Maker of the Year" by *The American Lawyer* in 2002, which also has profiled her. Ms. Jones has been named continuously by her peers as one of the *The Best Lawyers in America*"

and as one of the "Best Lawyers in Delaware," and was selected as one of the top 10 lawyers in Delaware by *Delaware Super Lawyers*. She is a Fellow of the American College of Bankruptcy and a *Chambers USA* "Star Individual," the highest honor a lawyer can receive. Ms. Jones has been recognized in the *K&A Restructuring Register* and the *Lawdragon 500* since their inception, has been named repeatedly to the *International Who's Who of Insolvency and Restructuring Lawyers*, and is AV-rated by Martindale-Hubbell. In 2018, she received the prestigious "Women Leadership" award at Global M&A Network's Turnaround Atlas Awards, which honors the achievement of influential women leaders in the restructuring and turnaround communities. She started her career as a judicial law clerk in the U.S. Bankruptcy Court for the District of Delaware. Ms. Jones is admitted to practice in Delaware and the District of Columbia. She received her undergraduate degree from the University of Delaware and her J.D. from Dickinson School of Law, where she was on the board of editors and business manager for the *Dickinson Law Review* and served on the Appellate Moot Court Board.

Hon. John K. Sherwood is a U.S. Bankruptcy Judge for the District of New Jersey in Newark, appointed in June 2015. In private practice, he had more than 25 years of experience in bankruptcy and debtor/creditor matters, including related litigation. Some of his noteworthy engagements were Ocean Place Development Resort (counsel to debtor), MagnaChip Semiconductor Finance Co. (counsel to creditors' committee), Quebecor World (USA) Inc. (litigation counsel), Le Nature's Inc. (counsel to creditors' committee) and the City of Detroit (counsel to union). Judge Sherwood was president of the New Jersey Bankruptcy Lawyers Foundation from 2008-13 and is an active member of ABI and the Turnaround Management Association. He was selected by *Chambers USA* from 2013-14 as one of America's Leading Lawyers for Business, and he was recognized in *The Best Lawyers in America* (2012-15) for his work in bankruptcy and in *Super Lawyers* (2006, 2009-14), where he was featured in the bankruptcy section and corporate counsel edition. Judge Sherwood received his undergraduate degree from James Madison University in 1983 and his J.D. in 1986 from Seton Hall University School of Law.

Hon. J. Kate Stickles is a U.S. Bankruptcy Judge for the District of Delaware in Wilmington, appointed on April 6, 2021. Previously, she was member of Cole Schotz P.C.'s Bankruptcy and Corporate Restructuring Department in its Wilmington, Del., office and practiced in the areas of corporate bankruptcy, insolvency and creditors' rights, having represented debtors, official committees, creditors, examiners and trustees in chapter 11 cases. Judge Stickles has been named in *Chambers USA: America's Leading Lawyers for Business* since 2010 and has been listed in *The Best Lawyers in America* and in *Delaware Super Lawyers* in the area of Bankruptcy and Creditor/Debtor Rights Law. She served as counsel to chapter 11 debtors in a variety of industries, including manufacturing and distribution, telecommunications, health care and media, in some of Delaware's most significant bankruptcy cases. Judge Stickles has published in, and served as a contributing editor for, the *ABI Journal*, and has also published in *The Americas Restructuring and Insolvency Guide*, the ABI Bankruptcy Litigation Committee eNewsletter and the ABI Commercial Fraud Committee eNewsletter. She also is active in the Bankruptcy Section of the Delaware State Bar Association, having served as the Section's chair (2010-11), vice chair Commercial Bankruptcy (2009-10) and secretary (2008-09). Judge Stickles is a member of the Delaware Views from the Bench Advisory Board and the International Women's Insolvency & Restructuring Confederation (IWIRC), for which she served as director-at-large from 2010-11. She received her B.A. in political science and communications from Western Maryland College and her J.D. from Temple University School of Law.

Hon. Lori V. Vaughan is a U.S. Bankruptcy Judge for the Middle District of Florida in Orlando, sworn in on Feb. 25, 2020. She started her career as a law clerk to Hon. Karen S. Jennemann. Judge Vaughan then practiced bankruptcy law for 21 years at two law firms, representing debtors, creditors and trustees in jurisdictions across the country. Most recently, she was a shareholder at Trenam Law in Tampa, Fla., and before that, she practiced at Foley & Lardner, the last year of which she spent practicing out of its New York office. She currently teaches bankruptcy as an adjunct professor at Florida A&M University. Judge Vaughan previously served as president of the Tampa Bay Bankruptcy Bar Association, chair of the Bankruptcy/UCC Committee of the Florida Bar's Business Law Section, and board member for the International Women's Insolvency & Restructuring Confederation. She has also sat on the boards of the USF Financing Corp. and USF Property Corp. Before taking the bench, Judge Vaughan was recognized by *Florida Super Lawyers* as being among the top 100 Lawyers in Florida, the top 50 Lawyers in Tampa Bay and the top 50 Women Lawyers in Florida. She also has been recognized by *Chambers USA* and *The Best Lawyers in America*. Judge Vaughan received her B.A. with high honors from Eckerd College in 1995 and her J.D. with honors from the University of Florida, College of Law in 1998.