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Mid-Year 2023 Update

By Christopher Patalinghug

The first half of 2023 is now in the books. Data provided by Epiq Bankruptcy show commercial Chapter 11 bankruptcies went up by 68% through the end of June this year — to 2,973 total filings from 1,766 filed during the first six months of last year. Overall commercial filings registered an 18% increase from a total of 10,258 for the first half of 2022 to 12,107 for the first half of this year. Small business filings, under Subchapter V of Chapter 11, totaled 814 in the first six months of 2023, a 55% increase from the 525 cases during the same period last year.

Total bankruptcy filings also went up — by 17% — from 185,352 filings during the first half of 2022 to 217,420 during the first six months this year. Total individual filings also registered a 17% increase and individual Chapter 13 filings had a 23% increase.

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Aearo, *LTL* Cases Tossed

By Christopher Patalinghug

The United States Bankruptcy Court for the District of New Jersey dismissed the second bankruptcy of Johnson & Johnson subsidiary, LTL Management, LLC, as a bad faith filing, marking the third time this year that courts turned back mass tort bankruptcies.

J&J commenced the case after its first attempt to resolve its talcum powder exposure through an LTL bankruptcy was dismissed by the United States Court of Appeals for the Third Circuit earlier this year. Two hours and eleven minutes after the first bankruptcy was dismissed, LTL re-filed. On July 28, 2023, the Bankruptcy Court ruled that LTL had not overcome the lack of financial distress (a precondition to accessing the bankruptcy system) that the Third Circuit found was fatal to its first filing.

A third case, *In re Aearo Technologies LLC*, was tossed by the U.S. Bankruptcy

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Beyond the numbers, how has the restructuring activity been year-to-date? What have been the significant events thus far? *Turnarounds & Workouts* asked three restructuring experts: **Jacob Adlerstein**, a restructuring and hybrid capital partner with Paul, Weiss, Rifkind, Wharton & Garrison in New York; **Doug Mintz**, co-chair of Schulte Roth + Zabel LLP's Business Reorganization Group; and **Sandy Qusba**, Head of Restructuring Practice at Simpson Thacher & Bartlett LLP.

How do you describe restructuring activity so far? What stands out about the first six months of 2023?

Jacob Adlerstein, Paul Weiss: The pace of restructuring activity meaningfully increased through the first half of 2023. With rising interest rates and continued geopolitical uncertainty, there is good reason to believe this pace will continue through the end of the year. Importantly, however, in-court Chapter 11 filings represent only a small part of the story. A significant portion of the restructuring activity over the past six months has involved out-of-court transactions, including amend-and-extends, uptier exchange offers and other liability management transactions. These transactions often don't generate the same headlines as a public bankruptcy filing, but they represent a meaningful portion of the restructuring work being done today. I expect this out-of-court trend to continue over the coming months as companies that are dealing with higher leverage and interest rate burdens will continue to try to find creative ways to avoid Chapter 11, but nevertheless may find it difficult to access the regular way capital markets.

Doug Mintz, Schulte Roth: Our team and our private capital investor clients have faced a lot of restructuring activity early this year. Some of it has been work outs of existing loans — a mix of direct loans and broadly syndicated loans. Others have been opportunistic investments in distressed credits. While there has been an uptick in chapter 11 filings this year, the uptick is not massive. We have seen the highest levels in several years — but the last few years (other than the first half of 2020) have seen historically low levels of distress. While filings have increased, the levels compare with restructuring activity circa 2016 and 2017, which long-time restructuring advisors do not recall as a banner time for distress.

Sandy Qusba, Simpson Thacher: "Restructuring activity is moving at a steady pace and we've been busy over the first six months of the year. Inflation and interest rates have created a challenging market environment for many companies. In addition, many companies that took advantage of the cheap cost of capital to shore up their balance sheets during the pandemic are now facing an approaching maturity wall, which they will need to address in the near future, if they aren't already. In addition to these macro trends, we also saw the banking sector face headwinds and, of course, the crypto winter. All of this led to a busy first half."

Which sectors or industries saw the most activity the past half-year?

Qusba: I'm continuing to see a lot of activity in the middle market, which has largely been industry agonistic because smaller companies across sectors don't have the same access to capital markets that large caps do. That being said, given market challenges, we have seen an increase in restructuring activity in the commercial real estate, media and healthcare sectors, which are areas where we think there will continue to be challenges.

Adlerstein: It is difficult to identify any one industry that has been driving the restructuring activity in 2023 so far. Certainly we saw a number of filings in the financial sector, including from the regional bank crises and crypto. These include SVB, Emergent Fidelity Technologies, Cash Cloud and Genesis Global Capital. The retail sector also continues to experience financial challenges, as we saw a number of high-profile retailers seek Chapter 11 protection, including Bed Bath & Beyond, Tuesday Morning, Loyal Companion and The Christmas Tree Shops. But as in prior years, filings spanned a number of industries and included the automotive, restaurant, pharmaceutical and healthcare industries, among others.

Mintz: We have continued of course to see significant retail restructuring activity. That sector suffers greatly year after year with no real end in sight.

Any sectors that caught you by surprise?

Mintz: The number of companies trying to deal with mass tort claims

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this year has been a surprise. Another surprise is that, despite seemingly significant convulsions in commercial real estate, that sector has not seen major restructuring activity to date.

Which sectors or industries could see heightened activity in the future? Which will continue to be vulnerable?

Qusba: I think there will continue to be challenges in the commercial real estate and healthcare sectors. In addition, I think that the media and communications sector overall is likely to experience challenges given the shifting nature of how end users consume media. I also think that any sector with a heavy reliance on human capital elements will continue to be vulnerable as the cost of labor continues to increase.

Adlerstein: If I had a crystal ball for the future, I might have chosen a different profession. But I think the issues that have plagued retailers over the recent years will persist in the near term. Economists report that consumer confidence remains generally pessimistic. In addition, this year has seen unprecedented wildfire activity and extreme weather conditions, with dangerous flooding in the Northeast and excessive heat in much of the South and Southwestern U.S. Climate anxiety, also known as eco-anxiety, may affect consumer spending in new ways we cannot predict.

The U.S. population is also aging, and economists expect that as retiring Baby Boomers work and spend less, there will be a slowing of real U.S. GDP. I would expect these changes in consumer demographics, as well as the continuing digitalization of the economy, will have significant impacts on the retail sector, among others.

What have been the significant cases year-to-date? What made them significant?

Adlerstein: The regional banking crises didn't generate a significant number of Chapter 11 filings, but it was certainly an unprecedented jolt to the system and an eye-opening experience. SVB's Chapter 11 case may present some unique issues that bankruptcy courts have not had to grapple with in many years. Another significant trend this year has been the failure of many companies that previously merged with special purpose acquisition companies (SPACs). Using SPACs as a way to take a privately held target company public through a reverse merger (a "de-SPAC transaction") was very popular in 2020 and 2021. Now, two years later with rising interest rates and tighter capital markets, several of these de-SPAC companies have started to file for Chapter 11 protection, including Virgin Orbit, Kalera Inc., Boxed, Starry Group Holdings, Inc. and Rockley Photonics Limited. The fallout from these filings remains to be seen.

Mintz: The two most significant sets of cases this year have been: 1) the crypto cases — though they ended up being far less dramatic than I think people anticipated last summer. Most of them are ending with a relative whimper — with assets returning to investors and investigations largely ending with little impact. And 2) the cases addressing tort liability (like LTL Management and Aearo). Courts have resisted efforts in those cases to use bankruptcy to manage potentially massive tort liabilities — creating some uncertainty in the market as to how those entities should deal with their claims. This has potential effects on investors and parent companies/ sponsors alike, who may increasingly seek to rely on bankruptcy to manage significant tort obligations.

Has anything changed about your outlook for Chapter 11s since early January?

Qusba: Over the past six months, we have seen companies continuing the trend of engaging in liability management transactions as a way to shore up their balance sheets and address upcoming debt maturities. Companies need to start thinking about and addressing these maturities at least a year in advance, otherwise they will find themselves in a situation with fewer options at a greater expense, which may lead to an increase in chapter 11s. This is particularly true for middle market companies that may not have the same access to the capital markets as large caps.

Adlerstein: 2023 is definitely shaping up to be a busier year than I would have predicted in January. But if the past few years have taught us anything, it is the futility of trying to predict the future. So I'm counting on more twists and turns still to come. That's one of the joys of the restructuring practice — it is dynamic and constantly evolving. ¤

Research Report

Who's Who in Envision and AmSurg's Bankruptcy Cases

by Carlo Fernandez

Envision Healthcare Corporation is a national medical group that delivers physician and advanced practice provider services, primarily in the areas of emergency and hospitalist medicine, anesthesiology, radiology, teleradiology and neonatology.

Envision presently operates across two segments — Envision Physician Services, which provides management services to affiliated medical groups and physician practices and AMSURG, the owner and operator of certain ambulatory surgery centers in partnership with physicians and other healthcare providers — providing high-quality care to almost 30 million patients per year across 41 states and the District of Columbia.

The Physician Services segment was started when EmCare Holdings Inc. began staffing emergency rooms in Dallas in 1972. By 2005, EmCare was the largest emergency room outsourcer in the United States, engaged in staffing arrangements with approximately 300 hospitals across 39 states.

The AMSURG segment was launched in 1992 as a pioneer in the ambulatory surgery center industry, originating a physician partnership model that endures today. AMSURG has grown from six partner physician groups in 1992 to a network of approximately 4,400 physicians at more than 250 ASCs across the country with over 25 million procedures performed in AMSURG facilities over the last three decades.

Envision was formed as a merger of equals between Envision Healthcare Holdings, Inc., and AmSurg Corp. in 2016. The combined company was renamed Envision Healthcare Corporation and traded on the New York Stock Exchange under the ticker EVH.

In October 2018, Envision Healthcare Corp. was acquired by private-equity firm KKR & Co. in a transaction valued at $9.9 billion. KKR Enterprise Aggregator L.P., an affiliate of Kohlberg Kravis Roberts & Co. L.P., currently owns approximately 99.72% of the equity interests in Enterprise Parent Holdings Inc., the ultimate parent entity of the Debtors.

Despite, or in some cases because of, its crucial role in the United States' healthcare system, Envision has faced a series of intense and extraordinary challenges to its business and operations over the past three-plus years.

Like many other companies, Envision has had to navigate the hardships and risks associated with the COVID-19 pandemic over the past three-plus years. In 2020, the COVID-19 pandemic had a negative impact on revenues of approximately $1.1 billion and reduced EBITDA by $415 million.

At the end of 2020, just as vaccines were being rolled out and the response to the pandemic became more controlled, Congress passed the No Surprises Act, which ended the practice of "surprise medical billing". While the legislative policy behind the No Surprises Act is sound, the regulatory implementation of the Act has been highly flawed, ultimately shifting the power dynamic in payment disputes too far in the favor of insurance companies (referred to as "payors"). Envision's largest payor has been uniquely aggressive in its behavior, reducing their total reimbursement by nearly 60% over the past five years, resulting in a revenue decline of more than $400 million.

In late 2021 and early 2022, the Company realized that it required more time and liquidity for its initiatives to mature and for the implementation issues related to the No Surprises Act to resolve in the face of a declining cash balance.

In what would be the first of a series of liquidity-enhancing and deleveraging transactions consummated between April and August 2022, Envision designated entities owning interests in ambulatory surgical centers comprising approximately 83% of the AMSURG business EBITDA as unrestricted subsidiaries. To remain in strict compliance with debt documents, AMSURG surgical centers comprising 17% of the

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AMSURG business were left behind at Envision Healthcare Corporation. Envision thereafter raised $1.1 billion in new money first lien indebtedness and completed an exchange of approximately $2.0 billion of existing debt (into $1.4 billion of AMSURG second lien debt) against those assets, resulting in the capture of $600 million in discount. As a result of the AMSURG second lien exchange transactions, AmSurg LLC extended a $1.4 billion intercompany term loan to Envision Healthcare Corporation, which remains outstanding today.

Following the AMSURG transaction, Envision Healthcare Corp. subsequently completed a series of financing and uptier transactions against its remaining Envision Healthcare Corporation assets with previously non-participating term lenders. These transactions resulted in $300 million of additional new money (the new "first out" term loans) and the conversion of $3.7 billion of existing term loans into the "second out" and "third out" tranches. The non-participating loans remained in a "fourth out" tranche

The 2022 liability management transactions captured over $1 billion in discount, raised $1.4 billion in new money, and extended the maturity on over 97% of the Company's existing revolving and term loans. Despite its initiatives, Envision faces an insurmountable mismatch between its cash generation from operations and its balance sheet and fixed costs.

After reaching a deal with key constituents on a comprehensive balance sheet restructuring, Envision and affiliates on May 15, 2023, filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code (Bankr. S.D. Texas Lead Case No. 23-90342).

As of the Petition Date, the Debtors had $7.7 billion in aggregate principal amount of funded debt obligations, comprised of $4.508 billion of total Envision debt, and $3.152 billion of AmSurg LLC debt. Envision debt consists of $440 million outstanding under the ABL Facility, $302 million outstanding under the first out term loan, $1.959 billion outstanding under the second out term loan, $648 million outstanding under the third out term loan, $167 million owed under the fourth out term loan B, and $3 million outstanding under the Envision fourth out incremental term loan. Envision's unsecured debt is $987 million outstanding under 8.750% Senior Notes due 2026. AmSurg LLC debt is $301 million under the revolving credit facility, $1.358 billion under the first lien term loan, and $1.493 billion under the second lien term loan.

Envision said investors holding more than 60% of the Company's roughly $7.7 billion debt have committed to support its Chapter 11 reorganization plan, which calls for $5.6 billion of the debt (except for a revolving credit facility) to be equitized or cancelled.

The terms of the RSA establish the framework for a consensual and comprehensive restructuring that will position Envision and AMSURG for future growth as two separate businesses. Under the terms of the RSA, the AMSURG and Envision Physician Services businesses will be separately owned by certain of their respective lenders. AMSURG will purchase the surgery centers held by Envision for $300 million plus a waiver of intercompany loans held by AmSurg LLC.

DEBTORS

Kirkland & Ellis, LLP, is serving as the Debtors' legal counsel. Restructuring group partners **Edward O. Sassower** and **Joshua A. Sussberg** lead the core group of attorneys providing services to the Debtors.

Jackson Walker, LLP, is the Debtors' conflicts counsel and co-counsel with Kirkland & Ellis. **Matthew Cavenaugh**, a partner at Jackson Walker, leads the engagement.

PJT Partners, LP, is serving as the Debtors' investment banker. **Steven Zelin**, a partner and global head of Restructuring at PJT Partners, leads the engagement.

Alvarez & Marsal North America, LLC, is the Debtors' restructuring

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advisor. **Dennis Stogsdill**, a partner at Alvarez & Marsal, heads the engagement.

Bain & Company, Inc., doing business as **Bain Consulting**, is the Debtors' operational consultant, to, among other things, assist the Debtors in executing cost savings programs. **Joshua Weisbrod**, a partner at Bain & Company, heads the engagement.

Haynes and Boone, LLP, has been tapped to provide independent services, at the sole direction of Gary Begeman in his capacity as independent director, to the boards of directors of Envision and Enterprise Parent Holdings Inc. Charles Beckham, Jr., a partner at Haynes and Boone, heads the engagement.

Katten Muchin Rosenman, LLP, is special counsel to Envision Healthcare Corporation's affiliates, AmSurg HoldCo, LLC and AmSurg, LLC. Katten is providing independent legal services on behalf of and at the sole direction of Pamela Corrie and Harvey Tepner in their capacity as independent managers on AmSurg's boards of managers. **Steven Reisman**, a partner at Katten, heads the engagement.

KPMG, LLP, is the Debtors' tax consultant. **David R. Helenbrook** is the principal of KPMG assigned to the case.

Deloitte & Touche LLP is the Debtors' independent auditor. **Lynn Friedrichs**, a partner of the firm, leads the engagement.

Kroll Restructuring Administration, LLC, is the claims, noticing and solicitation agent.

AMSURG LENDERS

Milbank LLP, led by partners **Dennis F. Dunne**, **Samuel A. Khalil**, and **Michael W. Price**, and **McGuirewoods LLP**, led by partner **Demetra Liggins** and associate **Andrew C. Papa**, are representing the Ad Hoc Group of AmSurg Lenders, who are holders of the AmSurg RCF loans, AmSurg first lien term loans, and AmSurg second lien term loans. Members of the Group are **Pacific Investment Management Company LLC, Partners Group (USA) Inc.**, **HPS Investment Partners, LLC**, and **King Street Capital Management, L.P.**

Davis Polk & Wardwell LLP, led by partner **Brian M. Resnick** and associate **Michael Pera**, in New York; and **Porter Hedges LLP**, led by partners **John F. Higgins**, and **Aaron J. Power**, in Houston, are serving as counsel to **Credit Suisse AG, Cayman Islands Branch**, the **AmSurg RCF Agent**.

Seward & Kissel LLP, led by partners **John R. Ashmead** and **Gregg S. Bateman**, and associate **Catherine V. LoTempio**, is representing **Wilmington Savings Fund Society, FSB**, in its capacity as administrative agent and collateral agent under the AmSurg second lien term loan facility.

Wachtell, Lipton, Rosen & Katz, led by partners **Joshua A. Feltman**, **Emil A. Kleinhaus**, and **John R. Sobolewski**, and counsel **Angela K. Herring**, and **Vinson & Elkins LLP**, led by partners **Paul E. Heath** and **Matthew W. Moran**, and senior associate **Michael A. Garza**, served as counsel to the Ad Hoc Group Of First Lien Amsurg Lenders. On June 29, 2023, the firms announced that they no longer represent the Ad Hoc Group as members of the group are no longer holders, or investment advisors, sub-advisors, or managers of holders, of the AmSurg Loans.

ENVISION LENDERS

Munsch Hardt Kopf & Harr, P.C., led by shareholders **John D. Cornwell**, and **Brenda L. Funk**, and **Gibson, Dunn & Crutcher LLP**, led by partners **Scott J. Greenberg**, **Jason Zachary Goldstein**, **Keith R. Martorana**, **David M. Feldman**, **Mary Beth Maloney**, and **C. Lee Wilson**, is representing the Envision Ad Hoc Group, which was formed by certain beneficial holders of loans and/or notes issued by Envision Healthcare Corp. and its affiliates. As of May 12, 2023, the members of the Ad Hoc Group are **Barings LLC, Black Diamond Capital Management, LLC, BlackRock Financial Management, Inc.**,

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Blackstone Alternative Credit Advisors LP, Bank of America, N.A., solely in respect of its U.S. Distressed & Special Situations Group, **BofA Securities, Inc.**, solely in respect of its U.S. Distressed & Special Situations Group, **Brigade Capital Management LP, Carlyle CLO Management LLC, CastleKnight Management LP, CIFC Asset Management LLC, Corre Partners Management, Eaton Vance Management, King Street Capital Management, L.P., MJX Asset Management LLC, Neuberger Berman Investment Advisers LLC, Polen Capital Credit, LLC, Redding Ridge Asset Management LLC, Sculptor Capital LP, Sound Point Capital Management, LP, SVPGlobal's Strategic Value Partners, LLC, Voya Alternative Asset Management LLC** and **Voya Investment Management Co. LLC**. SVPGlobal owns roughly $255.9 million of Envision's second-out term loan debt and King Street owns roughly $189.7 million in second-out term loan debt.

Herrick, Feinstein LLP, led by partners **Sean O'Donnell, Stephen B. Selbst, Christopher Carty**, and **Steven B. Smith**; and **Chamberlain, Hrdlicka, White, Williams & Aughtry, P.C.**, led by partners **Jarrod B. Martin**, and special counsel **Michael K. Riordan**, are representing the Ad Hoc Group of Fourth Out Lenders. As of June 23, 2023, members of the group hold $71,779,990 of the fourth out term loans outstanding. The members of the group are **Vibrant Capital Partners, Inc.** and **Vibrant Credit Partners, LLC**; **Saratoga Investment Corp CLO 2013-1 Ltd.; Ares Management**; and **Crescent Capital Group LP**.

Kilpatrick Townsend & Stockton LLP, led by **Todd C. Meyers**, and **Daniel F. Shank, Gianfranco Finizio**, is representing **Ankura Trust Company, LLC**, in its capacity as **Envision Term Loan Facility Agent**.

UNSECURED CREDITORS

The U.S. Trustee for Region 7 appointed an official committee to represent unsecured creditors in the Debtors' Chapter 11 cases. The committee members are (1) **Wilmington Trust, National Association**, as trustee for the Senior Notes, (2) **Zotec Partners, LLC**, (3) **Renaissance Radiology Medical Group Inc.**, (4) **Laurie Clark**, (5) **StaffCare Inc.**, (6) **Velocity**, A Managed Services Company, and (7) **Softtek Integration Systems, Inc.**

White & Case, LLP, is serving as counsel to the Creditors' Committee. Harrison Denman, a partner at White & Case, heads the engagement.

Force Ten Partners, LLC, is the Committee's financial advisor. Edward Kim, a partner at Force 10, leads the engagement.

Reed Smith LLP, led by **Paul D. Moak, Daniela Mondragon, Kurt F. Gwynne**, and **Jason D. Angelo**, is representing Wilmington Trust, National Association, as Trustee for the holders of the Senior Notes.

Meland Budwick, P.A., led by **James C. Moon**, is representing 22 personal injury claimants.

Shumaker, Loop & Kendrick, LLP, led by **Steven M. Berman**, is representing Kforce Inc. ($56,300 claim under a consulting agreement) and DAS Health ($2.59 million claim under a staffing agreement).

OWNERS

Paul, Weiss, Rifkind, Wharton & Garrison LLP, led by **Brian S. Hermann, Jacob A. Adlerstein, Brian Bolin**, and **Karen R. Zeituni**, in New York, and **Norton Rose Fulbright US LLP**, led by **Jason L. Boland, Bob B. Bruner**, and **Maria Mokrzycka,** is representing KKR in matters related to the chapter 11 case.

JUDGE

The Honorable **Christopher M. Lopez** is the case judge. ¤

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Court for the Southern District of Indiana this June, holding that the cases do not, at least presently, serve a valid reorganizational purpose.

LTL Management

The former Johnson & Johnson Consumer Inc. (Old JJCI) faced thousands of lawsuits alleging that talc in its Johnson's Baby Powder products caused mesothelioma and ovarian cancer. Faced with at least 38,000 suits (and the prospect of even more to be filed), mounting payouts and litigation costs, J&J undertook a corporate restructuring under Texas law to deal with its liabilities and minimize harm to the broader corporate group.

In October 2021, as a result of a series of corporate transactions, Old JJCI ceased to exist and two new entities, LTL Management LLC — an acronym for "Legacy Talc Litigation" — and Johnson & Johnson Consumer Inc. (New JJCI), were formed. LTL assumed responsibility for Old JJCI's talc-related liabilities and received certain assets, including rights under a 2021 Funding Agreement, equity interests in Royalty A&M LLC, which owns a portfolio of royalty revenue streams (valued by LTL at about $367.1 million), $6 million, and rights to insurance coverage. All other assets and liabilities not allocated to LTL were allocated to New JJCI.

In bankruptcy, the Funding Agreement gave LTL the right to cause New JJCI and J&J, jointly and severally, to pay it cash in the same amount to satisfy its administrative costs and to fund a trust, created in a plan of reorganization, to address talc liability for the benefit of existing and future claimants. The value of the payment right could not drop below a floor defined as the value of New JJCI measured as of the time of the divisional merger, estimated by LTL at $61.5 billion, and was subject to increase as the value of New JJCI increased after it.

Two days after its creation, LTL filed a petition for Chapter 11 relief in the Bankruptcy Court for the Western District of North Carolina (Bankr. W.D.N.C. Case No. 21-30589) on Oct. 14, 2021. That court, however, transferred the case to the Bankruptcy Court for the District of New Jersey (Bankr. D.N.J. Case No. 21-30589) on Nov. 16, 2021, before the Honorable Michael B. Kaplan. Upon commencement of the 2021 bankruptcy, LTL sought to stay (or stop) all talc-related litigation, including against some 670 non-debtors. Talc claimants moved to dismiss LTL's bankruptcy case as not filed in good faith. The bankruptcy court denied those motions and extended the automatic stay of actions against LTL to hundreds of nondebtors that included J&J and New JJCI. Appeals followed. After an 18 months-long process, which included a week-long trial in February 2022 and an appeal to the Third Circuit, on April 4, 2023, the bankruptcy court order was vacated, and the case was dismissed.

In rejecting calls to dismiss the 2021 case, the bankruptcy court ruled that the filing served a valid bankruptcy purpose because it sought to resolve talc liability by creating a trust for the benefit of claimants under 11 U.S.C. § 524(g). The court noted several benefits of claims administration thorough a § 524(g) trust, compared to mass asbestos litigation in trial courts, including the possibility it could resolve claims more efficiently (from both a cost and time perspective), ensuring more balanced recoveries among claimants, and preserving funds for future claimants.

The bankruptcy court also held that LTL was in "financial distress." The bankruptcy court focused on "the scope of litigation faced by Old JJCI (and transferred to LTL), the historic costs incurred by Old JJCI in connection with the talc litigation, and the effect on these costs on its business." According to the court, "extrapolating this talc liability into the future showed the 'continued viability of all J&J companies [was] imperiled.'" The court seemed uncertain whether LTL would completely exhaust its payment right under the Funding Agreement. The court rejected the argument LTL's filing was undertaken to obtain an unfair tactical litigation advantage, holding that the bankruptcy forum has a superior ability to protect talc claimants' interests.

On direct appeal, the Third Circuit reversed and dismissed. It ruled that the case was not filed in good faith due to LTL's lack of financial distress. The Debtor filed a petition for rehearing and rehearing en banc with the Third Circuit, which the circuit court denied. LTL filed a motion seeking a stay of the Third Circuit's mandate pending appeal to the U.S. Supreme Court, which the circuit court denied.

The Third Circuit distinguished LTL from several other Chapter 11 cases where the debtor faced mass tort litigation:

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- The debtor in *Johns-Manville Corp.* faced a tide of asbestos litigation that, but for its filing, would have forced the debtor to book a $1.9 billion liability reserve triggering the acceleration of about $450 million of outstanding debt, and possibly resulting in a forced liquidation of key business segments.
- The debtor in *A.H. Robins Co., Inc.*, had only $5 million in unrestricted funds and "a financial picture…so bleak that financial institutions were unwilling to lend it money."
- The debtor in *Dow Corning* was financially distressed in part because the legal costs and logistics of defending the worldwide product liability lawsuits against the debtor threated its vitality by depleting its financial resources and preventing its management from focusing on core business matters.

"These cases show that mass tort liability can push a debtor to the brink. But to measure the debtor's distance to it, courts must always weigh not just the scope of liabilities the debtor faces, but also the capacity it has to meet them," the Third Circuit said. In LTL's case, the Third Circuit, among others, noted that in the over five years of litigation to date, the aggregate costs had reached $4.5 billion, which was less than 7.5% of the $61.5 billion value on the petition date. The appeals court concluded that while LTL faces substantial future talc liability, its funding backstop — which include the roughly $61.5 billion payment right against J&J and New JJCI — plainly mitigates any financial distress foreseen on its petition date.

In Friday's decision, Bankruptcy Judge Kaplan said LTL still lacks "imminent and immediate financial distress." He also held that neither the appointment of a chapter 11 trustee nor an examiner is in the best interests of creditors. "The Court takes judicial notice of the approximately 4,900 docket entries that have been filed in these two, chapter 11 cases since their inception, nearly 20 months ago. From the Court's vantage point, the docket speaks to the complexities and far-reaching impact of this case on all parties in interest. This Court does not — and cannot — find that the appointment of an examiner and/or chapter 11 trustee will yield results in the best interests of creditors," he said.

Judge Kaplan encouraged the case parties to continue to pursue a global resolution, noting that, of the total claimants, about 58,000 talc claimants have already agreed in principle on material financial terms to resolve talc claims through a chapter 11 plan. "The foundation for a fair, efficient, and expeditious settlement has been laid by the dogged efforts of the [Ad Hoc Committee of Supporting Counsel], Debtor and other parties," said Judge Kaplan. "This Court sees no reason why this type of settlement cannot be pursued in a context other than this current bankruptcy case," he added.

Aearo

St. Paul, Minn.-based 3M, a large multinational technology and manufacturing company, acquired Indianapolis, Ind.-based Aearo in 2008. Aearo designed and manufactured an earplug sold to the U.S. military under the name Combat Arms Earplug Version 2 and to civilian consumers under the name Arc Plug.

Several Aearo entities and 3M are co-defendants in a multi-district litigation in Florida and in state courts in Minnesota alleging that the CAEv2 devices manufactured, distributed, and sold by Aearo or 3M were defective, resulting in hearing loss and related hearing defects such as tinnitus. According to a May 15, 2023, statistics report by the United States Judicial Panel on Multidistrict Litigation, the MDL has 255,500 actions pending, down from a historical high of almost 336,000. The MDL is the largest in history by an order of magnitude and represents a staggering 30% of cases currently pending in the federal district courts.

Several Aearo entities and 3M have also been named as defendants in a smaller number of claims related to alleged personal injury from workplace exposures to asbestos, silica, coal mine dust, or other occupational dusts in connection with the use of Aearo's mask and respirator products.

Aearo and affiliates, excluding 3M, sought Chapter 11 protection (Bankr. S.D. Ind. Lead Case No. 22-02890) on July 26, 2022. At the outset of its bankruptcy, Aearo requested that the Court enjoin the CAEv2 Actions as to 3M. The Court denied the request, finding that continuation of the CAEv2 Actions as to 3M posed no material threat to Aearo and the bankruptcy estates. The Court's conclusion was based largely on the terms of a funding agreement wherein 3M committed $1.24 billion, including $240 million for funding a chapter 11 case and a trust of $1 billion for pending actions, the commitment being uncapped and funded inside or outside of bankruptcy in exchange for

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Aearo's agreement to indemnify 3M but not assume liabilities.

In dismissing Aearo's bankruptcy, the Honorable Bankruptcy Judge Jeffrey J. Graham held: "[A]llowing an otherwise financially healthy debtor with no impending solvency issues to remain in bankruptcy, much less one whose liability for most of its debts is supported by an even more financially healthy, Fortune 500 multinational conglomerate, exceeds the boundaries of the Court's limited jurisdiction." The Aearo Entities' cases do not serve a valid reorganization purpose, according to Judge Graham, pointing out that Aearo has been, and currently is, financially healthy. "Its sales have increased over the last few years, notwithstanding the MDL. Aearo has no reported cash flow problems and timely meets its obligations. There is no suggestion that any debt has been accelerated or that its access to financial markets, investment or lending has been impacted by the Pending Actions. Aearo remains a small, profitable enterprise." He added, "While Aearo is a named defendant in the biggest MDL in United States history, it has not, to date, faced execution of any judgment. As of the Petition Date, Aearo had made no contribution to CAEv2-related defense costs. While 3M has not expressly committed to pay these costs in the future, there is no evidence that 3M has threatened to shift responsibility for these costs to Aearo. Any concerns that 3M's litigation support will end absent or outside of bankruptcy are purely hypothetical."

Jurisdictional Integrity

"Requiring a valid bankruptcy purpose and a debtor in need of bankruptcy relief protects [the bankruptcy court's] jurisdictional integrity," Judge Graham explained in deciding against Aearo. "Otherwise, a bankruptcy court risks becoming another court of general jurisdiction, which it most decidedly is not."

"Absent a Congressional intervention that clarifies if, when, and under what circumstances debtors involved in mass tort litigation may file for bankruptcy, the Court is unwilling to ignore that the Aearo Entities — at least presently — enjoy a greater degree of financial security than warrants bankruptcy protection."

For his part, the Honorable Thomas Ambro, who penned the Third Circuit decision, stressed that the dismissal of LTL's case is "not to discourage lawyers from being inventive and management from experimenting with novel solutions." According to Judge Ambro, "creative crafting in the law can at times accrue to the benefit of all, or nearly all, stakeholders. Thus we need not lay down a rule that no nontraditional debtor could ever satisfy the Code's good-faith requirement."

Melanie Cyganowski, the chair of Otterbourg P.C.'s Restructuring and Bankruptcy practice and former Chief Bankruptcy Judge for the Eastern District of New York, called the dismissal of the second LTL case "incredibly powerful." "First and foremost, [the court's ruling] gives control back to the tens of thousands of women and men suffering from cancer as the alleged result of Johnson & Johnson talcum powder products to pursue their rights to trial by jury in the court system or, if they decide, to settle on terms of their choosing. But, perhaps as importantly, it restores the public's confidence in the bankruptcy courts as forums reserved for the honest but unfortunate debtor seeking to reorganize, not the rich and powerful seeking delay and leverage. Ms. Cyganowski is Co-Lead Counsel of the Official Committee of Talc Claimants in LTL.

Adam C. Silverstein, Otterbourg Partner and Trial Lawyer in the LTL and Aearo cases, said: "This is the third bad faith dismissal of mass tort bankruptcy this year. Johnson & Johnson's first attempt to solve its talcum powder exposure through the bankruptcy of its subsidiary, LTL, was dismissed after the Court of Appeals for the Third Circuit ruled in January. Then 3M's ploy to use the bankruptcy system to resolve earplug products liability exposure through the bankruptcy of its subsidiary, Aearo, was rejected in June. And now [the] decision dismissing the second LTL bankruptcy filing may be the final nail in the coffin of corporate abuse of the bankruptcy system. I am gratified we played a role, teaming with Brown Rudnick and Massey Gail here, in each of these landmark rulings."

Jones Day serves as bankruptcy counsel to LTL. Brown Rudnick LLP; Otterbourg PC; and Massey & Gail LLP represent the Talc Claimants Committee in LTL.

Kirkland & Ellis LLP and Ice Miller LLP serve as counsel to Aearo.¤

Research Report

Who's Who in VICE Media's Bankruptcy Cases

by Carlo Fernandez

VICE Media Group is a global multi-platform media company with a global reach of over 400 million people.

With offices and production hubs in 20 central locations around the world, and more than 1,300 employees globally, VICE creates thousands of pieces of content each week globally, including editorial, digital and social video, experiential events, commercials, music videos, scripted and unscripted television, feature documentaries, and movies.

The Company operates globally spanning three primary regions: (i) North America, which comprises the United States and Canada, with its worldwide headquarters and regional headquarters for North America located in Brooklyn, New York, (ii) Europe and the Middle East, with regional headquarters in London, and includes offices in Eastern Europe, Western Europe, the Nordic countries, and the Middle East, (iii) Asia Pacific, with headquarters in Singapore and includes operations in India, China, Korea, Singapore, Japan and Australia.

VICE currently operates through five primary business segments: (i) the studios group, (ii) publishing, (iii) VICE TV, and (iv) VIRTUE, a creative advertising agency, and (v) VICE News.

VICE's Emmy and Peabody award-winning News division is one of the most trusted news sources among Gen Z and its coverage of the war in Ukraine has been watched on TikTok by hundreds of millions of people. Its studio group, including VICE Studios and Pulse Films, produced Bamarush for HBO Max, Lewis Capaldi: How I'm Feeling Now for Netflix, American Gladiators for ESPN, Gangs of London for Sky, and Tell Me Lies for Hulu. Its award-winning publishing division includes VICE.com, Refinery29 and the fashion bible i-D. Its advertising, commercial and music video teams work with brands and artists including Coke, Target, Harry Styles and Stormzy and created award-winning campaigns such as "Backup Ukraine" and "Unfiltered History." VICE TV is home to shows including Tales from the Territories, produced by Dwayne "the Rock" Johnson and the Dark Side franchise, including Dark Side of the Ring, Dark Side of Comedy and Dark Side of the 90s.

VICE Media was founded in 1994 and grew from a small magazine based in Montreal to a complex, international youth media conglomerate.

VICE has taken on a series of high-profile investments from entities like private equity firm TPG, A&E Networks, Disney, and Fox over the years. VICE relied on external funding, raising both debt and equity capital to fuel its rapid growth and to fund expenses in certain parts of its businesses. These investments left VICE highly leveraged and unable to pay its debts; this created a cascading situation where VICE had to continually push back loan repayments or get more funding to continue operations.

The liquidity strain caused by VICE's lack of profitability was further exacerbated late last year by the maturity of both the senior secured term loans and the senior subordinated notes.

The company tried to sell itself multiple times out-of-court but was never able to close a deal. It also tried to go public via a SPAC in 2021, but ultimately had to abandon that plan,

Vice Group Holding, Inc., and its affiliates sought protection under Chapter 11 of the Bankruptcy Code (Bankr. S.D.N.Y. Lead Case No. 23-10738) on May 15, 2023, with plans to sell the business to its investor group, absent higher and better offers.

In its schedules, Vice Group Holding reported $1.3 billion in total assets and $1.0 billion in total liabilities. Affiliate Vice Media, LLC, scheduled $530 million in total assets and $1.4 billion in total liabilities. At the heart of the Debtors' capital structure are $834 million of funded debt obligations, comprised of $474.6 million outstanding under senior secured term loans, $9.8 million outstanding under a multicurrency overdraft facility, $20.9 million outstanding under notes issued in connection with the 2016 acquisition of Pulse, and $328.7 million

Research Report

Who's Who in VICE Media's Bankruptcy Cases

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outstanding under several series of senior subordinated unsecured notes.

Existing first-lien lenders have agreed to provide a new money multi-draw term loan facility in the aggregate principal amount of up to $10 million to finance the Chapter 11 cases.

In June 2023, the Bankruptcy Court approved the sale of substantially all of the Company's assets to a consortium of lenders, which include Fortress Investment Group, Soros Fund Management and Monroe Capital, for a total purchase consideration of $350 million in the form of a credit bid and the assumption of significant liabilities.

DEBTORS

Togut, Segal & Segal, LLP, is serving the Debtors' lead bankruptcy counsel. Senior member **Albert Togut**, partner **Kyle Ortiz**, senior counsel **Brian F. Moore**, and associates **Leila Ebrahimi**, **John C. Gallego**, and **Joseph M. Murphy** are the attorneys primarily responsible for the overall engagement.

LionTree Advisors, LLC, a differentiated global investment and merchant banking firm focused on media, technology, and telecommunications, is the Debtors' financial advisor and co-investment banker. **Ben Braun**, a partner at LionTree, leads the engagement.

PJT Partners, LP, is the Debtors' investment banker. **Brent Herlihy**, a partner in the Restructuring and Special Situations Group of PJT Partners, leads the engagement.

AlixPartners' AP Services, LLC, is serving as the Debtors' restructuring advisor. **Frank Pometti** of AP Services is serving as the Debtors' chief restructuring officer. **Mark Del Priore**, a director at AlixPartners, has been designated as interim CFO of VICE.

Shearman & Sterling, LLP, is the Debtors' special counsel, representing Vice Group in, among other things, the sale and auction process. Partners **Fredric Sosnick**, **Ian Roberts** and **Michael Chernick** and associates **William S. Holste** and **Jacob S. Mezei** lead the core group of attorneys involved in the case.

Stretto, Inc., is the claims and noticing agent and administrative advisor.

LENDERS & INVESTOR GROUP

Houlihan Lokey is serving as financial advisor and **Gibson, Dunn & Crutcher LLP**, led by partners **David M. Feldman** and **Michael S. Neumeister**, and associates **Tommy Scheffer** and **Matthew C. Rowe**, is serving as legal counsel to a consortium led by Fortress Investment Group and including collectively with **Soros Fund Management and Monroe Capital**. Members of the Fortress consortium are also the First Lien Lenders, the DIP lenders, and the stalking horse bidder. **Fortress Credit Corp.** is the administrative agent under the DIP facility.

Shipman & Goodwin LLP, led by partners **Marie C. Pollio**, and **Latonia Williams**, is counsel to **Wilmington Trust, National Association**, the collateral agent under the prepetition term loan facility and the DIP facility.

UNSECURED CREDITORS

William K. Harrington, United States Trustee for Region 2, formed an Official Committee of Unsecured Creditors. The Committee members are **Wipro LLC, OMnet LLC, Horizon Media LLC, XWP Co. Pty Ltd.**, and **Wolftech Broadcast Solutions AS**.

Pachulski Stang Ziehl & Jones LLP is serving as counsel to the official committee of unsecured creditors. New York managing partner **Robert J. Feinstein** and Committee Practice Group co-chair **Bradford J. Sandler** lead the attorneys involved in the representation of the Committee.

Alvarez & Marsal North America, LLC, is the Committee's financial advisor. **Andrea Gonzalez**, a managing director at A&M, leads the engagement.

JUDGE

The Honorable **John P. Mastando III** is the case judge. ¤

Special Report

Canadian Bankruptcy Law Firms

Firm	Key Professionals	Recent Representative Clients
AIRD & BERLIS LLP (416) 863-1500 airdberlis.com Bankruptcy Attorneys: 19 Total Attorneys: 223	D. Robb English Steven L. Graff Ian Aversa Sanj Mitra	Original Traders Energy Ltd.; MPX International Corporation (KSV Restructuring Inc. as CCAA monitor); Springer Aerospace Holdings Limited (MNP Ltd. as CCAA monitor); and Immunovaccine Technologies and IMV USA Inc. (Horizonv Technology Finance Corporation, as agent)
BENNETT JONES LLP (416) 863-1200 – Toronto (403) 298-3100 – Calgary bennettjones.com Bankruptcy Attorneys: 21 Total Attorneys: 438	Kelsey J. Meyer Kevin J. Zych	MPX International Corporation; Trichome Financial Corp.; Magna Gold Corp.; BBB Canada Limited (Alvarez & Marsal Canada Inc. as CCAA monitor); Original Traders Energy Ltd. (KPMG Inc. as CCAA monitor); and Superette Inc. (PricewaterhouseCoopers Inc. as CCAA monitor)
BLAKE, CASSELS & GRAYDON LLP (604) 631-3300 blakes.com Bankruptcy Attorneys: 42 Total Attorneys: 707	Milly Chow Pamela L. J. Huff Linc Rogers Chris Burr Aryo Shalviri Kelly Bourassa Peter Rubin Peter Bychawski Bernard Boucher Sébastien Guy	DCL Corporation; Flower One Holdings Inc.; Pure Gold Mining Inc.; Trevali Mining Corporation; Trichome Financial Corp. (Stalking Horse Bidder)
BORDEN LADNER GERVAIS LLP (604) 687-5744 blg.com Bankruptcy Attorneys: 33 Total Attorneys: 737	Marc Duchesne François D. Gagnon Alex MacFarlane Roger Jaipargas Lisa Hiebert	Rambler Metals and Mining Canada Limited (Grant Thornton Limited as CCAA monitor); and Xebec Adsorption Inc. (National Bank of Canada as financial advisor)
BOUGHTON LAW CORPORATION (604) 687-6789 boughtonlaw.com Bankruptcy Attorneys: 2 Total Attorneys: 29	Martin Sennott Shaun Driver	Medipure Pharmaceuticals Inc.

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Canadian Bankruptcy Law Firms

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Firm	Key Professionals	Recent Representative Clients
BOYNECLARK LLP (902) 469-9500 boyneclarke.com Bankruptcy Attorneys: N/A Total Attorneys: N/A	Tim Hill Joshua J. Santimaw	Intelivote Systems Inc.; Edward Collins Contracting Ltd. (Daimler Truck Financial Services Canada Corporation)
BURNET, DUCKWORTH & PALMER LLP (403) 260-0100 bdplaw.com Bankruptcy Attorneys: 9 Total Attorneys: 110	Nicole Chorley David LeGeyt	Dynamic Technologies Inc.
CASSELS, BROCK AND BLACKWELL LLP (416) 860-6463 cassels.com Bankruptcy Attorneys: 26 Total Attorneys: 295	Joseph J. Bellissimo John Birch Jane Dietrich Ryan Jacobs Natalie E. Levine Jeff Oliver	LoyaltyOne, Co.; Superette Inc.; Gesco Industries Inc., (PricewaterhouseCoopers Inc. as CCAA monitor); Chalice Brands Ltd. (KSV Restructuring Inc. as CCAA monitor); Phoena Holdings Inc. (Cortland Credit Lending Corporation as DIP Lender); Magna Gold Corp. (KSV Restructuring Inc. as CCAA monitor); Rambler Metals and Mining Canada Limited (RMM Debt Limited Partnership); Independent Energy Corp. (Cortland Credit Lending Corporation); Trichome Financial Corp. (KSV Restructuring, Inc. as CCAA monitor)
CHAITONS LLP (416) 218-1129 chaitons.com Bankruptcy Attorneys: 3 Total Attorneys: 14	Aran Kwinta Seth Mandell Philip Taylor Harvey Chaiton	Nordstrom Canada Retail, Inc. (Directors and Officers)
CLARK WILSON LLP (604) 687-5700 cwilson.com Bankruptcy Attorneys: 7 Total Attorneys: 114	Christopher Ramsay Kevin MacDonald Rosemary John	CanWest Aerospace Inc. and Can West Global Airparts Inc.; Speakeasy Cannabis Club Ltd.; and Medipure Pharmaceuticals Inc. (Deloitte Restructuring Inc. as CCAA monitor)
DAVIES WARD PHILLIPS & VINEBERG LLP (416) 863-0900 dwpv.com Bankruptcy Attorneys: 13 Total Attorneys: 294	Robin B. Schwill Natasha MacParland Denis Ferland Christian Lachance	Gesco Industries Inc., and Tierra Sol Ceramic Tile Ltd. (Ironbridge Equity Partners Management Limited

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Canadian Bankruptcy Law Firms

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Firm	Key Professionals	Recent Representative Clients
DENTONS CANADA LLP (403) 268-7097 dentons.com Bankruptcy Attorneys: 44 Total Attorneys: 628	David W. Mann Robert J. Kennedy	Tehama Inc.; Trevali Mining Corporation (FTI Consulting as CCAA monitor); Speakeasy Cannabis Club Ltd. (Crowe Mackay & Company Ltd. as CCAA monitor); Cannapiece Group Inc. (BDO Canada Limited as CCAA monitor); MPX International Corporation (DIP Lenders); Trichome Financial Corp. (Cortland Credit Lending Corp as Agent and DIP Lender)
DLA PIPER (CANADA) (416) 365-3444 dlapiper.com Bankruptcy Attorneys: 11 Total Attorneys: 269	Edmond Lamek Danny M. Nunes Carole Hunter	CanWest Aerospace Inc. and Can West Global Airparts Inc. (FTI Consulting Canada Inc. as CCAA monitor); Midnight Integrated Financial Inc. et al. (Ernst and Young Inc. as CCAA monitor); and Pure Gold Mining Inc. (Sprott Resource Lending Corp. as prepetition lender)
DUNCAN CRAIG LLP (780) 428-6036 dcllp.com Bankruptcy Attorneys: 6 Total Attorneys: 36	Darren R. Bieganek Russell Rimer Ryan Quinlan	Midnight Integrated Financial Inc. et al.
FARRIS LLP (604) 684-9151 farris.com Bankruptcy Attorneys: 7 Total Attorneys: 94	Tevia Jeffries Tim Louman-Gardiner Gordon Love Rebecca Morse	Donnelly Holdings Ltd.; Flower One Holdings Inc. (RB Loan Portfolio I, LP)
FASKEN MARTINEAU DUMOULIN LLP (604) 631-4786 fasken.com Bankruptcy Attorneys: 39 Total Attorneys: 942	Stuart Brotman Haroon Laher Alain Riendeau Aubrey E. Kauffman Kibben Jackson Luc Béliveau	Independent Energy Corp.; Donnelly Holdings Ltd. (Ernst & Young Inc. as CCAA monitor); Trevali Mining Corporation (The Bank of Nova Scotia, as Administrative Agent); Canada Drives Ltd., USA Drives Ltd. and Canada Drives Auto Finance Ltd (PricewaterhouseCoopers Inc. as CCAA monitor); Nordstrom Canada Retail, Inc. (Nordstrom Inc.); Great Panther Mining Limited (Alvarez & Marsal Canada Inc. as CCAA monitor); Pure Gold Mining Inc. (KSV Restructuring Inc. as CCAA monitor); and Lightbox Enterprises Ltd. (Ernst & Young Inc. as trustee/monitor)

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Canadian Bankruptcy Law Firms

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Firm	Key Professionals	Recent Representative Clients
FOGLER, RUBINOFF LLP (416) 864-9700 foglers.com Bankruptcy Attorneys: 13 Total Attorneys: 134	Vern W. DaRe Milton A. Davis	Springer Aerospace Holdings Limited (Hillmount Capital Inc. as DIP Lender)
GOODMANS LLP (416) 979-2211 goodmans.ca Bankruptcy Attorneys: 13 Total Attorneys: 226	Robert Chadwick Brendan O'Neill Joseph Pasquariello Chris Armstrong	GreenSpace Group; Nordstrom Canada Retail, Inc. (Alvarez & Marsal Canada Inc. as CCAA monitor; Trustee of the Nordstrom Canada Employee Trust); Tehama Inc. as Deloitte Restructuring Inc. as CCAA monitor); and LoyaltyOne, Co. (KSV Restructuring Inc. as CCAA monitor)
GOWLING WLG (CANADA) LLP (416) 862-7525 gowlingwlg.com Bankruptcy Attorneys: 32 Total Attorneys: 746	Christopher N. Alam Elizabeth Burton Geneviève Cloutier David F.W. Cohen François Viau	Plant-Based Investment Corp. (msi Spergel inc., as CCAA monitor); and Springer Aerospace Holdings Limited (Caisse Desjardins Ontario Credit Union Inc.)
LAWSON LUNDELL LLP (604) 685-3456 lawsonlundell.com Bankruptcy Attorneys: 10 Total Attorneys: 202	Scott R. Andersen Bryan C. Gibbons Michael B. Morgan William L. Roberts Peter J. Roberts Alexis E. Teasdale	Donnelly Holdings Ltd. (Bank of Montreal)
MCCARTHY TÉTRAULT LLP (416) 362-1812 mccarthy.ca Bankruptcy Attorneys: 30 Total Attorneys: 758	James Gage Alan Tardiff Sean Collins Lance Williams	Great Panther Mining Limited; Immunovaccine Technologies; Endoceutics Inc.; Flower One Holdings Inc. (PricewaterhouseCoopers Inc. as CCAA monitor); Swarmio Media Holdings Inc. (Grant Thornton Limited as CCAA monitor); J.W. Carr Holdings Ltd., and Spruce Grove Industrial Park Inc. (Ernst and Young Inc. as CCAA monitor); Trevali Mining Corporation (Glencore International et al.); Xebec Adsorption Inc. (Deloitte Restructuring Inc. as CCAA monitor); Nordstrom Canada Retail, Inc (L'Oréal Canada Inc. and Estee Lauder Cosmetics Ltd. and Valentino); The Superette Group (SNDL Inc. as buyer)

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Firm	Key Professionals	Recent Representative Clients
MCDOUGALL GAULEY LLP (306) 665-5417 mcdougallgauley.com Bankruptcy Attorneys: 20 Total Attorneys: 98	Ian A. Sutherland Craig Frith Michael W. Milani Erin M.S. Kleisinger	Polar Window of Canada Ltd. (Deloitte Restructuring Inc. as CCAA monitor); Manitoba Clinic Medical Corporation (Alvarez & Marsal Canada Inc. as CCAA monitor)
MCMILLAN LLP (403) 531-4700 mcmillan.ca Bankruptcy Attorneys: 15 Total Attorneys: 308	Adam C. Maerov Waël Rostom Tushara Weerasooriya	Lightbox Enterprises Ltd.; and Gesco Industries Inc., (The Bank of Nova Scotia in its capacity as DIP Lender)
MILLER THOMSON LLP (416) 595-2660 millerthomson.com Bankruptcy Attorneys: 54 Total Attorneys: 505	Gregory R. Azeff Jeff Carhart Larry Ellis Asim Iqbal Tony Van Klink Kyla Mahar David Ward Terrence M. Warner	Plant-Based Investment Corp.; Phoena Holdings Inc.; The Flowr Corporation; and Cannapiece Group Inc.
MLT AIKINS LLP (403) 693-4300 mltaikins.com Bankruptcy Attorneys: 24 Total Attorneys: 309	J.J. Burnell Jeff Lee, Q.C. William E. J. Skelly Jonathan Bourchier Dana Nowak Paul Olfert Tom Provost Catrina Webster Ryan Zahara James Rose	Donmar Properties Ltd.; Dynamic Technologies Inc.; Polar Window of Canada Ltd.; Manitoba Clinic Medical Corporation (Canadian Imperial Bank of Commerce); Flower One Holdings Inc. (The Dennis Group, Inc.)
NORTON ROSE FULBRIGHT CANADA LLP (514) 847-4747 nortonrosefulbright.com Bankruptcy Attorneys: 34 Total Attorneys: 603	Luc Morin Jennifer Stam	Centre de distribution Transrapide Inc. (Deloitte Restructuring Inc. as CCAA monitor); Independent Energy Corp. (Ernst & Young Inc. as CCAA monitor); The Flowr Corporation (1000343100 Ontario Inc. as DIP Lender; and Forex Inc. (PricewaterhouseCoopers Inc., as CCAA monitor)

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Canadian Bankruptcy Law Firms

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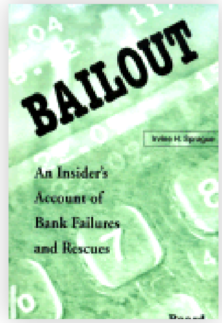
Firm	Key Professionals	Recent Representative Clients
OSLER, HOSKIN & HARCOURT LLP (416) 862-4908 osler.com Bankruptcy Attorneys: 43 Total Attorneys: 549	Sandra Abitan Mary Buttery Randal Van de Mosselaer Marc Wasserman	Chalice Brands Ltd.; Canada Drives Ltd.; BBB Canada Limited; Xebec Adsorption Inc.; Nordstrom Canada Retail, Inc.; DCL Corporation (Alvarez & Marsal Canada Inc. as CCAA monitor); and Trevali Mining Corporation (Directors)
PITBLADO LLP (204) 956-0560 pitblado.com Bankruptcy Attorneys: 4 Total Attorneys: 63	Eric Blouw Catherine Howden Kevin Tabachnick Douglas Ward	Donmar Properties Ltd. (Ernst & Young Inc. as CCAA monitor)
RECONSTRUCT LLP **FKA WEISZ FELL KOUR LLP** reconllp.com (416) 613-8280 Total Attorneys: 8	Caitlin E. Fell Sharon A. Kour R. Brendan Bissell Andrew J.F. Kent Le Nguyen Jessica Wuthmann	Springer Aerospace Holdings Limited; Edward Collins Contracting Ltd. (Grant Thornton Limited as CCAA monitor)
STEWART MCKELVEY (902) 892-2485 stewartmckelvey.com Bankruptcy Attorneys: 27 Total Attorneys: 247	Rémy Boudreau Hugh Cameron Cathy Lahey Julia Parent Mathieu Poirier James Travers	Rambler Metals and Mining Canada Limited; Edward Collins Contracting Ltd. (Royal Bank of Canada)
STIKEMAN ELLIOTT LLP (416) 869-5500 stikeman.com Bankruptcy Attorneys: 44 Total Attorneys: 523	David R. Byers C. Jean Fontaine Guy P. Martel Daphne MacKenzie Elizabeth Pillon Joseph Reynaud Ashley J. Taylor Claire Zikovsky	Gesco Industries Inc.; Immunovaccine Technologies (FTI Consulting Canada Inc. as CCAA monitor); and Endoceutics Inc. (Ernst & Young Inc. as CCAA monitor)
THORNTON GROUT FINNIGAN LLP (416) 304-1616 tgf.ca Bankruptcy Attorneys: 18 Total Attorneys: 31	Rebecca Kennedy D.J. Miller Grant B. Moffat Frank J.C. Newbould, Q.C. Leanne M. Williams	GreenSpace Group (PricewaterhouseCoopers Inc. LIT as CCAA monitor); Phoena Holdings Inc. (Ernst & Young Inc. as CCAA monitor); The Flowr Corporation (Ernst & Young Inc. as CCAA monitor); and Nordstrom Canada Retail, Inc (Landlords Oxford Properties Group for Store 834 (Nordstrom Yorkdale Shopping Centre, located at 3401 Dufferin Street, Toronto, ON)

Worth Reading

Bailout: An Insider's Account of Bank Failures and Rescues



Author: Irvine H. Sprague
Publisher: Beard Books
Soft cover: 321 pages
List Price: $34.95

Order This Book Online Now »

No one is more qualified to write a work on this subject of bank bailouts. Holding the positions of chairman or director of the Federal Deposit Insurance Corporation (FDIC) during the 1970s and 1980s, one of Sprague's most important tasks was to close down banks that were failing before they could cause wider damage. The decades of the 1970s and '80s were times of high interest rates for both depositors and borrowers. Rates for depositors at many banks approached 10%, with rates for loans higher than that. The fierce competition in the banking industry to offer the highest rates to attract and keep depositors caused severe financial stress to an unusually high number of banks. Having to pay out so much in interest to stay competitive without taking in much greater deposits was straining the cash and other assets of many banks. The unprecedented high interest rates also had the effect of reducing the number of loans banks were giving out. There were not so many borrowers willing to take on loans with the high interest rates. With the disruptions in their interrelated deposits and loans, many banks began to engage in unprecedented and unfamiliar financial activities, including investing in risky business ventures. As well as having harmful effects on local economies, the widely reported troubles of a number of well-known and well-respected banks were having a harmful effect on the public's confidence in the entire banking industry.

Sprague along with other government and private-sector leaders in the banking and financial field realized the problems with banks of all sizes in all parts of the country had to be dealt with decisively. Action had to be taken to restore public confidence, as well as prevent widespread and long-lasting damage to the U. S. economy. Sprague's task was one of damage control largely on the blind. The banking industry, the financial community, and the government and the public had never faced such a large number of bank failures at one time. The Home Loan Bank Board for the savings-and-loans associations had allowed these institutions to treat goodwill as an asset in an effort to shore up their deteriorating financial situations with disastrous results for their depositors and U.S. taxpayers. Such a desperate stratagem only made the problems with the savings-and-loans worse. The banks covered by the FDIC headed by Sprague were different from these institutions. But the problems with their basic business of deposits and loans were more or less the same. And the cause of the problem was precisely the same: the high interest rates.

Faced with so many bank failures, Sprague and the government officials, Congresspersons, and leaders he worked with realized they could not deal effectively with every bank failure. So one of their first tasks was to devise criteria for which failures they would deal with. Their criteria formed what came to be known as the "essentiality doctrine." This was crucial for guidance in dealing with the banking crisis, as well as for explanation and justification to the public for the government agency's decisions and actions. Sprague's tale is mainly a "chronicle [of] the evolution of the essentiality doctrine, which derives from the statutory authority for bank bailouts." The doctrine was first used in the bailout of the small Unity Bank of Boston and refined in the bailouts of the Bank of the Commonwealth and First Pennsylvania Bank. It then came into use for the multi-billion dollar bailout of the Continental Illinois National Bank and Trust Company in the early 1980s. Continental's failure came about almost overnight by the "lightening-fast removal of large deposits from around the world by electronic transfer." This was another of the unprecedented causes for the bank failures Sprague had to deal with in the new, high-interest, world of banking in the '70s and '80s. The main part of the book is how the essentiality doctrine was applied in the case of each of these four banks, with the especially high-stakes bailout of Continental having a section of its own.

Although stability and reliability have returned to the banking industry with the return of modest and low interest rates in following decades, Sprague's recounting of the momentous activities for damage control of bank failures for whatever reasons still holds lessons for today. For bank failures inevitably occur in any economic conditions; and in dealing with these promptly and effectively in the ways pioneered by Sprague, the unfavorable economic effects will be contained, and public confidence in the banking system maintained.

About The Author

As chairman or director of the FDIC for more than 11 years, Irvine H. Sprague (1921-2004) handled 374 bank failures. He was a special assistant to President Johnson, and has worked on economic issues with other high government officials. ¤

Special Report

Outstanding Investment Bankers 2023

Firm	Key Professionals	Recent Representative Clients
CAPSTONE PARTNERS, LLC Boston, MA (617) 619-3300 capstonepartners.com	Jamie Lisac David A. Rychalsky	Debtor: Party City Holdco Inc. (Total debt: $3B); Taronis Fuels, Inc., sold to Meritus Gas Partners in 363 sale (est. debt up to $50M); Allegiance Coal USA Ltd. (est. debt up to $100M)
CENTERVIEW PARTNERS, LLC New York, NY (212) 380-2650 centerviewpartners.com	Marc Puntus	Debtor: SVB Financial Group (total debt $3.6B); and Enjoy Technology, Inc. (total debt $69M). Lenders: Ad Hoc Group of Lenders in National CineMedia, LLC (total debt: $1.3B) Others: Juul Labs Inc. to help raise financing in mid-2022
DUCERA PARTNERS LLC New York, NY (212) 671-9700 ducerapartners.com	Agnes K. Tang Adam W. Verost Derron S. Slonecker	Debtor: Diebold Holding Company, Inc. (Total debt: $2.57B); Virgin Orbit Holdings, Inc. (Total debt: $153M) Unsecured Creditors' Committee: Core Scientific, Inc. (total debt: $1.3B) Others: Future claims representative in Endo International plc (Total debt: $9.5B)
EVERCORE GROUP, LLC New York, NY (212) 857 3100 evercore.com	Daniel Aronson Brent Banks Gregory Berube Stephan Chischportich Avinash D'Souza Stephen Goldstein Roopesh Shah David Ying	Debtor: Lumileds LLC (Total debt: $1.09B); Paradox Resources, LLC (Total debt: $50.4M); Serta Simmons Bedding, LLC (Total debt: $2.B); OSG Group Holdings, Inc.; Altera Infrastructure LP (Total debt: $2.6B); Avaya Inc. Lenders: secured bondholders of Rite Aid Corp. Others: Hearthside Food Solutions over refinancing of debt due in 2025
GUGGENHEIM SECURITIES, LLC New York, NY (212) 518-9200 guggenheimsecurities.com guggenheimpartners.com	Ronen Bojmel Morgan Suckow Stuart Erickson	Debtor: Kidde-Fenwal Inc. (Est. debt: $1B to $10B); Ryze Renewables II, LLC (Total debt: $215M); Cyxtera Technologies, Inc. (Total debt: $2.6B); Lannett Company, Inc. (Total debt: $708M); Lincoln Power, LLC (Total debt: $208M); Nielsen & Bainbridge, LLC; and Instant Brands Acquisition Holdings Inc.
HOULIHAN LOKEY CAPITAL, INC. New York, NY (212) 497-4100 hl.com	Saul Burian John Paul Hanson William "Tuck" Hardie David Hilty Bradley Jordan Andrew Miller P. Eric Siegert Stephen J. Spencer Eric Winthrop	Debtor: Carestream Health, Inc. (Total debt: $1.46B); Pacificco Inc., and Catalina Marketing Corporation (Total debt: $487M); Independent Pet Partners Holdings, LLC (Total debt: $119M); Gold Standard Baking, LLC (Total debt: $156M); Corsicana Bedding LLC (Total debt: $260M); NewAge, Inc. (Total debt: $149M); and David's Bridal, LLC (Total debt: $582M) Unsecured Creditors' Committee: Revlon, Inc. (Total debt: $3.7B); Diamond Sports Group, LLC (Total debt: $9.2B); and Genesis Global Holdco, LLC (Total debt: $116M) Others: Talc Claimants' Committee in LTL Management LLC (Est. debt: $1B to $10B); Tort claimants in Aearo Technologies, LLC (Total debt: ~$1B)

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Firm	Key Professionals	Recent Representative Clients
JEFFERIES LLC New York, NY (212) 284-2300 jefferies.com	Jeffrey Finger Richard Morgner Leon Szlezinger Robert White	Debtor: Nautical Solutions, L.L.C.; Benefytt Technologies, Inc. (Total debt: $1.46B); QualTek Services Inc. (Total debt: $789M); Lordstown Motors Corp. (Total debt: $70M); KDC Agribusiness LLC; Rockley Photonics Holdings Limited (Total debt: $120M); Pipeline Health System, LLC (Total debt: $903M); Compute North Holdings, Inc. (Total debt: $101M); Roman Catholic Diocese of Rockville Centre, New York Unsecured Creditors' Committee: Clovis Oncology, Inc. (Total debt: $754M) and FTX Trading Ltd. (Est. scheduled claims: $11.5B) Others: Opioid committee in Endo International plc (Total debt: $9.5B)
LAZARD LTD New York, NY (212) 632-6000 lazard.com	Brandon Aebersold Tyler W. Cowan David S. Kurtz Ari Lefkovits Andrew Torgove Andrew Yearley	Debtor: GenapSys, Inc.; National CineMedia, LLC (Total debt: $1.26B); SiO2 Medical Products, Inc. (Total debt: $372M); Bed Bath & Beyond Inc. (Total debt: $5.2B) Unsecured Creditors' Committee: SVB Financial Group (Total debt: $3.6B); Endo International plc (Total debt: $9.5B) Lenders: Senior Secured Noteholder Ad Hoc Group in Party City Holdco, Inc. (Total debt: $3B)
MILLER BUCKFIRE AND AFFILIATE STIFEL NICOLAUS New York, NY (212) 895-1800 millerbuckfire.com stifel.com	Kenneth A. Buckfire James Doak Matthew Rodrigue Kevin Haggard	Debtor: The Rockport Company, LLC (Total debt: $208M); Invacare Corporation (Total debt: $818M); Tricida, Inc. (Total debt: $229M); PhaseBio Pharmaceuticals, Inc.; Structurlam Mass Timber U.S., Inc. (Total debt: $67M); and Legacy Cares, Inc. (Total debt: $366M) Unsecured Creditors' Committee: Vital Pharmaceuticals, Inc. (Total debt: $1.14B); and Compute North Holdings, Inc. (Total debt: $121M)
MOELIS & COMPANY New York, NY (212) 883-3800 moelis.com	Thane Carlston William Derrough Robert Flachs Zul Jamal Bassam Latif Adam Keil Barak Klein	Debtor: BlockFi Inc. (Total debt: $255M); Voyager Digital Holdings, Inc. (Total debt: $2.4B); Brazos Electric Power Cooperative, Inc.; MLCJR LLC/ Cox Operating L.L.C.; Sorrento Therapeutics, Inc. (Est. debt: ~$1B); Venator Materials PLC (Total debt: $1.5B); Diamond Sports Group, LLC (Total debt: $9.2B); Genesis Global Holdco, LLC (Total debt: $116M); TPC Group, Inc. (Total debt: $1.3B); Party City Holdco, Inc. (Total debt: $3B) Unsecured Creditors' Committee: Talen Energy Supply, LLC (Total debt: $4.4B)

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PERELLA WEINBERG PARTNERS New York, NY (212) 287-3200 pwpartners.com	Kevin M. Cofsky Bruce Mendelsohn Alexander Tracy Brennan Smith John Messina John Cesarz	Debtor: Clovis Oncology, Inc. (Total debt: $754M); FTX Trading Ltd. (Est. scheduled claims: $11.5B); and Quotient Limited (Total debt: $309M) Unsecured Creditors' Committee: Cineworld Group, PLC (Total debt: $10.3B); Celsius Network, LLC (Total debt: $10B)
PIPER SANDLER & CO. AND TRS ADVISORS Minneapolis, MN (800) 333-6000 pipersandler.com	Joe Denham Mike Genereux Dan Gilligan Matthew Mintzer Dustin Mondell Tim Sanders Todd Snyder	Debtor: Lifesize Inc. (Total debt: $98.5M); Cleveland Integrity Services, Inc. and CIS Treasury, LLC (Total debt: $159M); and Tuesday Morning Corporation (Total debt: $55M)
PJT PARTNERS New York, NY (212) 364-7800 pjtpartners.com	Paul J. Taubman Jamie O'Connell Peter Laurinaitis	Debtor: Endo International plc (Total debt: $9.5B); Wesco Aircraft Holdings, Inc. (Total debt: $1.08B); Envision Healthcare Corporation (Total debt: $9.4B); Monitronics International, Inc. (Total debt: $997M); Phoenix Services Topco, LLC (Total debt: $176M); Vice Group Holding, Inc. (Total debt: ~$1.4B); Cineworld Group, PLC (Total debt: $9.6B); Core Scientific, Inc. (Total debt: $1.3B); Revlon, Inc. (Total debt: $3.6B); Starry Group Holdings, Inc. (Total debt: $309M) Lenders: Hearthside Food Solutions' first-priority lenders; Lender group to Global Medical Response over potential refinancing risks on $4B of debt due in 2025
RAYMOND JAMES & ASSOCIATES, INC. New York, NY (281) 679-3940 raymondjames.com	James E. Bunn J. Stephen Hufford Leslie Ann B. Curry Geoffrey Richards	Debtor: Mountain Express Oil Company (Total debt: $242M); Quanergy Systems Inc. (Est. debt: <$50M); Claurus Therapeutics Inc. (Est. debt: <$100M); PLx Pharma Inc. and PLx Opco Inc. (Total debt: $12M)
SC&H GROUP, INC. Ellicott City, MD (888) 850-5862 schgroup.com	Robert Patrick	Debtor: Diamond Scaffold Services, LLC (Est. debt: <$50M); Quality Heating & Air Conditioning Company, Inc. (Est. debt: <$50M); Astech Engineered Products, Inc. (Est. debt: <$10M) Unsecured Creditors' Committee: Golden Key Group, LLC (Total debt: $15.8M)

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SSG ADVISORS, LLC West Conshohocken, PA (610) 940-1094 ssgca.com	J. Scott Victor Mark E. Chesen Matthew P. Karlson Michael S. Goodman Teresa C. Kohl Neil Gupta Robert C. Smith	Confirmation of Cedar Haven Healthcare's Chapter 11 Plan. Restructuring of Rubie's Masquerade. Recapitalization of Phillip Galyen P.C. d/b/a/ Bailey & Galyen (Deal size: $42M); and Amoroso's Baking and Quattro Foods. Advisor to Schoolyard Snacks; Kid Made Modern; an affiliate of Stapleton Group, assignee for the benefit of creditors of Starcrest Products of California, sale to Mullen Automotive (Deal size: $110M). Placement of debt financing for Panhandle Oilfield Services (Deal size: $12M); exit financing for U.S. Tobacco Cooperative (Deal size: $130M); and equipment financing for Additive Circuits Technologies from Liberty Commercial Finance (Deal size: $3.1M). Sale of Retrotope to RTMFP Enterprises (Deal size: $27M); Path Medical to a Physicians Group affiliate (Deal size: $15M); Nova Wildcat Shur-Line Holdings to Gordon Brothers and Nations Capital JV (Deal size: $27M); Safe Inc. to Point Blank Enterprises (Deal size: $2.5M); Allena Pharmaceuticals to Heritage Global Partners and Glyscend (Deal size: $2M); Unicon to Blackstreet Capital (Deal size: $4M); Custom Alloy to a Trident Maritime Systems affiliate (Deal size: ~$37M). Sale of outstanding Xeeva stock to Simfoni (Deal size: $11M).
TRIPLE P SECURITIES, LLC A WHOLLY OWNED FIRM BY PORTAGE POINT PARTNERS, LLC Chicago, IL (630) 388-9694 pppllc.com	Alyssa Lozynski	Debtor: Beverly Community Hospital Association (Total debt: ~$131M); Performance Powersports Group Investor, LLC (Total debt: $52M); Principle Enterprises, LLC (Est. debt: <$50M)

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Who's Who in Genesis Care Pty Ltd.

Who's Who in Wesco Aircraft Holdings, Inc.

Special Report: Asia-Pacific Restructuring Practices of Major U.S. Law Firms

Special Report: Latin American Restructuring Practices of Major U.S. Law Firms

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