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Golden Looks Back at Four Decades in Restructuring Industry, Shares Outlook

For more than 40 years, Akin Gump partner Daniel Golden has been at the forefront of representing official creditors committees, ad-hoc bondholder groups and institutional investors in some of the largest, most complex restructurings in U.S. history, including Walter Industries, Delta Air Lines, Lyondell Chemical Co. and WorldCom. With Golden's recent retirement from practicing law at Akin Gump and the top-tier restructuring practice he built, he looks back on a four-decade career in the restructuring world and examines how the industry has changed over that time and what trends he sees that will shape the restructuring environment in the years to come.

Although he had no academic knowledge of bankruptcy law, his career began

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Chicago Title Denies Liability

Says Receivership & Bankruptcy Bar Suits

by Christopher Patalinghug

Chicago Title Company and affiliate Chicago Title Insurance Company urge the U.S. District Court for the Southern District of California and the California Superior Court to throw out investor lawsuits, including one class action lawsuit, concerning the escrow agent's role in a fraudulent scheme perpetrated by prominent San Diego real estate developer and restaurateur, Gina Champion-Cain and her firms, ANI Development, LLC and American National Investments, Inc.

The lawsuits claim Cain, through ANI, falsely represented investors' funds were being used to make high-interest short-term loans to California liquor license applicants through a special lending program or platform. Instead, Cain misused the funds for personal uses and to subsidize her vast array of businesses. She

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in the late 1970s shortly after his law school graduation, as a first year associate at the firm of Marcus & Angel, a New York bankruptcy boutique. Then, as a second-year associate arguing a venue transfer motion on behalf of a creditors' committee, his performance impressed the debtor's counsel (who went on to become a bankruptcy judge in New York) so much that she recruited him to work at Stroock & Stroock & Lavan LLP, where he remained for 19 years, becoming a partner and bolstering Stroock's restructuring practice.

Recruited by Akin Gump, Golden moved to the firm in the late 1990s and began to expand and shape the firm's nascent restructuring practice in an attempt to create a leading creditor side restructuring practice. He initially brought with him a small team of lawyers that included Fred Hodara, Lisa Beckerman and David Botter, and joined a team at Akin Gump that included then-associates and current partners Michael Stamer and Ira Dizengoff. Golden recounts that he recognized early on that Stamer and Dizengoff "were hidden gems who he was confident would become rock stars in the restructuring world." In order to keep up with ever increasing client demands, the group was constantly recruiting top-notch legal talent, including current partners and T&W Outstanding Restructuring Lawyers Abid Qureshi, James Savin and Phil Dublin—to create the "pre-eminent creditor's side restructuring business in the country."

The next pivotal moment in the growth of the team came in 2014. Golden was instrumental in helping to orchestrate the merger of the entirety of Bingham McCutcheon's London, Frankfurt and Hong Kong offices to Akin Gump, including Bingham's London-based restructuring practice led by T&W-recognized partners James Roome, Barry Russell and James Terry. The move was a bombshell—described in the media as the most significant move in the London legal market that year—and created an unparalleled transatlantic creditor-focused restructuring practice.

That is where things stand today. Forty years ago however, the industry was quite different. Looking back at the restructuring landscape in 1978, he says, "It wasn't really a situation where companies were over-leveraged—good companies with bad balance sheets—it was more a case of companies poorly run or situated in dying industries."

Golden notes that when he began his career, the restructurings were rather straightforward without the current overhang of adverse, competing creditor interests at play. "Typically, the debt structure of a distressed company would consist of a lender, either secured or unsecured, and an array of trade/supply creditors," he said. "There really was no such concept of corporate bond debt back in the '70s; the bonds issued at that time were primarily by insurance companies, and insurance companies were rarely going into bankruptcy. The entire restructuring world was smaller and less complicated, and there were a lot fewer firms doing bankruptcy [work]."

He looks at the mid-1980s as the dawn of corporate bondholder debt and its issuance to finance corporate America, a watershed in the development of the restructuring industry. Golden recalls, "It was the advent of firms like Drexel Burnham and others who arranged for the issuance of billions of dollars of junk bonds. These bonds were a plentiful source of alternative financing—less restrictive than traditional bank lending which allowed companies almost unfettered access to capital as long as the coupons could be paid."

There was a real change, he says, when Drexel Burnham went out of business putting into play many companies who had financed themselves with junk bonds. "It was a boom time for those restructuring lawyers who had been involved in the bondholder world," he says, "because they knew how to manage restructurings for companies which had defaulted bond debt, whereas the more-traditional bank financing lawyers didn't have a clue what to do with these bondholders."

Taking a longer view, he thinks about how the industry has changed, again, from those days to today and points to several major shifts. "I think one big difference is the issuance of secured rather than unsecured bond debt. And two, bondholders in general having a greater appetite to either force a restructuring that cuts out the old public equity or, in a private situation, to just take over control of a distressed company."

In his time at Stroock and at Akin Gump, Golden had the opportunity

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to mentor many restructuring lawyers who have come to occupy top-tier positions in that industry. And yet, despite the trend of partners to trade firms, the Akin Gump restructuring team has remained almost entirely intact during Golden's 20-year tenure.

Speaking of his own days as a young lawyer at Stroock, he recalls Jack Gross, a partner at the firm. Golden describes Gross as "a very interesting guy in a very colorful business" who was known for wearing tailor-made suits and a bowler hat and who drove around in a limousine affectionately labeled the "Gross mobile."

Gross taught Golden several lessons he carries around to this day and that he has shared, in turn, with his own mentees. Golden says Gross impressed upon him "the absolute necessity to understand your clients' motivations and thought processes and the need to anticipate what your client may need next. Don't simply react to what they ask you to do, but anticipate it."

Golden says Gross made him realize "how competitive the law firm landscape is in terms of attracting business. [That] you could be a great lawyer, really diligent, smart, write good briefs, be good in court. But if you really wanted to be able to call your own shots in a law career, you needed to control and generate business."

Another lesson that Golden took away from his time as a young lawyer was the importance of team-building and team effort and the pitfalls of an "every lawyer for themselves" attitude in a practice.

He notes, "One of the most telling things about our Akin Gump team is the continuity we've had over the decades. And that's a fairly remarkable thing in this day and age when people change firms all the time. I've often had headhunters call me and ask, 'Is it something you put in the drinking water there that keeps them there?' Because we have five or six partners who could all have gone out and started their own groups at other firms. But we like each other, and we have each other's backs, but, even more, we really believe that we are a better, stronger, more prolific team working together than working separately."

Looking ahead, Golden points to trends that could shape—or shake—the restructuring industry considerably. One is the increased creditor side competition, driven in large part by the advent of hedge funds investors in the distressed arena.

Golden recalls a time when, in a distressed situation, there might be two layers of bondholders—for example, secured and unsecured, or senior and subordinated—and it was easier to attempt to satisfy both. Today, he notes, because there are so many distressed funds investing in the same opportunities, "Everybody is fighting, not for the last nickel, they're fighting for the last penny.

He notes that courts are getting frustrated with the constant fighting among creditor groups and believes there may have to be legislative solutions to a problem that participants can't or won't fix.

Now, at the conclusion of a trailblazing 40-plus year career, Golden finds himself looking back on his legacy. His proudest accomplishment is the dynamo he leaves behind: a team of partners, counsel and associates in the Akin Gump restructuring practice that is recognized as among the best in the world. With that in mind, what are his thoughts on stepping away from Akin Gump and his practice?

"I love this place, and I'll miss working," Golden said. "But after 40 plus years, it feels like the right time to step away. I will watch with pleasure and a great deal of parental pride as my colleagues in our restructuring practice continue a journey that I started 20 years ago. I have absolutely no doubt that they will achieve continuing and unbelievable success." ¤

Research Report

Who's Who in Murray Energy's Bankruptcy Cases

by Carlo Fernandez

Headquartered in St. Clairsville, Ohio, Murray Energy Holdings Co. is the largest privately owned coal company in the United States, producing about 53 million tons of bituminous coal in 2018, and employing nearly 5,500 people, including 2,400 active union members.

Murray owns and operates 13 active mines across the Northern, Central, and Southern Appalachia Basins (located in Ohio, West Virginia, eastern Kentucky, and Alabama), the Illinois Basin (located in Illinois and western Kentucky), the Uintah Basin (located in Utah), and Colombia, South America. Murray also manages and operates five additional mines in the Illinois Basin through its partnership with non-debtor affiliate, Foresight Energy LP. It operates 12 underground longwall mining systems, 42 continuous mining units, 10 transloading facilities, and five mining equipment factory and fabrication facilities.

Excluding Foresight-related operations, Murray's operations generated approximately $2.5 billion in revenue related to coal sales and $542.3 million of EBITDA in 2018.

The thermal coal markets that Murray traditionally serves have been meaningfully challenged over the past three to four years, and deteriorated significantly in the last several months. This sector-wide decline has been driven largely by (a) the closure of approximately 93,000 megawatts of coal-fired electric generating capacity in the United States, (b) a record production of inexpensive natural gas, and (c) the growth of wind and solar energy, with gas and renewables, displacing coal used by U.S. power plants.

Murray Energy and 98 of its affiliates sought protection under Chapter 11 of the Bankruptcy Code (Bankr. S.D. Ohio Lead Case No. 19-56885) on Oct. 29, 2019.

Voluntary petitions were filed for all of the Company's main operating subsidiaries, including American Energy Corporation, The Harrison County Coal Company, The Marion County Coal Company, The Marshall County Coal Company, The Monongalia County Coal Company, The Ohio County Coal Company, UtahAmerican Energy, Inc., Murray South America, Inc., The Muhlenberg County Coal Company and The Western Kentucky Coal Company, LLC, which operate mining complexes located in Ohio, West Virginia, Utah, Kentucky and Colombia.

Foresight Energy LP (NYSE: FELP) and Foresight Energy GP LLC, including their direct and indirect subsidiaries, as well as Murray Metallurgical Coal Holdings, LLC, Murray Eagle Mining, LLC, Murray Alabama Minerals, LLC, Murray Maple Eagle Coal, LLC, Murray Alabama Coal, LLC and Murray Oak Grove, LLC did not file voluntary petitions and are not part of the Chapter 11 cases.

The Debtors sought Chapter 11 protection with a proposed plan that will allow the Debtors to emerge as a going concern, ensuring that the Debtors' assets will continue operating and providing employment to thousands of employees.

On the Plan Effective Date, Robert E. Murray will be the Chairman of the New Board with responsibilities to be determined by the New Board.

The Plan contemplates a proposed sale process whereby the Consenting Superpriority Lenders have agreed to form a new entity ("Murray NewCo") to serve as the "stalking horse bidder" and provide an offer to acquire certain of the Debtors' assets in accordance with an asset purchase agreement term sheet.

The terms of this stalking horse bid are outlined in a restructuring support agreement, which has the support of lenders holding more than 83% of the claims under the superpriority term loans (the "Consenting Superpriority Lenders"), noteholders holding more than 52% of the 1.5L Notes, and noteholders holding more than 62% of the 2L Notes.

The superiority term loan lenders' credit bid, via entity Murray New Co., will act as a floor for an overbid process to ensure that the Debtors receive the highest or otherwise best

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offer for their assets. The overbid process set a March 16, 2020 deadline for qualified bids and an auction on March 26.

The Ad Hoc Group and certain other Superpriority Lenders committed to finance the Chapter 11 cases by providing $350 million in new money (backstopped by the Ad Hoc Group) as part of the Debtors' $440 million DIP financing package (the "DIP Facility"). A portion of these new money proceeds were used to repay the asset-based revolving portion of the Debtors' Prepetition ABL Facility, which repayment provides the Debtors with additional operational flexibility. The DIP Facility also contemplated the roll-up of the Debtors' prepetition $90 million "first in, last out" facility in exchange for, among other things, the removal of the Debtors' borrowing base under the Debtors' Prepetition ABL Facility.

$2.7 Billion of Funded Debt

Murray Energy Holdings reported $3.53 billion in total assets against $6.102 billion in total liabilities as of Dec. 31, 2019.

As of the Petition Date, the Debtors had $2.7 billion of funded debt, comprised of:

- *$60.7 million outstanding under an asset-based revolving line of credit, as well as a $90 million outstanding in a first in, last out ("FILO") facility under an asset-based revolving credit facility with Goldman Sachs Bank USA, as agent;*
- *$1.727 billion outstanding under a superpriority term loan facility that matures Oct. 17, 2022, pursuant to a Superpriority Credit and Guaranty Agreement, dated as of June 29, 2018 with GLAS Trust Company LLC, solely in its capacity as administrative agent,*
- *$51 million outstanding under what was originally a $2 billion term loan facility pursuant to a term loan credit agreement dated April 16, 2015, with Black Diamond Commercial Finance, L.L.C., as successor administrative agent to GLAS Trust Company LLC,*
- *$491 million outstanding under its 12.00% Senior Secured Notes due 2024 ("1.5L Notes") with U.S. Bank, N.A, as indenture trustee,*
- *$2 million outstanding under its 9.5% Senior Secured Notes due 2020 ("Stub 2L Notes") pursuant to an indenture with Delaware Trust Company, as successor trustee to The Bank of New York Mellon Trust Company, N.A., and*
- *$295 million outstanding under 11.25% Senior Secured Notes due 2021 ("2L Notes") Wilmington Savings Fund Society, FSB, as successor trustee to The Bank of New York Mellon Trust Company, N.A.*
- *$20 million outstanding under an unsecured promissory note, due Feb. 14, 2022, entered into by Murray South America, Inc., with the Robert E. Murray 5/6/10 Trust;*
- *$25 million outstanding under an unsecured promissory note, that matures April 30, 2024, entered into by Murray with the Robert E. Murray 5/6/10 Trust (the "Unsecured Murray Met. Note").*

Black Diamond Commercial Finance LLC has commenced an adversary proceeding to object to the right of the Stalking Horse Bidder or any member of the Ad Hoc Group of Superpriority Lenders to credit bid.

In 2015, Murray obtained up to $2 billion in term loans that were due to mature in 2020. In 2018, as the outlook for the coal production industry darkened, Murray began to negotiate an extension of that 2020 maturity date, along with other modifications of its repayment obligations, with its term loan lenders. Lenders holding 97% of the term loan debt agreed to extend the maturity date to 2022. In exchange, the extending lenders were granted a superpriority interest in the collateral that supported the term loans, plus a first-priority lien on additional collateral.

Black Diamond, on behalf of the

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non-consenting lenders, is asking the Bankruptcy Court to enter a declaratory judgment that the refinancing transaction is invalid and that the term loan lenders are the true senior and first lien lenders.

DEBTORS

Kirkland & Ellis LLP is serving as lead co-counsel to the Debtors. The engagement is led by Restructuring partners **Nicole L. Greenblatt, P.C., Ross M. Kwasteniet, P.C., Joseph M. Graham**, and associate **Alexander Nicas**.

Dinsmore & Shohl LLP, led by partner **Kim Martin Lewis** and associate **Alexandra S. Horwitz**, is the Debtors' local co-counsel.

Evercore Group LLC is the Debtors' investment banker. The engagement is led by senior managing director **Gregory Berube**. Senior managing director **John Startin**, managing director **Andrew Frame**, and vice president **Pavel Te** are leading the bidding process.

Alvarez and Marsal LLC is the financial advisor. A&M's engagement is led by managing directors **Robert Campagna** and **George Varughese**.

Prime Clerk LLC is the claims and noticing agent, and the administrative advisor. **Benjamin J. Steele**, vice president of Prime Clerk, leads the engagement.

Baker & Hostetler LLP, led by partners **Michael A. VanNiel** and **Alexis C. Beachdell**, and **Paul, Weiss, Rifkind, Wharton & Garrison LLP,** led by partners **Paul. M Basta** and **Alice B. Eaton**, and counsel **Samuel E. Lovett**, are representing Murray Energy's non-debtor affiliates Foresight Energy GP LLC and Foresight Energy LP.

SUPERPRIORITY LENDERS

Davis Polk & Wardwell LLP, led by partner **Damian S. Schaible** and associate **Adam L. Shpeen**; and **Frost Brown Todd LLC**, led by member **Ronald E. Gold**, and Practice Group Leader **Douglas L. Lutz**, is co-counsel the Ad Hoc Group of Superpriority Lenders.

Houlihan Lokey Capital, Inc., led by **Eric Siegert**, **Fredrick Vescio** and **Daniel Tobin**, is acting as investment banker to the Superpriority Lenders.

Members of the Ad Hoc Group of Superpriority Lenders are funds controlled by **Aristeia Capital LLC, Argus Creek I LLC and Argus Creek II LLC, Bain Capital Credit, LP, Eaton Vance Management/ Boston Management & Research, Fidelity Management & Research Company, Invesco Advisers, Inc.,** and **Silver Point Capital, LP.**

As of Nov. 27, 2019, the Ad Hoc Group's members held $1.116 billion in aggregate principal of the Superpriority Term Loans, $6.084 million of the 2015 Term Loan, $229.8 million of the 1.5L Notes, $138.5 million of the 2L Notes, and $144 million of loans under the DIP Credit agreement.

Frost Brown Todd is also representing (i) **GLAS Trust Company LLC** in its capacity as administrative agent for the Superpriority Lenders, **GLAS USA LLC**, solely in its capacity as administrative agent under the DIP Credit Agreement, and **GLAS Americas LLC**, as the collateral agent under the DIP Credit Agreement, and (ii) **Great American Capital Partners LLC's GACP Finance Co., LLC**, solely in its capacity as Prepetition FILO Lender and DIP FILO Lender.

Wilmer Cutler Pickering Hale and Dorr LLP, led by partners **Andrew Goldman, Craig Goldblatt**, and **Benjamin Loveland**; senior associate **Christopher D. Hampson**; and associate **Salvatore M. Daniele**, is representing GLAS Trust Company in the Black Diamond adversary proceeding.

TERM LOAN LENDERS

Ropes & Gray LLP, led by partners **Gregg M. Galardi** and **Matthew M. Roose**, is serving as counsel to **Black Diamond Commercial Finance, LLC**, in its capacity as the administrative agent for the Prepetition Term Loan Credit Facility.

Ice Miller LLP, led by partner **Tyson A. Crist** and associate **John C. Cannizzaro**; and **Robbins, Russell,**

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Englert, Orseck, Untereiner & Sauber LLP, led by partners **Lawrence S. Robbins, Kathryn S. Zecca** and **Ariel N. Lavinbuk**, and associate **Jack A. Herman**, are representing Black Diamond in its adversary proceeding against the Debtors.

SECURED BONDHOLDERS

Drinker Biddle & Reath LLP, led by **Marita S. Erbeck**, **Michelle Y. Francois**, and **James H. Millar**, is counsel to **Delaware Trust Company**, as successor trustee to The Bank of New York Mellon Trust Company, N.A., under the Stub 2L Notes. The firm became Faegre Drinker Biddle & Reath effective Feb. 1, 2020, following the merger with Faegre Baker Daniels.

Seward & Kissel LLP, led by **John R. Ashmead**, and **Catherine V. LoTempio**, is counsel to **Wilmington Savings Fund Society, FSB**, as successor trustee to The Bank of New York Mellon Trust Company, N.A., under the 2L Notes.

Dorsey & Whitney (Delaware) LLP, led by partners **Alessandra Glorioso** and **Eric Lopez Schnabel**; and **Barnes & Thornburg LLP**, led by partner **Robert C. Folland** and staff attorney **Kyle R. Gerlach**, are serving as counsel to **U.S. Bank National Association**, as collateral trustee for the Stub 2L Notes, 2L Notes, 1.5L Notes, Priority Lien Debt, and Superpriority Lien Debt.

UNSECURED CREDITORS

The U.S. Trustee for Region 9 appointed creditors to serve on the official committee of unsecured creditors on Nov. 7, 2019. The Committee members are (1) **Bank of NY Mellon Trust Company N.A. as indenture Trustee**, (2) **CB Mining Inc.**, (3) **Joy Global**, (4) **RM Wilson Co.**, (5) **UMWA 1974 Pension Trust**, (6) **United Mine Workers of America International Union**, and (7) **Wheeler Machinery Co**. The Committee selected Joy Global and the UMWA 1974 Pension Plan and Trust as its co-chairpersons

Morrison & Foerster, LLP, led by partners **Lorenzo Marinuzzi** and **Jennifer Marines**, is counsel to the Creditors' Committee.

Vorys, Sater, Seymour and Pease LLP is the local counsel to the Committee. Attorneys who have primary responsibility for providing services to the Committee are partner **Tiffany Strelow Cobb**, of counsel **Brenda K. Bowers**, and associate **Melissa Giberson**.

Moelis & Company LLC is the investment banker to the Committee. **William Q. Derrough**, a partner of Moelis, leads the engagement.

AlixPartners, LLP, is the financial advisor to the Creditors' Committee. **David MacGreevey** is the managing director responsible for the overall engagement.

RETIREES

The U.S. Trustee for Region 9 on Dec. 31, 2019, appointed three retired workers of Murray Energy to serve on the official committee of retirees in the company's Chapter 11 case. The retiree committee members are (1) Benjamin Harris, (2) Sharon S. Myer, and (3) Samuel Louis Uveges.

Healey Block LLC, led by **Michael J. Healey**, is representing the Retirees Committee.

Bailey Cavalieri LLC, led by member **Nick V. Cavalieri** and of counsel **Matthew T. Schaeffer**; **Mooney, Green, Saindon, Murphy & Welch, PC**, led by members **Paul A. Green, John R. Mooney**, and **Diana M. Bardes**; and **Steptoe & Johnson LLP**, led by partner **Filiberto Agusti**, and special counsel **Joshua Taylor**, are representing the trustees for United Mine Workers of America 1992 Benefit Plan.

EQUITY HOLDERS

Willkie Farr & Gallagher LLP, led by partner **Brian Lennon** and co-chairman **Matthew Feldman**, is representing equity holder Robert E. Murray.

JUDGE

The **Honorable John E. Hoffman Jr.** is the case judge. ¤

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allegedly used subsequent investor contributions to pay off earlier investors and perpetuate the scheme for at least seven years.

The scheme unraveled when the Securities and Exchange Commission sued Cain and ANI last year for violations of securities laws. ANI was placed into receivership at the SEC's behest and a court-appointed receiver has taken control of the companies' assets.

Kim Funding LLC, a fund managed by Kim Peterson, who looked like Cain's business partner, was also involuntarily petitioned into Chapter 7 bankruptcy.

The first lawsuit was filed Oct. 22 by Austin, Texas-based investment funds Ovation Finance Holdings 2 LLC and Ovation Fund Management II, LLC, and Banc of California, N.A., a full-service, midsize bank based in Santa Ana, California. The class suit was filed Nov. 5 by Blake and Melissa Allred. The lawsuits assert violations of the civil Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1962, and common law against the Chicago Title entities, which acted as escrow agent for ANI. The class suit also names Cain as well as two escrow officers at Chicago Title's San Diego office and certain employees at ANI as defendants. ANI, Kim Funding and Peterson were not named in both lawsuits.

Chicago Title contends the investors' claims are unfounded and the cases should be dismissed. "Having allegedly lost tens of millions of dollars of their investors' funds in a scheme on which they conducted almost no due diligence, and with Cain and ANI in receivership and Peterson and Kim Funding in bankruptcy, Plaintiffs now seek to recover their losses from a deep pocket," Chicago Title says.

In the alternative, litigation should be stayed pending completion of the receivership and bankruptcy actions, because the persons who perpetrated the fraudulent scheme are unavailable, Chicago Title argues.

Ponzi Scheme

The SEC's lawsuit, filed Aug. 28, 2019, in the Southern District of California court, alleges Cain and ANI raised over $300 million since 2012, including over $100 million in 2018 and 2019, from roughly 50 investors nationwide by claiming to offer to investors an opportunity to make short-term, high-interest loans to parties seeking to acquire California alcohol licenses. Section 24074 of the California Business & Professions Code requires an applicant for the transfer of an alcoholic beverage license to establish an escrow account and deposit with the escrow holder the full amount of the purchase price or consideration while the application is pending. Depending on location and type, a liquor license can cost more than $400,000 and the application can take more than a year to process.

According to the SEC, Cain told investors that this regulatory requirement presented an investment opportunity. She directed investors to deposit their money into specified escrow accounts maintained by ANI, and represented to them that their funds were being loaned to liquor license applicants at a high interest rate. Cain provided investors with a purported list of pending applications, from which investors selected the license application that they wished to fund. She also provided investors with escrow agreements, ostensibly executed between ANI and its escrow company, which provided that investors' principal would be kept safe in an escrow account, and that once the underlying liquor license had become final, would then be returned to the investors with interest.

Cain's representations were materially false and misleading, and ANI's stated business was wholly illusory, the SEC says, because "the lists of pre-selected liquor license applicants contained largely cancelled or expired liquor licenses, and many of the license applicants whom ANI told investors they were funding had never heard of ANI, much less taken a short-term loan from ANI. In addition, the escrow agreements that Cain and ANI provided to their investors were fabricated. The escrow agreements were not executed by the escrow company's representatives, had never been seen by its executives, and contained the forged signatures of its escrow officers. The real escrow agreements governing the escrow accounts—which [Cain and ANI] concealed from their investors—gave

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ANI and Cain complete discretion and control over the deposited investor funds."

According to the SEC, while ANI owes its investors over $120 million, just $11 million remains in ANI's escrow account.

Lynchpin

According to the SEC complaint, Cain's first investor "was a high net-worth real-estate investor with whom Cain had previously done business." The complaint does not identify the first investor. However, papers filed in the Ovation and Allred proceedings name the investor as Peterson and Kim Funding.

The SEC complaint says the first investor—i.e., Peterson—estimates he has personally invested about $250 million in ANI's liquor license loan funding program, which includes rollovers of principal and interest due him from the alleged liquor license loans financed by his investment, according to the SEC.

In 2015, Peterson formed Kim Funding and began bringing other investors to the ANI liquor license funding loan program, telling them—based on Cain's representations to him—that their money would be used to fund short-term, high-interest loans (between 15% to 25%) to individuals and entities seeking to obtain California liquor licenses. In all, Peterson's additional investors invested approximately $50 million with ANI, either by wiring money directly to a pooled escrow account or through Kim Funding, which would funnel investor monies to pooled escrow accounts. Peterson says he and his investor group had funded over 2,000 alleged licenses.

Also in 2015, Cain formed ANI as a limited liability company to serve as a single purpose vehicle for the escrow lending business. Kim Funding had a contractual right to 80% of ANI's profits and held a 1% equity stake in the company.

Ovation Finance and Banc of California lent money to ANI through loan agreements with Kim Funding. They claim to have lost more than $75 million in the "ANI Loan Program." They contend that Chicago Title's role in holding the lenders' escrowed funds was essential to their decisions to lend money to support the Program.

"Indeed, the key feature of the ANI Loan Program was that a lender's funds would be held in escrow with a highly regarded institution like Chicago Title and could not be disbursed to any party other than the lender, which virtually guaranteed that the lenders' principal would be safely returned," lawyers at Kirkland & Ellis LLP and Pachulski Stang Ziehl & Jones LLP argue on behalf of Ovation and Banc of California. "Had Plaintiffs known that the arrangement was otherwise, they would never have lent funds to the ANI Loan Program."

Ovation and Banc of California allege that Chicago Title was either paid $1,000 for every escrow it was represented to have established (as represented by ANI) or $500 each time Cain withdrew money. Chicago Title also earned significant commissions and fees in connection with providing escrow and title insurance services in connection with Cain's other unauthorized investments made with investors' money. Additionally, Chicago Title's escrow officers were paid tens of thousands of dollars personally by Cain to secure Chicago Title's aid and participation in the fraudulent scheme—on top of commissions, bonuses and other compensation Chicago Title's escrow officers earned.

The Allreds say they invested $125,000 in the scheme. The Allreds relate that when licenses supposedly did close, Cain discouraged investors from withdrawing funds and urged them to roll their principal and interest into funding new licenses.

"The lynchpin of the scheme and the key to its success was Defendant Chicago Title. Chicago Title's reputation and standing as a secure financial institution and experienced fiduciary, as well as representations by Chicago Title's two agents in charge of the escrow accounts, Defendants [Della] DuCharme and [Betty] Elixman, assured investors that their funds were secure," according to lawyers at Berger Montague PC, who represent the Allreds.

Chicago Title cannot disclaim its actual knowledge of, and participation in, the scheme, Berger Montague contends. At all times, according

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to Berger Montague, DuCharme and Elixman—Chicago Title employees for 22 years and 11 years, respectively—acted in their capacities as Senior Commercial Escrow Officers at Chicago Title. Moreover, the very nature of the ANI escrow account provided Chicago Title with knowledge of its fraudulent nature.

The SEC complaint also relates that ANI and Cain raised another several million dollars from a group of at least 10 investors affiliated with a second individual. Investors in this group funded the same pooled escrow accounts as Peterson's investors and understood they were investing in the same liquor license loan funding program, from which they were to receive interest payments of between 15% to 25% depending on their loans.

Unlike Peterson's Investor Group, the investors in the Second Investor Group received promissory notes from both Cain and ANI. The notes identified the investors pooling their funds, listed the liquor licenses the investors were supposedly funding, and specified the interest to be paid to the investors for each license, with interest being paid no later than 364 days from the receipt of the investors' funds. ANI and Cain personally guaranteed the principal and interest due to the investors.

According to the lawsuits, investors in 2017 cumulatively deposited about $87.7 million into a pooled escrow account, yet no money was ever escrowed to actually facilitate, as represented to investors, the transfer of the alcohol licenses identified in the false investor escrow agreements.

"At no point did Chicago Title ever notify California liquor licensing authorities that these funds had been placed in escrow for the transfer of a liquor license, as required under state regulations," Berger Montague says.

The Allreds contend that, as a financial institution, Chicago Title is responsible to know if its employees are using the instrumentalities of its business to facilitate and engage in fraud. It is responsible for its authorized agents' misconduct in performing their core functions as escrow officers.

The Allreds' complaint also relates that a report by the court-appointed receiver for ANI revealed that the remaining assets of Cain, ANI and ANI Development are valued at about $12 million to $14 million. Although the full magnitude of the fraud is currently unknown, based on available information, it has been estimated that lending platform fraud resulted in at least $400 million cycling through the concealed non-escrow account, resulting in $140 million in lost principal by 50 or more investors, the complaint adds.

Sophisticated Investors, Copycat Suits

Shortly after the SEC filed its complaint, five other investors filed an involuntary bankruptcy petition against Peterson and Kim Funding, Nos. 19-05479-CL7 & 19-05480-CL7 (Bankr. S.D. Calif.), triggering a stay. The order placing ANI in receivership forbids suits against ANI and its officers, like Cain, by investors.

"Unable to recover from the scheme's perpetrators, and likely facing claims by their own investors, [Ovation and Banc of California] instead sued [Chicago Title]," the lawyers at Cooley LLP argue on behalf of Chicago Title. Cooley says Ovation and Banc of California are "no doubt hoping to divert attention from their own failings."

Cooley further contends that the plaintiffs' attempt to plead civil RICO claims is foreclosed by the SEC's charge that ANI's scheme constituted securities fraud. RICO claims are unavailable whenever the SEC has charged that the scheme underlying the RICO claims constitutes securities fraud, Cooley points out, citing *Bald Eagle Area Sch. Dist. v. Keystone Fin., Inc., 189* F.3d 321, 328-29 (3d Cir. 1999); and *Eagletech Comms. Inc. v. Citigroup, Inc.*, 2008 WL 3166533, at *12 (S.D. Fla. June 27, 2008).

Both complaints should also be dismissed for failure to join ANI, Cain, Peterson and Kim Funding, Cooley asserts. ANI and Cain are necessary parties because unless they are joined, Chicago Title risks double liability, Cooley explains. Kim Funding and Peterson were also involved in every step of Ovation and Banc of California's participation and are necessary parties.

The Receiver in the SEC Action has already stated that she is considering whether to pursue claims against Chicago Title on behalf of ANI. "But if ANI is not joined, both ANI and individual investors will be pursuing

Chicago, *from page 10*

claims for the same losses in different lawsuits," Cooley points out, saying that the court in *Northrop Corp. v. McDonnell Douglas Corp.*, 705 F.2d 1030, 1043 (9th Cir. 1983), held that Fed.R.Civ.P. 19 meant to "preclude[] multiple lawsuits on the same cause of action."

Cooley also observes that the Plaintiffs "appear to have done almost no diligence" into Cain's scheme. "Liquor licenses in California are matters of public record, and basic research would have revealed to Plaintiffs that most of the licenses Cain was purporting to fund were not for sale at all," Cooley says. "Similarly, an Internet search easily reveals that California liquor licenses are sold by highly specialized brokers, any of whom could have explained to Plaintiffs that Cain's scheme was nonsensical. But Plaintiffs apparently did not consult any such brokers, instead relying on the word of Peterson, Cain, and Kim Funding."

Cooley also contends that Cain impersonated Chicago Title employees through fake email addresses and forged Chicago Title documents. Chicago Title, according to Cooley, was not involved in the investors' recruitment to the ANI scheme and the investors never entered into a contract with Chicago Title. "Cain and Peterson also carefully restricted Plaintiffs' contact with [Chicago Title] employees, insisting that all contact with [Chicago Title] go 'directly through' them and telling Plaintiffs the employees were 'busy' and had multiple email addresses, which required Cain, not Plaintiffs, to initiate contact with them." Cooley says the Plaintiffs ignored this behavior and dutifully followed Cain's instructions, wiring tens of millions of dollars to the Chicago Title escrow account.

Cooley further says the Allreds' complaint is "nothing more than a copycat lawsuit that piggybacks on defective allegations made by others while utterly failing to allege any specific facts about their individual investments."

Meanwhile, Cain, who was named as defendant in the Allreds' suit, declined to answer the complaint "based on the advice of counsel," saying she'd invoke her Fifth Amendment privilege against self-incrimination. She asks the court, in accordance with *National Acceptance Co. of Am. v. Balthalter,* 705 F.2d 924 (7th Cir. 1983), to treat her "invocation as a specific denial of the allegations."

DuCharme and Elixman push for a stay of the class action litigation. Elixman also seeks dismissal.

A hearing on Chicago Title's request to dismiss the Ovation and Banc of California suit was set for Feb. 5. Chief Judge Larry Alan Burns, who presides over both cases, has said the dismissal bid is suitable for decision without oral argument and took the hearing off the calendar. The matter is taken under submission.

A hearing on Chicago Title's request to dismiss the Allreds' complaint is currently set for Feb. 24 before Judge Burns.

The cases are, *Allred et al v. Chicago Title Company et al.*, Case No. 3:19-cv-02129 (S.D. Calif.), and *Ovation Finance Holdings 2 LLC et al v. Chicago Title Insurance Company et al.*, Case No. 3:19-cv-02031 (S.D. Calif.).

Michael Shipley, Mark Holscher and R. Alexander Pilmer of Kirkland & Ellis LLP advise Ovation and Banc of California. Dean A. Ziehl of Pachulski Stang Ziehl & Jones LLP also represents the bank.

Benjamin Galdston, Michael Dell'Angelo and Barbara A. Podell of Berger Montague PC represent the Allreds.

Cooley LLP's Steven M. Strauss, Mazda K. Antia, Megan Donohue and Randall R. Lee advise Chicago Title and Chicago Title Insurance.

Joshua D. Franklin and Cheryl Dunn Soto of Franklin Soto LLP advise Cain. Edward Patrick Swan, Jr. and Shireen Matthews of Jones Day represent DuCharme. Gregory A, Vega, Sarah M. Shekhter and Ricardo Arias of Seltzer Caplan McMahon Vitek represent Elixman.

The receivership case is *SEC v. Champion-Cain and ANI Development, LLC, et al.*, Case No. 3:19-cv-01628-LAB-AHG (S.D. Calif.). Krista Freitag was appointed as receiver. She is represented by David R. Zaro, Michael R. Farrell and Edward G. Fates of Allen Matkins Leck Gamble Mallory & Natsis LLP ¤

Research Report

Who's Who in Highland Capital's Bankruptcy Case

by Carlo Fernandez

Highland Capital Management, LP, is a multibillion-dollar global alternative investment manager founded in 1993 by James Dondero and Mark Okada.

Today, Highland operates a diverse investment platform, serving both institutional and retail investors worldwide. In addition to high-yield credit, Highland's investment capabilities include public equities, real estate, private equity and special situations, structured credit, and sector- and region-specific verticals built around specialized teams. Additionally, Highland provides shared services to its affiliated registered investment advisors.

Highland is headquartered in Dallas and maintains offices in Buenos Aires, Rio de Janeiro, Singapore, and Seoul.

Pursuant to various contractual arrangements, Highland provides money management and advisory services for $2.5 billion of assets under management. Separately, it provides shared services for $7.5 billion of assets managed by a variety of affiliated and unaffiliated entities, including other affiliated registered investment advisors.

As registered investment advisor, Highland provides investment management services to hedge funds, private equity style funds, separately managed accounts and collateralized loan obligations:

- *Highland manages four hedge funds, which have $286 million in net assets.*
- *Highland manages two private equity funds, which had net assets of $303 million as of Sept. 30, 2019.*
- *Highland manages five separately managed accounts ("SMA"). The two most material SMAs are an SMA for NexBank, SSB, and an SMA for the Charitable DAF Fund, L.P. As of Sept. 30, 2019, the NexBank SMA had fee-earning assets under management of approximately $913 million consisting primarily of a portfolio of loans that are actively managed by Highland; and the DAF SMA had fee-earning assets under management of $225 million consisting of various liquid and illiquid securities.*
- *Highland is the collateral manager for 20 collateralized loan obligations pursuant to certain servicing agreements.*

Highland employs 76 people, including executive-level management employees, finance and legal staff, investment professionals, and back-office accounting and administrative personnel.

Highland primarily generates revenue from fees collected for the management and advisory services provided to funds that it manages, plus fees generated for services provided to its affiliates. During calendar year 2018, stand-alone annual revenue totaled $50 million. Through Aug. 31, 2019, its stand-alone revenue for the year to date totaled $24 million.

Highland sought Chapter 11 protection (Bank. D. Del. Case No. 19-12239) on Oct. 16, 2019. Other entities on the Highland platform—including but not limited to Highland Capital Management Fund Advisors, LP ("HCMFA"), NexPoint Advisors, LP, ("NexPoint"), NexPoint Real Estate Advisors, L.P. ("NREA"), and NexPoint Securities, Inc., as well as all HCMFA-, NexPoint-, and NREA-advised funds—did not file bankruptcy petitions.

In a ruling dated Dec. 4, 2019, Delaware Bankruptcy Judge Christopher S. Sontchi transferred the venue of the case to the U.S. Bankruptcy Court for the Northern District of Texas (Bankr. N.D. Tex. Case No. 19-34054).

Highland maintains a prime brokerage account with Jefferies, LLC. As of Oct. 11, 2019, Highland held $87 million in liquid and illiquid equity and debt securities in the prime account and had borrowed $30 million on margin from Jefferies secured by the securities. In order to raise cash for its ordinary course operations and other projected

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Chapter 11 administrative expenses, Highland intends to liquidate certain securities held in the prime account on a postpetition basis in the ordinary course.

Additionally, the Debtor is the majority owner and investment manager of a non-debtor affiliate called Highland Select Equity Fund, LP. The Select Fund held $138 million in securities, excluding private equity holdings.

$189M Arbitration Award

Highland's Chapter 11 filing was precipitated by an arbitration award initially issued against the Debtor in March 2019, by a panel of the American Arbitration Association, in favor of a Committee of Redeemers in the Highland Crusader Fund (the "Redeemer Committee").

The Debtor was formerly the investment manager for the Highland Crusader Fund that was formed between 2000 and 2002. The fund has been in liquidation since 2011. Rather than liquidating the fund at the height of the crisis for pennies on the dollar, Highland carried out a liquidation process over time intended to maximize recoveries for investors. The liquidation plan, which was finalized and approved by investors and Highland in 2011, established a committee of fund investor representatives to coordinate the liquidation process. Between 2011 and 2016, Highland distributed over $1.55 billion of the original account balance of approximately $1.70 billion.

With over 90% of the liquidation process completed, the Redeemer Committee filed a complaint against Highland resulting from a contract dispute over the timing of management fees and other related claims. On July 5, 2016, the Redeemer Committee (a) terminated and replaced the Debtor as investment manager of the Crusader Fund, (b) commenced an arbitration against the Debtor, and (c) commenced litigation in Delaware Chancery Court, inter alia, to obtain a status quo order in aid of the arbitration, which order was subsequently entered.

In March 2019, the arbitration panel issued its award, finding in favor of the Redeemer Committee on a variety of claims and requiring the Debtor to pay a gross amount of $189 million, which later would be partially netted against certain assets and deferred cash to be sent back to Debtor.

Highland believes it acted in the interest of investors and disputes the Redeemer Committee's claims.

Although the Debtor believes that the aggregate value of its assets exceeds the amount of its liabilities, it filed for Chapter 11 because it does not have sufficient liquidity to immediately satisfy the award or post a supersedeas bond necessary to pursue an appeal.

The Debtor intends to utilize the breathing spell provided by the automatic stay to consider all of its restructuring options with the goal of ultimately proposing a Chapter 11 plan that will maximize the value of the estate's assets for the benefit of all constituents.

The U.S. Trustee moved for the appointment of a Chapter 11 trustee, citing Highland has been found to engage in seal-dealing and other misconduct for years.

The Debtor and the creditors' committee responded that a trustee is no longer necessary in light of a settlement approved by the court on Jan. 9, 2020. The agreement between the Debtor and the creditors' committee instituted certain governance changes at Highland and its general partner, Strand Advisors, Inc. As part of the changes, James Dondero, the Debtor's co-founder and prior principal in control, is no longer in a position of decision-making authority at the Debtor; and a new, highly-qualified and independent board of directors has assumed control of the Debtor. The U.S. Trustee's request has been denied.

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As of Dec. 31, 2019, the Debtor reported $523.7 million in total assets and $183 million in total liabilities, most of which are unsecured. Secured debt are primarily $9.6 million of excess margin as of Oct. 11, 2019, in the prime account at Jefferies, and $5.2 million due as of the Petition Date under a loan agreement with Frontier State Bank. Unsecured debt includes (i) $9.5 million under the agreement for purchase and sale of collateralized loan obligations with ACIS Capital, and (ii) the recent arbitration award of $189 million.

DEBTORS

Pachulski Stang Ziehl & Jones LLP, led by **James E. O'Neill**, and **Jeffrey N. Pomerantz**, **Richard M. Pachulski, Ira D. Kharasch**, and **Maxim B. Litvak**, is serving as the Debtor's counsel.

Hayward & Associates PLLC, led by partners **Melissa S. Hayward** and **Zachery Z. Annable**, is local counsel to the Debtor.

Development Specialists, Inc., has provided its CEO, **Bradley D. Sharp**, to serve as chief restructuring officer of the Debtor and additional personnel, and is providing financing advisory and restructuring-related services to the Debtor. **Fred C. Caruso, R. Brian Calvert, Thomas P. Jeremiassen, Eric J. Held, Nicholas R. Troszak, Spencer G. Ferrero**, and **Tom Frey** are the additional personnel from DSI expected to provide services to the Debtor.

Foley Gardere, Foley & Lardner LLP, is serving as special Texas counsel. **Holland N. O'Neil**, a partner with the firm, has the primary responsibility for the matter.

Lynn Pinker Cox & Hurst LLP is serving as special Texas litigation counsel. The firm's partners, **Michael K. Hurst** and **David Coale**, both provide services to the Debtor.

Kurtzman Carson Consultants LLC is the claims and noticing agent and administrative advisor. **Evan Gershbein**, a senior vice president for KCC, leads the engagement.

Mercer (US) Inc. is compensation consultant to Highland. **John Dempsey**, a partner of Mercer, leads the engagement.

INDEPENDENT BOARD

Pursuant to a court-approved settlement with the creditors' committee, the Debtor agreed to wholesale changes to its governance, including replacing management led by James Dondero with an independent board. The independent board is now in charge of **Strand Advisors, Inc.**, and thereby manages the Debtor for all purposes.

The Independent Board consists of (i) **James P. Seery**, a high yield and distressed investing professional with experience managing large asset portfolios; (ii) **John S. Dubel**, who has served as an independent director and restructuring professional in a wide variety of industries; and (iii) The Hon. **Russell Nelms**, a former bankruptcy judge in the district.

UNSECURED CREDITORS

On Oct. 29, 2019, the Office of the United States Trustee for the District of Delaware appointed an Official Committee of Unsecured Creditors, which currently is comprised of four members: (1) **Redeemer Committee of Highland Crusader Fund**, (2) **Meta-e Discovery**, (3) **UBS Securities LLC** and **UBS AG London Branch**, and (4) **Acis Capital Management, LP**, and **Acis Capital Management GP, LLP**.

Sidley Austin LLP is serving as counsel to the Creditors' Committee. The attorneys expected to have primary responsibility for providing services to the Committee are partners **Bojan Guzina, Penny Reid, Matthew A. Clemente, Dennis M. Twomey**, and **Paige Holden Montgomery**, counsel **Charles Persons**, and associates **Alyssa Russell, Elliot Bromagen, Justin F. Song, Juliana Hoffman**,

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and **Chandler Rognes**.

FTI Consulting Inc. is the financial advisor to the Committee. **Conor P. Tully**, a senior managing director with FTI, heads the engagement.

During the time this Chapter 11 case was pending in the Delaware Bankruptcy Court, **Young Conaway Stargatt & Taylor, LLP**, was engaged by the Committee as co-counsel to Sidley Austin. Young Conaway attorneys set to be involved in the case were partners **Michael R. Nestor, Edmon L. Morton, Sean M. Beach**, and **Kevin A. Guerke**, and associate **Catherine C. Lyons**.

Upon the transfer of the Chapter 11 case to the Dallas Bankruptcy Court, the services rendered by Young Conaway will likely be transitioned to new local co-counsel to the Committee. It is contemplated that Young Conaway's services going forward will be limited primarily to transition services in the Chapter 11 case.

Winstead PC, led by shareholders **Rakhee V. Patel** and **Phillip Lamberson**, and associate **Annmarie Chiarello**, and **Rogge Dunn Group, P.C.**, led by **Brian P. Shaw**, are serving as counsel for ACIS Capital.

Morris, Nichols, Arsht & Tunnel LLP, led by partners **Curtis S. Miller** and **Kevin M. Coen**, and **Jenner & Block LLP**, led by partners **Marc B. Hankin** and **Richard Levin**, are serving as counsel to the Redeemer Committee of Highland Crusader Fund.

OTHER PARTIES

Jones Walker LLP, led by partners **Joseph E. Bain** and **Amy K. Anderson**, and associate **Megan Young-John**; and **Schulte Roth & Zabel LLP**, led by special counsel **James T. Bentley**, are representing a group of 25 separate Cayman issuers of collateralized loan and debt obligations ("Issuers"). The Debtor is the collateral manager for each of the issuers: ACIS CLO 2017-7 Ltd., Brentwood CLO, Ltd., Gleneagles CLO, Ltd., Greenbriar CLO, Ltd., Highland CLO 2018-1, Ltd., Highland Legacy Limited, Highland Loan Funding V Ltd., Highland Park CDO I, Ltd., Pam Capital Funding LP, PamCo Cayman Ltd., Rockwall CDO II Ltd., Rockwall CDO Ltd., Southfork CLO Ltd., Stratford CLO Ltd., Westchester CLO, Ltd., Aberdeen Loan Funding, Ltd., Bristol Bay Funding Ltd. Eastland CLO, Ltd., Grayson CLO, Ltd., Highland Credit Opportunities CDO Ltd., Jasper CLO, Ltd., Liberty Cayman Holdings, Ltd., Liberty CLO, Ltd., Red River CLO, Ltd., and Valhalla CLO, Ltd.

Dentons US LLP, led by partner **Patrick C. Maxcy** and managing associates **Casey Doherty** and **Lauren Macksoud**, is representing **Jefferies LLC**, the prime broker for the Debtor. Prime brokerage accounts for the Debtor and non-debtor Highland Select Equity Master Fund, L.P. are held at Jefferies.

Fox Rothschild LLP, led by partner **David Grant Crooks**, is representing **PensionDanmark Pensionsforsikringsaktieselskab**, one of the 50 largest pension funds in Europe with over 738,000 members. Under an investment management agreement signed in September 2015, the Debtor was appointed as the manager of an account established and funded by PensionDanmark.

JUDGE

The Hon. **Stacey G. Jernigan**, in Dallas, Texas, is the case judge. ¤

Special Report

Nation's Active Auctioneers in Chapter 11 Cases - 2020

Auctioneer	Contact	Recent Engagements
AJ WILLNER AUCTIONS, LLC Springfield, N.J. ajwillnerauctions.com	Harry Byrnes (908) 789-9999	NSC Wholesale Holdings, Supermarkets Plus
AGSTAR LAND BROKERS Johnson Lake, Neb. agstarland.com	Richard Dawson (800) 785-2528	Pertl Ranch Feeders, LLC and Pertl Ranch, LLC
AUCTION AMERICA, INC. West Palm Beach, Fla. 2bid4stuff.com	Stan L. Crooks (561) 682-3191	Byrd Restaurants-Royal Palm, Inc., Witter Harvesting Inc.
BESEN & ASSOCIATES, INC. New York besenpartners.com	Michael Besen (212) 689-8488	EMC Bronxville Metropolitan
BONNETTE AUCTION COMPANY Alexandria, La. bonnetteauctions.com	Barbara Bonnette (318) 443-6614	Quality Construction & Production, LLC
BULLSEYE AUCTION & APPRAISAL, LLC Lawrenceville, Ga. bullseyeauctions.com	Scott Schwartz Rick Sammons (770) 544-7479	Beautiful Brows LLC
BUTLER COUNTY AUCTION, LLC Towanda, Kan. butlercountyauction.com	Carl Mandina (316) 854-0550	RAG Oil Co., Inc.
CARIBBEAN ASSET RECOVERY, INC. Bayamon, P.R. arpagan.com	Antonio Pagan (787) 780-6464	Distribuidora Lequar Inc.
CENTURION SERVICE GROUP Dallas centurionservice.com	Erik Tivin Eric Wilensky (708) 761-6655	Center City Healthcare, LLC, d/b/a Hahnemann University Hospital
CHRIS COLSON AUCTION & REALTY, LLC Paducah, Ky. colsonsells.com	Chris Colson (270) 444-0031	SMM, Inc.
COLLAR CITY AUCTIONS REALTY & MGMT, INC. Delanson, N.Y. collarcityauctions.com	Randy Passonno (518) 895-8150	Fuigo LLC
COOPER'S AUCTION SERVICE Ripley, W.Va.	Robert Cooper (304) 514-2992	Pete Gould & Sons, Inc.

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Auctioneer	Contact	Recent Engagements
CRET LLC SERIES 2012-2 D/B/A NELLIS AUCTION Las Vegas nellisauction.com	Ken Chupinsky (702) 531-1300	Colleen & Tom Enterprises, Desert Land, LLC
CUNNINGHAM & ASSOCIATES, INC. Phoenix auctionaz.com	George Cunningham (602) 595-6714	The Carwasher, Inc., Silverado Stages, Inc.
DALE ELY AUCTIONEERS Carpenter, Wyo. daleelyauctioneers.com	Dale Ely (719) 429-5000	Hout Fencing of Wyoming, Inc.
ENERGYNET.COM, INC. Amarillo, Texas energynet.com	Chris Atherton (806) 351-2953	Exchange Avenue Production Co.
EVENSON AUCTIONEERS, INC. Wichita, Kan. evensonauctions.com	Mark Evenson (316) 683-7733	RAG Oil Co., Inc.
EWALD AUCTIONS, INC. Orlando, Fla. ewaldauctions.com	Robert H. Ewald (407) 275-6853	ABC Demolition, Inc.
GAVIN BROS., AUCTIONEERS, LLC Reedsburg, Wis. gavinbros.com	Robert J. Gavin (608) 524-6416	Schroeder Brothers Farm of Camp Douglas LLP
HANSEN AUCTION & REALTY Beloit, Kan. hansenonlineauction.com	Josh Miller (785) 738-8932	Rader Lodge, Inc.
INDUSTRIAL RECOVERY SERVICE, INC. York, Pa. irsauctions.com	(717) 854-0316	Fleetwood Acquisition
INTEGRATED PROPERTY GROUP D/B/A AUCTION ADVISORS New York auctionadvisors.com	Oren Klein (800) 862-4348	Neighborhood Health Services Corporation
JOE R. PYLE COMPLETE AUCTION & REALTY SERVICES Shinnston, W.Va. joerpyleauctions.com	Joe R. Pyle (304) 592-6000	Hard Rock Exploration, Inc.

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Auctioneer	Contact	Recent Engagements
KEY AUCTIONS LLC Indianapolis keyauctioneers.com	Seth Seaton (855) 353-1100	Scotty's Holdings
KODNER GALLERIES, INC. Dania Beach, Fla.	Russ Kodner (954) 925-2550	Republic Metals Refining Corp.
LAGESSE AUCTIONEERS, LLC Fort Worth, Texas lagesseauctions.com	James LaGesse (817) 413-0160	CFO Management Holdings, Mid-Cities Home Medical Equipment
MALTZ AUCTIONS Central Islip, N.Y. maltzauctions.com	Richard Maltz (516) 349-7022	EMC Bronxville Metropolitan, Highland Cliffs, LLC, E & J Macon LLC, Level Solar Inc., Quincy St III Corp., RX Plus, LLC, Corsi Cab Corporation, Sirgold Inc.
MANNION AUCTIONS LLC New York mannionauctions.com	William Mannion (212) 267-6698	Glenwood Property Management Corp.
MARSHALL LAND BROKERS AND AUCTIONEERS Kearney, Neb. marshallauction.com	Miles Marshall (308) 234-6266	Pertl Ranch Feeders, LLC and Pertl Ranch, LLC
MAYNARDS INDUSTRIES LTD Southfield, Mich. maynards.com	Jeff Miller (248) 569-9781	Unique Tool & Manufacturing Co.
MERV E. HILPIPRE AUCTION COMPANY Waterloo, Iowa hilpipre.com	Merv E. Hilpipre (319) 235-6007	Pearl City Garage
MOECKER AUCTIONS INC. Fort Lauderdale, Fla. moeckerauctions.com	Eric Rubin David D. Dybas (954) 252-2887	American Resource Management, A New Start Inc., Aero-Marine Technologies, Inc., DaDong Catering LLC
MYRON C. BOWLING AUCTIONEERS, INC. Ross, Ohio myronbowling.com	Myron C. Bowling (513) 738-3311	Burkhalter Transport, Inc.
NEW MILL CAPITAL HOLDINGS Grand Rapids, Mich. newmillcapital.com	Eric Weiler Gregory Schain (888) 801-6032	Schrad, Ltd.

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Auctioneer	Contact	Recent Engagements
OAHU AUCTIONS Honolulu, Hawaii oahuauctions.com	David Brandt (808) 371-6055	AguPlus, LLC
OMAR & MERV'S AUCTIONEERING, LLC Elliottsburg, Pa.	Mervin Glick (717) 438-3345	Loysville Structures
PARROTT REAL ESTATE & AUCTION Lawrenceville, Ill. parrottauctions.com	Zane Parrot Gregory L. Parrott (618) 943-4905	The United Methodist Village, Inc.
PPL GROUP, LLC Northbrook, Ill. pplgroupllc.com	Barret Arthur Alex Mazer (224) 927-5300	SMGR LLC, Midway Oilfield Constructors, Inc., Tonawanda Coke Corporation
PRESSBID AUCTION, LLC Ferndale, Mich. pressbid.com	(248) 268-1603	Rex Printing Co.
R.J. MONTGOMERY AND ASSOCIATES, INC. Plymouth, Mich. rjmauctions.com	Richard A. Montgomery (734) 459-2323	University Physician Group
R.L. RASMUS AUCTIONEERS, INC. Alexandria, Va. rasmus.com	Christopher Rasmus (703) 768-9000	Body Renew Winchester II, LLC
RITCHIE BROS. AUCTIONEERS (AMERICA) INC. Newman, Ga. ritchiebros.com	Scott Mulligan Chad Rollings (863) 424-7725	International Iron, LLC, Oakley Grading and Pipeline LLC, Nature's Second Chance Leasing LLC, Marine Builders
SHERMAN HOSTETTER GROUP LLC Beaver Falls, Pa. hostetterauctioneers.com	Matthew Hostetter (724) 847-1887	Information Technology Procurement Sourcing
SOLDNOW, LLC D/B/A TRANZON DRIGGERS St. Petersburg, Fla. tranzon.com	Walter Driggers, III Peter Wessling (877) 374-4437	Larry Carr & Associates, Inc., Precision Hotel Management Company
STEFFES GROUP, INC. Litchfield, Minn. steffesgroup.com	Scott Steffes (320) 693-9371	Richland Farms, Inc.

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Auctioneer	Contact	Recent Engagements
TEN-X, INC. Irvine, Calif. ten-x.com	Steve Jacobs (800) 793-6107	Emporia Property Group
TRANZON ASSET ADVISORS Elizabethtown, Ky. tranzon.com	Edward D. Durnil (270) 769-0284	Escue Wood Treated Products
TRANZON FOX (TRANZON FOX) **U.S. TITLE GUARANTY** Fairfax, Va. tranzon.com/Fox/default.aspx	Jeff Stein (703) 539-8111	SMWS Group LLC
U.S. TITLE GUARANTY Saint Louis, Mo. us-title.com	Nancy J. Lorusso (314) 727-2900	LaMar Investment Capital
UNION STANDARD EQUIPMENT Harrison, N.Y. unionmachinery.com	(718) 585-0200	James Candy Company
WALKER COMMERCIAL SERVICES, INC. Roanoke, Va. walkercommercialservices.com	William J. Walker, III (540) 344-6160	Goodwill Industries of South Central Virginia, Inc.

Recent engagements data is drawn from *Troubled Company Reporter*
a newsletter tracking troubled and distressed U.S. businesses, and other sources.
Visit bankrupt.com/periodicals/tcr/tcr.html for more information.
TCR content is also available via Dow Jones' Factiva service, Lexis-Nexis, WestLaw and The Bloomberg Professional Service.

Worth Reading

Macy's for Sale

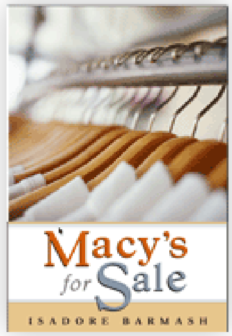
Author: Isadore Barmash

Publisher: Beard Books

Paperback: 180 pages

List price: $34.95

Order This Book Online Now »



Isadore Barmash writes in his Prologue, "This book tells the story of Macy's managers and their leveraged buyout, the newest and most controversial device in the modern financial armament" when it took place in the 1980s. At the center of Barmash's story is Edward S. Finkelstein, Macy's chairman of the board and chief executive office. Sixty years old at the time, Finkelstein had worked for Macy's for 35 years. Looking back over his long career dedicated to the department store as he neared retirement, Finkelstein was dismayed when he realized that even with his generous stock options, he owned less than 1% of Macy's stock. In the years leading up to his unexpected, bold takeover, Finkelstein had made over Macy's from a run-of-the-mill clothing retailer into a highly profitable business in the lead of the lucrative and growing fashion and "lifestyle" field.

To aid him in accomplishing the takeover and share the rewards with him, Finkelstein had brought together more than 300 of Macy's top executives. To gain his support for his planned takeover, Finkelstein told them, "The ones who have done the job at Macy's are the ones who ought to own Macy's." Opposing Finkelstein and his group were the Straus family who owned the lion's share of Macy's and employees and shareholders who had an emotional attachment to Macy's as it had been for generations, "Mother Macy's" as it was known. But the opponents were no match for Finkelstein's carefully laid plans and carefully cultivated alliances with the executives. At the 1985 meeting, the shareholders voted in favor of the takeover by roughly 80%, with less than 2% opposing it.

The takeover is dealt with largely in the opening chapter. For the most part, Barmash follows the decision making by Finkelstein, the reorganization of the national company with a number of branches, the activities of key individuals besides Finkelstein, Macy's moves in the competitive field of clothing retailing, and attempts by the new Macy's owners led by Finkelstein to build on their successful takeover by making other acquisitions. Barmash allows at the beginning that it is an "unauthorized book, written without the cooperation of the buying group." But as he quickly adds, his coverage of Macy's as a business journalist and his independent research for over a year gave him enough knowledge to write a relevant and substantive book. The reader will have no doubt of this. Barmash's narrative, profiles of individuals, and analysis of events, intentions, and consequences ring true, and have not been contradicted by individuals he writes about, subsequent events, or exposure of material not public at the time the book was written.

First published in 1989, the author places the Macy's buyout in the context of the business environment at the time: the aggressive, largely laissez-faire, Reagan era. Without being judgmental, the author describes how numerous corporations were awakened from their longtime inertia, while many individuals were feeling betrayed, losing jobs, and facing uncertain futures.

About The Author

Isadore Barmash, a veteran business journalist and author, was associated with the New York Times for more than a quarter-century as business-financial writer and editor. He also contributed many articles for national media, Reuters America, and the Nihon Kenzai Shimbun of Japan. He has published 13 books, including a novel and is listed in the 57th edition of Who's Who in America. He was born November 16, 1921, in Philadelphia, Pennsylvania. He died November 9, 2006, in New York City. ¤

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ALVAREZ & MARSAL DISPUTES AND INVESTIGATIONS, LLC New York alvarezandmarsal.com	*Debtors:* WMC Mortgage, LLC
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ANTHONY J. NEUPERT, LLC Bothell, Wash.	*Unsecured Creditors Committee:* Nortis, Inc.
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ARMORY CONSULTING CO. Irvine, Calif. armoryconsulting.com	*Debtors:* Ruby's Franchise Systems, Inc., Boss Litho, Inc.

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ARNOLD FINANCIAL CONSULTING, LLC Silver Spring, Md. arnoldfinancialllc.com	*Debtors:* Whitty IT Solutions LLC
ASI ADVISORS, LLC White Plains, N.Y. asi-advisors.com	*Debtors:* One Way Loans, LLC d/b/a Powerlend
AUGMENT ADVISORY AND CAPITAL Dallas augmentadvisory.net	*Debtors:* Zubras Electric, Inc.
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B. RILEY FBR, INC. New York brileyco.com	*Unsecured Creditors Committee:* Cambrian Coal Holding Company, Inc.
BARRON BUSINESS CONSULTING, INC. Indianapolis barronbusinessconsulting.com	*Debtors:* Georgia Direct Carpet, Inc.
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BPM LLP San Francisco bpmcpa.com	*Debtors:* Anka Behavioral Health, Inc.
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BRYARS TOLLESON SPIRES + WHITTON LLP Mission Viejo, Calif. btswcpa.com	*Unsecured Creditors Committee:* South Coast Behavioral Health, Inc.
CANTOR FITZGERALD & CO. New York cantor.com	*Debtors:* AAC Holdings, Inc.

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CENTERVIEW PARTNERS LLC New York centerviewpartners.com	*Debtors:* Blackhawk Mining LLC
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CR3 PARTNERS, LLC Dallas cr3partners.com	*Debtors:* AutoMedx, LLC
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DEVELOPMENT SPECIALISTS, INC. Los Angeles dsi.biz	*Official Committee of Tort Claimants:* PG&E Corp.
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EISNERAMPER, LLP Iselin, N.J. eisneramper.com	*Examiner:* The New City Waste Services, Inc.
EMERALD CAPITAL ADVISORS New York emeraldcapitaladvisors.com	*Debtors:* Glansaol Holdings Inc. *Unsecured Creditors Committee:* SportCo Holdings, Inc.
EQUITY ADVISORS INC. Burlington, Ill.	*Debtors:* Thurston Manufacturing Company

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ERNST & YOUNG CHARTERED ACCOUNTANT Dublin, Ireland ey.com	*Debtors:* Waypoint Leasing Holdings Ltd.
EVERCORE GROUP LLC New York evercore.com	*Debtors:* Vanguard Natural Resources, Inc., EP Energy Corporation
FINACITY CORP. Stamford, Conn. finacity.com	*Debtors:* CrediautoUSA Financial Company LLC
FORCE TEN PARTNERS, LLC Newport Beach, Calif. force10partners.com	*Debtors:* Broncs, Inc., Luxent, Inc., Sienna Biopharmaceuticals, Inc.
FREED MAXICK CPAS, P.C. Syracuse, N.Y. freedmaxick.com	*Debtors:* Eastern Niagara Hospital, Inc.
FTI CAPITAL ADVISORS, LLC New York fticonsulting.com	*Debtors:* Oak Rock Financial, Synergy Pharmaceuticals Inc., Fuse, LLC, Fusion Connect, Inc., Monitronics International, Inc., Halcon Resources Corporation, Perkins & Marie Callender's, PWR Invest, LP *Unsecured Creditors Committee:* Senior Care Centers, Hexion Holdings LLC, Cloud Peak Energy Inc., Legacy Reserves Inc., Jack Cooper Ventures, Inc., Sanchez Energy Corporation, Highland Capital Management, L.P. *Chapter 11 Trustee:* Miami International Medical Center
FULCRUM PARTNERS ASIA PTE LTD. Grange Heights, Singapore fulcrumadvisory.asia	*Debtors:* Arpeni Pratama Ocean Line Investment B.V.
GAVIN/SOLMONESE LLC Wilmington, Del. gavinsolmonese.com	*Unsecured Creditors Committee:* Cherry Bros., LLC, Weyerbacher Brewing Company, Inc.
GETZLER HENRICH & ASSOCIATES, LLC Philadelphia getzlerhenrich.com	*Debtors:* Service Painting, Inc.
GGG PARTNERS, LLC Atlanta GGGPartners.com	*Debtors:* Star Chain, Inc.

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GLEASON & ASSOCIATES, PC Pittsburgh gleasonexperts.com	*Chapter 11 Trustee:* Lawson Nursing Home, Inc.
GOLDIN ASSOCIATES, LLC New York goldinassociates.com	*Unsecured Creditors Committee:* Ditech Holding Corporation
GRASSI & CO. New York grassicpas.com	*Debtors:* Durr Mechanical Construction, Inc.
GREENWALKER LLP Charlotte, N.C. greerwalker.com	*Debtors:* Ballantyne Brands, Bentwood Farms
GREG MURRAY San Antonio gregmurraycpa.com	*Debtors:* Clearwater Transportation Ltd.
GROBSTEIN TEEPLE LLP Woodland Hills, Calif. gtfas.com	*Debtors:* Creative Global Investment Inc.
GULF ATLANTIC CAPITAL CORPORATION Tampa, Fla. gulfatlanticcapital.com	*Debtors:* Magnum Construction Management
HANSEN HUNTER & CO., P.C. Beaverton, Or. hhc-cpa.com	*Debtors:* Kenmetal, LLC, Meeker North Dawson Nursing, Senior NH, Harrah Whites Meadows Nursing, MCL Nursing, Oak Lake, LLC
HARMON PARTNERS, LLC Birmingham, Mich. harmonpartners.com	*Debtors:* Central Processing Services, Inc.
HIGH STREET GLOBAL ADVISORS, LLC Boston hsgallc.com	*Debtors:* Nortis, Inc.

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HOULIHAN LOKEY CAPITAL, INC. Los Angeles hl.com	*Debtors:* Orchids Paper Products Company, Hospital Acquisition LLC, George Washington Bridge Bus Station Development Venture LLC
IMPERIAL CAPITAL, LLC Los Angeles imperialcapital.com	*Debtors:* Bristow Group Inc.
IMSPIEGEL, LLC Brooklyn, N.Y.	*Debtors:* Russian Samovar, Inc.
JAY COLLINS/THE FINANCIAL FIRM LLC Hobbs, N.M.	*Debtors:* AB Kitchen Cabinets
JEFFREY TRODERMAN Cambridge, Mass.	*Debtors:* Joseph's Transportation, Inc.
JORDAN RIVER ASSOCIATES, LLC Austin, Texas	*Debtors:* Ultimate Brands Inc.
KAPILAMUKAMAL, LLP Fort Lauderdale, Fla. kapilamukamal.com	*Unsecured Creditors Committee:* National Auto Lenders, Inc.
LARX ADVISORS, INC. Frisco, Texas larxadvisors.com	*Debtors:* Mayflower Communities, Inc.
LAWRENCE KALKSTEIN CPA Montrose, N.Y.	*Debtors:* Waste Services, Inc.
LINKAGE CAPITAL MANAGEMENT, LLC Barrington, Ill. linkagecapitalmanagement.com	*Debtors:* TDE of Illinois, Inc.
MACCO RESTRUCTURING GROUP, LLC Houston maccorestructuringgroup.com	*Debtors:* Matra Petroleum USA, Inc.
MCA FINANCIAL GROUP, LTD. Phoenix mca-financial.com	*Debtors:* Avadel Specialty Pharmaceuticals

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MIES AND COMPANY, INC. Birmingham, Mich. miesandcompany.com	*Debtors:* Fourteenth Avenue Cartage Company, Inc.
M-III ADVISORY PARTNERS, LP New York miiipartners.com	*Debtors:* RAIT Funding
MILLER BUCKFIRE & CO. LLC New York millerbuckfire.com	*Debtors:* Things Remembered, Inc.
MILLER COFFEY TATE LLP Philadelphia mctllp.com	*Unsecured Creditors Committee:* XTL, Inc.
MOELIS & COMPANY LLC New York moelis.com	*Debtors:* Aegean Marine Petroleum Network Inc., Aegerion Pharmaceuticals, Inc., Joerns Woundco Holdings, Inc.
MOGLIA ADVISORS Aurora, Ill. mogliaadvisors.com	*Debtors:* ASC Insulation Fireproofing and Supplies, Inc.
MOMENTUM ADVISORS Springfield, Pa. momentum-advisors.com	*Debtors:* interTouch Topco LLC
NEWPOINT ADVISORS CORPORATION West Palm Beach, Fla. newpointadvisors.us	*Unsecured Creditors Committee:* Bal Harbour Quarzo, LLC, a/k/a Synergy Capital Group, LLC, a/k/a Synergy Investments Group
NV CONSULTING SERVICES LLC Chicago nvconsultingservices.com	*Debtors:* Advanced Patient Advocacy
OPPORTUNE LLP Houston opportune.com	*Debtors:* Halcon Resources Corporation

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PHOENIX MANAGEMENT SERVICES LLC Chadds Ford, Pa. phoenixmanagement.com	*Debtors:* SAS Healthcare, Inc.
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PIPER JAFFRAY Minneapolis pipersandler.com	*Debtors:* Kona Grill, Inc.
PLATINUM MANAGEMENT, LLC Minnetonka, Minn. thePlatinumGrp.com	*Debtors:* Rancher's Legacy Meat Co.
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PRICEWATERHOUSECOOPERS LLP New York pwc.com	*Unsecured Creditors Committee:* Willowood USA, LLC, Latex Foam International
PROTIVITI INC. Alexandria, Va. protiviti.com	*Debtors:* Goodwill Industries of South Central Virginia, Inc.
PROVINCE, INC. Henderson, Nev. provincefirm.com	*Unsecured Creditors Committee:* PGHC Holdings, Inc., Promise Healthcare Group, Beauty Brands, Innovative Mattress Solutions, Payless Holdings, Pernix Sleep, Inc., Z Gallerie, LLC, Achaogen, Inc., Kona Grill, Inc., Mattress Pal Holding, LLC, Insys Therapeutics, Inc., Charming Charlie Holdings Inc., uBiome, Inc.
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SALDI ADVISORY SERVICES, LLC Jamesville, N.Y.	*Debtors:* Beaver Dairy Farm LLC

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SCHWARTZ ADVISORS LLC La Jolla, Calif. schwartzadvisors.com	*Debtors:* SOMS Technologies
SHERWOOD PARTNERS INC. Santa Clara, Calif. shrwood.com	*Debtors:* NovaSom, Inc.
SKUTCH ARLOW GROUP, LLC Chicago skutcharlow.com	*Unsecured Creditors Committee:* Markpol Distributors, Inc.
SOLIC CAPITAL ADVISORS, LLC Evanston, Ill. soliccapital.com	*Debtors:* Clare Oaks
SONORAN CAPITAL ADVISORS Mesa, Ariz. sonorancap.com	*Chapter 11 Trustee:* Tate's Auto Center of Gallup, Inc.
SPEYSIDE ADVISORS, LLC Dallas speysidepartners.com	*Debtors:* NanoMech, Inc.
SPINGLASS MANAGEMENT GROUP, LLC Portland, Maine spinglassllc.com	*Debtors:* Sure Winner Foods, Springfield Medical Care Systems, Inc., Calais Regional Hospital
STEVEN HILL Miami	*Debtors:* Miami Valley Indoor Golf, LTD.
STOUT RISIUS ROSS, LLC Houston stoutadvisory.com	*Debtors:* PetroShare Corp. *Unsecured Creditors Committee:* Burkhalter Rigging, Inc.
TENEO CAPITAL LLC New York teneo.com	*Debtors:* CBCS Washington Street LP
THE CLARO GROUP, LLC Houston theclarogroup.com	*Debtors:* The Falls Event Center *Chapter 11 Trustee:* American Green Technology
THE FINLEY GROUP Charlotte, N.C. finleygroup.com	*Debtors:* Bon Worth, Inc.

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TRS ADVISORS LLC New York trsadvisorsllc.com	*Chapter 11 Trustee:* Princeton Alternative Income Fund LP
TURNING POINT CONSULTING Seattle turningpointcorp.net	*Debtors:* Country Morning Farms, Inc.
UNIQUE STRATEGIES GROUP, INC. Austin, Texas	*Debtors:* Corridor Medical Services
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Gnome de Plume

Why Are So Many Leaders Incompetent?

by Deborah Hicks Midanek

In the wake of the remarkable number of men toppled from their leadership positions during the Me, Too moments, the research done by organizational psychologist Sarah Jane Souther stands out. She studies how gender and personality shape the selection of leaders, and their impact on organizations. While discussions of gender tend to focus on the under-representation of women in leadership, she says that the bigger problem is the fact that most leaders are incompetent.

We in the restructuring community confront this ineptitude all the time, in the leaders of our clients as well as among our own number. Statistically, these people are more likely to be male than female. Yes, men are typically both more deceived about their talents than women, AND more likely to succeed in their careers. It follows that one of the best ways to fool other people into thinking you're better than you actually are is to fool yourself first. Until you can fool yourself and others no longer.

While we see them in extremis, their effects are pernicious. Incompetent leaders have negative effects on subordinates, causing low levels of trust and productivity and high levels of stress. Souther suggests googling "my boss is" to see what people think of their managers: "crazy," "abusive," "unbearable," "toxic," and so on.

Why do so many incompetent men become leaders? Souther's research suggests three main reasons. The first is our inability to distinguish between confidence and competence. Across cultures and countries, we tend to assume that confident people have more potential for leadership, but in any area of talent, including leadership, she finds very little overlap between confidence and competence.

The second reason she cites is our love of charismatic individuals, turbocharged in the digital age. We appear to want leaders who are charming and entertaining, but as most of us know, an effective leader and a stand-up comedian are different. The best leaders are typically humble rather than charismatic, to the point of being boring. For example, consider Angela Merkel—she wakes up, has breakfast with her husband, goes to meetings well-prepared, lets other people talk without interrupting them, makes rational decisions, and there are no scandals about her. In contrast, there is a surfeit of captivating stories on charismatic leaders with fascinating dark sides, who end up running and ruining countries and organizations.

The third reason for the persistence of incompetent leaders is our inability to resist the allure of narcissistic individuals and their grandiose visions. Much popular advice on helping people become leaders promotes a narcissistic mindset: "Love yourself, no matter what", "Don't worry about what people think of you" or "If you think you're great, you are." This contributes to the elevation to leadership roles of people unaware of their limitations and unjustifiably pleased with themselves. They see leadership as an entitlement and generally lack empathy and self-control, often acting without integrity and indulging in reckless risks. In contrast, the best leaders care about other people.

So, how do we stop incompetent people from becoming leaders? While it may not be in our own interest to do so, it could help society at large. First, we can learn and look for the qualities that make people better leaders. To improve the performance of our leaders, we must focus on the right traits and promote people because of competence, humility and integrity instead of falling for people who are confident, narcissistic and charismatic. Second, we must distrust our instincts. Focus less on the impressions people make during job or media interviews, which are just an invitation to project our own biases and prejudices. Even when we have good intentions, it is not easy to overcome this.

To the extent that we can do these things, we will end up with better leaders. However, progress starts with each and every one of us. If we want to improve the competence level of our leaders, we should first improve our own competence for evaluating and selecting them.

As an aside, the restructuring industry can likely contribute quite a bit to Souther's thinking, as we know an awful lot about dealing with the consequences of inadequate leadership. ¤

Deborah Hicks Midanek
President of Solon Group, Inc. and author of ***The Governance Revolution: What Every Board Member Needs to Know, Now!***
Contact: DHMidanek@SolonGroup.com, 917-853-3598

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