



Creditor
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INTRA-CREDITOR CLASS WARFARE SYMPOSIUM

HOSTED BY: LOWENSTEIN SANDLER
JUNE 21 | 1:00 PM - 4:30 PM





INTRA-CREDITOR CLASS WARFARE SYMPOSIUM

AGENDA



Welcome: Jeffrey Cohen, Lowenstein Sandler

Introduction: Evan Lederman, Creditor Rights Coalition

Panel 1: What is class warfare?

This Panel will discuss the controversial practices of "drop-down" financings (e.g., J. Crew) and "up-tiering" transactions (e.g., Serta) and implications for the market.

Panel 2: How we got here?

This Panel will discuss changes in the syndicated lending market, weakening of covenant protections, expectations of market participants, and evolving market, contractual and judicial norms.

Break

Panel 3: Where do we go from here?

This Panel will discuss the market's varying reactions to these developments, and what these developments mean for the traditional understanding of what it means to be a lender. Will we continue to see an arms race to the bottom or will market norms, contractual protections and/or courts step in to make a difference?

Concluding Remarks: Dan Kamensky, Creditor Rights Coalition

Reception



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Panel 1: What is class warfare?

This Panel will discuss the controversial practices of “drop-down” financings (e.g., J. Crew) and “uptiering” transactions (e.g., Serta) and implications for the market.



Chris Chaice
Brigade Capital Management

Chris Chaice is the Head of Distressed Research at Brigade Capital Management. Prior to joining Brigade in 2012, Mr. Chaice worked at Covenant Review, a fixed-income research firm, where he analyzed debt covenants, complex capital structures, and bankruptcy issues. Additionally, Mr. Chaice worked as an Analyst at Southpaw Asset Management, where he analyzed event-driven investment opportunities relating to bankruptcies, restructurings, mergers, liquidations, and litigation. Prior to Southpaw, Mr. Chaice practiced law at Cahill Gordon & Reindel and Willkie Farr & Gallagher, where he specialized in capital markets transactions, primarily representing underwriters of high yield bonds and leveraged loans. Mr. Chaice received a BA in Political Science from Syracuse University and a law degree, cum laude, from New York University School of Law.



Kevin Cofsky
Perella Weinberg

Kevin Cofsky is a Partner in the PWP Restructuring and Capital Structure Advisory Group in New York. Prior to joining PWP in 2007, Mr. Cofsky was a Managing Director at Evercore Partners, focusing on advising stakeholders in connection with stressed and distressed capital structures. Previously, Mr. Cofsky was a corporate attorney at Cravath, Swaine & Moore and clerked for the Chief Justice of the New Jersey Supreme Court. Mr. Cofsky earned a Bachelor of Science in Economics with a concentration in Finance from the Wharton School of Business at The University of Pennsylvania, a Juris Doctor from the University of Pennsylvania Law School and a Masters of Government Administration from the Fels Center of Government. He serves on the Board of the Dance Theatre of Harlem.



Joel Moss
Shearman & Sterling

Joel Moss is a Team Leader of the Financial Restructuring & Insolvency practice at Shearman & Sterling. Joel routinely represents ad hoc lender and noteholder groups, agent banks and direct lenders in all aspects of in court and out of court restructurings, including with respect to DIP, exit, rescue and special situations financings. He routinely advises investment funds and trading desks with respect to actual and potential investments. He also has substantial experience regarding financial contract safe harbors. Prior to joining Shearman & Sterling, Mr. Moss was a partner at a large global law firm. Before that, he was a director at Barclays in New York, where he handled bankruptcy and restructuring matters for the bank in the United States. At Barclays, his responsibilities included advising trading desks on bankruptcy issues relating to proposed and existing investments; negotiating and reviewing restructuring documentation where Barclays was agent and lender; negotiating and reviewing documentation for DIP and exit financings in which Barclays was agent and/or lead arranger and lender; and structuring financial transactions to mitigate bankruptcy risk.



Erica Weisgerber
Debevoise & Plimpton

Erica S. Weisgerber is a partner at Debevoise & Plimpton LLP, whose practice focuses on bankruptcy and restructuring litigation. She advises clients on restructuring- and litigation-related issues arising in bankruptcy cases, out-of-court restructurings and other distressed situations across a diverse range of industries. Her experience includes a range of debtor, sponsor, and creditor representations, adversary proceedings and contested matters in cases under Chapters 11 and 15 of the U.S. Bankruptcy Code and cross-border insolvency proceedings, including extensive experience litigating clawback claims arising out of domestic and international insolvencies. Ms. Weisgerber also regularly represents investment banks in their retentions by major constituencies in Chapter 11 proceedings. She is ranked as a leading Bankruptcy/Restructuring lawyer by Chambers USA (2022), was recognized by Turnarounds & Workouts in their 2020 list of twelve Outstanding Young Restructuring Lawyers in the United States, and was selected as a member of the 2020 Class of the American Bankruptcy Institute's 40 Under 40. She is also recommended in The Legal 500 US for her bankruptcy litigation work. She clerked for the Hon. Joseph Bianco of the United States District Court for the Eastern District of New York. Ms. Weisgerber received a J.D. magna cum laude from Georgetown University Law Center in 2008 and an A.B. magna cum laude from Georgetown University in 2005.





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Panel 2: How we got here?

This Panel will discuss changes in the syndicated lending market, weakening of covenant protections, expectations of market participants, and evolving market, contractual and judicial norms.



Professor Ken Ayotte
Berkeley Law

Ken Ayotte is the Robert L. Bridges Professor of Law at the U.C. Berkeley School of Law. Previously, Professor Ayotte was a Professor of Law at Northwestern Law School and a Professor of Finance at Columbia Business School, where he won the Dean's Award for Teaching Excellence. Ayotte's research interests are in the areas of bankruptcy, corporate finance, and law and economics. His research has been published in peer-reviewed journals, such as *Review of Financial Studies* and the *Journal of Law, Economics and Organization*, as well as law reviews, including *University of Chicago Law Review* and *Michigan Law Review*. Ayotte's research uses financial and economic tools to better understand our bankruptcy system. Recent research projects study the important role of complexity in debt contracting and bankruptcy law, including *Bankruptcy Process for Sale* (with Jared Ellias, *Yale Journal on Regulation* 2022), and *J. Crew, Nine West, and the Complexities of Financial Distress* (with Christina Scully, *Yale Law Journal Forum* 2022).



Professor Elisabeth de Fontenay
Duke University

Elisabeth de Fontenay is a Professor of Law at Duke University. Her research in corporate law and corporate finance focuses on how market actors behave in the less-regulated spaces of the financial markets. Her work has examined questions such as the ongoing decline in U.S. public companies and the rise of private capital, private equity firms' role in the debt markets, and law firms' role in corporate transactions. She received her B.A., summa cum laude, in economics from Princeton University, and her J.D., magna cum laude, from Harvard Law School. After graduating from law school, Professor de Fontenay practiced as a corporate associate at Ropes & Gray LLP, where she specialized in mergers and acquisitions, debt financing, and private investment funds.



Jeff Ogden
Natixis CIM Americas

Jeff Ogden joined Natixis CIB Americas in December 2021 as a Managing Director and Head of Leveraged Finance Syndicate, Americas. He is a seasoned leverage finance professional with deep experience in origination, execution, syndication and restructurings across a broad array of transactions, industries and geographies. Prior to joining Natixis, he founded a professional services firm providing primarily board of director and restructuring advisory services. From 1980 through 2019, Mr. Ogden had a role in growing the leverage finance/loan platforms at Bankers Trust, Deutsche Bank, Lehman Brothers and at Barclays where he helped to grow the Industrial and Natural Resources leveraged loan verticals to industry leading positions. Mr. Ogden has extensive restructuring experience having served as the founding member and Co-Head of the Restructuring Finance Group at Deutsche Bank and as a member of the loan workout groups at Bankers Trust (1987-1990), Deutsche Bank (1999-2000) and Barclays (2009). He has been involved in dozens of DIP, Exit and stressed financing transactions. Mr. Ogden graduated from Hamilton College in 1980 with a double major in English and Government. In 1986, he received his MBA from the Edwin L. Cox School of Business at Southern Methodist University.



Lee Shaiman
LSTA

Lee Shaiman is the Executive Director for the Loan Syndications and Trading Association. Mr. Shaiman has 40 years of experience in the financial services industry as an investment banker, financial analyst, debt syndicate manager and portfolio manager. Prior to joining the LSTA in January 2018, Mr. Shaiman was the Chief Investment Officer and Portfolio Manager for the liquid-credit business at ArrowMark Colorado Holdings, LLC, where he led an investment team focused on investing in senior secured loans, held primarily in collateralized loan obligation vehicles, "CLO's". Prior to joining ArrowMark, Mr. Shaiman was a Managing Director and Senior Portfolio Manager and Chairman of the Debt Funds investment committee at GSO Capital Partners, a division of Blackstone. He was directly involved in all aspects of managing, structuring and raising funds primarily invested in senior secured loans. Mr. Shaiman received a Master's of Science in Accounting and Taxation from the Wharton School of the University of Pennsylvania and a B.S. in Economics, cum laude, Phi Beta Kappa, from Rutgers College.





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Panel 3: Where do we go from here?

This Panel will discuss the market's varying reactions to these developments, and what these developments mean for the traditional understanding of what it means to be a lender. Will we continue to see an arms race to the bottom or will market norms, contractual protections and/or courts step in to make a difference?



Assoc. Professor Vince Buccola
Wharton

Vince Buccola is an associate professor at the Wharton School, where he studies corporate financial law, especially as it pertains to distress, reorganization, and bankruptcy. Before joining the Wharton faculty, Professor Buccola was a Bigelow Fellow at the University of Chicago Law School. He clerked for Judge Frank H. Easterbrook, of the U.S. Court of Appeals for the Seventh Circuit, and was a trial lawyer at Bartlit Beck. He is a graduate of the University of Chicago Law School (JD) and Wesleyan University (BA).



Justin Forlenza
Covenant Review

Justin Forlenza is Senior Covenant Analyst at Covenant Review/Fitch Solutions. He was with Covenant Review from 2012 until 2018 and rejoined Covenant Review in August of 2019. He has practiced law at Weil, Gotshal & Manges LLP and most recently at Cravath, Swaine & Moore LLP. Mr. Forlenza has extensive experience with leveraged finance transactions, including the negotiation and execution of credit agreements and bond indentures, issues relating to secured transactions under Articles 8 and 9 of the UCC, LBO financings, and the analysis of complex stressed and distressed capital structures. He graduated from Cornell University in 2003 and from Fordham Law School magna cum laude in 2007.



Elliot Ganz
LSTA

Elliot Ganz is the LSTA's General Counsel and Co-Head of Public Policy. He is a 1980 graduate of New York University School of Law and a 1977 graduate of Queens College, City University of New York. Before joining the LSTA Mr. Ganz worked for three years at a Wall Street law firm followed by 22 years in senior legal positions at four major US and international banks. He is a member of the bar of the Supreme Court of the United States, a fellow of the American College of Commercial Finance Lawyers and served as a member of the Committee on Financing Chapter 11 of the American Bankruptcy Institute's Commission to Study the Reform of Chapter 11. Mr. Ganz has supervised the filing of over 25 amicus briefs on important loan and bankruptcy-related cases, including three briefs supporting successful appeals to each of the New York Court of Appeals and Supreme Court of the United States. He most recently supervised a successful lawsuit under the Administrative Procedure Act against the Securities and Exchange Commission and the Federal Reserve Board on the critical issue of risk retention under the 2010 Dodd-Frank Act.



David Golub
Golub Capital

David Golub is President of Golub Capital, a market-leading, award-winning direct lender and experienced credit asset manager, with over \$45 billion of capital under management. Golub Capital partners with institutional investors and family offices, offering tailored solutions for investors' credit asset strategies. Prior to joining Golub Capital in 2003, Mr. Golub was a Managing Director of Centre Partners, a leading middle market private equity firm, and of Corporate Partners, a Lazard-sponsored \$1.5 billion private equity fund formed to acquire significant minority stakes in established companies. He is a member of the board of the Loan Syndications and Trading Association among other board affiliations and charitable endeavors. Mr. Golub earned his AB degree magna cum laude in Government from Harvard College. He received an MPhil in International Relations from Oxford University, where he was a Marshall Scholar, and an MBA from Stanford Graduate School of Business, where he was named an Arjay Miller Scholar.



Michael Lipsky
Mariner Investment Group

Michael Lipsky is the Portfolio Manager for the Mariner Bowport Fund. Prior to joining Mariner, he was a Senior Analyst at Knighthead Capital Management. From 2011 to 2018, he was a Partner at MatlinPatterson Global Advisers LLC and Senior Portfolio Manager of the Global Opportunities Fund. From 2009 to 2011, Mr. Lipsky was a Managing Director at Blackrock, Inc. where he was the Portfolio Manager for the Value Credit Partners fund and head of distressed investments in the R3 Capital fund. Prior to joining Blackrock in 2009, Mr. Lipsky was a Senior Partner and Head of Distressed Products for R3 Capital Partners. He held a similar role with Lehman Brothers' Global Principal Strategies group from 2007 to 2008. Earlier, he spent seven years with Deutsche Bank Securities, Inc. and was most recently a Managing Director in the Global Distressed Products group. From 1996 to 2000, Mr. Lipsky was an Associate in the Fixed Income Currencies and Commodities Group at Goldman Sachs & Co. Mr. Lipsky holds an MBA, with honors, from Columbia Business School and a BA degree from the University of Pennsylvania.



Assoc. Professor Greg Nini
Drexel University

Dr. Greg Nini an associate professor of finance at the LeBow College of Business of Drexel University. At Drexel, Dr. Nini teaches classes on financial institutions and markets and conducts research in a variety of areas related to corporate finance and capital markets. His research has been supported by various grants and published in top finance journals. Dr. Nini is also a fellow of the Wharton Financial Institutions Center and a visiting scholar at the Federal Reserve Bank of Philadelphia. Before joining Drexel, Dr. Nini was on the faculty at the Wharton School of the University of Pennsylvania and an economist at the Federal Reserve Board in Washington D.C. Dr. Nini has served on the editorial boards of the Journal of Financial Economics, Journal of Financial Services Research, and the Journal of Risk and Insurance. He recently testified to the U.S. House Committee on Financial Services about the risks of leveraged lending. Dr. Nini holds a Ph.D. in applied economics from the Wharton School at the University of Pennsylvania and a B.A. in mathematics and economics from Swarthmore College.





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CREDITORS RIGHTS COALITION



Who We Are

The Creditor Rights Coalition is a nonprofit association established to serve as the collective and leading voice representing all stakeholders with an interest in protecting creditor rights.

What We Do

The Coalition was created with the intent of engaging in the twin pillars of thought-leadership and advocacy.

Our Core Mission

The Creditor Rights Coalition seeks to promote transparency, accountability, and equality of treatment for similarly situated creditors to ensure fair and robust stakeholder participation in bankruptcy proceedings.

Advisory Board

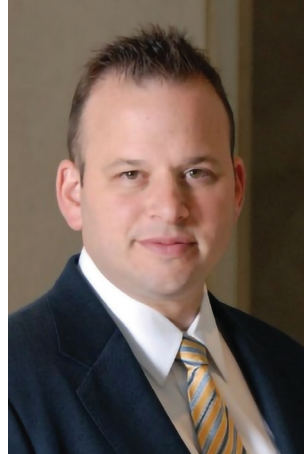
The Advisory Board is responsible for leading the various initiatives of the Coalition.



Marc Heimowitz



Dan Kamensky



Steve Krause



Evan Lederman

For more information about the Coalition or to subscribe to our mailing list please find us at www.creditorcoalition.org or scan below.



