

# Turnarounds & Workouts

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## **SPAC Bankruptcies**

### **Securities Fraud, Convertible Debt & Forward Purchase Agreements**

*By Adam J. Brenneman, Thomas S. Kessler, Jack Massey, and Katharine Ross*

The past several years have seen a significant rise in (and subsequent fall of) special purpose acquisition companies (“SPACs”), shell companies with no operations of their own that are created for the sole purpose of conducting an initial public offering and subsequently acquiring one or more private operating companies through a merger (known colloquially as a “de-SPAC transaction”). Estimates indicate that in 2020 alone, SPACs comprised approximately 24% of all IPOs, rising to 61% in 2021, raising a whopping \$240 billion in proceeds. Through a de-SPAC transaction, the target company is effectively able to go public without completing the laborious and time-consuming, and in many cases highly

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## **Sorrento Judge Halts Short-Sales**

*By Christopher Patalinghug*

Investors of bankrupt Sorrento Therapeutics, Inc., are suing eight major brokerage firms, seeking to halt alleged “naked” short-selling of common shares of Scilex Holding Company, which is majority-owned by Sorrento. The official committee of Sorrento equity security holders commenced an adversary proceeding against the brokerage firms in bankruptcy court in Houston, Texas, saying these illegal trades are causing artificial selling pressure on the Scilex stock, which has depressed the trading price of the security and increased the stock’s volatility on the open market. Sorrento’s controlling interest in the Scilex stock is among the company’s most valuable assets, according to the committee. The committee asserts the depressed price and increased volatility of the stock, however, have dampened Sorrento’s ability to sell the Scilex stock or obtain financing based on the value of the Scilex stock. “The Court’s intervention is therefore urgently needed to address

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restrictive, IPO process itself.

The recent surge in interest in SPAC IPOs and de-SPAC transactions has begun to wane, however. The public failure of a number of companies that went public in a de-SPAC, combined with heavy regulatory scrutiny and an increasing interest rate environment, has resulted in high levels of redemptions, together with a rise in companies that began as SPACs seeking chapter 11 relief in the face of economic distress and liquidity crises, most within twelve to eighteen months following consummation of the relevant de-SPAC transaction.

While the circumstances precipitating a bankruptcy are often complex and are always company-specific, a common factor cited by de-SPAC companies that have recently filed for chapter 11 relief is lower-than-anticipated proceeds from the de-SPAC transaction. This is largely the result of increasing redemption rates. Shareholders who purchased common stock in connection with a SPAC IPO have a right to redeem their shares upon consummation of the subsequent business combination with the target operating company (or upon certain other events, such as a vote to extend the life of a SPAC). In the first half of 2021, it is estimated that the average monthly redemption rate for SPACs was between 7% and

43%. However, by December 2022, average redemption rates had risen to 97% and de-SPAC companies that have filed for chapter 11 relief within the last year cite redemption rates ranging from 82% to 98%, resulting in significantly reduced proceeds from the de-SPAC transaction. Given the somewhat high cash cost of de-SPAC transactions (which often involve the payment of professional fees in excess of \$10 million) and the precarious liquidity position of many target companies in de-SPAC transactions (many of which are pre-revenue companies), the failure to generate proceeds in the de-SPAC transaction itself can be fatal. General macroeconomic trends — such as uncertainty brought about by inflation and rising interest rates, increasing costs of energy, and recessionary fears — as well as increasing scrutiny on SPACs by the SEC, and several high-profile securities fraud cases involving SPACs, may be factors influencing investor confidence and such rising redemption rates.

SPAC bankruptcies, as a relatively new phenomenon, raise several potentially interesting issues that are worth bearing in mind and watching for in these cases.

### **Potential Allegations of Securities Fraud**

Because SPACs are shell companies and do not have historical

financial results or assets to describe, their IPO disclosures tend to be limited, and to focus on the experience of the SPAC's sponsors. In the same vein, while companies going public through a traditional IPO typically do not include financial projections in the registration statements that are submitted in connection with an IPO because of the potential liability risk, companies going public through a de-SPAC transaction have historically been perceived to not face the same risk and often utilize forward-looking statements and financial projections in their proxy statement and other materials filed in connection with the transaction. The Private Securities Litigation Reform Act<sup>1</sup> provides a safe harbor that generally shields issuers from liability for forward-looking statements that are identified as such and accompanied by certain cautionary language. This safe harbor expressly excludes statements made in connection with an IPO, however, such that companies going public through a traditional IPO are not covered by the safe harbor in connection with an IPO, but companies going public through a de-SPAC transaction are.

Because many of the companies that are the target of de-SPAC transactions are pre-revenue or early-stage companies, their projections have often focused on available market size rather than actual performance and have been based on

<sup>1</sup> 15 U.S.C. § 78u-5.

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a number of assumptions. In many cases, the assumptions underlying these projections have been poorly disclosed and in some cases are of dubious achievability. As a result, many de-SPAC companies have been unable to meet their projections and numerous companies have been targets of shareholder class actions or SEC enforcement actions on claims of securities fraud related to allegedly misleading financial projections and promotional materials in connection with a de-SPAC transaction. There have also been high-profile criminal charges related to the same — most prominently in the case of Trevor Milton, the founder of Nikola, an electric truck company that went public through a de-SPAC transaction. As more SPAC companies file for chapter 11 relief, issues related to securities fraud claims may appear with increasing frequency in those cases.

Helpfully for SPAC-debtors, the Bankruptcy Code provides clear guidance for resolution of these types of claims when brought by shareholders. Section 510(b) of the Bankruptcy Code requires subordination of “a claim...for damages arising from the purchase or sale of...a security” of the debtor. Accordingly, shareholder claims of

securities fraud are “subordinated” to the status of equity claims rather than being treated as (structurally senior) general unsecured tort claims. In the language of bankruptcy courts that have examined the provision, Section 510(b) evidences a policy decision by Congress that, “as between shareholders and general unsecured creditors, it is the shareholders who should bear the risk of illegality in the issuance of stock in the event the issuer enters bankruptcy.”<sup>2</sup>

There are a number of other ways that securities fraud and related issues may impact the bankruptcy proceedings of companies that began as SPACs. Most notably, companies may face ongoing scrutiny from the SEC and DOJ in connection with allegations of fraud during the pendency of the bankruptcy proceedings.<sup>3</sup> And, unlike ordinary suits, actions against debtors by government entities using their police or regulatory powers are not subject to the automatic stay. Similarly, directors, officers, and other affiliates may also face fraud charges that are not necessarily enjoined by the automatic stay even if the SPAC-debtor is covered. To the extent that such fraud issues are present, they may lead to disputes regarding the scope of the automatic stay or certain features of an eventual plan of reorganization, such as the scope

of releases.

## Treatment of Convertible Debt in Chapter 11

Convertible debt is often used by SPACs for raising cash, particularly in connection with a PIPE (“private investment in public equity”) transaction near the end of a de-SPAC transaction, where proceeds are intended to replace IPO proceeds that are redeemed by investors. While convertible debt presents more risk for investors than more traditional forms of debt (because convertible debt is often subordinated and/or has few covenant protections), the risk is compensated by a significant potential upside benefit in the event the company becomes profitable. Various issues related to the treatment of the claims of convertible noteholders may arise in the context of a SPAC bankruptcy: for example, whether certain types of claims arising from convertible debt agreements (such as claims for fraud or misrepresentation) are subject to mandatory subordination under Section 510(b) as “claim[s]... for damages arising from the purchase or sale of...a security,” as discussed in the section above.

Courts generally agree that claims are subject to subordination under Section 510(b) “if there is a sufficient ‘nexus or causal relationship between the claim and the purchase’ or sale

<sup>2</sup> *Baroda Hill Inv., Ltd. v. Telegroup, Inc. (In re Telegroup)*, 281 F.3d 133, 141 (3d Cir. 2002).

<sup>3</sup> See, e.g., *In re Adelphia Commc’n Corp.*, 327 B.R. 143, 148-149 (Bankr. S.D.N.Y. 2005).

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of securities,”<sup>4</sup> and many utilize a “but-for” analysis in determining the scope of Section 510(b), asking whether the claim would exist but for the equity interest. In conducting this analysis, courts focus on whether the claim at issue implicates the policy concerns underpinning the provision, as discussed above. To that end, courts have interpreted Section 510(b) broadly and have also demonstrated a willingness to look at the intent of the parties, asking whether the terms and circumstances under which a claimant entered into a transaction “demonstrates an intention to take on the risk and return expectations of a shareholder rather than those of a creditor.”<sup>5</sup>

Whether an unconverted note would be treated as debt rather than equity likely depends on the terms of the note, intent of the parties, and nature of the claim raised by the noteholder. To the extent that a holder of an unconverted note asserts a claim related to their conversion rights, for example, originally purchased the note at a lower interest rate or on other terms more favorable to the debtor than would be offered by more traditional creditors in exchange for the opportunity to exercise conversion rights in the future, or otherwise

treated the note as an investment rather than a loan, such claims may well be subject to Section 510(b)’s subordination mandate. Likewise, claims arising from convertible notes that have already matured and converted to equity interest are likely subject to subordination under Section 510(b).

### **Treatment of Forward Share Purchase Agreements in Chapter 11**

As defined in Section 101(25) (A) of the Bankruptcy Code, a forward agreement is a contract for the purchase, sale or transfer of a commodity that has a maturity date falling more than two days after the parties entered into the contract. In the SPAC context, a forward share purchase agreement is an agreement in which the de-SPAC company commits to purchasing stock from an investor at a future date in connection with a de-SPAC transaction. SPACs and target companies generally negotiate a minimum level of capital required to complete the merger, and SPACs regularly use forward purchase agreements to maintain that minimum level of capital at closing, even if that capital is later subject to repurchase pursuant to the forward share purchase agreement. Such agreements can also be negotiated to

help a company maintain its public float and avoid being delisted from stock exchanges.

Given how common they are in the SPAC context, issues regarding how to treat forward share purchase agreements may begin to arise in SPAC bankruptcies. First, disputes may arise as to whether forward share purchase agreements are executory contracts. An executory contract is defined in most circuits as one under which both the debtor and the counterparty have unperformed obligations that would constitute a material breach if not performed. Whether both parties have remaining obligations under a contract is a question of state law. If a contract is executory, the debtor can either assume the contract, in which case it must cure any defaults before assumption, or reject the contract, in which case it is treated as a prepetition breach. If a contract is not executory, it is treated as either an asset or liability of the debtor. Whether a particular forward share purchase agreement is executory likely depends on the particular terms, structure, and timing of the forward share purchase agreement at issue.

Disputes may also arise in the context of the applicability of the automatic stay to forward share purchase agreements. Normally,

<sup>4</sup> *Hagerstown Block Co. v. Solomon (In re Hagerstown Block Co.)*, 570 B.R. 494 (Bankr. D. Md. 2017) (quoting *Baroda Hill Inv., Ltd. v. Telegroup, Inc. (In re Telegroup, Inc.)*, 281 F.3d 133, 138 (3d Cir. 2002)).

<sup>5</sup> *Id.* at \*5.



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contract counterparties are barred by the automatic stay from exercising contractual rights or remedies (such as offset rights, or “ipso facto clauses,” which provide for termination of the agreement upon an event of insolvency or bankruptcy). Counterparties to forward contracts, however, are exempted from these limitations by certain safe harbor provisions of the Bankruptcy Code. Section 362(b)(6) of the Bankruptcy Code provides that the automatic stay does not limit a counterparty’s right to exercise contractual rights to offset or net out any termination value, payment amount, or other transfer obligation in connection with a forward contract. Further, Section 556 of the Bankruptcy Code provides that a counterparty’s contractual rights to liquidate, terminate, or accelerate a forward contract will not be limited under the Bankruptcy Code.

Finally, in the context of a SPAC bankruptcy, disputes may arise as to whether payments made pursuant to forward share purchase agreements prior to the petition date may be avoided. The Bankruptcy Code provides clear guidance on this, however; pursuant to Section 546(e), a debtor cannot avoid payments made to certain types of counterparties (including forward

contract merchants, stock brokers, financial institutions, and financial participants) in connection with a forward contract, except an actual fraudulent transfer under Section 548(a)(1)(A) of the Bankruptcy Code. While Section 546(e) does not apply to all forward contracts, many forward share purchase agreements are likely to meet its requirements.

### Conclusion

Given the market trends in favor of high redemption levels and distressed trading prices of de-SPAC company stock, we expect that de-SPAC company bankruptcies will continue to be the hangover that follows the end of the SPAC party. Although many de-SPAC companies have relatively low levels of debt, the complexity of many de-SPAC company capital structures and the prevalence of fraud and similar claims will mean that de-SPAC bankruptcies will likely continue to require complex and thoughtful solutions to maximize recoveries.

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# Research Report

## Who's Who in Tuesday Morning's Bankruptcy Cases

by Carlo Fernandez

**D**allas, Texas-based Tuesday Morning Corporation is an off-price retailer specializing in products for the home, including upscale home textiles, home furnishings, housewares, gourmet food, toys and seasonal decor, at prices generally below those found in boutique, specialty and department stores, catalogs and on-line retailers.

Founded on a Tuesday morning in 1974 in Dallas, Texas, as a local, recurring Tuesday morning bargain hunt, the Tuesday Morning® brand expanded into a leading retail destination and experience for savvy shoppers to hunt for bargains on name-brand, quality home furnishings across a nationwide, 500-store footprint. The retailer achieved \$1 billion in revenue at its peak in each of 2018 and 2019.

In 2020, the company filed for bankruptcy and closed over 200 stores, cut its employee headcount and slashed debt. Tuesday Morning, then with around 700 stores in 40 states, filed for Chapter 11 protection (Bankr. N.D. Tex. Lead Case No. 20-31476) on May 27, 2020 and emerged from

bankruptcy in January 2021 with 490 of its best performing stores.

Less than two years later, Tuesday Morning and several affiliates again filed for Chapter 11 bankruptcy protection (Bankr. N.D. Tex. Lead Case No. 23-90001) on Feb. 14, 2023, saying it plans to close more than half of its 487 stores in 40 states. At that time, the Company said it is closing 264 locations spanning 38 states due to unprecedented challenges.

The Debtors reported about \$148 million in total assets. As of the Petition Date, their funded debt obligations consisted of:

- \* a senior secured asset based revolving credit facility with Wells Fargo Bank, N.A., as administrative agent, for itself and on behalf of the other lenders, and 1903P Loan Agent, LLC, as FILO B documentation agent, in the amount of (i) \$998,105 in revolving credit loans with the outstanding principal amount of \$928,715 and accrued interest of approximately \$69,390; and (ii) FILO B obligations in the amount of \$7.42 million with the outstanding principal amount of \$7.37 million and accrued

interest of \$47,050.

- \* \$24.4 million outstanding under a term loan facility with Alter Domus (US) LLC, as administrative agent, for itself and on behalf of the other lenders.

- \* \$21.1 million, consisting of (i) a series of junior secured convertible notes in the outstanding principal amount of \$7.74 million (the "FILO C Notes"); (ii) a series of junior secured convertible notes in the outstanding amount of \$10.3 million (the "JSC Notes") under a Note Purchase Agreement with TASCOR Ventures CA, LLC, as FILO C Collateral Agent for the FILO C secured parties and the Prepetition Term Loan Lenders.

The Debtors early in the case obtained court approval to access \$15 million of DIP financing from Invictus Global Management, LLC, and Cantor Fitzgerald Securities, as administrative agent. In March, the Debtors sought approval to take out \$12.5 million of replacement DIP financing from 1903P Loan Agent, LLC. On April 11, 2023, Invictus announced a deal to purchase the 1903 DIP from 1903P Loan Agent,

# Research Report

## Who's Who in Tuesday Morning's Bankruptcy Cases

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and Invictus again stepped into the shoes as DIP lender.

Tuesday Morning said Invictus failed to deliver the stalking horse bid it guaranteed that it would make. Unable to find a viable going concern offer for the business, Tuesday Morning in an auction on April 19, 2023, selected Hilco as the successful bidder for more than 200 store locations that weren't already designated as going out of business.

Tuesday Morning was subsequently acquired by Hilco Merchant Resources for \$32 million in a court-approved bankruptcy sale — over the objection of global management firm Invictus, which argued it was prepared to finance Tuesday Morning's continued operations. The company now will go out of business, with stores initiating closing sales.

The Official Committee of Unsecured Creditors has filed a lawsuit against Invictus and a separate lawsuit against FILO C noteholders, led by TASC Ventures CA, LLC, and Ayon Capital, L.L.C.

In the lawsuit against the FILO C noteholders, the Committee requests the Court to recharacterize

the noteholders' claims as equity. According to the Committee, the FILO C Noteholders' claims under the Convertible Notes are not secured debt obligations, but rather disguised equity contributions by insiders and parties seeking to take over.

In the suit against Invictus, the Committee said, "While Invictus has repeatedly claimed to be the Debtors' white knight — playing up how it was the prepetition lender of last resort with the goal to ultimately purchase the company, saving thousands of jobs in the process — its actions, and inactions, prove otherwise. Time and again, Invictus made a promise, either in or out of Court, was given the benefit of the doubt, and ultimately failed to deliver, pivoting instead to costly litigation without any apparent end game aside from inundating the Debtors' stakeholders in endless and costly litigation."

### DEBTORS

**Munsch Hardt Kopf & Harr P.C.** is serving as the Debtors' bankruptcy counsel. Shareholders **Deborah M. Perry, Kevin M. Lippman, Jamil N. Alibhai, and Julian P. Vasek**, and

associates **An Nguyen and Conor P. White** are the attorneys involved in the case.

**Force Ten Partners, LLC**, is the Debtors' financial advisor. **Nicholas Rubin**, a partner with Force 10, leads the engagement.

**Piper Sandler & Co.** is the Debtors' investment banker. **Dustin Mondell**, a managing director of Piper Sandler, leads the engagement.

**Phelanlaw** is the Debtors' special counsel, assisting the Debtors in their transition into Chapter 11. **Robin Phelan**, the founding partner of Phelanlaw, is responsible for the engagement.

**A&G Realty Partners, LLC**, led by co-president Andy Graiser, is the Debtors' real estate consultant.

**Stretto, Inc.**, is the claims, noticing, and solicitation agent.

### LENDERS

**Schulte Roth & Zabel**, led by partners **Adam C. Harris, Douglas I. Koff, Ned S. Schodek, and Douglas S. Mintz**; **Mololamken LLP**, led by **Jeffrey A. Lamken, Justin M. Ellis, and Ryan Yeh**; and **ForsheyProstok, LLP**, led by founding partner Jeff



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## Who's Who in Tuesday Morning's Bankruptcy Cases

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Prostok, are serving as counsel to **Invictus Global Management, LLC**, a secured creditor and the DIP lender.

**Otterbourg, P.C.**, led by member **Chad Simon**, and **Reed Smith LLP**, led by partner **Omar J. Alaniz** and associate **Taylre C. Janak**, are advising **1903 Partners, LLC** and **1903P Loan Agent, LLC**, which was the replacement DIP Lender, the FILO B Documentation Agent and one of the Prepetition ABL Lenders.

**Hedrick Kring Bailey PLLC**, led by **Joshua L. Hedrick**, and **Nicole L. Walker**; **The Law Offices Of Sam Stricklin**, led by **Sam Stricklin**; **Stichter, Riedel, Blain & Postler, P.A.**, led by **Harley E. Riedel**, **Charles A. Postler**, and **Daniel R. Fogarty**; and **Gunster, Yoakley & Stewart, P.A.**, led by **Kenneth G.M. Mather**, are representing **TASCR Ventures CA, LLC**, **TASCR Ventures, LLC**, and **TM21, LLC**. TASCR Parties hold the senior secured position in the Chapter 11 cases as to their FILO C Note, which is secured by a first lien priority position on the Debtors' cash collateral.

**Jackson Walker LLP**, led by **Kenneth Stohner, Jr.**, **Michael S. Held**, and **J. Machir Stull**, is serving as counsel to term loan lenders **Tensile Capital Management, LP**, **CEOF Holdings LP**, and **Corbin Capital Partners, L.P.**

**Choate, Hall & Stewart LLP**, led by **Kevin J. Simard**, **Jonathan D. Marshall**, **Jean-Paul Jaillet**, **Bryana McGillycuddy**, and **Jacob S. Lang**; and **Winstead PC**, led by **Phillip Lamberson** and **Annmarie Chiarello**, are representing Wells Fargo Bank, National Association, the administrative agent under the prepetition ABL facility.

**Crowe & Dunlevy, P.C.**, led by **Christina W. Stephenson**, and **Preti Flaherty, LLP**, led by **Bodie B. Colwell**, are representing **Fred Hand**, **Marc Katz**, and **Paul Metcalf**, who each holds a Management JSC Note.

### UNSECURED CREDITORS

The U.S. Trustee for Region 6 appointed an official committee to represent unsecured creditors. The Committee members are Basis

Global Technologies, Inc., Enchante Accessories, Inc., Azure Home, Inc., Amber Libreros, and Michel Design Works.

**Lowenstein Sandler, LLP**, is the Committee's lead counsel. **Jeffrey Cohen**, a partner and chair of Lowenstein Sandler's Bankruptcy & Restructuring Department, leads the engagement.

**Fox Rothschild, LLP**, is serving as co-counsel and conflicts counsel to the Committee. Partner **Trey Monsour** and associate **Joseph Caneco** lead the attorneys handling the representation.

**Province, LLC**, is the Committee's financial advisor. **Sanjuro Kietlinski**, a principal with Province, leads the engagement.

### JUDGE

The Honorable **Edward L. Morris** is the case judge. ☐

**Sorrento, from page 1**

this continuing threat to the overall value of the Debtors' estates and the eventual success of the Chapter 11 Cases," the committee says.

The brokerage firms have denied the equity committee's claims. The defendant firms are:

- Bank of America Securities, Inc.,
- Merrill, Lynch, Pierce, Fenner & Smith Incorporated,
- J.P. Morgan Securities LLC,
- Morgan Stanley & Co., LLC,
- Pershing LLC,
- National Financial Services LLC,
- State Street Bank and Trust Company, and
- UBS Securities LLC

The equity committee says it is acting on Sorrento's behalf and the company has agreed that it may bring the lawsuit. The committee reserves the right to name additional defendants.

### Case Background

Sorrento (OTC Market: SRNEQ) is a clinical and commercial stage biopharmaceutical company developing new therapies to treat cancer, pain (non-opioid treatments), autoimmune disease and COVID-19. The company and its wholly owned direct subsidiary, Scintilla Pharmaceuticals, Inc., sought Chapter 11 bankruptcy protection (Bankr. S.D. Texas Lead Case 23-90085) on Feb. 13, 2023, days after arbitration awards entered in a dispute related to the company's sale of Cynviloq™, a drug used to treat breast and lung cancers, left Sorrento in a short-

term liquidity crunch. Sorrento was awarded \$125 million in damages against NantPharma, LLC, however, a \$175 million award against Sorrento and in favor of NantCell, Inc. and Immunotherapy NANTibody LLC resulted in \$50 million in judgment that could be enforced immediately. Sorrento assessed that enforcement actions with respect to the \$50 million, such as attachment of Sorrento's assets and bank accounts, could lead to significant business disruption.

As of its Chapter 11 filing, Sorrento said it had over \$1 billion in assets, including the \$125 million arbitration award against NantPharma. The figure also included about 59 million shares of Scilex common stock and about 29 million shares of Scilex Series A Preferred Stock that collectively had a market value of roughly \$850 million as of the filing date.

### Scilex Stake

Scilex Holding (Nasdaq: SCLX) is the successor entity following the business combination of Vickers Vantage Corp. I, a special purpose acquisition company, and Scilex Inc. that was completed in November 2022. Scilex is focused on acquiring, developing and commercializing non-opioid pain management products for the treatment of acute and chronic pain. Scilex was originally formed in 2019 and has three wholly owned subsidiaries, Scilex Inc., Scilex Pharmaceuticals Inc., and Semnur Pharmaceuticals, Inc. While a majority-owned subsidiary of Sorrento, Scilex did not file for bankruptcy.

Immediately following the

November 2022 business combination, Sorrento held a 96.2% interest in shares of Scilex common stock subject to a 180-day lockup agreement. In December 2022, Sorrento declared a stock dividend consisting of an aggregate of 76 million Scilex shares. The dividend stock was also subject to certain transfer restrictions through May 11, 2023, which the bankruptcy court subsequently extended to Sept. 1. Hence, the dividend stock is not freely tradeable.

Following the dividend payment and as of March 31, 2023, Sorrento's ownership interest in Scilex common stock was 42.5%. Assuming conversion of Scilex Holding Preferred Stock into Scilex common stock, Sorrento's total ownership interest is 52.06%.

### Naked Short Sales

Short selling is the practice of selling securities that a seller does not own but may have borrowed with the intention of buying identical securities back at a later date. The short seller hopes to profit from a decline in the value of the securities between the time the securities are borrowed and the time they are replaced. "Naked" short-selling occurs when a seller does not borrow or arrange to borrow the securities in time for delivery to the clearinghouse by the trade date plus two days. Failure to deliver securities through naked short selling allows traders to sell securities that they do not actually possess.

Brokers, dealers, banks and other nominees act as record owners and hold the Scilex shares distributed under the Sorrento dividend in

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custody as agents for their customers, the Sorrento shareholders, who are the true “beneficial owners” of the stock. The agents hold, in the aggregate, about 89.5% of the dividend shares. Sorrento observed irregularities in the reported ownership of the Scilex stock in connection with the annual meeting of Scilex shareholders. The reported beneficial ownership did not correlate to the reports issued by Scilex’s proxy agent. Scilex discovered that more than 44 million shares of its common stock were not reported by brokerage firms to Broadridge Financial Solutions, Inc., an independent third party that collects and tabulates stockholder votes. Scilex warned the widespread and substantial non-reporting and under-reporting of eligible stockholder votes posed a serious risk of legal challenge. Scilex believed certain brokerage firms did not comply with, and thus violated, their legal obligation to deliver proxy materials to their customers and inform the customers of their right to vote at the annual meeting.

This revelation prompted Sorrento to file a Rule 2004 Motion asking the bankruptcy court to compel certain brokerages to provide written responses to information requests, to allow Sorrento to determine which brokerages failed to report or underreported the Scilex common stock so that Sorrento could seek to remedy the failure and its effect on Scilex’s stock value. But Sorrento received few responses to their information requests, and nearly all responses were inadequate,

incomplete, or did not resolve the uncertainties surrounding the reporting of Scilex common stock. Sorrento and the equity committee agreed that the committee should investigate the reporting deficiencies and take additional measures. The equity committee asked the court to direct brokerage firms trading in Scilex stock to credit all dividend shares to their customers’ accounts and file a report with the court detailing as to each customer account, on an anonymous basis, the number of dividend shares credited and the quoted price of the stock on a market-to-market basis.

According to the equity committee, to obtain a legal short position, a short-seller must “borrow” or “locate” freely tradeable stock in the subject stock before closing the short sale. However, the reports provided by brokerage firms indicate that the short interest in Scilex stock totals millions of shares more than the entire public float of about 3 million Scilex shares. “The ineluctable conclusion is that these short positions resulted from illegal short-selling,” the committee contends.

The equity committee also observed that when Sorrento and the committee filed their respective motions, the trading prices of Scilex stock spiked upwards. “There was no reported news during these two timeframes that would otherwise be expected to drive such volatility in the Scilex stock price. Instead, it appears that the filing of these pleadings caused some short sellers to cover their positions, which caused the share prices to spike upwards,” the

committee points out.

The equity committee believes the responses submitted by the eight brokerage firms confirm Sorrento’s and the committee’s concerns that many of the brokerage firms are not complying with the SEC’s Regulation SHO, which was specifically enacted to stop naked short-selling practices, and that abusive “naked” shorting of the restricted dividend shares is occurring in the market.

According to the committee, the brokerage firms’ responses indicate there are over 10 million Scilex shares being shorted. The committee contends the firms have a strong monetary inducement to allow illegal naked short-selling as some of the firms have charged short-selling customers as much as 300% interest per annum for borrowing any shares for short-selling. “This is apparently the case even if the shares are not actually borrowed,” the committee adds.

The committee asserts the naked short-selling of Scilex stock constitutes violations of the automatic stay under Section 362(a)(3) of the Bankruptcy Code. The committee contends the defendant brokerages should pay a penalty when positions are not closed out within five business days of the entry of a court order. Sorrento and the committee propose a penalty of \$1.00 a day per share of the dividend shares and unrestricted Scilex common stock, which the firms individually hold as custodian for their beneficial owners. The penalty must be deposited with the Registry of the Court for the benefit of Sorrento’s estates. The committee also wants the defendants to provide

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an accounting of, and disgorge all profits received from, the naked-short selling, including all interest charged to short-sellers, by depositing those gains into the Registry of the Court.

### Overreach

The defendant brokerage firms contend the equity committee's lawsuit is a "clear overreach" and will be dismissed as a matter of law. The firms explain, "[T]he underlying premise of the Equity Committee's claims appears to be that Defendants' involvement in open market trading of stock that happens to be owned both by clients of Defendants and by the Debtors (or that is owned by clients of Defendants and is related to stock owned by the Debtors) may have an effect, through fluctuations in market pricing caused by such trading in which the Defendants and other third parties are involved, on the value of stock owned by the Debtors. Not only is there no precedent for such activity constituting a violation of the automatic stay, such a conclusion would defy both basic logic and the 'safe harbor' exceptions to the automatic stay embedded in the Bankruptcy Code." They also argue, "Short positions on a broker-dealer's books and records and loans of securities in the normal course of a securities lending program of [dividend shares] are not indicative of short sales (let alone of any 'illegal' or 'naked' short sales of such stock), as

this security has at all relevant times been under a transfer restriction."

The firms further assert that: (a) there is no substantial threat that irreparable harm will result because Sorrento has an adequate remedy at law (i.e., money damages); (b) the equity committee lacks standing to pursue the claims; (c) the complaint fails to allege any action, even if taken, that has been or could be a violation of the automatic stay because the trading of dividend shares is not property of Sorrento's bankruptcy estate, and (d) firms' trading or loaning of dividend shares (if any) could not be a violation of the automatic stay under the Bankruptcy Code's safe-harbor provisions.

### TRO & Evidentiary Hearing

In a June 14 order, the Hon. David R. Jones of the U.S. Bankruptcy Court for the Southern District of Texas, who presides over Sorrento's Chapter 11 cases, entered a temporary restraining order suspending all short-sales of dividend Scilex shares. The court directed the brokerage firms to submit an accounting of all profits received from the naked-short selling of dividend Scilex shares, including all interest charged to short-sellers.

Judge Jones originally set an evidentiary hearing for June 27 in Houston. In an agreed order dated June 26, the parties agreed to continue the hearing to July 5. The brokerage firms will provide the equity committee with certain

discovery, including interviews with the firms' representatives, to be completed by July 5. The parties agreed to extend the TRO through July 6.

The equity committee is represented by Glenn Agre Bergman & Fuentes LLP, led by Andrew K. Glenn, Kurt A. Mayr, Shai Schmidt, and Richard C. Ramirez.

Bank of America Securities, Merrill Lynch and Pershing are advised by Shawn R. Fox and Demetra Liggins of McGuireWoods LLP.

Alicia F. Castro and Simon R. Mayer of Locke Lord LLP argue for J.P. Morgan Securities.

UBS Securities is represented by Katten Muchin Rosenman LLP's Peter A. Siddiqui, Peter G. Wilson, David Luger and Michaela C. Crocker.

Doyle, Restrepo, Harvin & Robbins, L.L.P., led by Andrew R. Harvin and Michael S. Hawke, advise Morgan Stanley.

Wilmer Cutler Pickering Hale and Dorr LLP's George W. Shuster, Jr., and Ross E. Firsenbaum; and Porter Hedges LLP's John F. Higgins, M. Shane Johnson and Megan N. Young-John represent National Financial Services and State Street Bank and Trust. ▣



# Research Report

## Who's Who in Independent Pet Partners' Bankruptcy Cases

by Carlo Fernandez

**B**acked by private equity firm TPG Growth, Independent Pet Partners offers a one-stop pet experience with healthy, high-quality food products and treats and a range of pet services, including grooming, self-wash, pet parent education, and veterinary services. Independent Pet also sell goods through e-commerce platforms. When it filed for bankruptcy, the Company operated under four unique regional banners: Chuck and Don's, Kriser's Natural Pet, Loyal Companion, and Natural Pawz. Each of the banners have its own standalone website.

IPP was organized in Delaware in 2017 to meet the burgeoning demand for pet services. The Company's initial business model involved acquiring regional, market-leading pet stores and consolidating them into a single platform.

Independent Pet Partners Holdings, LLC, and various affiliated entities sought protection under Chapter 11 of the U.S. Bankruptcy Code (Bankr. D. Del. Lead Case No. 23-10153) on Feb. 5, 2023.

The Debtor reported \$104.8 million in total assets and \$119.7 million in total liabilities as of the bankruptcy filing. The Debtors' prepetition capital structure includes funded debt with an aggregate outstanding balance (including principal and interest) of \$111.4 million, comprising of:

- \* \$17.4 million in principal, plus accrued and unpaid interest in the amount of \$228,708, is outstanding under the asset-based revolving facility with Acquiom Agency Services LLC, as administrative agent and collateral agent, and certain members of the Prepetition Lender Group, as lenders; and

- \* \$84.0 million in principal, plus accrued and unpaid interest in the amount of \$532,091, is outstanding for term loans provided under a Credit Agreement ("DDTL Credit Agreement") with Wilmington Trust, National Association, as administrative agent, and the lenders party thereto, including the members of the Prepetition Lender Group; and

- \* \$9.15 million in aggregate principal, plus accrued and unpaid

interest in the amount of \$38,094, is outstanding for term loans provided under the Priming Credit Agreement, dated as of Nov. 28, 2022, as amended, with Acquiom, as administrative agent, and the members of the Prepetition Lender Group, as lenders party thereto

Members of the Debtors' pre-bankruptcy lending syndicate have committed to provide New Money Loans in an aggregate principal amount not to exceed \$9.55 million.

The Debtors have sold what's left of the business to their lender group and are seeking approval of a plan that would return 11 cents on the dollar to unsecured creditors owed \$10.6 million.

The Lender Group offered to credit bid \$60 million of debt and serve as the stalking horse bidder for the purchase of the "go-forward business" as part of a sale process under Section 363 of the Bankruptcy Code.

More specifically, the Lender Group offered to purchase the assets comprising 66 of the Debtors' core, high-performing stores in Colorado,

# Research Report

## Who's Who in Independent Pet Partners' Bankruptcy Cases

*Continued from page 13*

Illinois, Kansas, Minnesota and Wisconsin as a going concern. The Debtors, in their business judgment, after consulting with their advisors, made the difficult decision to close down and liquidate their remaining 93 stores, reducing the Debtors' footprint from 13 to 5 states, the result of which was the discontinuance of the Debtors' Natural Pawz and Loyal Companion banners.

After the Debtors did not receive any timely qualifying bids other than the Lender Group's bid, the Court approved the going concern sale of the remaining assets to the Lender Group's IPP Buyer Acquisition, LLC, in April 2023.

The Plan, which was set for hearing on June 29, 2023, reflects the terms agreed upon by the Debtors and their significant constituents in connection with the Court-approved settlement agreement entered into on March 17, 2023 between the Debtors, the Committee, the Lender Group, the DIP Lenders, the Stalking Horse Purchaser, and TPG. The settlement provided for, among other things,

the waiver and extinguishment, solely for distribution purposes, of the Prepetition Lenders' and TPG's unsecured claims, thereby increasing distributions to the remaining general unsecured creditors.

Meanwhile, the Debtors sold to the former owner of Natural Pawz two dozen Texas pet-supply stores that were slated to close as part of the bankruptcy process. The buyer, called NP Acquisition LLC, acquired eight locations of Kriser's Natural Pet stores and 16 Natural Pawz locations for \$5 million in cash, plus 200% of the cost of inventory, and the assumption of liabilities.

PSP Stores, LLC, d/b/a Pet Supplies Plus, has acquired assets associated with the Loyal Companion brand and 20 related stores for \$2 million in cash, plus 200% of the cost of inventory, and the assumption of liabilities.

Pet Pros LLC (d/b/a EarthWise Pet, Dee-o-Gee, and GROOMBAR) acquired the inventory and the leases for 16 store locations. Pet Pros acquired the assets and leases for 6

Kriser's Natural Pet locations, and 10 Loyal Companion locations for \$500,000 in cash, plus 200% of the cost of inventory, and the assumption of liabilities.

### DEBTORS

**McDonald Hopkins LLC** is serving as the Debtors' legal counsel. Chair **David A. Agay**, Chicago managing member **Marc Carmel**, member **Joshua Gadharf**, and associates **Maria G. Carr** and **Ashley J. Jericho** comprise the core group of attorneys providing services to the Debtors.

**Young Conaway Stargatt & Taylor, LLP**, is bankruptcy co-counsel to the Debtors. **Andrew L. Magaziner**, **S. Alexander Faris**, and **Kristin L. McElroy** lead the attorneys involved in the representation of the Debtors.

**Houlihan Lokey Capital, Inc.**, is the Debtors' financial advisor and investment banker. **Adam Dunayer**, a managing director at Houlihan, heads the engagement.

**Berkeley Research Group, LLC**,

# Research Report

## Who's Who in Independent Pet Partners' Bankruptcy Cases

*Continued from page 14*

is providing managing director **Stephen Coulombe** and director **Charlie Reeves** to serve as Co-Chief Restructuring Officers and providing additional staff.

**Omni Agent Solutions** is the notice, claims, and balloting agent, and administrative advisor.

### LENDERS

**Dechert LLP**, led by partner **Shmuel Vasser**, and counsel **Stephen Wolpert**, is serving as counsel and **Richards, Layton & Finger, P.A.**, led by director **Russell Silberglied**, and associate **Brendan Schlauch**, is serving as local counsel to the DIP lenders and prepetition lenders. Subsidiaries or affiliates of **CION Investment Corporation, Main Street Capital Corporation**, and **Newstone Capital Partners** are the prepetition lenders and the DIP lenders. **Vinson & Elkins LLP** is also counsel to certain DIP Lenders.

**Paul Hastings, LLP**, is advising **Acquiom Agency Services, LLC**, which serves as administrative and collateral agent under the DIP Facility

and is the successor to CIT Bank, N.A., as administrative and collateral agent, under the prepetition revolving credit facility.

**Arnold & Porter Kaye Scholer LLP**, is representing **Wilmington Trust, National Association**, as prepetition DDTL agent.

### UNSECURED CREDITORS

The U.S. Trustee for Region 3 appointed an official committee to represent unsecured creditors in the Chapter 11 cases. The current members of the Committee are: (i) ServiceChannel.com, Inc.; (ii) Klinger-Weiss Infosystems, Inc.; (iii) Regency Centers, L.P.; and (iv) Westley Robinson. The Committee initially consisted of five members but Boss Pet Products, Inc., resigned from the Committee.

**Kelley Drye & Warren LLP** is the Committee's lead counsel. **Jason R. Adams**, a member of Kelley Drye & Warren, leads the engagement. Partner **James S. Carr**, special counsels **Maeghan McLoughlin** and **Lauren S. Schlüssel**, and senior associate

**Ravi Vohra** are also involved in the case.

**Potter Anderson & Corroon LLP** has been tapped as the Committee's Delaware counsel. Partners **Christopher M. Samis**, **Aaron H. Stulman**, and associate **Elizabeth R. Schlecker** are the attorneys involved in the representation of the Committee.

**Province, LLC**, is the Committee's financial advisor. **Adam Rosen**, a principal with Province, heads the engagement.

### OWNER

**Cristine Pirro Schwarzman**, a restructuring partner in Ropes & Gray's New York office, is representing **TPG Growth III Management, LLC**.

### JUDGE

The Honorable **Laurie Selber Silverstein** is the case judge. □

# Special Report

## Bankruptcy Tax Specialists in the Nation's Major Law Firms

Firm	Senior Bankruptcy Tax Partners	Recent Representative Clients
<p><b>AKIN GUMP STRAUSS HAUER &amp; FELD LLP</b> New York, Washington, D.C., Houston, London, Dallas, Boston, and Los Angeles www.akingump.com Bankruptcy Tax Attys: 41</p>	<p>Stuart Alter Stephen Brown Alison Chen Ryan Dahan Menachem Danishefsky Olivier De Moor Matthew Durward-Thomas Patrick Fenn Serena Lee Brandon Morris David Snyder Josh Williams</p>	<p>Unsecured Creditors' Committees of Global Eagle Entertainment, Brooks Brothers, Diamond Offshore Drilling, Dean Foods, Intu Metrocentre Finance, Premier Oil Group, Purdue, Seadrill, Group, Valaris; Informal groups in Travelport, Aeromexico, J.C. Penney, PG&amp;E, CBL &amp; Associates Properties, Intelsat Jackson, Pacific Drilling, Foresight Energy, Frontera Holdings, CEC Entertainment Investment Managers for Centric Brands, Just Energy Group, Chesapeake Energy Corporation, Highpoint Resources Corporation Debtors FirstEnergy Solutions, Jonah Energy and Martin Midstream Partners Creditor Tyrus Capital Management, Mallinckrodt OCC, Kennedy Lewis Investment Management as bondholder in Tapstone Energy's restructuring</p>
<p><b>BAKERHOSTETLER</b> 21 offices in the U.S., including Atlanta, Chicago, Los Angeles, New York, Washington, D.C. www.bakerlaw.com Bankruptcy Tax Attys: 4</p>	<p>Jeff Paravano Michelle Hervey John Lehrer Betsy Smith</p>	<p>Limetree Bay Refinery; Dakota Plains; Nicklin Holdings (assisting with an avoidance action); Kalera; and Entrust Energy</p>
<p><b>BROWN RUDNICK LLP</b> New York, Boston, London www.brownrudnick.com Bankruptcy Tax Attys: 7</p>	<p>Nicole Bouchard Vincent Guglielmotti Rodney Bedow Tracy Fisher Barbara Kelly</p>	<p>Talc Claimants Committee in the Chapter 11 case of LTL Management LLC (Johnson &amp; Johnson); Unsecured Creditors Committee in the Chapter 11 case of BlockFi; Ad Hoc Committee of Convertible Unsecured Noteholders in the Chapter 11 case of Invacare; Fahrenheit in its successful bid to sponsor a Chapter 11 plan of reorganization for insolvent crypto lender Celsius Network; Unsecured Creditors Committee in the Chapter 11 case of Revlon Inc.; Governmental Plaintiffs Ad Hoc Committee in the Chapter 11 case of Mallinckrodt Pharmaceuticals; Opioid Master Disbursement Trust II (MDT II); Ad Hoc Committee of Consenting Governmental &amp; Other Contingent Litigation Claimants in the Chapter 11 case of Purdue Pharmaceuticals; Coalition of Abused Scouts for Justice in the Chapter 11 case of the Boy Scouts of America; Trustee of the PG&amp;E Fire Victim Trust, formerly Justice John K. Trotter (retired) and presently Cathy Yanni; Equity Security Holders Committee in the Chapter 11 case of Washington Prime Group; and Ad Hoc Committee of Unsecured Noteholders in the Chapter 11 case of Alpha LATAM</p>



# Special Report

## Bankruptcy Tax Specialists in the Nation's Major Law Firms

*Continued from page 16*

Firm	Senior Bankruptcy Tax Partners	Recent Representative Clients
<p><b>DAVIS POLK &amp; WARDWELL LLP</b> New York, London, Hong Kong www.davispolk.com Bankruptcy Tax Attys: 50</p>	<p>Neil Barr Jonathan Cooklin William A. Curran Michael Farber Lucy W. Farr Ethan R. Goldman Corey M. Goodman Michael Mollerus Kara L. Mungovan David H. Schnabel Patrick E. Sigmon Mario J. Verdolini</p>	<p>Various groups of ad hoc lenders; Cerberus South American Investments; Grupo Aeroméxico; Highbridge Capital; K&amp;N Engineering; Lone Star; Monitronics International; Neovia Logistics Holdings; Precigen; and Virgin Investments</p>
<p><b>GIBSON, DUNN &amp; CRUTCHER</b> Dallas, Houston, Los Angeles, London, Munich, New York, Orange County, Palo Alto, Washington, D.C. www.gibsondunn.com Bankruptcy Tax Attys: 57</p>	<p>Edward Wei Dora Arash Mike Cannon Matt Donnelly Pamela Endreny Kathryn Kelly Brian Kniesly Eric Sloan Jeff Trinklein Lorna Wilson Dan Zygielbaum</p>	<p>Creditors: Mallinkrodt, Diamond Sports Group, Aeromexico, Southern Graphics, Endo, Serta, Cytera, Diebold, Phoenix Services, National Cinemedia, Robertshaw</p> <p>Sponsor: IPC Systems</p> <p>Borrower: Southern Graphics</p>
<p><b>JONES DAY</b> New York, Boston, Dallas and Washington, D.C. www.jonesday.com Bankruptcy Tax Attys: 12</p>	<p>Edward Kennedy Sean Jackowitz Ben Jacobs Colleen Laduzinski Richard Nugent Stephen Parrinello Kelly Rubin</p>	<p>Borrowers/Debtors: Diebold Nixdorf, Inc.; Diocese of Rockville Centre; and LTL Management LLC (Johnson &amp; Johnson subsidiary).</p> <p>Creditors in: Intelsat; Morphe LLC/Forma Brands LLC; and Puerto Rico.</p>
<p><b>KIRKLAND &amp; ELLIS LLP</b> Chicago and New York www.kirkland.com Bankruptcy Tax Attys: 20</p>	<p>Thad Davis Todd Maynes Anthony Sexton Sara Zablotney</p>	<p>Cineworld Group, Bed Bath &amp; Beyond, David's Bridal, Nordic Aviation Capital, Avaya, Altera Infrastructure, Voyager Digital Holdings, Celsius Network, BlockFi, Carestream Health, Pipeline Health System, SiO2 Medical Products, Lannett Company, Whittaker Clark &amp; Daniels, HONX, Nautical Solutions, Nielsen &amp; Bainbridge</p>

# Special Report

## Bankruptcy Tax Specialists in the Nation's Major Law Firms

*Continued from page 17*

Firm	Senior Bankruptcy Tax Partners	Recent Representative Clients
<p><b>KRAMER LEVIN NAFTALIS &amp; FRANKEL LLP</b> New York www.kramerlevin.com Bankruptcy Tax Attys: 7</p>	<p>Barry Herzog Avi Reshtick</p>	<p>Unsecured Creditors' Committee of Brazos Electric Power Cooperative; Board of directors of Cineworld Group; Ad hoc group of first lien lenders to the Diamond Sports Group; Official Creditors' Committee in Endo Pharmaceuticals; Oppenheimer and Franklin Mutual as holders of PREPA bonds; Ad hoc committee of governmental entities holding opioid-related claims in Mallinckrodt; Ad Hoc Committee of 10 state attorneys general, six municipalities, the Plaintiffs Executive Committee and a Native American Tribe in the Purdue Pharma bankruptcy; and key multi-billion unsecured claimant group in LATAM Airlines Group</p>
<p><b>LATHAM &amp; WATKINS LLP</b> Chicago, Houston, Los Angeles, New York and Washington, D.C. www.lw.com Bankruptcy Tax Attys: 15</p>	<p>Bora Bozkurt Jim Cole Eric Kamerman Joseph Kronsoble Bryant Lee Jiyeon Lee-Lim Jocelyn Noll David Raab</p>	<p>AIG Financial Products; GTT Communications (Represented Ad Hoc Committee of GTT Noteholders); Imerys Talc America; Lincoln Power; Lumileds Holding; Mallinckrodt; MD Helicopters; Monitronics International; Packable Holdings; Paddock Enterprises; Sorrento Therapeutics; Starry Group Holdings; and Virgin Orbit Holdings</p>
<p><b>MCDERMOTT WILL &amp; EMERY</b> Chicago, Miami, New York, and Washington, DC www.mwe.com Bankruptcy Tax Attys: 8</p>	<p>Steve Hadjiligiou Gary Karch John Lutz Timothy Shuman Michael Silva Gregory Weigand Michael Wilder Daniel Zucker</p>	<p>Assisted corporate client reorganize debt in excess of \$1B that minimize adverse tax consequences; real estate developer deal with project lenders, including a debt-to-equity conversion; corporate defendant in mass tort to establish settlement fund to pay claims; and leading financial services company in connection with internal restructuring and related analysis of tax attributes resulting from its combination with a multinational investment bank &amp; financial services company</p>
<p><b>PAUL HASTINGS LLP</b> Chicago, Houston, London, and New York www.paulhastings.com Bankruptcy Tax Attys: 37</p>	<p>Joseph Opich Gary Silber Greg Nelson Ziemowit Smulkowski Arun Birla Jiten Tank</p>	<p>Quotient Limited; Official Committee of Unsecured Creditors of FTX; Ad Hoc Group of Diamond Sports Cross Holders; Secured Convertible Noteholders of Core Scientific; Ad Hoc Group of Digicel International Finance Limited; Ad Hoc Committee of Supporting Talc Counsel in LTL Management LLC; Ad Hoc Group of Output Services Group First Lien Lenders; Ad Hoc Noteholder Group of TPC Group; Davidson Kempner Management as 1L lender to Pipeline Health System LLC; Ad Hoc Group of United Road Services Lenders; Wahoo Fitness; Commonwealth of Puerto Rico creditors committee; and Eagle Hospitality creditors' committee</p>

# Special Report

## Bankruptcy Tax Specialists in the Nation's Major Law Firms

*Continued from page 18*

Firm	Senior Bankruptcy Tax Partners	Recent Representative Clients
<p><b>SCHULTE ROTH &amp; ZABEL LLP</b> New York www.srz.com Bankruptcy Tax Attys: 12</p>	<p>Alan Waldenberg Joseph Reich</p>	<p>Chapter 11 (Creditor): Forma Brands; Stanadyne; Corsicana Mattress; Tuesday Morning; and Compute North</p> <p>Out-of-Court Restructurings (Creditor): Ligado Networks; American Achievement Corp; Southern Graphics Inc.; WHIP Networks; Pegasus Home Fashions; Jack Cooper Holdings; Tegra Global; American Gilsonite; Associated Materials; Parfab; Gearbox Holdings; and Radienz Living</p>
<p><b>SKADDEN, ARPS, SLATE, MEAGHER &amp; FLOM LLP</b> Boston, Chicago, London, New York, Palo Alto, Washington, D.C. www.skadden.com Bankruptcy Tax Attys: 25</p>	<p>Edward Gonzalez Jessica Hough Alec Jarvis Alex Jupp David Polster Sarah Beth Rizzo Sean Shimamoto Paul Schockett Eric Sensenbrenner Royce Tidwell Gavin White Chase Wink</p>	<p>Endo Health Solutions; Genesis Healthcare; Markel CATCo Reinsurance Fund; Oaktree Capital Management (with respect to Neovia Logistics Services); The GEO Group; The Washington Group (with respect to Dominion Diamond Mining Mines ULC); and Ad Hoc Group of Noteholders (with respect to Voyager Aviation Holdings)</p>
<p><b>WEIL, GOTSHAL &amp; MANGES LLP</b> New York, Washington, D.C., Dallas www.weil.com Bankruptcy Tax Attys: 20</p>	<p>Noah Beck Devon Bodoh Greg Featherman Robert Frastai Stuart Goldring Mark Hoenig Jonathan Macke Graham Magill Joseph Pari Amy Rubin Paul Wessel</p>	<p>Debtors: All Year Holdings Limited; Evergreen Gardens Mezz LLC; American Dream; Arcade Beauty; iFIT Health &amp; Fitness; KServicing; LTL Management LLC; MediaMath Enterprises; NPC International; Phoenix Services Topco; Redbox Entertainment; Regis Corporation; Ruby Pipeline; Scandinavian Airlines System; Serta Simmons Bedding; and Talen Energy Supply</p> <p>Creditors: Universal Entertainment Corporation; Nordic Aviation Capital; Seadrill Limited; Nautical Solutions; Clovis Oncology; David's Bridal; and Unsecured Creditors' Committee of Cineworld</p>

# Worth Reading

## The Big Board

### A History of the New York Stock Market

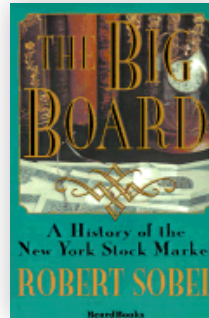
Author: Robert Sobel

Publisher: Beard Books

Soft cover: 395 pages

List Price: \$34.95

[Order This Book Online Now »](#)



First published in 1965, *The Big Board* was the first history of the New York stock market. It's a story of people: their foibles and strengths, earnestness and avarice, triumphs and crash-and-burns. It's full of entertaining anecdotes, cocktail-party trivia, and tales of love and hate between companies and investors.

Early investments in North America consisted almost exclusively of land. The few securities holders lived in cities, where informal markets grew, with most trading carried out in the street and in coffeehouses. Banking, insurance, and manufacturing activity increased only after the Revolution. In 1792, 24 prominent New York businessmen, for whom stock- and bond-trading was only a side business, met under a buttonwood tree on Wall Street and agreed to trade securities on a common commission basis. Five securities were traded: three government bonds and two bank stocks. Trading was carried out at the Tontine Coffee-House in a call market, with the president reading out a list of stocks as brokers traded each in turn.

The first half of the 19th century was heady for security trading in New York. In 1817, the Tontine gave way

to the New York Stock and Exchange Board, with a more organized and regulated system. Canal mania, which peaked in the late 1820s, attracted European funds to New York and volume soared to 100 shares a day. Soon, the railroads competed with canals for funding. In the frenzy, reckless investors bought shares in "sheer fabrications of imaginative and dishonest men," leading an economist of the day to lament that "every monied corporation is prima facie injurious to the national wealth, and ought to be looked upon by those who have no money with jealousy and suspicion."

Colorful figures of Wall Street included Jay Gould and Jim Fisk, who in 1869 precipitated one of the worst panics in American financial history by trying to corner the gold market. Almost lynched, the two were hauled into court, where Fisk whined, "A fellow can't have a little innocent fun without everybody raising a halloo and going wild." Then there was Jay Cooke, who invented the national bond drive and, practically unaided, financed the Union effort in the Civil War. In 1873, however, faulty judgement on railroad investments led to the failure of Cooke & Co. and

a panic on Wall Street. The NYSE closed for ten days. A journalist wrote: "An hour before its doors were closed, the Bank of England was not more trusted."

Despite J. P. Morgan's virtual single-handed role in stemming the Knickerbocker Trust panic of 1907, on his death in 1913, someone wrote "We verily believe that J. Pierpont Morgan has done more harm in the world than any man who ever lived in it." In the 1950s, Charles Merrill was instrumental in changing this attitude toward Wall Streeters. His firm, Merrill Lynch, derisively known in some quarters as "We, the People" and "The Thundering Herd," brought Wall Street to small investors, traditionally not worth the effort for brokers.

*The Big Board* closes with this story. Asked by a much younger man what he thought stocks would do next, J.P. Morgan "never hesitated for a moment. He transfixed the neophyte with his sharp glance and replied 'They will fluctuate, young man, they will fluctuate.' And so they will."

#### About The Author

*Robert Sobel died in 1999 at the age of 68. A professor at Hofstra University for 43 years, he was a prolific historian of American business, writing or editing more than 50 books. □*

**This book may be ordered by calling 888-563-4573 or by visiting [www.beardbooks.com](http://www.beardbooks.com) or through your favorite Internet or local bookseller.**



# Special Report

## U.S. Turnaround and Restructuring Firms With European Offices

Firm	Senior Professionals	Recent Representative Clients
<p><b>ALIXPARTNERS, LLC</b> 25 offices in the Americas, Europe, and Asia Tel. 44 20 7098 7400 www.alixpartners.com</p>	<p>Joff Mitchell Jim Mesterharm Alastair Beveridge Anthony Place Axel Schulte Clare Kennedy Jens Haas Lorenzo Pietromarchi Michael Baur Rainer Bizenberger Simon Appell Stelios Fragkos</p>	<p>Cineworld; CQS; Elvia PCB; Hunter Boot; Indigo Michael; International Banking Corp.; Petropavlovsk; Petropavlovsk plc; SMCP; Trussardi; and Wittur</p>
<p><b>ALVAREZ &amp; MARSAL EUROPE</b> 31 offices across Europe, including HQ in London Tel. 44 207 715 5200 www.alvarezandmarsal.com</p>	<p>Antonio Alvarez III Richard Fleming Roger Bayly Mike Corner-Jones Mark Firmin Paul Gilbert Paul Kirkbright Alex Lawson Julio Manero Tim Metzgen Johann Stohner Rudolph Thomeer</p>	<p>NMC Healthcare; Avro Energy Limited - Administrators; The Infrastructure and Growth Capital Fund LP; Igloo Energy Supply Limited; Orbit Energy Limited; People's Energy (Supply) Limited; Utility Point Ltd; Yandex NV; Schur Flexibles; PFP Energy Limited; MJ Hudson Group; Luckin Coffee Inc; Ozon Holdings plc; and Railsbank Technology Ltd</p>
<p><b>BDO</b> London Tel. 44 020 7486 5888 www.bdo.co.uk</p>	<p>Mark Shaw Ed Higgs Malcolm Cohen Mike Grime Martha Thompson Matthew Tait Tony Nygate Shane Crooks Matthew Chadwick</p>	<p>Unilever Australia Services; Sameric; Star Financial Systems; Brook House Hops Ltd; Rachel Securities; Fosse Bank School; IG Interactive Entertainment; Stirling Holiday Lets; Padworth Vehicle Recyclers; Bluefin Insurance Services; NCK Construction; Straightline Beef; and Thomson Utility Solutions Ltd</p>

# Special Report

## U.S. Turnaround and Restructuring Firms With European Offices

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Firm	Senior Professionals	Recent Representative Clients
<p><b>EY-PARTHENON TURNAROUND AND RESTRUCTURING STRATEGY</b> 300+ locations across Europe Tel: 44 20 7951 2000 www.ey.com/restructuring</p>	<p>Falco Weidemeyer Alan Hudson Jo Robinson Milan Knarse Andreas Warner Gunnar Gerig Alessandro Frezza Dolf Bruins Slot Alex Soler-Lluro Borrell Nuno Silva Guillaume Cornu Ben Trask</p>	<p>Lifeways Group; UKCloud Ltd (in Liquidation); Power by Britishvolt Limited (in Administration); Vroon Group B.V.; CF Industries; SGM Smit; Amigo PLC; Provident Financial plc; East West Insurance; CX Reinsurance; China Fortune Land Development; a syndicate that included ING, Rabobank, PNC and ABN AMRO; Expo City Dubai; and Bogner</p>
<p><b>FTI CONSULTING</b> 20+ offices in 10 countries across Europe Tel: 44 20 3727 1000 www.fticonsulting.com</p>	<p>Adam Bradley Matt Callaghan Nick Carmichael Iain Graham Paul Inglis John Maloney David Morris Duncan Turner Diederick Van Der Plas Sergio Velez Andreas Von Keitz</p>	<p>Cannon Capital Developments; Ultramar Energy Ltd; Eclipse Communications Germany GmbH; Mapeley Steps Properties; Keyair Limited; Gieves &amp; Hawkes; Heref Berwick House; Cote Kitchens; Mapeley Investment Group; and 5 Churchill Place Management Company</p>
<p><b>GRANT THORNTON UK LLP</b> London Tel: 44 20 7383 5100 www.grantthornton.co.uk</p>	<p>Kevin Hellard Shaun O'Callaghan Nick Wood Chris Laverty Hugh Dickson Daniel Smith Kevin Coates Senthil Alagar Bradley Chadwick Philip Stephenson</p>	<p>Evro Football Pro Ltd; IHS Markit Global Funding; Ipreo Capitalbridge Ltd.; Amira Nature Foods; AB Consolidated Investments Ltd; Versant Hotels Limited; Amaze Communication Services; Brunel Group Holdings; Yes Recycling (Fife) Ltd; Kershaw Group; Insuletics Limited; Symbio Europe; Capital Lease Solutions; Four Seasons (Bamford); Frank's Ice Cream; Travel Claims Services; Industrial Door Services (Scotland); and CZ Capital LLP</p>

# Special Report

## U.S. Turnaround and Restructuring Firms With European Offices

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Firm	Senior Professionals	Recent Representative Clients
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