

# Turnarounds & Workouts

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## Bankruptcy Guru Recognized for Prediction Model

by Jeffrey Adam Baxt

People often ask Dr. Edward I. Altman, Ph.D., this year's recipient of the Harvey R. Miller Outstanding Achievement Award for Service to the Restructuring Industry, how he came up with the name for his Z-Score formula for predicting the probability of bankruptcy. The Z, he said, does not stand for Zero.

"The Z is a very common value used in statistics," explained Dr. Altman, the Max L. Heine Professor of Finance at the Stern School of Business at New York University (NYU), citing the Z test and Z ratio in statistics. "Also, I liked it was the last letter of the alphabet. Some people say why didn't you call it the A score or similar to my name, but I never thought it was going to last past my dissertation.

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## Business Judgment Standard Enough to Hire Advisors, Delaware Judges Agree

by Christopher Patalinghug

The U.S. Bankruptcy Court for the District of Delaware recently authorized three bankrupt retailers to hire liquidators outside the purview of 11 U.S.C. § 327(a):

(a) The Hon. Kevin J. Carey on September 18, 2018, authorized Samuels Jewelers, Inc., to retain the joint venture of Gordon Brothers Retail Partners and Hilco Merchant Resources, LLC, as consultants in connection with the debtor's store closing sales;

(b) The Hon. Kevin Gross permitted Heritage Home Group LLC, and its affiliated debtors on September 27, 2018, to engage SB360 Capital Partners, LLC as consultants to assist them in the sale of their "Non-Luxury Group" assets; and

(c) The Hon. Brendan Linehan Shannon on October 1, 2018, permitted Brookstone Holdings Corp. to employ Gordon Brothers Retail Partners, LLC and

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*Altman, from page 1*

I never thought it as an identification with the Altman Z-score. So I just thought it as, I've got to give it a name, and I chose Z. The main reason was I had seen it a couple of times in the statistics world and rather than call it X or Y, which is traditional in regression, I called it Z."

"That is, of course, probably the piece of work I'm known for and the one that catapulted me in my career in distressed debt, high-yield bonds, and credit risk in general," he said.

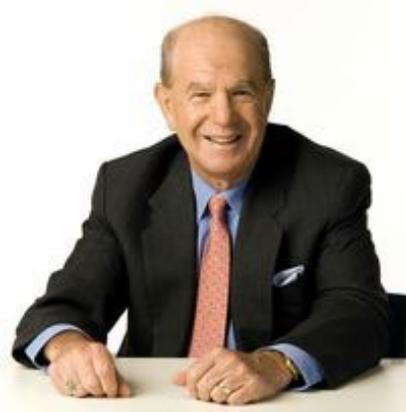
This year marks the 50th anniversary of Prof. Altman establishing a model that attempts to predict corporate bankruptcy in advance by two years.

The Miller Award, named after Altman's late friend and colleague, will be presented to him Monday, Nov. 26th at the 25th annual Distressed Investing Conference in midtown Manhattan in NYC. Miller, who died in 2015, was widely credited with developing the modern practice of bankruptcy law. The award will be presented by Marc Lasry of Avenue Capital Management, last year's recipient.

Dr. Altman has an international reputation as an expert on corporate bankruptcy, high yield bonds, distressed debt and credit risk analysis. He is the Director of Research in Credit and Debt Markets at the NYU Salomon Center for the

Study of Financial Institutions. He previously chaired the Stern School's MBA Program for 12 years, and was named to the Max L. Heine endowed professorship at Stern in 1988.

Born in Bronx, NY, in the shadow of Yankee Stadium, Prof. Altman graduated from the City College of New York with a BA degree in Economics in 1963. He then went on to pursue an MBA and Ph.D. in Finance from UCLA's School of



**Professor Dr. Edward I. Altman**

Professor of Finance, Emeritus,  
New York University's Stern  
School of Business

2018 Recipient of the Harvey R.  
Miller Outstanding Achievement  
Award for Service to the  
Restructuring Industry

Business, receiving his Doctorate in 1967, the same year he married his wife, Elaine Karalus. In 1973, their son, Gregory, was born in Paris, France, where he was serving as a Visiting Professor of Finance at Hautes Etudes Commerciales from 1971 to early 1973. His personal interests include golf and supporting

the education of young classical musicians.

It was during his years at UCLA that one of his professors, J. Fred Weston, recommended bankruptcies as an area of study, and Dr. Altman became "turned on" by the aspect of predicting corporate health and bankruptcy.

T&W recently talked with Prof. Altman about teaching, his interest in bankruptcy, and his thoughts on receiving The Harvey:

**T&W:** Was it because of your interest in predictions that you devised the Z-Score?

**Professor Altman:** That's right! At that time, there were a number of methodologies but very traditional using ratio analysis and credit analysis in general to assess the likelihood of default, nothing very rigorous and nothing holistic in terms of the firm's entire operations. I adapted what I could of the existing literature and got fascinated by the info content of the counting numbers, enhanced by statistical techniques and that kind of propelled the idea. Back then, bankruptcy was a pretty isolated event and very rarely did you find a firm with \$25 million in assets going bankrupt! So all my sample size (66 firms) was relatively small and all manufacturing firms; I wanted to concentrate on that. Since then, I've expanded out and others have, too.

*Altman, from page 2*

What was lucky was that even with that small sample, the model that we built seems to have stood the test of time and is still used today more than any other model, even though it's an old model. Somehow it's remained robust. And of course, I've built on them, and being models more robust and representative, I've also adapted the original scores to determine the elusive holy grail. That is not just bankruptcy prediction per se, but the probability of it happening, because it's not black and white; a company has certain attributes, but the likeliness of them going under is not 100 percent of zero.

But that is what it was back then, until we developed models and techniques to take the Z-score and use it as a determinate of the probability default. All the ratings agencies

**This year marks the 50th anniversary of Professor Altman establishing a model that attempts to predict corporate bankruptcy in advance by two years.**

adapted it, all the banks use it, so it's become really quite pervasive throughout the financial industry.

**T&W:** What got you into the field of economics and finance?

**Prof. Altman:** Another of my role models is my brother, Stuart, (also an economist) who's four years older and we've been very close for a long time. I was an undergrad at CCNY in Harlem and he went to the Baruch school downtown, and then he went out to UCLA for his Ph.D. I visited him one summer, and fell in love with what was going on (at UCLA). When I went to UCLA, I began to specialize in corporate finance, and then got turned on by the bankruptcy area when I was looking for a doctoral dissertation and the rest is history.

**T&W:** How do you feel about getting the award named for your late friend and colleague?

**Prof. Altman:** It's very special and I'm honored to receive it. For a long time we knew of each other. I remember back in 1990, the first time when Eastern Airlines was being reorganized, even then he had a stellar reputation but we didn't have a relationship, though he was critical of academics in general. I was an exception, but he was critical that they really didn't understand the issues and he really came down hard on them. For a while, he was an austere figure and of course his reputation grew. Then there was a conference at Columbia where we were each on a panel, and we met. Gosh, I was really impressed with him, and then I began inviting him to be a guest speaker

in my class, and the students were enraptured. So then I began inviting him out to dinner, and then he would invite my wife and me to the opera; he was a great opera aficionado. And then, and not always on the same side of the fence, we would debate both publicly and privately, the role of hedge funds and non-traditional investors in debt and their role in the Chapter 11 bankruptcy process, and he would be very critical of them. I would advise hedge funds and I saw them in action, but also I realized the important role hedge funds have played in the distressed debt, so I would be more on the defense side of hedge funds. I also remember we locked horns a couple of times in the American Bankruptcy Institute's

**Altman has an international reputation as an expert on corporate bankruptcy, high yield bonds, distressed debt and credit risk analysis.**

deliberation on what's wrong and what's right with the Chapter 11 code.

**T&W:** Why did you focus on teaching rather than another career in economics and finance?

**Prof. Altman:** There were a couple of motives, and one of them was not, let's say, very high level. When I was a grad student at UCLA it was during the Vietnam War and I was 24 and

*Altman, from page 3*

got my MBA first. When you're 24, even with an MBA, you were going to be drafted or at least eligible to be drafted. At the same time, I got bitten by the research bug and I enjoyed it, and I said, if I go on for my Ph.D. I'll still have a student deferment. The Ph.D. is usually a ticket to either research and teaching or some people use it to be a practitioner base for consulting; very rarely do you find Ph.D.s becoming practitioners, and hedge funds weren't really relevant and important when I got my degree. The best and brightest who went into industry went into working in corporate finance at General Motors; Ford; IBM; General Dynamics and the airlines, and after that, investment banking got really attractive and then consulting. So when I got my degree, I was 26 and not eligible to be drafted, which worked out great, and then I had to get a job and had gotten married at the same time. So most of the people who went into Ph.D. went into teaching. So I said why not, and I got a job at NYU, which I'm still at.

In 1981, I was approached by a headhunter with a job description and they asked me if I knew anybody who might be interested in this job, and it was at an investment bank that turned out to be Morgan Stanley, in a new department for them, called credit risk. I saw the job description and thought it was fantastic. And the headhunter said, 'would you be interested?' 'Well, maybe, let me

think about it. I was contemplating all the extra zeros in my salary but I decided I didn't want to change my lifestyle and I didn't want to work for somebody else, but I was really fascinated by the job description.

So I asked if I could talk to the person who wrote it; turned out it was someone who knew me; used to be on the faculty who was now the head of fixed income research, and he said, 'Would you be interested (instead) in a consulting assignment? We're trying to make a decision about

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whether we want to get into this new market, high yield junk bonds, from an underwriting, reading and research standpoint; would you be willing do a kind of a white paper on the risk and rerun attributes?' This is when Drexel and Milken were starting out; Lehman and Bear Sterns were involved a little bit but no one else and it was considered a dirty area to get involved in. But I looked at it, did a lot of research, built some databases, and then published a bunch of stuff, and that really resonated with the market and I became one of the few, but certainly the first, academic writing

about high yield bonds. So being first is far more important than being brilliant; you've got to be decent and have a reputation to have a credible paper, but being first is important in terms of staking out an area in research, as well as staking out an area of a practitioner.

**T&W:** What do you find most enriching about teaching?

**Prof. Altman:** Well, I've been teaching for a long time; I still love it and haven't lost my enthusiasm for teaching. That is why even though I'm emeritus, I still continue to teach as an adjunct one course a year. It's fantastically energizing, I find, both in terms of motivating me to keep up with stuff in my field and it really adds energy to my other work, so it complements it really well. Plus, NYU students are just fantastic; they're hungry to learn; they're not arrogant like some at other business schools are, and they're very appreciative.

But I must tell you my favorite teaching is not at the undergrad or graduate level, it's the executive (level) because these people bring experience and (I) learn from them, hopefully, as much or more than they get from me. So I'd say the executive teaching, and that's what I like the best, is the most enriching part and that's why I like giving speeches at conferences.

It's been a great experience for 51 years. ☐

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# Distressed Investing 2018

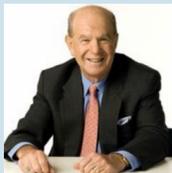
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# Research Report

## Who's Who in The NORDAM Group's Bankruptcy Cases

by Carlo Fernandez

**T**he NORDAM Group is an independently owned aerospace company based in Tulsa, Oklahoma.

Founded in 1969, the firm designs, certifies and manufactures integrated propulsion systems, nacelles and thrust reversers for business jets; builds composite aircraft structures, interior shells, custom cabinetry and radomes; and manufactures aircraft transparencies, such as cabin windows, wing-tip lens assemblies and flight deck windows.

The company's manufacturing business employs 1,250 people in five facilities across three countries: three facilities in Tulsa, Oklahoma; one facility in Chihuahua, Mexico; and one facility in Altrincham, England, United Kingdom.

NORDAM also is a major third-party provider of maintenance, repair and overhaul services to the military, commercial airline and air freight markets.

Facing \$285.9 million in funded debt, The NORDAM Group, Inc., and four affiliates filed for Chapter 11 protection (Bankr. D. Del. Lead Case No. 18-11699) on July 22, 2018. The debtor-affiliates are Nacelle Manufacturing 1 LLC, Nacelle Manufacturing 23 LLC, PartPilot LLC, and TNG DISC, Inc.

NORDAM's foreign subsidiaries and affiliates have not filed for bankruptcy protection in the U.S. or in their home jurisdictions.

NORDAM's bank lenders agreed to provide additional funding to ensure operations continue uninterrupted during the restructuring process.

NORDAM CEO Meredith Madden said the Chapter 11 filing follows a long contract dispute with Pratt & Whitney Canada Corp. NORDAM in October 2010 had entered into a Purchase Agreement for Nacelle Hardware Products (the "LTPA"), with P&W to establish a program for designing, manufacturing, and integrating specialized Nacelle Systems with Podding as part of the PW800 Program that would be installed in the G500 and G600 aircraft that Gulfstream Aerospace Corporation had been developing.

Unanticipated costs connected with the program led NORDAM to spend more than \$200 million on the program, a move that jeopardized overall performance.

NORDAM in late September won approval from the bankruptcy court of a global agreement which provides for GAC's acquisition of NORDAM's interest in the program, will immediately restart the program and grant a sale of program assets from NORDAM to GAC in exchange for GAC's assumption of \$18 million of third-party vendor and contract counter-party liabilities and a series of mutual releases terminating all disputes among NORDAM, Pratt & Whitney, and GAC with respect to

the program.

As it eliminates potentially the largest contingency in the chapter 11 cases—namely, the treatment of claims arising from or related to the LTPA, NORDAM said the deal will lead to a Chapter 11 reorganization that will provide "substantial (if not complete) recoveries for all creditors."

### DEBTORS

**Huron Consulting Group** is the debtors' restructuring advisor. **John C. DiDonato**, managing director at **Huron Consulting Services LLC** and practice leader of the business advisory practice with Huron, has been appointed as chief restructuring officer in connection with the commencement of the Chapter 11 cases. Huron senior director **Matt Fisher** and directors **Brett Anderson** and **Mark Western** are serving as deputy CROs.

**Weil Gotshal & Manges LLP** is counsel to the debtors. **Ryan Preston Dahl**, partner at the firm, heads the engagement. Business Finance & Restructuring Department co-chair **Ray C. Schrock, P.C.**, and counsel **Jill Frizzley** are also involved in the case.

**Richards Layton & Finger, P.A.**, is serving as bankruptcy co-counsel to the debtors. **Daniel J. DeFranceschi**, director, heads the engagement. Other professionals designated to represent

# Research Report

## Who's Who in The NORDAM Group's Bankruptcy Cases

*Continued from page 6*

the debtors are director **Paul N. Heath** and associates **Brett M. Haywood** and **Megan E. Kenney**.

**Guggenheim Securities, LLC**, is the investment banker. **Ronen Bojmel**, a senior managing director at Guggenheim, leads the engagement.

**Davis Graham & Stubbs LLP** is special counsel to the debtors, rendering non-bankruptcy aviation, corporate, and litigation legal services. **Albert J. Givray**, partner, leads the engagement and is serving as general counsel to NORDAM as part of the engagement.

**Grant Thornton LLP** is providing accounting, tax and audit services. **Denece Van Pelt**, managing director of the firm, leads the engagement.

**Epiq Corporate Restructuring, LLC**, is the claims agent and administrative advisor. The Epiq team is comprised of senior case manager **Tim Conklin**, consulting services director **Angela Tsai**, and case manager **Joseph Saraceni**.

### LENDERS

**Simpson Thacher & Bartlett LLP**, led by partner **Elisha D. Graff**, and counsel **Nicholas Baker**, is representing **JPMorgan Chase Bank, N.A.**, as administrative agent for the lenders providing the \$45 million DIP financing and the prepetition secured lenders under the fully-drawn secured revolving credit

facility in an outstanding principal amount of \$266.5 million. Aside from JPMorgan, the lenders include **Bank of America N.A.**, **Citibank, N.A.**, and **HSBC Bank**.

**DLA Piper LLP (US)**, led by partner **R. Craig Martin**, represents **Cherokee Partners LLC**, **East Plant Investment LLC**, and **Eight Partners LLC**, which are owed \$19.2 million of principal under a promissory note. The VIE Note bore annual payment-in-kind (PIK) interest at the prime rate and matured on June 18, 2018.

### UNSECURED CREDITORS

Andrew Vara, acting U.S. trustee for Region 3, appointed an official committee of unsecured creditors, comprising of **Hexcel Corporation**, **Infosys Limited**, **Cytec Engineering Materials, Inc.**, **KLX, Inc.**, **Pryer Aerospace LLC**, **Eaton Corporation**, and **TNT Machine, Inc.** Gail E. Lehman of Hexcel Corporation is chairperson of the committee.

**Morrison & Foerster LLP** is primary bankruptcy counsel to the creditors' committee, with the engagement led by **Lorenzo Marinuzzi**, partner. Partners **Jonathan I. Levine** and **Todd M. Goren** are also involved in the case.

**Cole Schotz P.C.** is serving as Delaware co-counsel and conflict counsel to the committee. **Norman**

**L. Pernick**, member, leads the engagement. Other attorneys primarily responsible for representing the committee are members **J. Kate Stickles** and **Daniel F.X. Geoghan**, and associates **Krista L. Kulp** and **Katherine M. Devanney**.

**Jefferies LLC** is the committee's investment banker. **Leon Szelesinger**, managing director and joint global head of Restructuring & Recapitalization at Jefferies, heads the engagement.

**Zolfo Cooper, LLC**, is the committee's bankruptcy consultant and financial advisor. **David MacGreevey** is the managing director who will be responsible for the engagement.

### SETTLEMENT PARTIES

**King & Spalding LLP**, led by partners **Sarah R. Borders** and **Timothy M. Fesenmyer**, is representing **Gulfstream Aerospace Corporation**.

**Wachtell, Lipton, Rosen & Katz**, led by of counsels **Philip Mindlin** and **Douglas K. Mayer**, and corporate partners **Joshua R. Cammaker** and **Victor Goldfeld**, is representing **Pratt & Whitney**.

### JUDGE

The **Honorable Mary F. Walrath** is the case judge. □

## *Delaware, from page 1*

Hilco Merchant Resources, LLC, as consultants in connection with the company's own store closing sales.

The Court entered the approval orders amid opposition from the Office of the U.S. Trustee for Region 3 to the seemingly backdoor manner by which the firms were being engaged.

### *In re Samuels Jewelers, Inc.* **Hiring via Assumption of Consulting Deal**

Austin, Texas-based Samuels Jewelers, which operates a chain of more than 120 jewelry stores in 23 states across the United States, sought Chapter 11 protection (Bankr. D. Del. Lead Case No. 18-11818) on August 7, 2018, after its owner got embroiled in a multi-billion dollar bank fraud. In its bankruptcy petition, the Company estimated between \$100 million and \$500 million in both assets and liabilities, including \$84 million owed to Wells Fargo Bank and \$10 million to GB Credit Partners.

Samuels Jewelers sells fine jewelry items in a wide range of styles and prices, with a principal emphasis on diamond and gemstone jewelry, and has been serving jewelry customers since its founding in 1891. Then known as Barry's Jewelers Inc., the Company filed for bankruptcy in 1992 and then in 1997. The Company exited bankruptcy the following year and changed its name to Samuels Jeweler. It again sought bankruptcy protection in 2003 and emerged as a

private entity the next year, with DDJ Capital Management LLC owning a majority stake in the reorganized company. India's Gitanjali Gems Ltd. acquired the Company in 2006.

Early this year, Punjab National Bank in India filed a complaint against Mehul Choksi, chairman of Gitanjali Gems, and his nephew, fashion jeweller Nirav Modi, over \$1.77 billion in alleged fraudulent transactions. Both men are wanted by Indian authorities. Robert J. Duffy, Samuels Jewelers' restructuring executive, has said in bankruptcy court filings that Choksi stepped down from the Company's board of directors after the fraud allegations surfaced.

Samuels Jewelers mulled closing more than 100 stores as part of its bankruptcy. To bring liquidators on board, the Company sought and obtained authority from the Court to assume a consulting agreement entered prior to the petition date by and between Samuels Jewelers and a contractual joint venture comprised of Gordon Brothers Retail Partners, LLC and Hilco Merchant Resources, LLC. Gordon Brothers and Hilco beat out the tandem of Tiger Capital Group, LLC, and Great American Group, LLC, for the rights to sell Company assets. Samuels Jewelers says both factions contemplated asset disposition consulting agreements, which typically provide—in contrast to other agreements in which disposition firms take on all costs and responsibilities of managing closing sales and in return pay a

guaranteed percentage of the cost of sold merchandise—that, for an agreed upon fee, an asset disposition firm will give advice and assistance regarding any store closing sales and provide management oversight for the sales, but the asset disposition firm will not take on all costs and responsibilities of the sales. The Consulting Agreement dated June 29, 2018, includes a “fiduciary out” provision that allows the Company to terminate the deal to pursue, among other things, a going-concern or partial going-concern sale, so long as the Company terminates the Consulting Agreement “prior to the point at which Consultant has materially performed” its obligations. The joint venture is entitled to receive payment of all fees earned, all reimbursable expenses incurred, all so-called Additional Consultant Goods sold before the effectiveness of such termination, and any other amounts incurred to the joint venture under the agreement prior to termination.

Samuels Jewelers contends that assumption of the Consulting Agreement must be approved in accordance with 11 U.S.C. § 365(a). Lawyers at Richards, Layton & Finger, P.A., led by Daniel J. DeFranceschi and Zachary I. Shapiro; and Jones Day, led by Gregory M. Gordon, Amanda S. Rush, Jonathan M. Fisher and Paul M. Green, which represent the Company, remind the Court that the standard governing bankruptcy court approval of a debtor's decision to assume or reject an executory contract or unexpired lease is whether the

**Delaware, from page 8**

debtor's reasonable business judgment supports assumption or rejection. They contend that "assumption of the Consulting Agreement is beneficial to the Debtor's estate, and therefore is a reasonable exercise of the Debtor's business judgment" and "will enable the Debtor to utilize the skills and resources of the Consultant to effectively and efficiently conduct the Inventory Sales for the benefit of all stakeholders." They note that the Company's prepetition secured lenders and DIP lenders "support the assumption of the Consulting Agreement and recognize the benefits provided to the estates."

***In re Heritage Home Group LLC, et al.*****Hiring via Entry into Disposition Agreement**

Heritage Home Group, which designs, manufactures, sources and retails home furnishings, filed for Chapter 11 protection (Bankr. D. Del. Lead Case No. 18-11736) on July 29, 2018, listing \$100 million to \$500 million in both assets and liabilities in its petition. The Company sought and obtained Court authority to enter into a disposition agreement with SB360 Capital Partners in accordance with the business judgment standards of 11 U.S.C. § 363(b). SB360 would assist in the sale of inventory, furniture, fixtures and equipment, and raw materials at the retail locations and distribution centers of the Debtors' so-

called Non-Luxury Group, consisting of the Broyhill, Thomasville, Drexel, Drexel Heritage and Henredon businesses.

Three firms—SB360 Capital; a joint venture composed of Great American Group and Tiger Capital Group; and a joint venture of Hilco Merchant Resources and Gordon Brothers Retail Partners—had submitted proposed asset disposition agreements and the Company, in consultation with the secured lenders, chose SB360 because HHG IPCo, LLC, a newly formed entity affiliated with SB360 and Authentic Brand Group, simultaneously entered into an asset purchase agreement to serve as the stalking horse bidder for the intellectual property assets of the Non-Luxury Group.

Lawyers at Young Conaway Stargatt & Taylor, LLP, led by Pauline K. Morgan, Kenneth J. Enos, Jaime Luton Chapman, Ashley E. Jacobs and Shane M. Reil, who represent Heritage Home, assert that "ample business justification exists for entry into the Disposition Agreement," and retaining the services of SB360 "will ensure that those inventory sales are conducted in a manner that creates the highest return for the Debtors' estates." Robert D. Albergotti, Managing Director in the Global Turnaround and Restructuring Group of AlixPartners LLP, an affiliate of AP Services, LLC, and the Interim Chief Financial Officer and Chief Restructuring Officer of Heritage Home, says, "the inventory sales will require extensive preparation

and coordination," and the Debtors "do not possess the necessary resources in-house to coordinate such measures on a company-wide scale" so "it is imperative that the Debtors have access to the services of an experienced disposition firm to plan for and assist with the inventory sales." The Debtors also note that, as a result of SB360's selection as asset disposition advisor, HHG IPCo, LLC has agreed to increase the proposed purchase price for the IP Assets.

***In re Brookstone Holdings Corp., et al.*****Hiring via Assumption of Closing Store Deal**

Brookstone Holdings Corp. and several affiliates filed for Chapter 11 (Bankr. D. Del. Lead Case No. 18-11780) on Aug. 2, 2018, the gifts and gadgets retailer's second in four years. Brookstone, which was founded in 1965, made a 13-week trip to the bankruptcy court from April to July 2014 to sell the business to a consortium of Chinese investors led by Sailing Capital and conglomerate Sanpower Group. The consortium acquired the Company's 240 stores for \$137.5 million, net of cash and assumed liabilities, outbidding Spencer Spirit Holdings Inc., an American specialty retailer, that served as stalking horse. Amid declining sales, Brookstone sought bankruptcy protection anew to close its remaining 101 mall store locations, and seek a buyer for its airport,

## *Delaware, from page 9*

e-commerce and wholesale business divisions. The Company listed \$50 million to \$100 million in assets and \$100 million to \$500 million in liabilities in its petition.

To bring liquidators on board, Brookstone sought and obtained Court authority to assume an August 1 closing store agreement with Gordon Brothers Retail Partners and Hilco Merchant Resources in accordance with the Code's Section 365(a). Lawyers at Young Conaway Stargatt & Taylor, LLP, led by Michael R. Nestor, Sean M. Beach and Andrew L. Magaziner; and Gibson, Dunn & Crutcher LLP, led by Matthew J. Williams, David M. Feldman, Matthew K. Kelsey, Keith R. Martorana and Jason Zachary Goldstein, argue that the Debtors have satisfied the "business judgment" standard and have a sound business reason for seeking to assume the Closing Store Agreement, and that assumption of the Closing Store Agreement "will allow the Debtors to engage the Liquidation Consultant, on a postpetition basis, to manage the Closing Sales at the designated Closing Stores."

### **Similar Language**

The agreements entered into by each of the Debtors outline similar tasks for the liquidators—called Consultants in the Debtors' court pleadings. Among other services, the Consultants recommend appropriate

discounting, point-of-purchase, point-of-sale, and other internal and external advertising; provide qualified supervision to oversee the conduct of the inventory sales; maintain communication with the sale location employees and managers; establish and monitor accounting functions for the inventory sales; recommend loss prevention strategies; recommend appropriate staffing levels and bonus and incentive programs (to be funded by the Debtors); assist the Debtors to commence the inventory sales as a "store closing," "sale on everything," "everything must go," or such other themed sale approved by the Debtors and the Bankruptcy Court; assist the Debtors in the scheduling and allocation of inventory delivery; and preserve and protect the value of intellectual property. In return, the Consultants would be paid a percentage of merchandise sales and furniture, fixture and equipment, plus incentives and reimbursement of certain expenses according to a budget. The agreements also provide mutual indemnification.

Both Samuels Jewelers and Brookstone disclosed that Gordon Brothers Retail Partners' parent company, Gordon Brothers Group, owns a minority interest in, has certain contractual relationships with, and from time to time may provide contractual services to, Gordon Brothers Finance Company in the ordinary course of its business. GB Finance is a secured lender to each of these Debtors.

### **Procedurally Improper**

The United States Trustee lodged virtually the same objection to each of the Debtors' motions. Essentially, the U.S. Trustee tells the Court it does not have an objection *per se* to the Debtors exercising their business judgment to conduct the asset sales; it balks at the way the Debtors are bringing in liquidators. Andrew R. Vara, the Acting United States Trustee for Region 3, says the Debtors should be filing a retention application under § 327(a) of the Bankruptcy Code and Bankruptcy Rule 2014. The U.S. Trustee contends that the liquidators' work "strongly resembles activities of an auctioneer, which is one of the four specifically enumerated professionals for which the trustee or debtor-in-possession must seek court approval to retain under section 327(a)" and that the Debtors are seeking approval "of a pure agency relationship in which the Consultant never takes title to any of the assets. Because the Consultant is serving purely as a professional liquidating estate assets as part of a public sale process, the Consultant's retention must be reviewed and approved under section 327(a) and Federal Rule of Bankruptcy Procedure 2014." To properly be retained under section 327, the U.S. Trustee contends the Consultant must submit a section 327(a) application; submit a declaration of disinterestedness pursuant to Federal Rule of Bankruptcy Procedure 2014;

## Delaware, from page 10

actually be disinterested; disclose its fees; and have its fees subject to court approval. The U.S. Trustee also argues that section 363 may provide authority to proceed with the contemplated sales, but it does not provide authority to engage and compensate the putative “exclusive agent.”

The U.S. Trustee reminds the Court that Judge Martin Glenn in *In re Borders Group, Inc.*, 453 B.R. 477, 485 (Bankr. S.D.N.Y. 2011), articulated a clear rule that even for *de minimis* asset sales, brokers, auctioneers, and liquidators need to file section 327(a) applications. “Here, where the inventory sales are a key component of their restructuring strategy, the Consultant should certainly file a section 327(a) application,” the U.S. Trustee says.

The U.S. Trustee also leans on *In re First Merchants Acceptance Corp.*, No. 97-1500, 1997 WL 873551 (D. Del. Dec. 15, 1997), in arguing that even if the Consultant is not an auctioneer, it is still a professional that must be employed pursuant to section 327. The debtor in *First Merchants* sought approval of a servicing agreement between an entity that was an agent for the lender bank, and the debtor. Judge Joseph James Farnan Jr., sustained the U.S. Trustee’s objection to the proposed retention, holding that the agent was a professional subject to section 327(a), but could not be retained because, it was also an agent for the lender bank, and was therefore

not disinterested. Judge Farnan identified factors for the court to consider when determining whether or not someone is a professional, and held that “the type of work which [the agent] intends to perform for the [First Merchants] Debtor is work that requires a specialized skill or knowledge, such that [the agent] can be considered a ‘professional’ within the ordinary and common sense meaning of the term.” The U.S. Trustee contends that the Consultants’ roles in the three bankrupt retailers’ cases give them a meaningful amount of autonomy and control in the process; the contemplated sales represent a significant amount of restructuring activity in each case; and the Debtors’ acknowledgement of the Consultant’s “expertise” demonstrates that the firms’ “services involve some degree of special knowledge or skill, such that the employee can be considered a ‘professional’ within the ordinary meaning of the term.”

### Advisor, Not Auctioneer

The Courts in *Heritage Home* and *Brookstone* entered opinions to explain their reason for approving the Debtors’ motions, while the Court in *Samuels Jewelers* granted that Debtor’s request but has not provided its reasoning. The *Brookstone* judge cited the rulings in *Heritage Home* and in *Samuels Jewelers*.

In *Heritage Home*, Judge Gross admits the Bankruptcy Code “provides clearly that bankruptcy courts must require that attorneys, accountants, appraisers and other professionals

be retained formally pursuant to Section 327(a)” but rejects the U.S. Trustee’s argument that SB360 is an auctioneer. “It is clear from the Disposition Agreement and the testimony at the hearing of SB360’s Executive Managing Director and General Counsel, Mr. Robert Raskin, that SB360 was not an auctioneer or other professional, but an advisor. Mr. Raskin’s entire testimony supported the advisor rather than professional person description,” Judge Gross states in an eight-page Memorandum Opinion.

Judge Gross points to Black’s Law Dictionary (10th ed. 2014) for definition of “auctioneer”: “A person in charge of selling at an auction, with the responsibility of calling for bids, announcing how much money has already been offered for something, and gaveling down the hammer price; a person legally authorized to sell goods or land of other persons at public auction for a commission or fee.” According to Judge Gross, “SB360 clearly does not satisfy the first definition and the second definition is not applicable because there will not be a public auction.”

On *First Merchants*, Judge Gross says the case law provides that “professional” is limited to those occupations which control, purchase or sell assets that are important to reorganization, is negotiating the terms of a plan of reorganization, has discretion to exercise his or her own personal judgment, and whether he or she contributes “some degree of special knowledge or skill.” According to Judge Gross, it is clear that SB360

*Delaware, from page 11*

is not at the center of the Debtors' reorganization and although it does have special knowledge, the terms of the Disposition Agreement nullify the control of SB360. "Many entities and people involved in bankruptcy cases have special knowledge but do not require Section 327(a) retention," he adds.

Judge Gross points to two recent decisions by other jurisdictions for guidance. In *In re Nine West Holdings, Inc.*, 2018 WL 3238695 (Bankr. S.D.N.Y. July 2, 2018), Judge Shelley Chapman ruled that Alvarez and Marsal and Ralph Schipani, an A&M employee, who had been serving Nine West for four years, did not require a Section 327(a) retention. Judge Chapman stated that Schipani can be retained under the business judgment standard outside of Section 327(a). Meanwhile, the court in *In re hgregg, Inc.*, Case No. 17-01302-RLM-1 (Bankr. S.D. Ind. May 8, 2017), rejected any requirement of a 327(a) retention. That court held an evidentiary hearing and found, inter alia, that the consultant (1) carried out debtor's judgment, (2) did not play a central role in the reorganization, (3) did not have broad discretion, and (4) had no control over sales prices. Judge Gross concludes that SB360's responsibilities are clearly advisory and do not constitute an intimate role in the Debtors' plans.

In *Brookstone*, Judge Shannon looks to Judge Gross's decision in *Heritage Home* as well as Judge Farnan's in *First Merchants* and declares that

"this Court is satisfied that [Gordon Brothers and] Hilco's services, while clearly valuable and important, are not sufficiently central to the development and implementation of the Debtor's reorganization to support a finding that it is a 'professional' within the meaning of § 327(a)." Judge Shannon also agrees with Judge Gross that the liquidators—in *Brookstone's* case, Gordon Brothers and Hilco—are not auctioneers for the purpose of section 327(a) because the inventory being sold by Hilco is not being sold to the highest bidder at a public sale. Instead, it is being priced and sold at stores in a manner typical of a retail sale, not an auction.

Perhaps a note to future attempts at bringing in restructuring and other firms to assist in bankruptcy cases, Judge Shannon says the "established practice requires fulsome disclosure of the services to be provided and the compensation to be paid, followed by a hearing on the merits where a debtor must carry its burden under Bankruptcy Code §§ 365 and 363 to demonstrate that it is proceeding in good faith and that its proposed course of action reflects the exercise of its reasonable business judgment. This structure is compliant with the Bankruptcy Code and is sufficient to address the UST's legitimate desire for transparency and due process without imposing the additional requirements and restrictions required by § 327(a)."

Finally, Judge Carey entered a final order in *Samuels Jewelers* authorizing the Company to operate under the Consulting Agreement and

approving the conduct of store closing sales. He permitted the Company to assume the Consulting Agreement pursuant to section 365 and "act and perform in accordance with the terms of the Consulting Agreement, including, making payments required by the Consulting Agreement to the Consultant without the need for any application of the Consultant or a further order of the Court." The Final Order provides that nothing prevents the liquidators and their affiliates from bidding on the Debtor's assets.

The issue of whether *Samuel Jewelers'* liquidators must be retained pursuant to section 327 is left for another day. The matter, Judge Carey says, is "continued generally, until such date and time as may be mutually agreed upon by the Debtor, the Consultant and the Office of the United States Trustee," adding that "notwithstanding anything to the contrary in this Final Order, solely in the event that this Court determines that the Consultant is a 'professional', as contemplated by section 327 of the Bankruptcy Code, the provisions set forth in this Final Order relating to the retention and payment of the Consultant will be subject to further order of this Court. In such circumstance, the Consultant shall be entitled to seek retention *nunc pro tunc* to the Petition Date. This Order and the record relating to this Court's consideration of the Motion shall not be considered final with respect to any appeal until this Court enters a further order resolving the issue of whether the Consultant is subject to section 327 of the Bankruptcy Code." □

# Research Report

## Who's Who in Neighbors Legacy's Bankruptcy Cases

by Carlo Fernandez

**N**eighbors Legacy Holdings, Inc., and its subsidiaries operate 22 freestanding emergency centers throughout the State of Texas, including in the greater Houston area, South Texas, El Paso, the Golden Triangle, the Panhandle, and the Permian Basin.

The emergency centers offer an alternative to traditional hospital emergency rooms by reducing wait times, providing better working conditions for physicians and staff, and giving patient care the highest possible priority.

The company was founded in Houston in 2008 by nine emergency room physicians.

Unable to service \$110 million in secured bank debt, Neighbors Legacy Holdings and 50 affiliates sought protection under Chapter 11 of the Bankruptcy Code (Bankr. S.D. Tex. Lead Case No. 18-33836) on July 12 and 23, 2018.

The Debtors are in the process of closing court-approved sales for substantially all of their assets to five separate buyers in five separate asset packages. Each of the sales currently contemplate a closing deadline of Oct. 31, 2018,

although certain extensions may be necessary.

At the auction held Aug. 27, 2018, the highest and best bids were submitted by these parties:

1. Altus Health Systems OPCO, LLC, and Altus Health System Realty, LLC, are buying the Baytown, Crosby, Kingwood, Pearland, Pasadena and Porter facilities for \$49.076 million;

2. AECER 4, LLC, is the winning bidder for the Mueller facility, with a purchase price of \$1.325 million;

3. Exceptional H.C. Inc. is the winning bidder for the Lubbock, Orange, Port Arthur, Beaumont, Amarillo, and McAllen locations, with an offer of \$9.97 million;

4. Greater Texas Emergency Centers LLC is buying the Bellaire, Yorktown, Odessa, Midland, Texarkana, and Paris locations for \$6.60 million; and

5. Tenet Business Services Corporation is the winning bidder for the Brownsville, Eastside, and Harlingen locations, with an offer of \$7.087 million.

The Debtors selected Nitya Health Operations LLC and Nitya Health RE LLC to be the backup bidder for certain facilities, and

Greater Texas Emergency Centers as back-up bidder for the Yorktown facility.

Upon the sales closing, the Debtors intend to file a plan of liquidation in order to wind up their remaining businesses.

### **DEBTORS**

**FTI Consulting Inc.** substituted for **CohnReznick LLC**, the firm initially employed by Neighbors Legacy and its affiliates to provide restructuring services in connection with the Chapter 11 cases. **Chad J. Shandler**, who was designated as CRO while still employed with CohnReznick, left the firm on Aug. 31 and joined FTI. Shandler continues to serve as the Debtors' CRO.

**Porter Hedges LLP** is serving as bankruptcy counsel to the Debtors. **John F Higgins, IV**, partner, leads the engagement. Partner **Eric M. English** and associate **Genevieve M. Graham** are also part of the team handling the case.

**Houlihan Lokey Capital, Inc.**, is the Debtors' investment banker. **Andrew Turnbull**, managing director, leads the engagement.

# Research Report

## Who's Who in Neighbors Legacy's Bankruptcy Cases

*Continued from page 13*

**Kurtzman Carson Consultants LLC** is the claims, noticing and solicitation agent.

### LENDERS

**Reed Smith LLP**, with partner **Matthew E. Tashman**, counsel **Lloyd A. Lim** and associate **Ali K Burner**, is representing **Keybank National Association**, the administrative agent for secured lenders owed \$109 million for a revolving credit and term loans provided to the Debtors prepetition, and a \$8 million revolving loan provided by DIP lenders postpetition.

### UNSECURED CREDITORS

The Office of the U.S. Trustee appointed an official committee of unsecured creditors, comprising of **Read King, Inc.**, **UCP Texas Limited, Ltd.**, **The Don Levin Trust**, **XtreMed Enterprise, LLC**, and **Southwest Precision Printers, LP**.

**Cole Schotz P.C.** is the committee's legal counsel. **Michael D. Warner**, member, leads the engagement. Other attorneys primarily responsible for representing the committee

are members **Warren A. Usatine** and **Felice Yudkin**, and associate **Benjamin L. Wallen**.

**GlassRatner Advisory & Capital Group, LLC**, is the committee's financial advisor. **Mark Shapiro**, senior managing director, heads the engagement.

**Gray Read & McGraw LLP**, led by partner **Jason Brookner**, serves as Read King's attorney. **John Pearce, Esq.**, is representing UCP Texas. **Underwood Perkins, P.C.**, with attorneys **David L. Campbell** and **Eli D. Pierce**, and **Exall + Wood, PLLC**, with member **Kim Anello**, are representing The Don Levin Trust. **Christian, Smith & Jewell, LLP**, with of counsel **Allan Levine**, is representing XtreMed Enterprise. **Davis & Hill, P.C.**, led by shareholder **Dennis A. McQueen**, is counsel to Southwest Precision Printers.

### BUYERS

**DuBois, Bryant & Campbell, L.L.P.**, led by partner **Seth E. Meisel**, is representing **AEC ER 4, LLC**.

**Anwar-i-Qadeer & Associates, P.C.**, led by founding partner

**Anwar-i-Qadeer**, and **The Gerger Law Firm PLLC**, led by managing member **Alan Gerger**, are representing **Altus Health Systems OPCO, LLC** and **Altus Health System Realty, LLC**.

**Joyce W. Lindauer Attorney, PLLC**, led by founding partner **Joyce Lindauer**, is representing Dallas-based **Exceptional H.C., Inc.**

**Braun, Browne & Associates, P.C.**, led by founder **Sheldon Braun**, and **Hoover Slovacek, LLP**, led by bankruptcy practice head **Edward L. Rothberg**, are representing **Greater Texas Emergency Centers**.

**Kirkland & Ellis**, with corporate partner **Andrew Kimball**, is representing **Tenet Business Services Corporation**.

### PCO

**Mesch Clark Rothschild** partner **Susan N. Goodman, RN JD**, was selected as the patient care ombudsman for the debtors. She tapped her own firm as counsel.

### JUDGE

The **Honorable Marvin Isgur** is the case judge. ☐

# Special Report

## The Nation's Largest Claims Agents

Firm	Locations	Senior Professionals	Debtor
<b>AMERICAN LEGAL CLAIMS SERVICES, LLC</b> americanlegal.com	Jacksonville, FL	Jeffrey Pirrung	FreeLinc Technologies
<b>BMC GROUP, INC.</b> bmcgroup.com	Seattle, WA	Sean Allen Tinamarie Feil Jeff Kalina Lorenzo Mendizabal Mathew Satuloff	Auto Masters; Curae Health; Duro Dyne; Education Management II; Ingersoll Financial; KIKO USA; and Oi Brasil Holdings Cooperatief U.A.
<b>DONLIN RECANO &amp; COMPANY, INC.</b> donlinrecano.com	New York, NY	Alexander Leventhal Roland Tomforde Nellwyn Voorhies	AcuSport n/k/a ASPC Corp.; Armstrong Energy; B&B Liquidating; Bestwall LLC; EBH Topco; Elements Behavioral Health; Exelco North America; First River Energy; Gump's Holdings; Kraus Carpet; Mac Acquisition; Open Road Films; PhaseRx Inc.; Quality Construction & Production; Ruby's Diner; Vasari LLC; Velocity Holding Company; Wachusett Ventures; and Westmoreland Coal Company
<b>EPIQ BANKRUPTCY SOLUTIONS, LLC</b> epiqglobal.com	New York, NY	Brian Hunt Brian Karpuk Eric Kerwood Jane Sullivan Kathryn Tran Angela Tsai Brad Tuttle	1 Global Capital LLC; ABT Molecular Imaging; Artsonig Pty Limited; BillNat; Color Spot Holdings, f/k/a CSH Winddown; Cumulus Media, n/k/a CM Wind Down Topco; EXCO Resources; Fallbrook Technologies, f/k/a Hodyon, Inc.; G.A.F. Seelig; Government Development Bank for Puerto Rico; HCR ManorCare; Herald Media Holdings, f/k/a HMM Media; Hooper Holmes, Inc. d/b/a Provant Health; Little River Healthcare Holdings; M & G USA (Unsecured Creditors' Committee); Mattress Firm; Maurice Sporting Goods; Model Reorg Acquisition; Navillus Tile; ONE Aviation Corporation; Orion HealthCorp; Red Fork (USA) Investments; Schahin II Finance Company (SPV) Limited; SEGA Biofuels; The NORDAM Group; The Rosegarden Health and Rehabilitation Center; The Weinstein Co.; Tops Holding II; and Woodbridge Group of Companies

# Special Report

## The Nation's Largest Claims Agents

*Continued from page 15*

<b>Firm</b>	<b>Locations</b>	<b>Senior Professionals</b>	<b>Debtor</b>
<b>JND CORPORATE RESTRUCTURING</b> jndla.com	Denver, CO Los Angeles, CA Minneapolis, MN New York, NY Seattle, WA Washington, DC	Mike Hill Robert Klamsner Travis Vandell	Apex Xpress; Augustus Energy Resources; Cornbread Ventures; Francis' Drilling Fluids; Hobbico Inc.; Jet Midwest Group; Nighthawk Royalties; Preferred Care; Sancilio Pharmaceuticals Company; SIW Holding Company f/k/a WIS Holding Company; and Toys "R" Us (Unsecured Creditors' Committee)
<b>KURTZMAN CARSON CONSULTANTS LLC</b> kcellc.com	El Segundo, CA New York, NY	Rebecca Cook Evan Gershbein Robert Jordan Albert Kass	A'GACI; American Tire Distributors; Cobalt International Energy; Condominium Association of the Lynnhill Condominium; Enduro Resource Partners; ExGen Texas; Fibrant LLC; Heritage Home Group; Neighbors Legacy Holdings; Product Quest Manufacturing; Orexigen Therapeutics; Rand Logistics; RM Holdco; The Walking Company; Tintri; and VER Technologies Holdco
<b>LOGAN &amp; COMPANY, INC.</b> loganandco.com	Upper Montclair, NJ	Kathleen M. Logan	The Fairbanks Company
<b>PRIME CLERK LLC</b> primeclerk.com	New York, NY	Benjamin P.D. Schrag Benjamin J. Steele Shira D. Weiner	Ascent Resources; Bertucci's Holdings; The Bon-Ton Stores; Cenveo, Inc.; Claire's Stores; EV Energy; Fieldwood Energy; FirstEnergy Solutions; Gibson Brands; HGIM Holdings; J&M Sales Inc.; Lucky Dragon; M&G USA; New Mach Gen, LLC; Orchard Acquisition; Patriot National; Real Industry; Remington Outdoor; RMH Franchise, The Rockport Company; Samuels Jewelers; Schletter Inc.; Southeastern Grocers; Toys "R" Us Property Company I, LLC; and Walter Investment

# Special Report

## The Nation's Largest Claims Agents

*Continued from page 16*

Firm	Locations	Senior Professionals	Debtor
<b>OMNI MANAGEMENT GROUP</b> omnimgt.com	New York, NY Woodland Hills, CA	Paul Deutch Scott Ewing Brian Gelinis Katie Nownes Brian Osborne Eric Schwarz	1141 Realty Owner LLC; 4 West Holdings; Arecont Vision; Blue Gold Equities LLC; Brookstone Holdings; Charming Charlie; Dexter Surgical; Ensequence Inc.; Firestar Diamond; Flatironhotel Operations; Garces Restaurant Group; Gibson Brands (Unsecured Creditors' Committee); Mission Coal Co.; PES Holdings; Seasons Corporate; SeaStar Holdings; USI Services Group; Videology Inc.; Woodbridge Group of Companies (Unsecured Creditors' Committee); and Zetta Jet USA
<b>RELIABLE COMPANIES</b> reliable-co.com	East Norriton, PA Philadelphia, PA Wilmington, DE	Gene Matthews	USAE LLC
<b>TRUSTEE SERVICES, INC.</b> trusteeservicesinc.com	Silverdale, WA	Kenneth A. Welt	Miami International Medical Center

Recent representative client 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](http://bankrupt.com/periodicals/tcr/tcr.html) for more information about that weekday newsletter. TCR content is also available via Dow Jones' Factiva service, Lexis-Nexis, WestLaw and The Bloomberg Professional Service.

# Worth Reading

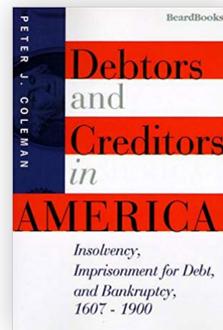
## Debtors and Creditors in America: Insolvency, Imprisonment for Debt, and Bankruptcy, 1607-1900

Author: Peter J. Coleman

Publisher: Beard Books

Softcover: 320 Pages

List Price: \$34.95



### [Order This Book Online Now »](#)

Suppose that, three hundred or so years ago, you were in urgent need of a pig. But you couldn't afford the pig, so you purchased it on credit. (Yes, there was credit in the woodsy days of this country; it wasn't strictly a cash and barter economy.) Some time later, the pig having served the purpose for which it was intended and hence being no longer recoverable, and you not being the winner of the lottery you'd relied upon to pay your debt, the creditor seeks satisfaction.

He could proceed against you in a couple of different ways, but either way, assuming you still hadn't won that lottery, you went to jail. And there you rotted, unless you had the means to buy your way out, in which case you wouldn't be there in the first place. In a notorious perversion of logic, a debtor, like any prisoner, was expected to feed and clothe himself while incarcerated. A pauper's grave—the so-called potter's field—awaited the debtor who died in prison. It could have been worse: under ancient Roman law, creditors were entitled to chunks of your actual body and—sorry, Will Shakespeare—there was no penalty for hacking off a disproportionate slice.

What changed this nefarious

system? Not sentiment (at least not primarily), but hard economic facts. For one thing, it was an ineffective arrangement. The creditor derived malicious satisfaction from watching his debtor fade away in prison, but that didn't satisfy the debt. For another thing, the colonies suffered a chronic people shortage. They needed laborers and militiamen. Society couldn't afford to lose the prisoner's labor or his ability to shoulder a musket and defend against Indian attacks. Nor could society afford to support the innocent wife and children "perishing with Hunger & Cold" (here's where sentiment entered into the equation).

The system began to be modified in various ways. For some categories of debtors, commonly single men who owed little, some colonies substituted indentured service for imprisonment. Another modification, applicable to petty debts, provided a release from prison and immunity from rearrest if the debtor swore he was impoverished—presumably a more effective deterrent centuries ago when there was true shame associated with being a deadbeat. A third modification put clothing, furniture, eating utensils, and tools beyond the reach of attachment.

None of this was of any help to the larger defaulters, the businessmen, and it was for their benefit (economic necessity, again) that colonial bankruptcy laws began to evolve. Interestingly, the colonies preferred voluntary proceedings, giving the right of action to the insolvent, in contrast to English bankruptcy practice, which sided with the creditor. Development of bankruptcy relief was by no means smooth as, predictably, many stern and rockbound colonists took a moral stance against it. Complicating matters was the requirement that, until the Revolution, a debtor relief law, like any colonial legislation, had to be approved by the Crown, in this case the Board of Trade.

The author provides a painstaking region-by-region analysis of the development of bankruptcy law, and sums up all the history in a concluding chapter.

### About The Author

*Peter J. Coleman, J.D., Ph.D., was Emeritus Professor of History, University of Illinois at Chicago. He taught American history at UIC from 1966-1971 and from 1976 to his retirement in 1987. He was born in Wellington, New Zealand in 1926. He died in March 2004. ☐*

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# Special Report

## Outstanding Turnaround Firms – 2018

Firm	Senior Professionals	Outstanding Achievements
<p><b>ALIXPARTNERS</b> New York, NY alixpartners.com</p>	<p>Rob Albergotti John Castellano Lisa Donahue Randall Eisenberg Holly Etlin David Hindman Alan Holtz David Johnston Jim Mesterharm Kent Percy Becky Roof Pilar Tarry</p>	<p>Advisor or interim manager to Aceto Corporation; Appvion; ATD Corporation; BCBG; CGG; Charming Charlie; HCR Manorcare; Heritage Home Group; Pacific Drilling; Video Equipment Rentals; and Westinghouse Electric Company</p>
<p><b>AMHERST PARTNERS</b> Birmingham, MI Chicago, IL amherstpartners.com</p>	<p>Scott Eisenberg Bruce Goldstein Thomas McCabe James Morden Brian Phillips Sheldon Stone</p>	<p>Had 16 active engagements including two Federal Receiverships (one of which was ISI Security Group, Inc.), and two CRO engagements. High-profile assignments include providing turnaround services for a Tier 1 automotive supplier, orchestrating a wind-down of a highly problematic manufacturing location while stabilizing operations at main production facility in preparation to sell the business. Practice saw dramatic increase in geographical reach, moving from a largely Midwest footprint to include major assignments in the west, southwest, southeast and mid-Atlantic regions of the country. An 84% success rate on engagement proposals/pitches for the year to date. Financial advisor for the Unsecured Creditors' Committee in the bankruptcy cases of Quadrant 4 System Corporation and Rees Associates, Inc.</p>

# Special Report

## Outstanding Turnaround Firms – 2018

*Continued from page 19*

Firm	Senior Professionals	Outstanding Achievements
<p><b>CONWAY MACKENZIE</b> New York, NY Birmingham, MI conwaymackenzie.com</p>	<p>Gregory A. Charleston Sam W. Clark, IV Michael S. Correra Aurelio García-Miró Joseph M. Geraghty Kenneth T. Latz Donald S. MacKenzie Peter J. Smidt Timothy B. Stallkamp Steven R. Wybo John T. Young, Jr. A. Jeffrey Zappone</p>	<p>Celebrated 31st anniversary as premier consulting and financial advisory firm. Added 23 client service professionals to its roster during 2018. Added industry advisory service line offering, AntiCorruption Services. Received three awards this year within the Turnaround &amp; Restructuring industry and won multiple Best and Brightest Companies to Work For awards specific to office locations around the United States. Has four pending awards in the Turnaround &amp; Restructuring category, which the winners will be announced by year-end. Financial advisor to Tweddle Group, Inc. (restructuring of \$210 million senior term facility); Central Grocers, Inc. and Strack &amp; Van Til Super Market, Inc. Interim CFO and CRO to Shields for Families, Inc. (out-of-court restructuring). Restructuring/Operational Advisor to Product Quest Manufacturing, LLC (Manufacturing); R.E. Gas Development, which operates as a subsidiary of Rex Energy (Oil &amp; Gas); Erin Energy Corporation (Exploration &amp; Production); Patriot National, Inc. (Insurance Technology and Outsourcing); and Rand logistics, Inc. (Freight Shipping).</p>
<p><b>DEVELOPMENT SPECIALISTS</b> Chicago, IL dsi.biz</p>	<p>Geoffrey L. Berman Yale S. Bogen William A. Brandt, Jr. R. Brian Calver Fred C. Caruso A. Kyle Everett Patrick J. O'Malley Joseph J. Luzinski Bradley D. Sharp Steven L. Victor</p>	<p>Consultant and sales agent to Advanced Precision Manufacturing, Inc. and ADK Arms, Inc. Consultant to Capitol Station 65, LLC. Financial advisor in the chapter 11 cases of CC Care, LLC; Sedgwick, LLP; and Don Rose Oil Co. (Unsecured Creditors' Committee). Financial advisor and accountant to PC USA RE, LLC. Accounting and finance professional to Melbourne Beach, LLC's CRO. Restructuring advisor to 1 Global Capital LLC (Bradley Sharp as CRO) and MedCision, LLC (Kyle Everett as CRO).</p>

# Special Report

## Outstanding Turnaround Firms – 2018

*Continued from page 20*

Firm	Senior Professionals	Outstanding Achievements
<b>GETZLER HENRICH &amp; ASSOCIATES</b> Boston, MA Chicago, IL Houston, TX New York, NY Philadelphia, PA getzlerhenrich.com	Joel Getzler William Henrich Robert Gorin Marjorie E. Kaufman Mark D. Podgainy Mark G. Samson Daniel Polsky David R. Campbell	Hired in 74 middle-market turnaround, bankruptcy, due diligence and liquidation situations in 2018, including Firestar Diamonds; Mammoet-Starneth; Kiko Inc.; Duro Dyne National Corp.; Isolux Corsan Liquidating Trust; River Run Foods; Watsons Inc.; a 100 year-old, \$100 million, family-owned business that hand-manufactures tools; a multi-national digital marketing and advertising firm; a \$40 million maker of international dance costumes and gymnastics uniform; a private-equity owned, multi-state physician practice group in the Midwest (retained by lending group); a \$100 million custom retail display units manufacturer; a transportation business services and solutions company; a private-equity firm over its acquisition of an underperforming \$300 million national behavioral health platform; a toxicology laboratory; a \$400 million integrated consumer products company that recently emerged from bankruptcy; a \$130 million operator of a national network of specialized mental health and substance abuse facilities and community-based programs; a pharmaceutical industry solutions provider; a major U.S. consumer products retailer; a \$350 million technology and communication solutions provider; and a \$45 million high-end outdoor furniture maker.
<b>GLASSRATNER ADVISORY &amp; CAPITAL GROUP</b> Atlanta, GA Dallas, TX Irvine, CA Kansas City, MO West Palm Beach, FL glassratner.com	Alan Barbee Carol Fox Marshall Glade Ronald Glass J. Michael Issa Ian Ratner Mark Shapiro Michael Thatcher	Financial advisor to ACI Concrete Placement of Kansas; Boegel Farms; Curae Health; Point.360; Ruby's Diner; and Neighbors Legacy Holdings (Unsecured Creditors' Committee). Financial advisor and investment banker to Vitargo Global Sciences (Richard Laski as Chapter 11 trustee). Financial advisor, investment banker and CRO to Etcher Farms. CRO to EarthOne Circuit Technologies; LeCentre on Fourth; The Treatment Center of the Palm Beaches; and X-Treme Bullets.

# Special Report

## Outstanding Turnaround Firms – 2018

*Continued from page 21*

Firm	Senior Professionals	Outstanding Achievements
<b>M-III PARTNERS</b> New York, NY miiipartners.com	Colin Adams Charles H. F. Garner Brian Griffith Philip Kassin Mohsin Y. Meghji Kenneth Simon Martin Young	CRO to Sears Holdings Corp.; Relativity Media; and Real Industry. Advised Term Loan Lenders to Remington Outdoor Company. Mohsin Y. Meghji served as member of Toys “R” Us board as an independent director.
<b>TONEYKORF PARTNERS</b> Valley Stream, NY toneykorf.com	Steven R. Korf Mark E. Toney	CRO to Milford Hospital. Interim CFO and interim finance director to a health system in the Tri-State area. Engaged by County of Bergen, New Jersey, to assist it in overseeing the operations of New Bridge Medical Center, formerly Bergen Regional Medical Center, during a transition period from its then current long-term third-party operator to a new long-term operator.
<b>ZOLFO COOPER</b> Los Angeles, CA New York, NY zolfocooper.com	John Boken Richard Collura Carol Flaton Elizabeth Kardos Eric Koza David MacGreevey Joff Mitchell Kevin Nystrom David Orlofsky Frank Pometti Scott Winn	Financial advisor to Toys “R” Us - Delaware; Eugene Davis, an independent member of VER Technologies HoldCo; and the Unsecured Creditors’ Committee in Charming Charlie Holdings. Bankruptcy consultant and financial advisor to Cenveo Inc., and to the Unsecured Creditors’ Committee in Advanced Contracting Solutions; Bon-Ton Stores; EBH Topco; The NORDAM Group; RMH Franchise Holdings; and Tops Holding II.

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# Gnome de Plume

## Data is Not Information

by Deborah Hicks Midanek

**W**hy do companies fail? Of the original S&P 500 list created in 1957, only 74, or 15 percent are, according to CFO.com, still on the list. Economist Hyman Minsky posits that stability itself breeds instability, and therefore inside success, the seeds of failure are taking root. While a company striving to become successful knows that each day requires making adjustments to anticipate changing circumstances, these habits are difficult to maintain in the successful market leader.

Are executives in such companies blind? Failure can occur due to a sudden shock to the system, but most failures are not due to unforeseeable events. Executives are often relying on data that is not providing them with the information they need. Because it is familiar and can be compared to last month or last year, they are lulled into a false sense of security.

In many cases, executives believe that if there is a control system in place, it will do the job for which it was intended. Systems and policies are often constructed for day-to-day transactions, or to meet accounting criteria, but not for analyzing raw data to make sense of what it all means. Sustainability depends on transforming data into meaningful information to support decision-making.

### Assumptions are not facts

One technology company claimed it could see into the future, by matching supply and demand trends precisely to generate tightly focused forecasts. The technology worked very well, but the forecasts did not. The company had not included the ability to reflect changes in one key variable: the rate of growth. Company executives believed they had a superior grasp of reality and acted on the information they had, to the company's disadvantage.

### Data is not information

In another company, cash flow was falling and lenders were insisting on asset sales and appointment of outside advisers. The company, in the waste management sector, had 52 profit centers, and no method of easily aggregating the data into useful information. To make matters even harder to understand, the company thought about its business activity by product line, which ignored the functional connection between hauling activity and landfills. With the data organized by market segment into fewer profit centers, the resulting information made it easy for management to see which assets were unprofitable, and sell them forthwith. Instead of forcing a liquidation, lenders were competing to offer new financing.

### Accounting does not equal reality

The subprime meltdown provides another example of participants blinded by bad information. In one subprime company, their loans were securitized each quarter. Using the accounting procedure required, the expected cash flows resulting from each securitization were capitalized as assets on the balance sheet.

The company lost sight of the fact that the asset on its books did not represent anything more than assumptions as to likely future receipts. The 'earnings' the company was declaring showed attractive growth because it was valuing the expected future cash flows on ever more aggressive assumptions. When the opportunity to securitize disappeared and the company had to sell loans directly to buyers, it could not support itself. Had the company not been blinded by what it believed to be the value of its main asset, the capitalized value of expected future cash flows, its board could have accepted an offer to buy the company. Instead they faced liquidation.

It is difficult to challenge the status quo and consider whether information available matches the nature of decisions to be made, and to test the quality of the data and the conclusions reached. Delusion, fear of the unknown, and fear of being criticized are powerful. Thus, the status quo continues to inform how we see the world.

Remember that fish cannot see water. Ensure that the information provided reflects the nature of the decisions to be made. Companies that successfully use their information to out-think and out-execute their competitors thrive. Consistently high-performing enterprises build their strategies around information-driven insights. □

#### Deborah Hicks Midanek

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- Who's Who in Verity Health System of California, Inc.
- Who's Who in Samuels Jewelers, Inc.
- Special Report: Sources of Debtor-in-Possession Financing
- Special Report: Outstanding Restructuring Lawyers – 2018

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