American Bankruptcy Institute
Delaware Views from the Bench

Update on the Intersection of the Bankruptcy and Chancery Courts

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2024

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October 24, 2024

ABI and the Delaware State Bar Association

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Topic Agenda

I. Assignment for the Benefit of Creditors (ABC) Filings
II. Forum Selection: Practical Considerations
III. Fiduciary Duties in Chancery and Bankruptcy Courts

1. Assignment for the Benefit of Creditors (ABC) Filings

Overview: An Uptick in ABC Filings in Chancery

- An assignment for the benefit of creditors (ABC) is a common law or statutory alternative to a formal Chapter 7 bankruptcy proceeding.
- Some states require judicial oversight of an ABC, while others permit ABCs to be made out of court.
- ***In Delaware, ABCs must comply with the Delaware Assignment Statute, which provides for limited judicial oversight.***
- Delaware has seen a significant uptick in the number of ABC filings.
- Through recent decisions, the Court of Chancery has sent a strong message that it expects parties pursuing this bankruptcy alternative to comply with the statute and do a better job of explaining and justifying the relief they seek.
- This will require significantly more frequent and robust disclosures to the court and public.

Chapter 11 vs. Chapter 7 vs. Delaware ABC

	Chapter 11	*Chapter 7*	*Delaware ABC*
Automatic Stay	Yes	Yes	No
Ability for Unsecured Creditors to Form Creditors' Committee	Yes	Yes	No
Control	Incumbent management typically remains in control	Loss of control to trustee selected by U.S. Trustee's office	Assignor selects assignee
Expense	Significant professional fees compared to non-bankruptcy options	Significant professional fees compared to non-bankruptcy options	Likely less expensive alternative to bankruptcy
Risk of Involuntary Federal Bankruptcy Petition	Not if voluntary case has been commenced	Not if voluntary case has been commenced	Yes
Ability for Cap Landlord Claims	Yes	Yes	No

Delaware ABC Statute (10 *Del. C.* §§ 7381-87)

- Assignee's filing of inventory (10 *Del. C.* § 7381) – assignee must file an affidavit of inventory within 30 days of assignment
- Court's appointment of appraisers (10 *Del. C.* § 7382) – assignee recommends two appraisers for court's consideration and the two appraisers are required to appraise the assignor's assets and file the appraisals with the court
- Bonding of assignee (10 *Del. C.* § 7383) – assignee shall give bond with sufficient surety to be approved by the court
- Proceedings on assignee's bond (10 *Del. C.* § 7384) – court may direct the bond to be proceeded on if deemed necessary for protection of interested party
- Assignee's accounts and exceptions to those accounts (10 *Del. C.* § 7385) – assignee must render an account of the assignee's trusteeship every year from the date of the bond
- Removal of assignee (10 *Del. C.* § 7386) – allows court to remove assignee or trustee for cause
- Voidance of preference assignments (10 *Del. C.* § 7387) – permits court to void preferences and assignments under certain circumstances

The requirements to file an affidavit of inventory within 30 days of the assignment* (10 *Del. C.* § 7381)*; give bond as approved by the court* (10 *Del. C.* § 7383)*; and submit annual accounts* (10 *Del. C.* § 7385) *are mandatory – an assignee risks removal "for cause" if they fail to comply.

In re Wack Jills, Inc., C.A. No. 2019-0650-PAF (Del. Ch. August 29, 2024)

- In a recent ruling, the Court of Chancery removed an assignee for the first time (at least in modern times) for cause under Section 7386
- Assignee "did not come close to satisfying the requirements of the ABC statute"
  - Assignee did not file an affidavit of inventory within 30 days of the Assignment
  - Assignee failed to seek the court's appointment of two appraisers to appraise the assets of the Assignment estate
  - Assignee did not file annual accountings
- Assignee also failed to act in the best interest of the Assignor's creditors
  - Assignee's compensation structure "provided no incentive to minimize Trust expenses because the Assignee received a 20% commission on all amounts distributed to creditors and all amounts paid in costs and expenses"
  - Assignee hired his New Jersey law firm as counsel after having already retained Delaware counsel

This case "epitomizes the lawlessness of a period in which Delaware ABC proceedings were known as 'the Wild West of bankruptcy'" and demonstrates that the Court will be looking for strict compliance with the statute in future cases.

Other Recent Case Examples Further Indicate the Need for More Active Engagement in ABC Proceedings

In re Kidbox.com, Inc., C.A. No. 2022-0379-PAF (Del. Ch.)

- **Facts**: A corporation filed a motion seeking restrictions "comparable to the 'automatic stay' provisions under the Bankruptcy Code," including enjoining initiating litigation, seizing property, enforcing liens, or recovering claims against Kidbox. While the petition cited prior orders granting similar relief, ***it did not identify any express statutory authority for the requested relief or include any detail explaining the specific need for the creditor injunction***.
- **Outcome**: The Court of Chancery denied the relief requested, noting that the motion was "largely copied, nearly verbatim" from *In re BeautyCon Media Inc.*, another ABC case that also failed to supply sufficient grounds for a stay. In a comment appended to the order, the Court of Chancery highlighted the fact that the petition contained "***no stated grounds for the need to enter a stay in this matter***."

In the Matter of Global Safety Labs, Inc., C.A. No. 2022-0309-JTL (Del. Ch.)

- **Facts**: After the corporation had been dissolved and was winding up its affairs, the corporation asked the Court of Chancery to determine that the corporation "shall not be required to set aside additional funds as security to provide compensation for unsecured claims, claims that have not been made known to [the company], have not yet arisen, or may arise within five (5) years of the date of dissolution." The Petition, however, ***offered minimal information regarding the nature and magnitude of the company's assets or liabilities***.
- **Outcome**: To rule on the company's petition, the Court of Chancery decided to adopt the procedure used in bankruptcy petitions known as a "***first-day declaration***." The court held that the declaration should describe the company's organizational structure, the relationships between the company and any other entities, including parent companies, holding companies, affiliates or subsidiaries, or creditors, the company's capital structure, loans, and unsecured debt obligations, as well as a description of the events leading to the company's dissolution and why dissolution was chosen over other options.

Information to Include in "First-Day Affidavit" Equivalent

- Recent cases[1] have provided guidance on what information to provide to the Court in the "first-day affidavit" equivalent:

1. The description of the affiant and the affiant's relationship with the assignor or assignee;
2. A description of the assignee, its experience, its principal or parent entity, and the events leading up to its creation;
3. A description of the assignor, its business prior to the Assignment, and its corporate and capital structure;
4. A detailed description of any debt obligation secured by all or substantially all of the assignor's assets, including the purpose of the obligation at the time it was entered, and its current status;
5. The events leading up to the Assignment;
6. Any efforts to sell the assignor or its assets within the year prior to the date of the Assignment;
7. A description of how the assignee was engaged;
8. A description of the terms of any agreement, arrangement, or understanding concerning the assignor or its assets between or among, on the one hand the assignee or its principal, and on the other hand any director, officer, employee, or creditor of the assignor, or any potential acquirer of the assignor or its assets;
9. If the assignee contemplates the disposition of any of the assigned assets prior to the submission of the appraisals required by 10 Del. C. § 7382 and the bond required by 10 Del. C. § 7383, a detailed explanation for doing so; and
10. The assignee's efforts to collect the documents identified on the following slide and the reasons for any inability to provide the information requested

[1] *See, e.g., In re Theonys Inc.*, C.A. no. 2023-0195-PAF, Order (Del. Ch. May 22, 2023)

Documents to Include with "First-Day Affidavit" Equivalent

- Recent cases[1] have provided guidance on what documents to provide to the Court with the "first-day affidavit" equivalent:

Documents evidencing the assignor's authorization to enter into the Assignment;

Documents evidencing the terms of the assignee's engagement, including the Assignee's fee schedule;

Documents evidencing the terms of any engagement of the assignee or its parent entity with the assignor, any of its directors, officers, employees, or creditors relating to the assignor or its assets at any time within one year of the date of the Assignment;

Documents evidencing any agreement, arrangement, or understanding between the assignee or its parent entity and any person relating to the Assignment or the assigned assets;

Documents evidencing any agreement, arrangement, or understanding between or among any director, officer, employee, or creditor relating to the Assignment;

A list of all engagements for which the parent of the assignee or any of its affiliates has served as an assignee in an assignment proceeding filed in this court over the last three years.

[1] *See, e.g., In re Theonys Inc.*, C.A. no. 2023-0195-PAF, Order (Del. Ch. May 22, 2023)

Practitioner Considerations

- Counsel requesting the Court of Chancery to exercise its powers to facilitate an ABC should be prepared to ***withstand greater scrutiny*** and ***provide more detail*** than what historically has been deemed to be sufficient.

1. **Sunlight as disinfectant:** "The court is not trying to convert a Court of Chancery proceeding involving a defunct or dissolved entity into a bankruptcy case. Counsel must make case-by-case determinations about the information the court should have. Nevertheless, the concept of a first-day declaration can serve as a guide." – *In the Matter of Global Safety Labs*
2. **Stays of creditor actions:** The Court sees no basis or authority to impose one (statutory authority, personal jurisdiction).
3. **Undisclosed fees:** All fees, including success fees, must be disclosed in the initial request for appointment. Fees that are only disclosed in the annual accounting may be disallowed.

2. Forum Selection: Practical Considerations

Overview: Choosing the Appropriate Court

- Lawsuits against former directors and officers of bankrupt companies for breaches of fiduciary duty are commonplace.
- Bankruptcy Courts have become accustomed to overseeing such state law claims.
- The Court of Chancery is another venue where such claims are often litigated.
- Practitioners should carefully consider whether to pursue fiduciary duty claims in the Court of Chancery or through an adversary proceeding in Bankruptcy Court.
- Know your audience.

Overview: Choosing the Appropriate Court

Key Considerations

- Bankruptcy Court will be very familiar with the case and parties, whereas the Court of Chancery offers a blank slate and fresh start.
- "Deeping insolvency" is not a cause of action in Delaware state courts (*see, e.g., Trenwick Am. Litig. Tr. v. Ernst & Young, L.L.P.,* 906 A.2d 168 (Del. Ch. 2006), *aff'd sub nom, Trenwick Am. Litig. Tr. v. Billett,* 931 A.2d 438 (Del. 2007)), but the Bankruptcy Court may be a more welcoming forum for adjacent claims.
- Post-confirmation litigation trusts approved as part of chapter 11 plan allow the pursuit of claims with relative administrative ease.

Practitioner Considerations

- ***It is imperative for both practitioners and judges to be well-acquainted with the underlying proceeding whenever a case moves between the courts.***
- Consider the long-term impact of where you choose to litigate:
  - You may face a potentially different outcome if you bring a claim in the Court of Chancery versus as adversary proceedings in Bankruptcy Court.
  - The Court of Chancery rulings impact future claims that could be brought in Bankruptcy Court.
- Be mindful that judges may internally communicate when a case moves between the courts.

GenapSys Inc.

- GenapSys Inc. spent significant time in the Delaware Bankruptcy and Chancery Courts in front of Vice Chancellor Zurn and Judge Shannon, respectively
- Earlier this year, GenapSys's founder and ex-CEO Hesaam Esfandyarpour filed a complaint in Delaware Court of Chancery alleging certain of its directors were invalidly appointed and an annual stockholder meeting was overdue
  - Esfandyarpour also petitioned the Court of Chancery for additional access to the work of a special committee that had been appointed and was considering filing GenapSys for bankruptcy, which was denied
  - The Court of Chancery imposed a routine status quo order anointing the incumbent board with the power to run the company but limiting available actions. The incumbent board repeatedly pressed the Court of Chancery for authority to file for bankruptcy, asserting that the Bankruptcy Court could and should rule on the proper composition of the board in the context of a motion to dismiss. The Court of Chancery denied these requests
  - The Court of Chancery found four of five incumbent directors were invalidly appointed and ordered a stockholder meeting to appoint their replacements, but rejected Esfandyarpour's argument that he had power to appoint the new directors

GenapSys Inc.

- In the days that followed, GenapSys reshuffled its board. The new board filed for Chapter 11 protection, citing, among other things, mounting litigation costs
- Esfandyarpour and cofounder and spouse Kosar Parizi sought dismissal of the Chapter 11 case, alleging it was filed in bad faith to seize control of the company and that the filing was not properly authorized because, among other reasons, the board did not comply with certain governance documents
  - The Bankruptcy Court rejected the bid to have the case dismissed
  - Genapsys subsequently sold substantially all of its assets in bankruptcy to Sequencing Health and is currently in the process of winding down

KDC Agribusiness LLC

- KDC Agribusiness LLC is another example of a case that started in the Court of Chancery and ended up in Bankruptcy Court, but this time, was sent back to the Court of Chancery
- In a rare ruling from the Bankruptcy Court last year, Judge Goldblatt lifted the stay on a $300 million+ trade secret misappropriation suit pending in the Court of Chancery brought by California Safe Soil LLC ("CSS") against KDC Agribusiness LLC ("KDC")
  - CSS alleged that as it sought to expand its recycling and fertilizer production venture, KDC exploited disavowed trade secret agreements and set up its own business using CSS recycling IP
- The suit had been pending in the Court of Chancery since 2021, and was scheduled for a seven-day trial beginning on June 20, 2023
- Just one business day prior to the start of trial, KDC filed for bankruptcy and initiated an adversary proceeding seeking a declaratory judgment that would have rejected CSS' claims to trade secret infringement or damages
- The Bankruptcy Court acknowledged that KDC had virtually no access to cash and that a third party lender was prepared to invest substantial new money in the bankruptcy
- However, Judge Goldblatt found that the "need to show appropriate respect for the Court of Chancery" left him with no choice but to grant relief from the stay
  - The Court fell short of granting CSS' motion to dismiss the Chapter 11 case entirely
- While acknowledging the Bankruptcy Court's ability to take on major cases (e.g., Lehman Brothers), the Court noted that "none of those cases involve taking a case out of another court and moving it into Bankruptcy Court on the theory that the Bankruptcy Court and bankruptcy judge were capable of resolving it quickly"

3. Fiduciary Duties in Chancery and Bankruptcy Courts

Overview: Fiduciary Duties

Directors and management of solvent corporations have two basic duties to the Company and its stockholders, and two related obligations.

Two Primary Fiduciary Duties

Duty of Care:
Act on an informed basis and in a deliberative manner, after having considered all material information reasonably available.

Duty of Loyalty:
Act on an independent and disinterested basis in good faith solely in the best interest of the Company and its stockholders, without separate consideration of the interests of the directors, management, or of another person or organization.

Two Related Obligations

Duty of Good Faith:
Is a subset of the duty of loyalty: duty to act in the honest belief that the action taken is in the best interest of the Company and its stockholders.

Duty of Disclosure/Candor:
Flowing from the duties of care and loyalty, requires directors to make full and fair disclosure of all material information to stockholders when seeking stockholder action and to fellow directors in deliberations.

Standards of Review

Courts review directors' compliance with their duties under different standards of review, depending on the situation:

- **Business Judgment Rule:**
  The business judgment rule is a rebuttable judicial presumption that directors act in good faith, on an informed basis, based on a reasonable investigation and after careful consideration of all material factors reasonably available, and in the honest belief that such director's action was taken in the best interest of the Company and its stockholders. If directors act in accordance with their fiduciary duties, the business decisions of the Board are protected by the business judgment rule.

- **Enhanced Scrutiny:**
  Applies to situations involving change of control (including a sale of the Company for cash), certain break-ups and defensive responses to threatened change of control situations.

- **Entire Fairness:**
  Applies to self-interested / related-party transactions or when application of the business judgment rule is rebutted. If a plaintiff rebuts the business judgment rule presumption, directors have the burden of proving the "entire fairness" of their actions, encompassing both fair dealing ***and*** fair price. Fair dealing focuses on conduct of the Board in connection with how the transaction was initiated, structured and negotiated; fair price means a price which a reasonable seller, under all of the circumstances, would regard as fair.

Fiduciary Duties of Directors – Owed To Whom?

Directors of insolvent Delaware corporations have fiduciary duties to exercise their business judgment in the best interest of the corporation and to maximize the value of the corporation for the benefit of all those having an interest in it.

- **Solvent Corporations:** If a corporation is solvent, fiduciary duties are owed by the directors and officers to the corporation and its stockholders.
- **Insolvent Corporations:** Directors and officers of an insolvent corporation continue to owe a duty *to the corporation* for the benefit of all of its residual claimants, a category which now includes creditors.
  - Directors' fiduciary duties do not "shift" from stockholders to creditors when a corporation is insolvent; their duties remain to the corporation itself.
  - **Derivative Claims:** Both stockholders and creditors have standing to bring derivative claims on behalf of an insolvent corporation for breach of fiduciary duties.
- **Bankruptcy Overlay:** Courts generally have held that, in bankruptcy, directors and officers are trustees or "quasi-trustees" for a debtor's creditors. ***Accordingly, in addition to the fiduciary duties that arise under state law, determinations by directors and officers of a chapter 11 debtor are also subject to duties under federal common law.***
  - Duties are similar to the traditional corporate fiduciary duties, i.e., duty of loyalty and duty of care.

Deepening Insolvency

- "Deepening Insolvency" has been defined as "injury to the debtors' corporate property from the fraudulent expansion of corporate debt and prolongation of corporate life." *Official Comm. of Unsecured Creditors v. R.F. Lafferty & Co.*, 267 F.3d 340, 347 (3d Cir. 2001).
- Some jurisdictions treat deepening insolvency as an independent cause of action.
  - *See, e.g., Official Committee of Unsecured Creditors v. Baldwin (In re Lemington Home for the Aged)*, 777 F.3d 620 (3d Cir. 2015) (recognizing a deepening insolvency cause of action under Pennsylvania law).
- Other jurisdictions have viewed deepening insolvency as a theory of damages when asserted in connection with a breach of fiduciary duty claim (or other independent cause of action).
  - *See, e.g., Viera v. AGM II, LLC (In re Worldwide Wholesale Lumber, Inc.)*, 378 B.R. 120, 126-27 (Bankr. D.S.C. 2007) (recognizing deepening insolvency as a possible theory of damages if asserted in connection with a breach of fiduciary duty claim).
- Other jurisdictions have rejected the theory outright.
- ***Deepening insolvency is not a separate cause of action under Delaware law.***

Deepening Insolvency: *Trenwick*

- In *Trenwick Am. Litig. Tr. v. Ernst & Young, L.L.P.,* 906 A.2d 168 (Del. Ch. 2006), *aff'd sub nom, Trenwick Am. Litig. Tr. v. Billett,* 931 A.2d 438 (Del. 2007)), the Delaware Court of Chancery rejected deepening insolvency as a cause of action.
- Factual Background:
  - Starting in 1998, the directors of a publicly listed insurance holding company embarked on an aggressive strategy of growth by acquisition in the United Stated States, United Kingdom, and Bermuda.
  - The holding company's U.S. subsidiary – Trenwick America Corporation ("TAC") – became the intermediate parent of all U.S. operations. TAC also became the primary guarantor and secondary guarantor on hundreds of millions of debt.
  - In 2003, the holding company and TAC filed chapter 11 bankruptcy in the United States Bankruptcy Court for the District of Delaware.
  - Trenwick America Corporation's Chapter 11 plan created the TAC Litigation Trust, which was assigned the causes of action held by TAC.
  - Instead of litigating fiduciary duty claims in Bankruptcy Court, TAC filed its case in Delaware Chancery Court.
  - In 2005, following confirmation of TAC's Chapter 11 plan, the TAC Litigation Trust filed a complaint in the Delaware Chancery Court against former subsidiary directors alleging breach of fiduciary duty, "deepening insolvency," and fraud, claiming that the majority independent board of the holding company engaged in an imprudent business strategy by acquiring other insurers who had underestimated their potential claims exposure.

Deepening Insolvency: *Trenwick* (cont'd)

- Outcome:
  - The Court of Chancery dismissed all of the Litigation Trust's claims, finding:
    - The Court found that the acquisitions were arms-length transactions approved by majority independent boards and a diverse stockholder base, so the Litigation Trust did not have a claim for breach of fiduciary duty.
    - Delaware does not recognize "deepening insolvency" as a cause of action: "'[D]eepening insolvency' is not more of a cause of action when a firm is insolvent than a cause of action for 'shallowing profitability' would be when a firm is solvent."
      - "Even when a firm is insolvent, its directors may, in the appropriate exercise of their business judgment, take action that might, if it does not pan out, result in the firm being painted in a deeper hue of red."
      - The court found that the "complaint argues from hindsight," and that the fact that the aggressive business strategy ultimately failed did not mean it was "the product of culpably sloppy efforts."
      - "So long as directors are respectful of the corporation's obligation to honor the legal rights of its creditors, they should be free to pursue in good faith profit for the corporation's equityholders. Even when the firm is insolvent, directors are free to pursue value maximizing strategies, while recognizing that the firm's creditors have become its residual claimants and the advancement of their best interests has become the firm's principal objective."
    - The plaintiffs did not plead the fraud claims with particularity and were therefore not viable.

Faculty

Jacqueline Dakin is a Corporate Restructuring associate with Skadden, Arps, Slate, Meagher & Flom LLP in Wilmington, Del., where she represents debtors, creditors, investors and other stakeholders in complex business reorganizations and distressed transactions, including chapter 11 reorganizations, out-of-court workouts, M&A transactions, and other related financing and restructuring matters. She also advises clients on general corporate and litigation matters. Ms. Dakin's experience includes counseling Endo International plc and certain of its affiliates in their chapter 11 cases in the U.S. Bankruptcy Court for the Southern District of New York; Armstrong Flooring, Inc. and three affiliated debtors in their chapter 11 cases in the U.S. Bankruptcy Court for the District of Delaware, including the $107 million sale of Armstrong's North American assets, the $59 million sale of its assets in China and Hong Kong and the $31 million sale of its assets in Australia; Highline Management Inc. in connection with the $880 million sale of substantially all of the assets of Prime Automotive Group to Group 1 Automotive, Inc.; Black Diamond Capital Management, L.L.C. as lender to, and potential purchaser of, Speedcast International Ltd. in its chapter 11 cases in the U.S. Bankruptcy Court for the Southern District of Texas; The McClatchy Co. and certain of its affiliates in their chapter 11 cases in the U.S. Bankruptcy Court for the Southern District of New York, including the $312 million sale of substantially all of its assets to its largest bondholder, Chatham Asset Management; Patriarch Partners in connection with multiple matters, including the restructuring of Dura Automotive in the U.S. Bankruptcy Court for the District of Delaware; and the special litigation committee of Clovis Oncology Inc. in an 18-month internal investigation and successful resolution of high-profile Caremark claims. She received her B.A. *magna cum laude* in 2016 from the University of Connecticut, and her J.D. *summa cum laude* in 2019 from Villanova University Charles Widger School of Law, where she was admitted to the Order of the Coif and was a member of the *Villanova Law Review*.

Hon. Paul A. Fioravanti, Jr. was sworn in as a Vice Chancellor of the Delaware Court of Chancery in Wilmington on Feb. 10, 2020. Prior to joining the court, he was a director at the Wilmington law firm of Prickett, Jones & Elliott, P.A., where he practiced for 21 years with a primary focus on corporate and commercial litigation in the Court of Chancery. While in private practice, Vice Chancellor Fioravanti served on the Court of Chancery Rules Committee and the Corporation Law Council of the Corporation Law Section of the Delaware State Bar Association. Upon graduating from law school, he served as a judicial clerk on the Court of Special Appeals of Maryland for Hon. Ellen L. Hollander, who now serves on the U.S. District Court for the District of Maryland. Vice Chancellor Fioravanti is a member of the American Bar Association, the Delaware State Bar Association and the Richard S. Rodney Inn of Court. He received his B.A. in political science from the University of Delaware and his J.D. from the University of Maryland School of Law, where he served as editor-in-chief of the *Maryland Law Review*.

Joseph O. Larkin is a litigation partner in the Corporate Restructuring department of Skadden, Arps, Slate, Meagher & Flom LLP in Wilmington, Del. He represents a broad range of clients in high-profile, bet-the-company disputes involving mergers and acquisitions, commercial contracts, antitrust matters, securities class actions, corporate control challenges and troubled-company litigation in state and federal courts throughout the country. He also frequently advises clients on Delaware law governing corporations and alternative entities. Mr. Larkin has represented companies and boards in

litigation arising from some of the largest transactions in history, and he has been at the forefront of corporate innovation. He was one of the lead litigators that represented MacAndrews & Forbes in the Delaware Supreme Court's seminal decision in *Kahn v. M&F Worldwide Corp. (MFW)*, and he has successfully tried cases and arbitrations to judgment for Sabre Corp., CommonWealth REIT, Service Properties Trust, TravelCenters of America LLC and the stockholders of EPCO Carbon Dioxide Products, Inc. Mr. Larkin has been repeatedly named to *The Best Lawyers in America* for Corporate Law, and has been consistently recognized by *The American Lawyer* and the *Financial Times* for litigation victories in the Delaware Court of Chancery. He also has been recognized by *Turnarounds & Workouts* magazine as one of its Outstanding Young Restructuring Lawyers and by *Chambers USA* for Bankruptcy/Restructuring, in addition to being named as a Litigator of the Week in September 2020 by *The American Lawyer* for a victory in the Delaware Court of Chancery. Mr. Larkin received his B.A. *magna cum laude* from the University of Richmond and his J.D. *magna cum laude* from Villanova University School of Law, where he was admitted to the Order of the Coif and served as associate editor of the *Villanova Law Review*.

Hon. Brendan Linehan Shannon is a U.S. Bankruptcy Judge for the District of Delaware in Wilmington, appointed in 2006. He manages a full chapter 11 docket and also handles all chapter 13 consumer bankruptcy cases filed in Delaware. He served as Chief Judge from 2014-18. Prior to his appointment to the bench, Judge Shannon was a partner with Young Conaway Stargatt & Taylor, LLP in Wilmington, Del., where he primarily represented corporate debtors and official committees in chapter 11 cases. He is an adjunct professor in the Bankruptcy LL.M. Program at St. John's University School of Law in New York, and previously taught at Widener School of Law in Delaware. He also serves on the board of editors of *Collier on Bankruptcy* (16th ed.) and is a contributing author for *Collier Forms* and for several chapters covering the Federal Rules of Bankruptcy Procedure. In addition, he serves on the editorial board of the *American Bankruptcy Institute Law Review*. In 2011, Judge Shannon was appointed to serve as a member of the National Bankruptcy Conference. In 2020, he was inducted as a Fellow of the American College of Bankruptcy. Judge Shannon is a member of the Delaware State Bar Association, the American Bar Association, ABI and the Rodney Inns of Court in Wilmington, Del. He is also a member of the board of directors of the Delaware Council on Economic Education. Judge Shannon received his undergraduate degree from Princeton University and his J.D. from the Marshall-Wythe School of Law at the College of William and Mary.