



GLOBAL TURNAROUND

15th International Insolvency & Restructuring Symposium

France is open for business



WELCOME TO THE AMERICAN BANKRUPTCY INSTITUTE'S (ABI) 15TH INTERNATIONAL INSOLVENCY & RESTRUCTURING SYMPOSIUM IN PARIS, FRANCE! GLOBAL TURNAROUND IS PROUD, ONCE AGAIN, TO BE MEDIA SPONSOR FOR THE CONFERENCE.



Al Togut

Al Togut, founding partner of Togut, Segal & Segal, helped Ian Williams put the conference on the map by persuading many of the leading lights of the New York restructuring marketplace to support it. Thus a stimulating meeting was born.

It was also Togut's idea to involve other trade associations in the conference, by inviting them to contribute a panel. He has been closely associated with the American Bankruptcy Institute (ABI) for many years, and co-chaired its recent review of Chapter 11.

One of the many initiatives resulting from the review was a streamlined version of Chapter 11 for smaller companies, which comprise 95 per cent of all filings. "I'm very proud of that," says Togut.

"This conference brings many of the leading restructuring professionals of both continents together, and we should celebrate it reaching its fifteenth year," declares Togut.

"My motivation for heavy involvement in the ABI international conference is that whereas when I first started practicing 45 years ago, Chapter 11s were filed by US companies with all operations in the US, a US work force, US suppliers, US customers, US creditors, etc, today's Chapter 11s involve companies with operations, suppliers, creditors, etc located in many countries.

"I felt it important for ABI to broaden its footprint and offer a conference that would educate its members in the ways of an international practice.

"To my mind, that is the most important aspect of the Paris conference."



Ian Williams

Ian Williams "I only meant to do it once," says Ian Williams, the insolvency lawyer who has been running the ABI's international insolvency conferences for the last fifteen years.

"It's been a rollercoaster ride," says Williams. "I put together the first conference in the Savoy in London, and afterwards I thought 'that's it.' Then in 2006 everyone said 'what are you doing for the conference this year?' So I've been doing it ever since.

"This year, amongst other things, I hope we will learn whether France has really made itself fund-friendly, or is it still the 'Ancien Regime'. I am really looking forward to another well-received event."

Welcome to Paris!

"And what better place to debate the future path of the European restructuring market than France. Brexit seems to grind on forever, the US is still locked in a tariff war with China, and businesses worldwide worry about tightening credit and a long-anticipated economic slowdown.

"President Macron has laid out the red carpet for international businesses in this changing world, including new insolvency laws that allow debt-equity swaps and cram-down. We should learn a lot more about how far he has succeeded at this year's conference."

John Willcock,
Editor, Global Turnaround





France opens its doors to investors in distressed companies



Anker Sorensen,
De Gaulle Fleurance
& Associés

Is the famously pro-employee and pro-debtor restructuring regime in France finally improving for distressed investors?

The answer is a qualified 'yes' according to Anker Sorensen, a partner with independent full service French law firm De Gaulle Fleurance & Associés, who will be chairing the first panel of the conference, 'Helping foreign creditors and investors navigate French insolvency law and recent statutory changes'.

It is nearly thirty years since Anker Sorensen started practising law in France, most of those in the area of M&A, corporate rescue and restructuring. For a lot of that time, he says, the French restructuring regime was very favourable to debtors, and much of it still is:

"Creditors do not appoint the administrator, nor control the sauvegarde or administration process, which are court-driven proceedings in which the administrators are key figures.

"The main aim of these proceedings is not to pay creditors, but rather to find a solution for the debtor company."

Recently, however, legal reforms in France have enabled debt for equity swaps, whether forced or voluntary, says Sorensen, as well as an element of cram-down. "Creditors have also been given the ability, provided they sit on a creditors' committee, to file their own restructuring plan of the debtor company".

"Over the last ten years, around twenty debt for equity swaps in mid-sized to large distressed companies have been reported by the French financial press," says Sorensen.

French debt-equity swaps

Ikks

In May this year bondholders holding 320 million euro of debt in Ikks took control of the French ready-to-wear group using an accelerated sauvegarde procedure from previous owners, New York-based global investor Silverfern Group, LBO France and founder Roger Zannier.

The new owners of the 500-store

group were led by Avenue Capital, Carval Investors and Marathon Asset Management, who had set up an ad hoc committee in 2018.

Under the debt-equity swap, 180 million euro out of the 320 million euro of the original bond debt was converted into capital. The new owners also put in 70 million euro of new money to refinance short-term loans and consolidate cash flow.

Courtepaille

Courtepaille represents a network of 290 restaurants located mostly on French motorways, that employs more than 4,000 people.

In 2015 the UK-based mezzanine finance firm Capital Group (ICG) took control of Courtepaille from the previous owner Fondations Capital.

That in turn was five years after Courtepaille had been acquired by Fondations Capital in a 245 million euro secondary buyout. ICG had financed the deal with 190 million euro in financing, and when Courtepaille subsequently broke covenants, Fondations lost control.

Cameieu

Cameieu operates one of France's largest chains of women's clothing stores with over 600 shops, and another 400 in 17 other countries. The company was launched in 1984 and now employs 6,000 people with revenues of over 700 million euro.

AXA Private Equity acquired the company from the founding family in 2005.

In January this year creditors Farallon, Carval and CVC took control in a debt-equity swap, having already financed a rescue of the company three years ago.

For all that, Sorensen added, "French banks are in the main still reluctant to pursue debt-equity swaps, even though the press has recently reported that this scenario has been considered in the arm-wrestling between Rallye, the holding of the French supermarkets chain Casino, and its financial creditors, as well as Bourbon, the offshore oil services provider."

In sauvegarde, the court can decide that the debtor's share capital or by-laws can be modified by the shareholders' meeting,

convened at first notice, and impose that the vote, to allow a change of ownership, be cast at the majority of the shareholders present or represented. This is a marked departure from France's established Company Law.

In administration, when the closing down of a company of a certain size is likely to cause serious disturbance to the national or regional economy and employment, and if the change of the company's share capital appears to be the only serious solution to allow the continuation of the company's activity, shareholders:

- can be deprived of their voting rights and replaced by a court-appointed agent to vote in favour of the share capital change, in lieu of the shareholders reluctant to vote the required change.
- may also be forced to sell their equity stakes to the investors and/or creditors who have committed to implement the restructuring plan, submitted to the court and supported by the latter, at a price to be decided by an expert.

This, says Sorensen, "obviously incentivises reluctant shareholders to cooperate or hand over the keys of companies in distress to its creditors or other investors".

During the third quarter of this year, the number of mid sized French companies employing more than 50 people filing for insolvency went up compared to the same period last year and exceeded one filing per working day (source: Altares-Dun & Bradstreet).

These filings threaten the jobs of around 2,350 employees more than last year at the same period. According to market rumours the number of filings of mid-sized and larger companies may increase in the next few months, thereby increasing the opportunities for their competitors and potential investors.

"All in all," Sorensen concludes, "France is more open to funds investing in distressed business than it has ever been. Investors should not be afraid to use the new rules."

ABI announces diverse '40 under 40'

The American Bankruptcy Institute has announced its most diverse '40 under 40' since launching the initiative for young professionals in 2017.

"This 2019 class of honorees is incredibly accomplished and diverse, and well representative of the multidisciplinary nature of our community," said ABI executive director Samuel J. Gerdano. "We look forward to engaging these young leaders in the full range of ABI's activities, in service to the profession."

A dozen senior members of the ABI selected the honorees from over 350 applicants. Twenty-two members of the 2019 '40 under 40' class are male and 18 are female, and six of the honorees are minorities.

For the first time, two honorees are located outside the US, from Mexico and Spain. The ABI noted that those selected were chosen from both large and small firms from every region of the US, and represent diverse practice areas such as law, finance, consulting, academia, government and more.

The honorees will be recognised at a special ceremony during ABI's 2019 Winter Leadership Conference, taking place 5-7 December at the Terranea Resort in Rancho Palos Verdes, California.

The ABI's '40 under 40'

- **Michael Addeo** of GSO Capital Partners (New York)
- **Michael Balistreri** of Alvarez & Marsal (New York)
- **Camille C. Bent** of BakerHostetler LLP (New York)
- **Kimberly A. Brown** of Landis Rath & Cobb LLP (Wilmington, Del.)
- **Jose Carles** of Carles Cuesta Abogados (Madrid, Spain)
- **Justin F. Carroll** of Guggenheim Partners Investment Management (New York)
- **Bradley Cosman** of Perkins Coie LLP (Phoenix, Ariz.)
- **Julie A. Cvek Curley** of Kirby Aisner & Curley LLP (Scarsdale, N.Y.)
- **Ryan J. Dattilo** of the U.S. Senate Committee on the Judiciary (Washington, D.C.)
- **Monique B. DiSabatino** of Saul Ewing Arnstein & Lehr (Wilmington, Del.)
- **Ashley A. Edwards** of Parker Poe (Charlotte, N.C.)
- **Prof. Pamela Foohey** of the Indiana University Maurer School of Law (Bloomington, Ind.)
- **Gregory W. Fox** of Goodwin Procter LLP (New York)
- **Michael Fuller** of OlsenDaines (Portland, Ore.)
- **Prof. Brook E. Gotberg** of the University of Missouri Law School (Columbia, Mo.)
- **Christopher T. Greco** of Kirkland & Ellis LLP (New York)
- **Amy Denton Harris** of Stichter, Riedel, Blain & Postler, P.A. (Tampa, Fla.)
- **Andrew C. Helman** of Murray, Plumb & Murray (Portland, Maine)
- **Adam D. Herring** of the U.S. Department of Justice, Executive Office for U.S. Trustees (Washington, D.C.)
- **George R. Howard** of Skadden, Arps, Slate, Meagher & Flom LLP (New York)
- **Robert Klamser** of Stretto (Denver)
- **Angela M. Libby** of Davis Polk & Wardwell LLP (New York)
- **Jessica H. Liou** of Weil, Gotshal & Manges LLP (New York)
- **David A. Mawhinney** of K&L Gates LLP (Boston)
- **Ashley McDow** of Foley & Lardner LLP (Los Angeles)
- **Megan W. Murray** of Buchanan Ingersoll & Rooney (Tampa, Fla.)
- **Edward E. Neiger** of ASK LLP (New York)
- **Russell A. Perry** of Ankura (Dallas)
- **Charissa Potts** of Freedom Law, PC (Eastpointe, Mich.)
- **Brandy M. Rapp** of Whiteford Taylor Preston, LLP (Roanoke, Va.)
- **Ivan J. Romo Valdovinos** of SOELI Consulting (Mexico City, Mexico)
- **Tara J. Schellhorn** of Riker Danzig Scherer Hyland & Perretti, LLP (Morristown, N.J.)
- **Alexandra R. Schnapp** of the U.S. Bankruptcy Court (N.D. Ga.; Atlanta)
- **Marc N. Swanson** of Miller, Canfield, Paddock and Stone, PLC (Detroit)
- **Jennifer M. Taylor** of O'Melveny & Myers LLP (San Francisco)
- **Spencer M. Ware** of AlixPartners LLP (New York)
- **Matthew L. Warren** of King & Spalding LLP (Chicago)
- **Lindsy M. Weber** of Polsinelli PC (Phoenix)
- **Nicholas J. Zluticky** of Stinson LLP (Kansas City, Mo.)
- **Evan J. Zucker** of Blank Rome LLP (New York)

'King Coal' loses its throne in the US

Stephen Lerner, global leader of Squire Patton Boggs' restructuring practice, has been helping to reorganise distressed businesses for 35 years.

This year he was asked to do something he has never done before.

On a Thursday the CEO of a company he had never dealt with previously called him, asking for help to file a Chapter 11. On Friday they had their very first meeting. On the Monday it filed.

"Usually you want as much time as possible to prepare for a bankruptcy filing," said Lerner. "This is the first time in my life I've had to do a filing 'sight unseen'."

The reason was unique to the company, a sudden and unforeseeable change in its financial circumstances. But what does Lerner think of the current market for restructurings in the US?

He reckons the US economy is getting "frothier". Many have forecast a downturn, and with it a boom in his kind of work. But while his practice is the busiest it has been in the last two years, Lerner says he doesn't think we're quite there yet. Which is perfectly understandable, he adds. Restructurings and bankruptcies are a lagging indicator of economic activity. It could take another year or two for a surge in restructuring work to really take off.

Meanwhile many oil and gas companies are coming round for their second, third or even fourth restructuring, due to the languishing oil price.

This low oil price has had an inevitable knock-on effect on gas companies, exploration and oil services businesses, and other forms of energy generation, particularly coalmines in the US.

'The biggest coal mines in the world'

It must be quite something to put on your cv. Lerner is the debtor adviser to the company which runs the two of the biggest coalmines in the world – and which has filed for Chapter 11.

Both the Blackjewel pits are in Wyoming, something of a surprise perhaps when you remember the historic concentration of US coal in states like Kentucky and Tennessee.

Blackjewel is the US's fifth-largest coal company by value, and has total debts and liabilities of over US\$400 million. Coincidentally on 29 October the US's biggest coal company, Murray Energy, became the eighth American coal company to file for Chapter 11 this year.

Advised by Kirkland & Ellis, the demise of the Ohio-based mining giant had been long forecast. Murray's bankruptcy follows those of industry stalwarts like Cloud Peak Energy, Cambrian Coal, as well as Blackjewel.

The US economy is also facing another headwind, says Lerner: tightening credit markets. While the interest rate may still remain low, even the most secured lenders at the top of the debt stack are beginning to get concerned about the quality of the credit, says Lerner.

"If companies fail to operate within their loan terms, lenders are taking advantage by improving their position. We live in interesting times," Lerner concludes.



AMERICAN
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15th International Insolvency & Restructuring Symposium

14-15 November 2019
InterContinental Paris le Grand, Paris, France

AGENDA

THURSDAY 14 November

12.00 noon REGISTRATION OPENS

12.30 - 1.30 NETWORKING LUNCH

1.45 - 2.00 WELCOME

Ian Williams
RSM Restructuring Advisory LLP; London, UK

2.00 - 3.00 **Helping Foreign Creditors and Investors Navigate French Insolvency Law and Recent Statutory Changes**

Anker Sorensen, Moderator
De Gaulle Fleurance & Associés; Paris, France
Fabienne Beuzit
Jones Day; Paris, France
Jean-Dominique Daudier de Cassini
Weil, Gotshal & Manges LLP; Paris, France
Fabienne Goubault
PLM Avocats; Paris, France
Christophe Thévenot
Thévenot & Perdereau Administrateurs
Judiciaries; Paris, France

3.00 - 4.00 **UNCITRAL Model Law By the International Insolvency Institute**

This session will examine the UNCITRAL Model Law recognition and enforcement of foreign insolvency-related judgments, and will update attendees on the current drafts related to enterprise groups and medium, small and micro-insolvencies.

Evan J. Zucker, Moderator
Blank Rome, LLP; New York, USA
Kathlene M. Burke
Skadden, Arps, Slate, Meagher & Flom LLP; London, UK
Hon. Christopher M. Klein
U.S. Bankruptcy Court (E.D. Calif.); Sacramento, USA
Prof. Avv Antonio Tullio
Tullio & Partners Studio Legale; Modena, Italy
Robert van Galen
NautaDutilh N.V.; Amsterdam, The Netherlands

4.00 - 4.30 COFFEE AND TEA BREAK

4.30 - 5.30 **US-EU Distressed Investing**

Teresa C. Kohl, Moderator
SSG Capital Advisors, LLC; West Conshohocken, Penn., USA
Alban Meteyer
Chiron Financier SAS; Paris, France
Joshua Pichinson
AgencyIP; Santa Clara, Calif., USA
Federica Pietrogrande
Gordon Brothers; London, UK
Christian A. Saxenhammer
Saxenhammer & Co.; Berlin, Germany

5.30 - 6.30 **Brexit Update: A European Perspective**
TMA Europe

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FRIDAY 15 November

00.00 - 00.00 **OPENING REMARKS**

Ian William RSM Restructuring Advisory LLP; London
Alane A. Becket, President, ABI
Becket & Lee LLP; Malvern, Pa., USA
Dr. Annerose Tashiro
Vice President-International Affairs, ABI
Schultze & Braun GmbH; Achern, Germany

9:30 - 10:15 **KEYNOTE ADDRESS**
AI, Innovation and the Future

Dr. Rand Hindi
Co-Founder and CEO Snips; Paris, France

10.15 - 11.30 **Diggin' for Gold: Strategic Tools for Realizing and Monetizing Assets Utilizing Third-Party Funding IWIRC**

Michelle Pickett, Moderator
PwC; Toronto, Canada
Ingrid Bagby
Cadwalader, Wickersham & Taft LLP; New York, USA
Carmel King
Grant Thornton UK LLP; London, UK
Naomi Loewith
Bentham IMF; Toronto, Canada

11.30-11.45 **COFFEE AND TEA BREAK**

11.45 - 1.00 **2020 Within Reach: How Are Trade Wars, Elections and Commodities Volatility Affecting Restructurings Around the Globe? INSOL International**

Ronald J. Silverman, Moderator
Hogan Lovells; New York, USA
Erin Broderick
Honigman LLP; Chicago, USA
Roger Elford
Charles Russell Speechlys; London, UK
Charlotte Møller
Reed Smith LLP; London, UK
Geoffrey D. Simms
AJ Capital; Jakarta, Indonesia
Vincent Vroom
Loyens and Loeff; Amsterdam, The Netherlands

1.00 - 2.00 **NETWORKING LUNCH**

2.00 - 3.15 **The Broad, Developing International Paradigm for Restructuring: The Latest on the American Perspective**

The push for more uniform systems allowing for the exchange of restructuring efforts between countries continues unabated. This panel will discuss the last year or two of developing trends in the US as they reflect this growing international paradigm, and will also comment on recent cases and decisions of note covering the international restructuring experience.

William A. Brandt, Jr., Moderator
Development Specialists, Inc.; New York, NY, USA
Stephen D. Lerner
Squire Patton Boggs (US) LLP; Cincinnati, Ohio, USA
Elizabeth R. McCollm
Paul, Weiss, Rifkind, Wharton & Garrison LLP;
New York, NY, USA
Chief Judge Cecelia G. Morris
U.S. Bankruptcy Court (S.D.N.Y.); New York, NY, USA

3:15 - 3:45 **COFFEE AND TEA BREAK**

3.45 - 5.00 **Tariff Wars: The Impact on U.S. Businesses and Their Potential Failure**

With the actual implementation of tariffs, how have business practices shifted? What is the destruction of value in manufacturing and agriculture? Is there a resolution in sight, or are retailers and others doomed?

5.00 - 5.15 **Closing Remarks**
Ian Williams

RSM Restructuring Advisory LLP; London, UK

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