



Proskauer University

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Proskauer»

The Private Credit Restructuring Group

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Private Credit Restructuring Group

Market-leading
Restructuring
Capabilities

Private Credit
Restructuring Group

Unmatched
Private Credit
Experience

Ranked a **top ten** firm by The Deal for Out-of-Court Restructurings

100+ middle market restructurings over the last decade

“Absolutely exceptional...superior work, some of the highest-caliber restructuring lawyers...”

Client in Chambers USA

50 insolvency and transactional lawyers

Proud to advise **75 of the largest asset managers** globally

Executing **250+ transactions each year**

“Top-tier advice across a range of financings.”

Chambers USA

Restructuring at Proskauer

Our team has advised on 100+ restructurings, involving more than \$1 trillion in debt, and including some of the largest, most high-profile matters in recent history.



What We Are Seeing Today



General Observations

1. Early COVID 19: March 2020

- a) Liquidity, liquidity, liquidity
- b) Range of alternatives – no one size fits all
- c) BUT default levels remained low

2. What comes next?

- a) Key driver – liquidity
- b) Why lenders may not get to the table early enough this time around

Next Steps

1. Getting Information

- a) Using rights under credit agreement
- b) Ratchet up the pressure

2. Current Negotiations

- a) Sponsor contributions – form, timing and terms
 - i. Risk of equitable subordination and recharacterization
- b) Lender contributions – form, timing and terms
- c) Pre-DIP roll-up

Selected Workout and Restructuring Scenarios

1. Scenario 1: We have a deal – sponsor willing to “toss the keys”
 - a) Lender considerations
 - b) Implementation out-of-court
 - c) Implementation in-court – The Rocket Case
2. Scenario 2: We have a deal – sponsor buys time
 - a) How to prevent the “double-cross”
3. Scenario 3: The “Heisman”: Time to Take Unilateral Action
 - a) Impasse – now what?
 - b) What’s the tool-box? When and how to ratchet-up the pressure

Selected Workout and Restructuring Scenarios

- 4. Scenario 4: Majority lenders have a deal... how to deal with holdouts
 - a) Out-of-court solutions
 - b) Bankruptcy court solutions
- 5. Scenario 5: We had a deal and then... the fulcrum shifted!

Hot Topics



Hot Topics

1. When to “down-shift” off the board of directors
2. DIP Roll-up – what is the current state of play in roll-ups?
3. Use of cash – not cash collateral in chapter 11 –the changing dynamic
4. “Hibernation” chapter 11 cases
 - a) What are they?
 - b) Restart challenges
5. Untested structures: Unitranche and AALs

Conclusion



The Proskauer Team



Peter J. Antoszyk



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Education

Boston University School of Law,
J.D., 1985

State University of New York at
Albany, B.S., 1982

Admissions & Qualifications

Florida State Bar, 1987

Massachusetts State Bar, 1985

Peter J. Antoszyk is a partner in the Corporate Department, a member of the Private Credit Group and co-head of the Private Credit Restructuring Group.

Peter represents direct lenders, private credit funds, asset managers, alternative lenders, sovereign wealth funds, BDCs, insurance companies, hedge funds, finance companies and other direct credit funds on arranged, syndicated and “club” direct lending transactions ranging from \$15 million to \$1 billion. Peter has extensive experience with acquisition financing, dividend recapitalizations, growth capital loans and cross-border finance transactions for sponsor and non-sponsor backed financings in North America and Europe. He has advised across a wide array of sectors including consumer and retail, manufacturing, science and technology, health care, medical and medical devices and energy and energy-related industries. Peter’s experience also includes structures such as uni-tranche, one-stops, first-in/last-out financings, second lien loans, subordinated term loans, mezzanine, holdco structures, synthetic mezzanine, “silent firsts,” preferred equity and other innovative private credit structures.

Peter has been at the forefront of developing the unitranche and agreement among lender structures.

Peter also has over 25 years of experience in special situations, bankruptcies and insolvencies, including in out-of-court debt-for-equity exchanges, section 363 acquisitions, debtor-in-possession (DIP) financings, exit financings, chapter 11 plan acquisitions and restructurings (including restructuring support arguments) and other creditor rights strategies in both domestic and foreign jurisdictions. Peter combines his extensive experience with insolvency and finance to counsel clients not only on structuring financing transactions (including intercreditor issues) but also throughout any workout, exercise of remedies restructuring or insolvency proceedings.

Chambers USA notes that Peter is “not only great at documenting deals, but he’s also a tremendous restructuring attorney”; he “understands the legal issues and the commercial dynamics too”; and he is “incredibly effective and practiced.”

Peter lectures and writes articles for industry publications and has been quoted in *Private Debt Investor*, *Financier Worldwide*, *The New York Times*, *The Washington Post*, *The Wall Street Journal*, *The Daily Deal*, *The Secured Lender* and other publications, and has appeared on CNN Street Sweep.

David M. Hillman



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Education

Albany Law School of Union
University (J.D., 1995)

State University of New York
College at Oneonta (B.A., 1992)

Admissions & Qualifications

New York State Bar, 1996

David M. Hillman is co-head of the Private Credit Restructuring Group and a member of the Business Solutions, Governance, Restructuring & Bankruptcy Group.

David has 25 years of experience with an emphasis on representing private credit lenders, private funds, sovereign wealth funds and other alternative lenders and distressed investors in special situations and restructurings both in- and out-of-court, whether the lender is secured or unsecured, unitranche or structured preferred. He has substantial experience in every phase of restructuring and distressed investing, including credit bid sales under section 363, debt-for-equity swaps, chapter 11 plans, out-of-court restructurings and foreclosures, as well as navigating inter-creditor issues involving the relative rights of majority and minority lenders. David also litigates the issues facing private credit lenders, including issues involving plan confirmation, solvency, valuation, inter-creditor disputes, financing and cash collateral disputes, fraudulent transfers, equitable subordination, recharacterization, breach of fiduciary duty and similar disputes.

David was listed as a “leading individual” in bankruptcy/restructuring by *Chambers USA*, which noted that interviewees praised him as “wonderful to deal with,” “very effective” and an “excellent litigator and strategist” who “thinks outside the box.” *Chambers* also noted that David is “an excellent counselor for distressed situations with significant litigation elements” and “a terrific, conscientious and focused lawyer.” Additionally, he has been recognized as a leader in his field by New York Super Lawyers as well. A member of the American Bankruptcy Institute, David speaks frequently on bankruptcy-related topics, including recent decisions affecting secured creditor rights and preparing creditors for bankruptcy risks.

Charles A. Dale



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Education

Northeastern University School of Law (J.D., 1991)

University of Dayton
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Admissions & Qualifications

Massachusetts State Bar, 1991

Chad Dale is a partner in Proskauer's Corporate Department and a member of both the Business Solutions, Governance, Restructuring & Bankruptcy and Private Credit Restructuring Groups.

Chad has nearly 30 years of experience in corporate reorganizations and debt restructurings. As a member of the Private Credit Restructuring Group, Chad's practice focuses on direct lenders and ad hoc groups of direct lenders, hedge funds and BDC's. He also represents troubled companies, equity sponsors, creditors' committees, trustees and receivers in complex out-of-court debt restructurings and formal insolvency proceedings. Chad has also served as a court-appointed chapter 11 trustee and frequently represents purchasers of financially distressed businesses. Chad offers extensive experience handling debt restructurings, reorganizations and distressed asset transactions.

Recognized by *Chambers USA* in Band 1 of its rankings, market sources have noted that Chad is "an incredibly accomplished attorney with great presence." He is a fellow of the prestigious American College of Bankruptcy and has been recognized as one of the top 100 lawyers in New England since 2008.

Chad has written and presented articles on a wide range of matters including debtor-in-possession financings, the reorganization of professional sports franchises, intellectual property licensing in bankruptcy, executory contracts, director and officer liability insurance and income and property taxation in bankruptcy.

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Education

University of Michigan Law
School (J.D., 2008)

Haverford College (B.A., 2003)

University of Oxford

Admissions & Qualifications

New York State Bar, 2009

Vincent Indelicato is a partner in Proskauer’s Corporate Department, and a member of both the Business Solutions, Governance, Restructuring & Bankruptcy and Private Credit Restructuring Groups. His practice focuses on corporate restructurings, with an emphasis on the representation of direct lenders, ad hoc groups, bondholders, and creditors’ committees both out of court and in chapter 11. He is frequently consulted by leading distressed hedge funds, BDCs, private credit lenders, private equity investors and creditors on complex domestic and international insolvency and restructuring issues, including intercreditor and interlender matters, across a variety of industries. Vincent has been recognized by the American Bankruptcy Institute as a recipient of the 40 Under 40 Award for his “formidable courtroom presence with natural dealmaker instincts”, and an Outstanding Young Restructuring Lawyer by Turnaround and Workouts.

Over the last several years, Vincent has played a lead role in some of the most significant corporate reorganization cases in the United States. These include his representation of the Statutory Committee of Unsecured Claimholders in the chapter 11 cases of Caesars Entertainment Operating Company Inc., which filed for bankruptcy with more than \$18 billion of funded debt; the Los Angeles Dodgers in their \$2 billion acquisition by Magic Johnson and Guggenheim Partners; Brookfield Asset Management in the \$2.5 billion debt restructuring of Kerzner International’s Atlantis Bahamas Resort; and J.P. Morgan and other substantial creditors in the chapter 11 cases of MF Global, a financial services company with \$41 billion in assets. He also serves as counsel to the Statutory Committee of Unsecured Claimholders in the multi-billion-dollar chapter 11 cases of Westinghouse Electric Co. LLC, represents an ad hoc group of second lien noteholders in the chapter 11 cases of Avaya Inc., which filed for bankruptcy with more than \$6 billion of funded debt, and acts as lead counsel to the Statutory Equity Committee in the chapter 11 cases of Breitburn Energy Partners L.P., an oil and gas master limited partnership with more than \$3 billion of funded debt.

Vincent writes extensively on restructuring topics, and his writing has been featured in *The New York Times DealBook*, *The Bond Buyer*, *The New York Law Journal* and the leading industry blog Distressed-Debt-Investing.com. He also has been recognized as a “Rising Star” in the New York Metro editions of Super Lawyers every year since 2013, and received a 2013 Turnaround Award by The M&A Advisor.

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