- August 2026 -

THE CREDIT REPORT

A Publication by the IWIRC - Virginia Network

Inside this Edition:

Recent Developments
New Cases You Need to Know.

***Keathley v. Buddy Ayers Constr., Inc.*, 608 U.S. ___, 146 S. Ct. 1532 (2026):** After filing a Chapter 13 petition, the debtor was involved in a post-petition automobile accident and retained counsel to pursue a personal-injury claim. The debtor informed his bankruptcy counsel that he intended to bring the action, but neither the debtor nor counsel amended his schedules to disclose the claim. The omission occurred even though the debtor's confirmed plan provided for payment of 100% of creditors' claims over five years. The debtor later filed a negligence action while the bankruptcy case remained pending. After the defendant moved for summary judgment on judicial-estoppel grounds, the debtor immediately amended his schedules and submitted affidavits explaining that the omission had been inadvertent. Applying Fifth Circuit precedent, the district court held that the action was barred because the debtor knew the facts underlying the claim and had a potential motive to conceal it. The Fifth Circuit affirmed.

In a unanimous opinion authored by Justice Jackson, the Supreme Court vacated and remanded. Assuming without deciding that judicial estoppel applies in the bankruptcy context and that inadvertence or mistake may prevent its application, the Court held that courts must employ a holistic inquiry considering all relevant facts and circumstances. Knowledge of the claim and a hypothetical motive to conceal it may be relevant, but they cannot be treated as effectively dispositive. Because knowledge and some potential financial benefit will exist in nearly every bankruptcy nondisclosure case, the Fifth Circuit's rule was both overly rigid and overly broad. The Court therefore rejected the frameworks previously employed by the Fifth, Tenth, and Eleventh Circuits and required a fact-specific inquiry capable of distinguishing intentional manipulation from an inadvertent omission.

Continued on page 3

Continued from page 2

***Black v. Brice* (In re Schletter, Inc.), Case No. 25-2069, 2026 WL 1864750, 2026 U.S. App. LEXIS 18912 (4th Cir. June 29, 2026):** Following confirmation of a Chapter 11 liquidation plan, the plan administrator sued the debtor's former president and CEO for breach of fiduciary duty arising from prepetition business decisions. The debtor, a wholly owned subsidiary of a German parent company, manufactured and distributed solar-panel racking systems. Under the executive's leadership, the debtor developed and introduced a revised system known as G-Max. Although the project followed months of analysis and investigation and was presented to the parent company, its implementation was unsuccessful and contributed to operational and financial difficulties.

The plan administrator alleged that the executive breached his fiduciary duties by pursuing the G-Max strategy without adequate testing and by failing to oversee the project properly. The bankruptcy court granted summary judgment in favor of the executive, and the district court affirmed.

The Fourth Circuit likewise affirmed. Applying Delaware law, the court explained that directors and officers of a solvent, wholly owned subsidiary owe duties to the subsidiary for the ultimate benefit of its parent and the parent's shareholders—not directly to the subsidiary's creditors. Although creditors of an insolvent corporation may have standing to assert derivative fiduciary-duty claims, no such right arises merely because a corporation is operating in the "zone of insolvency." Viewed in the light most favorable to the plan administrator, the record did not establish that the debtor was insolvent during the executive's tenure.

The court also rejected the administrator's oversight claim under *In re Caremark International Inc. Derivative Litigation*. A *Caremark* claim ordinarily concerns a conscious failure to implement or monitor systems designed to detect corporate misconduct or violations of law. The allegations against the executive instead challenged ordinary decisions involving product development, testing, production, and delivery. Because the evidence showed that the executive investigated the project, monitored its progress, and kept the parent company informed, the business judgment rule protected the challenged decisions. Delaware law does not impose personal liability merely because a business strategy undertaken in good faith ultimately proves unsuccessful.

***Sanders v. Oquirrh Mt. L. Grp., P.C.*, Case No. 4:25-cv-149 (JKW), 2026 WL 1894801, 2026 U.S. Dist. LEXIS 147014 (E.D. Va. July 1, 2026):** Lexington Law Firm and related entities filed Chapter 11 cases in the United States Bankruptcy Court for the District of Delaware. In connection with those proceedings, the bankruptcy court approved the transfer of substantially all of Lexington Law's assets to Oquirrh Mountain Law Group ("OML"). The sale order provided that OML acquired the assets free and clear of claims and enjoined parties holding claims against the debtors from pursuing those claims against OML or the acquired assets.

The plaintiff subsequently sued OML in the Eastern District of Virginia based on her prior interactions with Lexington Law, asserting, among other claims, violations of the Credit Repair Organizations Act. Taking judicial notice of the Delaware bankruptcy proceedings, the district court held that the claims fell within the plain language of the sale order. The order defined claims broadly by reference to 11 U.S.C. § 101(5), transferred the assets free and clear under § 363, and expressly prohibited the assertion of successor liability against OML.

The plaintiff argued that the injunction was unauthorized under *Harrington v. Purdue*

Continued on page 4

Pharma L.P., 603 U.S. 204 (2024). The district court declined to determine whether *Purdue Pharma*, which addressed nonconsensual third-party releases in a Chapter 11 plan, applies to bankruptcy sale orders. Instead, the court concluded that *Purdue Pharma* did not operate retroactively to invalidate the previously entered sale order.

The plaintiff also argued that OML was a mere continuation of Lexington Law and therefore could be liable under successor-liability principles. Her amended complaint, however, did not plead that theory, and she could not amend the complaint through arguments in opposition to dismissal. Because she neither properly moved for leave to amend nor submitted a proposed amended complaint, the court dismissed the action with prejudice.

***Bullock v. Truist Bank (In re Bullock)*, Adv. Pro. No. 26-03001-KLP, 2026 WL 2102656 (Bankr. E.D. Va. July 21, 2026):** Three years after receiving her Chapter 7 discharge, the debtor reopened her bankruptcy case and filed an adversary proceeding alleging that Truist Bank violated the automatic stay under 11 U.S.C. § 362 and the discharge injunction under § 524. According to the complaint, Truist continued making automatic withdrawals from the debtor's bank account to pay a discharged credit-card debt despite receiving notice of the bankruptcy and discharge.

The debtor served the complaint and summons by certified mail addressed to Truist's chief executive officer in accordance with Federal Rule of Bankruptcy Procedure 7004(h). Truist failed to respond by the deadline, and the Clerk entered default. After the debtor moved for default judgment, Truist moved under Federal Rule of Civil Procedure 55(c), made applicable by Bankruptcy Rule 7055, to set aside the default and permit a late answer.

Applying the six factors identified in *Payne ex rel. Estate of Calzada v. Brake*, 439 F.3d 198, 204–05 (4th Cir. 2006), the court denied Truist's motion. Although the burden of identifying a meritorious defense is relatively modest, Truist offered no affidavit, testimony, or other evidence addressing the merits of the debtor's claims. Its declaration explained only its internal handling of the lawsuit, and its unsigned proposed answer consisted largely of general denials and conclusory defenses.

The court also found that Truist had not acted with reasonable promptness, waiting sixty-three days after entry of default before seeking relief. Although some of the remaining *Payne* factors favored Truist, the absence of a meritorious defense and the lengthy delay weighed heavily against setting aside the default. The court characterized Truist's failure to respond—whether caused by defective internal procedures or employee inaction—as negligence.

The court accepted the complaint's well-pleaded allegations as to liability and entered default judgment on the claims under §§ 362 and 524. Because the amount of damages was not established by the pleadings, the court scheduled an evidentiary hearing under Rule 55(b)(2) to determine damages and other appropriate relief.

***In re Malloy*, Case No. 23-33442-KRH, 2026 WL 2058195, 2026 Bankr. LEXIS 1756 (Bankr. E.D. Va. July 15, 2026):** The Chapter 7 trustee sought approval under Federal Rule of Bankruptcy Procedure 9019 of a settlement resolving claims and interests between the bankruptcy estate and two creditors. The dispute arose from a prepetition contract and related state-court proceedings, orders, and appeals. The litigation continued after the debtor filed bankruptcy and generated extensive claims, professional fees, and appellate proceedings.

The debtor objected to the compromise. Because the estate appeared potentially solvent, the debtor could have received any surplus

SAVE THE DATE:

2027 IWIRC Leadership Summit
March 2 - 4, 2027 in Hong Kong!

Open to International Board Members, Advisory Council Members, past International Chairs, Strategic Plan Task Force Members, and local Network Chairs - as well as 10 additional spots for IWIRC members to attend.

Continued on page 5

Continued from page 4

remaining after payment of claims and administrative expenses and therefore had a financial interest in the proposed settlement. The bankruptcy court conducted a lengthy evidentiary hearing at which the trustee and debtor testified.

Applying the factors articulated in *In re Austin*, 186 B.R. 397, 400 (Bankr. E.D. Va. 1995), the court considered the probability of success in the litigation, potential collection difficulties, the complexity and expense of continued proceedings, and the interests of creditors. The settlement reduced the estate's potential exposure, resolved disputed claims and interests, limited further professional expenses, and established a path toward completing administration of the case. It did not conclusively allow all requested professional fees; the bankruptcy court retained its independent authority to determine whether those fees were reasonable.

The debtor complained that the agreement did not provide him with a broad personal release. The court found that objection unpersuasive because the debtor was unwilling to provide reciprocal releases and was not a party to the settlement. He nevertheless stood to benefit from the resolution of the litigation, the possibility of obtaining a discharge, and the return of any surplus remaining after payment of allowed claims and expenses.

The court found that the trustee had investigated the claims, considered the costs and risks of continued litigation, and exercised sound business judgment. The compromise was fair and equitable and fell above the lowest point in the range of reasonableness. The opinion reiterates that a court evaluating a Rule 9019 settlement does not conduct a trial on the merits or determine whether the trustee achieved the best conceivable result. The question is whether the compromise reasonably resolves uncertain and expensive litigation in the interests of the estate.

***In re Wentz*, Case No. 25-11661-KHK, 2026 WL 2056057, 2026 Bankr. LEXIS 1752 (Bankr. E.D. Va. July 15, 2026):** The Chapter 13 trustee and a creditor objected to confirmation of an above-median debtor's plan. Because the debtor did not propose to pay unsecured creditors in full, 11 U.S.C. § 1325(b)(1)(B) required her to devote all projected disposable income received during the applicable commitment period to payments under the plan. The debtor proposed a "pot deduction" through which counsel's fees would be paid from funds otherwise available to unsecured creditors.

The court determined that the preliminary issue was how the Bankruptcy Code accounts for attorney's fees in calculating an above-median debtor's disposable income. Sections 1325(b)(3) and 707(b)(2) require use of the means test, and § 707(b)(2)(A)(iv) directs the debtor to deduct payments on priority claims. Allowed compensation awarded to Chapter 13 debtor's counsel under § 330(a)(4) constitutes an administrative expense under § 503(b)(2) and receives priority under § 507(a)(2). Such fees therefore must be deducted in calculating disposable income.

The court relied substantially on *In re Dumas*, 608 B.R. 902 (Bankr. N.D. Ga. 2019), which reached the same conclusion based on the statutory text. Although Official Form 122C-2 does not expressly provide a line-item deduction for post-petition attorney's fees and appears to contemplate only certain prepetition priority claims, an official form cannot override the Bankruptcy Code. The court also rejected the suggestion that a forward-looking adjustment under *Hamilton v. Lanning*, 560 U.S. 505 (2010), was required because the Code itself prescribed the treatment of the expense.

The court cautioned that priority claims may not be deducted twice—first through the means test and again through a pot deduction. Because the debtor's means test did not deduct allowed attorney's fees as priority claims, the court required amendment of the means test and proposed plan. Once it determined that the fees had to be included in the statutory disposable-income calculation, the court found it unnecessary to decide whether a separate pot deduction was otherwise permissible.

***In re Railhead*, Inc., Case No. 26-10508-BFK, 2026 WL 1884768, 2026 Bankr. LEXIS 1666 (Bankr. E.D. Va. June 30, 2026):** Republic Capital Access, LLC ("RCA"), a factoring company, moved for appointment of a Chapter 11 trustee under 11 U.S.C. § 1104. Railhead was a government subcontractor working for prime contractors in the national-security field. Under a prepetition factoring agreement, RCA purchased certain accounts receivable from Railhead. RCA alleged that Railhead diverted purchased receivables, violated cash-collateral orders, failed to make required payments, neglected its reporting obligations, and otherwise demonstrated that management could not be trusted to continue operating as a debtor in possession.
The court distinguished Railhead's prepetition conduct from its performance during the bankruptcy case. Although Railhead had diverted

Continued on page 6

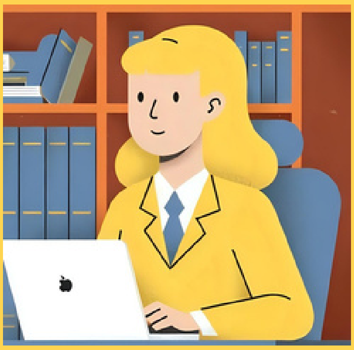
Continued from page 5

approximately $400,000 in receivables purchased by RCA to fund payroll, that amount had been repaid well before the bankruptcy filing. The court therefore concluded that the prepetition diversion did not independently warrant appointment of a trustee.

Railhead's post-petition conduct was more troubling. It repeatedly failed to comply with the terms of cash-collateral orders, make required adequate-protection payments, use appropriate debtor-in-possession accounts, remain within authorized budgets, and provide accurate and timely monthly operating reports. Management agreed to requirements that it later acknowledged the debtor could not satisfy. The court found that RCA's complaints were, in many respects, justified and that the record demonstrated both noncompliance with court orders and mismanagement during the case. Railhead argued that appointing a trustee would destroy its business because its contracts involved sensitive and classified national-security work. The court accepted that proposition. It concluded, however, that the likely consequences of appointing a trustee did not require the court to leave the case in Chapter 11 despite demonstrated noncompliance.

Relying on *Finney v. Smith* (*In re Finney*), 992 F.2d 43, 45 (4th Cir. 1993), the court explained that it was not confined to the relief requested in RCA's motion. Section 1112(b), together with § 105(a), permitted the court to dismiss the case sua sponte for cause. The court determined that dismissal better served the parties than appointment of a trustee, which would be expensive, disruptive, and likely fatal to the debtor's business. It dismissed the case without prejudice, leaving Railhead free to file another Chapter 11 case, and denied RCA's trustee motion as moot.

NOTE *from the* EDITOR



The end of summer has a way of shifting us into high gear. Vacations wind down, calendars fill up, and before we know it we're juggling hearings, deadlines, conferences, school schedules, and everything else life throws our way.

That's why I think August is the perfect time to hit pause and ask: ***What actually deserves my attention?*** For me, IWIRC is part of my answer. Investing in relationships, mentoring others, and making time for our professional community isn't (just) a distraction from work - it's one of the most rewarding parts.

As we head into what is traditionally one of the busiest seasons of the year, I hope you'll give yourself permission to be intentional. Protect your time. Prioritize what matters. Leave room for the opportunities and people that energize you. Work will always keep us busy. The real challenge is making sure we're busy doing the right things.

In solidarity, Rachel Greenleaf

Lead on a Global Stage

IWIRC is seeking engaged leaders to serve on its International Board of Directors and committees. If you're ready to contribute your ideas, experience, and enthusiasm, apply today!

Nominations Close August 15, 2026

EXPANDING YOUR BANKRUPTCY NETWORK IN VIRGINIA

Your guide to the organizations, conferences, and professional communities shaping insolvency practice across the Commonwealth.

Whether you are new to the practice or have been practicing for decades, Virginia offers no shortage of opportunities to learn, build relationships, and stay current. Many IWIRC members are active participants in the organizations below, making these events excellent opportunities to connect with colleagues from across the state.

BY MARY BALTHASAR
IWIRC Virginia Member

LOCAL BAR ASSOCIATIONS

TIDEWATER BANKRUPTCY BAR ASSOCIATION (TBBA)

Norfolk and Newport News

- Luncheon and webinar CLEs
- Hal J. Bonney Annual Seminar on Bankruptcy and Restructuring
- Chapter 13 trustee question-and-answer sessions
- Networking happy hours
- Annual holiday celebration
- Opportunities to serve on the Board of Directors

Membership: $150 annually

Learn more:
tidewaterbankruptcy.org

NORTHERN VIRGINIA BANKRUPTCY BAR ASSOCIATION (NVBBA)

Alexandria

- Virtual and in-person CLE programs
- Networking events
- Annual holiday gathering

Membership: $195 for regular members; $100 for government attorneys

Contact:
NVBBA@ofplaw.com

RICHMOND BAR ASSOCIATION – BANKRUPTCY SECTION

Richmond

- CLE programs
- Social events
- Judicial roundtables
- A forum to exchange ideas and discuss developments in bankruptcy law

Membership: $25 annually (plus Richmond Bar Association dues)

EDUCATIONAL CONFERENCES

MID-ATLANTIC INSTITUTE ON BANKRUPTCY & REORGANIZATION PRACTICE

Charlottesville

September 17–18, 2026

- 10 CLE credit hours
- IWIRC Virginia networking reception
- Judges, trustees, and practitioners from across the region

WESTERN DISTRICT OF VIRGINIA BANKRUPTCY CONFERENCE

Salem

- Hosted annually by the U.S. Bankruptcy Court
- Complimentary attendance for practitioners
- IWIRC-sponsored networking reception

This year's conference was held on May 29, 2026.

VIRGINIA STATE BAR ANNUAL BANKRUPTCY PRACTICE SEMINAR

Richmond

- 3 CLE credit hours
- Presented by the Virginia State Bar Bankruptcy Law Section and Virginia CLE

This year's seminar was held on March 13, 2026.

VIRGINIA BAR ASSOCIATION BANKRUPTCY LAW CONFERENCE

Irvington

- 5 CLE credit hours
- Presented by the Virginia Bar Association Bankruptcy Law Section

This year's conference was held on May 2–3, 2026.

VARIOUS IWIRC CONFERENCES

- More information coming in a future newsletter issue on:
  - IWIRC@NCBJ
  - IWIRC Spring Meeting (before ABI)
  - IWIRC Leadership Summit
  - IWIRC Flagship Conference

Virginia's bankruptcy community is collaborative, supportive, and full of opportunity. Get involved, make connections, and help strengthen our profession.

WE HOPE TO SEE YOU AT AN UPCOMING EVENT!

PASSPORT CHALLENGE RESULTS!

To commemorate our 20th anniversary, the Virginia Network launched its first-ever Passport Challenge. The goal was simple: to celebrate the values at the heart of IWIRC by intentionally creating opportunities for ourselves and one another. Throughout June, members met for coffee, promoted one another's accomplishments, attended educational programs, volunteered in their communities, patronized women-owned businesses, shared professional insights, and made time for their own well-being. Each participant earned a magnetic IWIRC pin.

Congratulations to **Kelly Barnhart**, who finished in 1st place with an impressive 175 points. Kelly's enthusiasm and commitment to our Network made her a fitting champion of our 20th anniversary celebration. It seemed only right that Kelly's grand prize should involve her two Great Danes. Her dogs received matching IWIRC-themed collars, handcrafted by Virginia Beach-based, woman-owned business Mrs. Bones, in the Network's signature purple and green. After all, every champion - and every champion's sidekicks - deserves a little swag!

Here's to the next 20 years.

BY THE NUMBERS

- **20** YEARS CELEBRATED 2006–2026
- **12** PARTICIPANTS
- **76** ACTIVITIES COMPLETED
- **755** POINTS EARNED
- HIGHEST BADGE EARNED COMMONWEALTH LEADER
- **12** PINS AWARDED *Commemorating 20 Years of IWIRC Virginia*

Thank you to our members for making this challenge such a success!

Tina's Wish Returns to Richmond for Its 2026 Virginia Gathering

On Thursday, October 15th, Tina's Wish will host its 2026 Virginia Gathering in Richmond - an evening dedicated to raising awareness and funds for early detection ovarian cancer research. Expect to see fellow Financial Restructuring colleagues, and enjoy a meaningful program.

There is no early detection test for ovarian cancer. Tina's Wish is working to change that, funding innovative scientific research for the prevention and early detection of the disease and providing gynecologic health education. Guided by its mission—Know Early. Know Hope.®—the foundation has raised more than **$34 million** since its founding and now funds **$2.4 million** in research each year.

To learn more, become a sponsor, or purchase tickets, contact Anna Gibson at agibson@tinaswish.org or visit tinaswish.org/virginia26.

Your go-to source for navigating the practical (and sometimes perplexing) realities of insolvency and restructuring.

From courtroom complications to career curveballs to candid conundrums, Miss Reese Truct-Shering offers strategic advice for the situations that show up in your daily practice.

Have a question for Miss Reese? Send it to iwircvirginia@gmail.com *because chances are, if you're wondering about it, someone else is too.*

I would like to ask my firm for a salary increase and the current promotion criteria but am not sure how to start the conversation.

Dear Ambitious - First, congratulations! Asking about your future at the firm is a sign that you see one there. Many attorneys make the mistake of treating a compensation conversation like a surprise motion. Don't. Your managing partner should not be hearing for the first time that you hope to become a partner when you are asking why you haven't become one.

Instead, frame the conversation around professional development. Ask something like: I'd love to better understand what success looks like here. What skills, business development , or experiences should I be focusing on over the next year? And when compensation decisions are made, what metrics are considered?" Listen carefully to the answer. If you've already met those expectations, that's your opening to discuss compensation. If not, you've gained a roadmap instead of guessing. The lawyers who advance the fastest usually aren't the ones who assume someone is keeping score—they're the ones who ask what game they're playing.

How do I set boundaries with clients and other attorneys within my firm? I feel like there is an expectation that I be "on" all hours of the day and on weekends.

Dear Exhausted - The practice of law can easily become a 24-hour job - unless you teach people otherwise. The secret is consistency. If you answer every email within three minutes on a Saturday, congratulations! You have successfully trained everyone to expect exactly that.

Boundaries don't mean being unavailable. They mean being predictable. Tell clients when they can expect responses. Use your out-of-office message when you're truly unavailable. If something is genuinely urgent, make sure people know how to reach you. Most importantly, don't manufacture emergencies by responding immediately to things that can wait until Monday morning.

Within your firm, communicate early. If you're unavailable because you're at another hearing, on vacation, or simply off for the evening, let people know before they need you.

Of course, there will always be true emergencies. Bankruptcy lawyers know better than anyone that temporary restraining orders, emergency motions, and last-minute filings don't always respect business hours. But if everything is treated like an emergency, eventually nothing is.

One-Minute TOOLBOX

PRACTICAL TIPS TO MAKE YOUR BANKRUPTCY PRACTICE *just a little easier.*

Three ECF Shortcuts You Should Know

Whether you file dozens of pleadings each week or only occasionally venture into CM/ECF, a few small habits can save significant time—and frustration.

1. **Start with the Utilities Menu.**
The Utilities tab is more than an afterthought. Need to verify whether a document has already been filed? Looking for a party's address? Want to review your own filing history? Many common tasks can be accomplished from the Utilities menu without navigating through multiple filing events.

2. **Use "Search" Before You Guess.**
Can't remember whether the event is called "Motion to Assume," "Assumption of Executory Contract," or something else entirely? Use the search function within the event selection screen. Typing a keyword is often much faster than drilling through category after category - and it can help you discover filing events you didn't know existed.

3. **Track Cases Automatically.**
Stop manually checking the docket to see if something has happened. From the Utilities menu, select Maintain Your ECF Account then Email Information, You can select “Send notices in these additional cases.” Add case numbers and you will notified of any filings in that particular case without filing a notice of appearance. *Normal PACER charges apply.*

41st ANNUAL

Mid-Atlantic Institute

ON BANKRUPTCY AND REORGANIZATION PRACTICE

SEPTEMBER 16–18, 2026

Join leading judges, practitioners, and financial professionals from across the region for two days of timely education, insight, and connection.

WEDNESDAY, SEPTEMBER 16, 2026

IWIRC VIRGINIA OPENING RECEPTION

Join us as we kick off the conference at IWIRC Virginia's annual opening reception.

Location to be announced.

THURSDAY, SEPTEMBER 17, 2026

Recent Developments for Advanced Bankruptcy Practitioners
Hon. Kevin R. Huennekens and Rachel Greenleaf

Subchapter V Issues
Hannah W. Hutman

The Anticipated Rise in the Use of Receiverships and Assignments for the Benefit of Creditors
Brandy Rapp

Consumer Bankruptcy Law Issues – A Powerhouse Panel
Hon. Elizabeth L. Gunn, Kelly M. Barnhart, Malissa L. Giles, Nancy R. Schlichting

FRIDAY, SEPTEMBER 18, 2026

Litigation Practice Pointers
Hon. Rebecca B. Connelly and Hon. Kevin R. Huennekens

Judges' Roundtable
Hon. Rebecca B. Connelly, Hon. Elizabeth L. Gunn, and Hon. Kevin R. Huennekens

IWIRC Virginia members will be featured throughout the conference, demonstrating the breadth and depth of expertise across the restructuring community.