PETITION

😎Notice of Appearance - Ryan Preston Dahl, Partner at Ropes & Gray LLP😎

This week we welcome **Ryan Preston Dahl**, a Partner in the business restructuring group at **Ropes & Gray LLP**. Ryan has been practicing law for nearly 15 years and has had stints at some of the top restructuring practices in the nation. We hope you benefit from his perspective here.

PETITION: Ryan. What's up? Let's get into it. You likely noticed that we've written — though not as much recently — quite a bit about creditor-on-creditor violence in our newsletters. You've been involved in two of the poster child situations for that theme: *Serta Simmons Bedding LLC* and *J.Crew*. Please explain those situations to our audience: why all the fuss? Boiled down to their simplest form, were both matters just a matter of what the docs permit? What do you make of the trend and do you expect it to continue?

Ryan: At their core, these transactions (or attempted transactions) are sophisticated parties enforcing their rights under sophisticated documents. No more and no less.

For me at least, an interesting facet is the extent to which companies and their stakeholders are all willing to explore and also pursue these sorts of esoteric deals to a degree that simply wasn't the case, say, 8 or 10 years ago. In 2010, at least some professionals were still calling themselves "bankruptcy lawyers" and the analysis of incurrence basket consumption was not a daily exercise. But for the last few years now, some of the most interesting transactions are not the ones occurring in bankruptcy court but are the result of creditors and their borrowers “just” enforcing their respective documents.

In a way, I think this is a function of a much slower restructuring market in the traditional sense: creative types have more time on their hand to do creative things (‘creative’ being used relative to corporate balance sheets). Related to this is the fact that you’ve got larger and larger special situations and event-driven funds chasing what seems to be a shrinking number of deals in the traditional, in-court restructuring space. So, at least on the credit side, you’ve got a lot of players with incentives to structure and implement transactions that, previously, weren’t really necessary where you had very large capital structures going through more traditional, in-court processes. And, given how loose credit documentation continues to become, you’ve got a wide open playing field on which to put creativity to work.

PETITION: Give us some insight into what it was like to restructure CEC Entertainment Inc., the owner of the Chuck E. Cheese brand, over the course of the pandemic. There have to be some interesting anecdotes there. Did you abscond with some old game tickets before they were set ablaze?😜

Ryan: It’s interesting given where we are and where we’ve come since COVID really took hold in 2020. When CEC really got going, at least speaking for myself, it was difficult to figure out whether the world was ending, whether it was simply mass hysteria but a passing phase, or something altogether different. With the passage of time, obviously the world didn’t end. But COVID’s impact was incredibly real and incredibly hard; it’s difficult even for someone like me to be snarky about it. One thing that really does stand out from that time and, frankly the “experience” (if you can call it that) of advising creditor groups and businesses through COVID, was the importance of staying focused and keeping perspective on the big picture in a given deal. **Matt Barr**, who was really an incredible leader in CEC (and a lot more for that matter), really set a great example in that way. He’s nothing if not cool under pressure with a board, creditors, company, everyone. A great role model, although he’s also a terribly big soccer fan. Nobody’s perfect.

PETITION: You’ve written in the past about the need for proper governance in the restructuring context (specifically we refer to Claire’s). You recently represented an independent director in Basic Energy Services Inc.’s chapter 22 case. We’ve been hard

on independent directors. In what ways is the proliferation of independents benefiting the bankruptcy process and in what ways is that construct breaking down? Have we been overly harsh? Feel free to call us "morons": you wouldn't be the first.

Ryan: At the outset, I'm coming at this from the premise that the debtor-in-possession is one of the foundational elements of chapter 11. The US system doesn't mandate the appointment of a third party trustee or equivalents. We don't appoint a quasi-fiduciary, like a monitor. Chapter 11 is also different than, say, an examinership that by design gives certain creditors a free hand to drive their own outcomes.

Regardless of where you stand on the comparative merits, we have a bankruptcy system where the debtor manages its affairs, and is obliged to balance competing interests, outside truly extraordinary circumstances. With this in mind, the focus applied to governance, and independent governance, is absolutely right. Our system requires independent fiduciaries to be, well, independent—and not just independent in name only. Independent fiduciaries cannot just be order takers. The women and men who have this responsibility need to be wiling to drive a process in the right way and the right time. They need to be willing to make unpopular decisions where they are at no small risk of personal attack from very capable attackers.

But here is where the dialogue around the 'independent director role' can get a bit lost in its own rhetoric. For example, the criticism gets raised that somebody has been on 'too many boards' for distressed companies and, therefore, is either going to drive a pre-ordained outcome ('because that's what they do') or else can't really be disinterested in a given matter. This is a bit of a logical fallacy; post hoc ergo propter hoc if you like either pretentious Latin or old West Wing episodes. More fundamentally, this argument treats experience as a disability—which is odd. A restructuring process can impose existential risk on any business. Companies and their stakeholders should consider, and certainly have the right to consider, whether to seek out women and men with the expertise to guide those processes, whether as directors or professionals for that matter. This is not to say that directors without a restructuring background can't get up the learning curve—many do and do the job well. But this is not an easy task at the best of times and not everyone wants to do it.

Another criticism that gets raised is more of the ad hominem attack applied on a global basis; that is, something along the lines of "all of these so-called independent directors are shills, and they aren't really ever going to be independent." This criticism gets more immediate traction precisely because the integrity of individual fiduciaries is so important. Personal integrity matters, full stop, and allegations questioning a fiduciary's integrity must be taken seriously. And it would be naïve to think that there are not people who will trade their integrity to get hired. Fortunately for me, I haven't had to spend time working with, or working for, that kind of person. My own experience is that directors are genuinely trying to get it right in difficult situations.

I also tend to think these types of attacks involve more than a little bit of misdirection. "Criticism of the independent director" easily becomes a smoke screen for "criticism of decisions I do not like." But this doesn't change the fact that independence is not a popularity contest or an exercise in counting noses. A fiduciary for the debtor in possession is stuck with the job of balancing competing interests in a way that is fair under the Bankruptcy Code. You can't just look out for the interests of a single constituency or serve as their in-house advocate, and no one constituency gets to dictate outcomes. So independence means independence, which can sometimes be easier to accept in theory than in practice.

PETITION: **Outside of the director context, you must have some thoughts about inefficiencies in bankruptcy. What is f*cked and needs fixing? Is there one subject that not enough people are talking about? If you could implore Congress to take action about one thing, what would it be?**

Ryan: This is probably not the sexiest topic, but if I were the legislative king for a day (a contradiction in terms) I'd emphasize the need for easier access to the bankruptcy courts for individual women and men. The bankruptcy process is complicated enough at the best of times; it can be prohibitively complicated for an individual dealing with the issues that can come with having to file personal bankruptcy. The problem of access to the courts is not unique to bankruptcy, of course, but I'm a bankruptcy lawyer so there you go.

Here, it's worth noting how retired **Judge Eugene Wedoff** is taking on this challenge. Judge Wedoff spent nearly 30 years on the bench and is a role model for lawyers who were fortunate enough to spend time in His Honor's courtroom. He is now representing individual debtors in bankruptcy appeals on a pro bono basis. This is absolutely the kind of thing that should be supported on a systemic level.

PETITION: Your bio shows that you represented The NORDAM Group Inc. in the "first-ever 'postpackaged' chapter 11 cases." Like … huh? WTF is a postpackaged bankruptcy?

Ryan: A cheeky bit of drafting there, and credit (and for the legal side of the deal generally) really belongs to my colleague, **Dan Gwen**. By way of background, NORDAM really could have been a disaster. The filing was driven by a contentious, complicated dispute between NORDAM and a major business counterparty, which is a big deal at the best of times for an aerospace manufacturer. (Dad Joke for your readers: How many parts does it take to fly an airplane? All of them.) Everybody started out being very, very unhappy with each other and it was the sort of thing that could have dragged out for years. Put another way, it could have been a great deal for the lawyers and nobody else.

But we were fortunate to get a global resolution on the business issues very quickly post-filing. In particular, our CEO and CRO did a great job of working with their respective counterparties to get everyone to holster their proverbial pistols. The lawyers stood down and business people on all sides then struck a business deal that worked through these very, very complicated supply chain problems. We also had the benefit of a lender group willing to give NORDAM some breathing room to let that deal play out. Credit goes to the lenders' professionals for making what was a very tough pitch in that regard, since a large part of that deal involved repurposing what at least arguably was a good chunk of the lenders' collateral. And, once that deal got signed up, we (or, more accurately, **Ronan Bojmel** and **Pete Schwaikert** at **Guggenheim**) did an awesome job of raising new capital that paid all our creditors in full, brought on an incredible partner for the original equityholders, and even funded a dividend at exit.

So, much as I'd like to take credit for the first (and only) postpackaged bankruptcy, it's a better example of what can happen when the lawyers just stay out of the way and respect their roles. That said, the postpack remains trademarked. It would be great to see more.

PETITION: Caesars has been front and center again thanks to a new book on the matter. Regale us with some war stories from that hot mess please.

Ryan: Oh man. My tour of duty ended early and that deal still took a few years off my life. I got to be like the guy at the end of Platoon who choppers out right before the last fight. In other words, this all happened before **Ben Rhode** and **Joe Graham**really went over the top, to continue the wildly inapposite military metaphor, but here we go.

We were working through another negotiation around the first 1L RSA in January 2015, which continued to involve everyone living in the office for yet another weekend. I had gotten home at what I think was about two am (Chicago time) and was still fielding calls again when the Delaware involuntary petition came across the transom. That was quite a "buckle up" moment. So things are now moving even faster on prep ahead of the voluntary filing in Chicago a few days later. Me and some of my partners are then down in Delaware arguing about whether the first day goes forward in Chicago or not. But that's not the funny part.

Meanwhile, **Dave Zubricki** had been working on a presentation for the first day hearing in Chicago for what I think was about a month straight. This wasn't an easy job and not exactly the sort of thing they advertise in law schools. You've got a complicated capital structure, a ton of backstory, and a whole lot of exposition required to frame it all up, so there's a real benefit to getting that presentation in front of the world at the beginning of the case—but not easy to do. And, perhaps not surprisingly, you have a dozen different lawyers, bankers, FAs, and the company who are lobbing in 'conceptual comments' to Zubricki on a 24/7 basis. But despite the drafting by committee, Dave's presentation was metaphysically perfect. It had hit the sort of Platonic ideal of what a first day presentation aspires to be. There wasn't a laser light show to go with it, but there should have been.

So, while we are arguing in the Delaware court about whether "Chicagoland" is a made up word (btw, "Chicagoland" is a real word inasmuch as Malört is a real drink) and where the first day hearing actually gets to proceed, I'm seeing non-stop emails from my partners in Chicago about why the Mona Lisa of first day presentations must be permitted to shine. Unfortunately, I failed in that task, and my shame is great. As far as I know, that presentation still hasn't seen the light of day; I think it's sitting in a warehouse somewhere next to the Indy Jones' ark. Hilarious.

PETITION: You represented Fisker Automotive years ago when it filed for bankruptcy. Henrik Fisker is obviously back with a new EV company that launched in 2016 and IPO'd via SPAC in 2020. As far as SPACs go, it's actually doing relatively well — up 40% against the $10/share launch (though it was recently downgraded and is meaningfully off its highs). What did you learn about EVs from that restructuring? At what point do EVs

usher in the wave of automotive supply chain disruption that people have been discussing for years?

Ryan: Very cool question. Even then (and this is going back to 2014) one of the takeaways was that sophisticated players were going to deploy tremendous amounts of capital into EV technology and its component IP, as demonstrated by the 72 hour auction we had in that case. In one of the breaks, our banker, **Stephen Worth** at **Evercore**, said something to the effect of 'this is just the beginning of how people are looking at electric—you'll see.' Clearly, he was absolutely right, as we're all watching these investments into new Fisker- and Fisker-like SPACs, which is in addition to how the OEMs and major suppliers have been making their own investments in the space for many, many years now.

And, to your point, at least some restructuring folks had been anticipating an uptick in automotive restructuring activity heading into 2020, looking at declining sales, lower capex budgets, and some then-current product cycle challenges with the OEMs. Auto-adjacent deals like **syncreon** and a few others also seemed to confirm that a cycle was about to turn. But COVID really threw those calculations to the side, and a bunch of the formerly stressed auto names have performed incredibly well over the last 20 months or so.

From where I sit at least, there are three really interesting things about the ramp up in EV expansion—none of which are probably all that novel for the operators who live and breath automotive everyday. The first, and maybe most obvious point, is that there will be winners and losers among the EV companies themselves. The not quite accurate analogue I think about is the way fiber companies were building out in the late 1990s and early 2000s post-telecom deregulation given the scope of different build outs plus the capital intensive nature of these businesses. The second is that there will almost certainly be disruption over the longer term (more on this below) in the broader automotive supply chain. The number of parts required for EV is materially lower than for a car using an internal combustion engine. Widespread EV penetration will then presumably impact the number of suppliers, and the identity of suppliers, that remain standing as OEMs consolidate their own supply chains.

Finally, what is really interesting to think about is what widespread EV penetration does to infrastructure in the broad sense: power plants, charging stations, energy storage infrastructure, changes in housing and transportation infrastructure, and the public and private finance required to make it all work. This has the potential for some really wide ripple effects. To be sure, this is the kind of conversation that makes a lot more sense over a few drinks and happy to do that too.

All that being said, I've got no crystal ball for when all this comes together. I call shenanigans on anyone who claims they do.

PETITION: Things have obviously been relatively quiet. What is your prognosis for Q421 and beyond into '22? What is the catalyst that creates a more robust restructuring market?

Ryan: Full disclosure here, I've predicted twelve of the last two recessions—so my market prognostications aren't worth much. I was also the most consistently mediocre fixed income trader in Chicago for about two years running, so spotting trends in the yield curve isn't exactly my thing either. But with that caveat emptor, let me try to answer your question.

With the smug benefit of hindsight, COVID pulled forward potential restructuring activity by about 12 to 24 months. COVID did not really create a wave of "new" restructurings. With some notable exceptions, the companies that restructured during COVID were already being predicted to have maturity issues or cashflow issues somewhere in the 2020-2022 timeframe. COVID also re-set the maturity profile across balance sheets generally. At the risk of gross generalization, every business that was not actually on fire (and even a few that were) did what they should have done by re-setting their cap stacks and getting as much liquidity onboard as possible, and that trend has only continued. So, at least in my immodest opinion, it's not totally surprising that companies facing true financial distress are few and far between for the present. The restructurings that might have otherwise happened in 2021 or early 2022 have already occurred in some form or fashion.

Looking out ahead, there is simply too much liquidity in the market looking to find a home, any home, for there to be any level of macro distress in the immediate term. That observation is a truism at this point, but true all the same. Credit funds and equity funds continue to raise huge amounts of capital that they need to put to work, first lien and second lien credit is available seemingly almost everywhere, and even very, very, very challenged businesses are able to raise debt and/or equity capital in seemingly unlimited amounts and at higher and higher valuations.

That being said, the current situation feels more than a little spooky, at least in the US. Companies cannot seem to find enough workers, retail and wholesale prices are moving in one direction, and wage inflation at least feels very real for the first time in more than a decade — and at least using the companies I've been working with as a sample set. But valuations keep ripping, leverage keeps growing, and liquidity is, apparently, infinite. So maybe we've hit the formula for perpetual economic growth. Or maybe this is another case of "As long as the music is playing, you've got to get up and dance," to quote those fateful words. It ended so well last time.

PETITION: What is the best piece of professional advice that you've ever gotten and why?

Ryan: Two things come to mind. First is "If you're talking, you're not learning," is something **Jamie Sprayregen** would point out from time to time. Honestly, there's a ton I learned, and still learn, from Jamie. I'm grateful for the opportunity to have worked for him.

Second is from **Vijay Srinivasan**, who was my first real boss when [we] were in the investment banking department at **JPMorgan** together twenty years ago. He now runs **Scarsdale Capital**, but then Vijay was a senior associate, and I was a barely-functional first year analyst. One midnight we are stuck in a cubicle next to each other and I'm complaining about running yet another scenario analysis ahead of a board call. He looked at me and said "*You need to stop trying to be the smartest guy in the room and try to be the most prepared guy in the room.*" Easy for him to say since he usually is both the smartest and most prepared guy in any room. But it's great advice all the same.

PETITION: What are some books that have helped you in your career?

Ryan: This is a fun one. So here's one responsive and two totally unresponsive, but even more pretentious, answers. First is "***Elements of Bankruptcy***," by **Professor Douglas Baird** at the University of Chicago. The book is exactly what it advertises itself to be: the fundamentals of bankruptcy. Great style, great analysis, and I survived law school because of it. I still use it, particularly when we are looking at a "first principles" kind of issue in practice.

Second, and this really isn't a book that has helped my career so much as it is an interesting read, is "***Diplomacy***," by **Henry Kissinger.** Mr. Kissinger's political philosophy has its critics, and he’s clearly writing for posterity in this book. But he writes with great style and is willing to assess history and historical decision makers from the vantage point of knowing that he’s going to be judged by history as well.

Finally, “***Master of the Senate***” by **Robert Caro**. Saying this book is fantastic is not exactly a ‘hot take’ in 2021. But Caro’s analysis of political dealmaking and the exercise of political power is quite incredible, and the whole thing is sort of framed against this sense of impending tragedy when you think about what lies ahead for Johnson’s presidency. Again, not particularly relevant to your question, but it’s a unique book.

PETITION: Finally, you’ve likely noticed that we like to snark “Long ABC” or “Short XYZ.” What are you “long” these days? What are you “short”? Feel free to be creative here.

Ryan: Very short on the music of **Bruce Springsteen**. Not a close call. This is not to say that Mr. Springsteen’s music is “bad.” The man is not **Nickleback**. It’s just not “great.” Mr. Springsteen loves New York, New Jersey, blue collar heroes, ennui, cars, and nostalgia. We get it. The last 40+ years has made all of that very clear, together with “let’s have a saxophone solo for no reason.” Huzzah. The degree to which this music is treated with awe by certain members of the restructuring trade also boggles the mind. At the end of the day, it’s the East Coast, Camaro-driving version of **John Cougar Mellencamp**. None of that is “bad,” just not worthy of religious devotion.

Very long on ***Team Langbein*** for The Race to Cure Sarcoma Chicago 2021. As your readers know (and your support has been amazing), many people lost a close colleague, friend, and loved one with Chris Langbein’s passing earlier this year. He is irreplaceable. But thousands of women and men continue to face their own challenges with sarcoma every year. The Race to Cure is an important event to raise awareness and raise funds for this critical, but underfunded area of cancer research. Although this year’s race happened last Saturday, people can still donate. I am sure that the masters of the universe reading Petition can and will dig into their wallets to contribute. It’s a great cause. Link is here.

PETITION: Thanks Ryan.