

THE M&A ADVISOR SYMPOSIUM REPORT

Featuring



Jack Butler
Chief Executive Officer
Birch Lake Holdings LP



**The Honorable
Robert D. Drain**
Judge
Bankruptcy Court for the Southern
District of New York



Sheila T. Smith
Consultant
Corporate Restructuring Group
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> STALWARTS ROUNDTABLE STATE OF THE RESTRUCTURING INDUSTRY

At The M&A Advisor's Annual Distressed Investing Summit in Palm Beach, Florida, January 27-29, 2016, Jack Butler, Chief Executive Officer, Birch Lake Holdings LP, chaired a panel discussion entitled "Stalwarts Roundtable: State of the Restructuring Industry." Butler was joined by The Honorable Robert D. Drain, Judge, Bankruptcy Court for the Southern District of New York; Sheila T. Smith, Consultant, Corporate Restructuring Group, Deloitte; Andrew M. Troop, Partner, Pillsbury Winthrop Shaw Pittman, and J. Scott Victor, Founding Partner and Managing Director, SSG Capital Advisors.

In this opening session of the summit, these M&A stalwarts discussed a wide range of trends in global and domestic restructuring, and examined industries and sectors that are likely to experience elevated levels of distress in 2016 – energy in particular. In this report, we gather their insights and reflections and offer their advice on finding opportunities to create value out of distressed situations in a time of heightened economic uncertainty.

The principal topics addressed in this symposium report include:

- The Pulse of the Middle Market
- Evolving Bankruptcy Laws in Brazil and China
- Foreign Companies in US Bankruptcy Courts
- "Second Phase" of Energy Industry Restructuring?
- Keeping a Wary Eye on Industry Verticals
- Venue Changes Increasingly Asked in Bankruptcy

As this panel observed, disruption both destroys and creates value. The current economic stress in China and Brazil creates opportunities for investors and restructuring advisors alike. Likewise, the distress in the "oil patch" has created value in the automotive industry. Disputes arise in all distressed situations, and judges call the balls and strikes. The insights from this panel reflect the reality of today's restructuring market and we hope readers of this report will find them instructive.

David Fergusson
President & Co-CEO
The M&A Advisor

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“You don’t need to get much of an increase in default rates to have a huge increase in activity.”
– Jack Butler

Executive Summary

The volatility fever that simmered in the global markets in 2015 and erupted after the New Year has the restructuring industry looking for an active – or perhaps hyperactive – year. Uncertainties about the economies in China and Brazil underscore the worry. Continued low energy and commodity prices are taking tolls on many industry verticals – while raising the fortunes of others. Meanwhile, in the U.S., Brazil, China and other countries, bankruptcy laws are under examination or have been changed. This has led to opportunities for professionals in M&A and distressed investing worldwide. Disruption can both destroy value and create value and distressed investors can perform noble service in helping achieve the latter. Against this backdrop, the Stalwarts Roundtable “State of the Restructuring Industry” convened at The M&A Advisor’s Annual Distressed Investing Summit in Palm Beach, Florida, January 27-29, 2016.

Introduction

At The M&A Advisor’s Annual Distressed Investing Summit in Palm Beach, Florida, Jack Butler, Chief Executive Officer of Birch Lake Holdings LP, chaired a Stalwarts Roundtable discussion entitled “State of the Restructuring Industry.”

In this report, we summarize the observations and insights of these veteran M&A who participate in the restructuring process as advisors, investors, legal experts and judges. The panelists were:

- Jack Butler | Chief Executive Officer, Birch Lake Holdings LP
- The Honorable Robert D. Drain | Judge, Bankruptcy Court for the Southern District of New York
- Sheila T. Smith | Consultant Corporate Restructuring Group, Deloitte
- Andrew M. Troop | Partner, Pillsbury Winthrop Shaw Pittman
- J. Scott Victor | Founding Partner and Managing Director, SSG Capital Advisors

The Pulse of the Middle Market

At Birch Lake Holdings LP, Jack Butler invests in undervalued high potential companies in transitional situations to facilitate operational transformation and improve long-term shareholder value and advises corporations and investors on mergers and acquisitions, financial restructurings and complex special situations. Before Birch Lake, he was the founder and leader of the corporate restructuring practice at a major law firm for more than 20 years. He moderated a panel as diverse as the clients he represents, who gave their views on what he called “the pulse of the middle market.”

Butler opened the discussion by noting that New York University Professor Edward J. Altman, in his 13th annual address to the New York Chapter of the Turnaround Management Association (Jan. 25, 2016), said he expected corporate bond default rates to remain low in 2016 (about 2.03 percent), although a major economic event in another country, Portugal or Brazil in particular, could increase the number dramatically, perhaps more than 5 percent. “The point he makes is [that] you don’t need to get much of an increase in default rates to have a huge increase in activity,” Butler said. He asked J. Scott Victor, Founding Partner and Managing Director at SSG Capital Advisors in Philadelphia, to give his views.

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“There will be a lot of defaults, but even if it’s 5 percent – because of the sheer amount in the volume that’s out there in the bond world – It doesn’t really impact the mid to lower middle market where I practice,” Scott said. “But certainly it impacts the larger transactions where there’s a lot of junk bond money and high yield bonds. It will create a lot of work on larger deals.” He added: “I think those default rates will go up. The high yield market has certainly been very turbulent in the past year. It’s much harder to get a high yield deal done. It’s very different than what is going on in the plain old asset-based lending world. I think those default rates in the high yield market will go up this year.”

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Butler asked the Honorable Robert Drain, Judge of the Bankruptcy Court for the Southern District of New York, what impact he is seeing in the courtroom. Drain said he’s seen less interest in acquisition of assets in distressed companies and more interest in liquidity and cash. “There’s not a lot of cash to go around and people are fighting for [it]. They’re not really fighting for warrants; they’re not fighting for a sliver of the equity. They’re just happy to get cash. I think that’s an indication that things are tightening up a little bit and people are worried about – at least in the short term.”

Butler turned the discussion to how global economic events may impact distressed investing this year. He noted that Goldman Sachs, in its outlook for the year, makes the point that “global growth is a lot more stable than it looks.” He asked Sheila Smith, the veteran restructuring consultant at Deloitte (who received a Lifetime Achievement Award from The M&A Advisor at the summit), to share her perspective on global developments. “Energy has been a big problem in Brazil,” she said, adding that the country has a new bankruptcy law that is “really just being tested now.” She noted that in Brazil, bankruptcy cases go before judges who don’t specialize in bankruptcy like in the US, and that there are also new bankruptcy laws in Chile and Columbia creating opportunities for distressed investing and restructuring advisors. “Brazil has double-digit inflation now. The Olympics are on the way. There’s that additional cost that came on the heels of the World Cup. To the extent that you can find a foothold in Brazil or in industries such as commodities, energy, gas, [or] agriculture, I suggest people that work in South America are hot and you should think about avenues to work there.”

Andrew Troop, Partner at law firm Pillsbury Winthrop Shaw Pittman in New York, provided a view on economic activity in China and Asia. “I do a lot of work and a lot of investment banking work is generated from China,” he said. “I get calls all the time from distressed companies here in the United States saying: ‘Find me an investor from China.’ The practical reality is that drying up.” He added that China, like Brazil, has a relatively new bankruptcy regime. “While it’s been in place for a while, it hasn’t been tested. That bankruptcy regime was crafted substantially by US lawyers who participated in the process and tried to impose in China and its restructuring regime the kind of certainty that we’ve come to expect here in the United States. It will be interesting to see – as that economy struggles – how that law develops and what role we might actually have there.”

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Evolving Bankruptcy Laws in Brazil and China

Butler asked Judge Drain if he could share the views of judges in other countries who he confers with on bankruptcy cases about the current environment. “It’s a complicated picture,” Drain said. “I’ll just focus on Brazil for a second, since Sheila brought it up. At one level, the courts there have really reached out to delegations that I participated in that have gone down to Sao Paulo several times over the last decade. Both very senior level and at the trial level, they know that with an economy of their size, there’s bound to be a time – which has now happened – where a lot of key industries and businesses are distressed. The issue is whether the whole system can develop as a functioning system to give people certainty. In Brazil, for example, almost every order can be appealed. You have incredible delay risk. It’s an outgrowth of actually anti-corruption concerns from several decades ago. The Supreme Court in Brazil has something like 15,000 pending cases that they mostly deal with administratively, but it’s still an issue.”

China, Drain added, has little experience in working with bankruptcy laws and courts. “That’s what China lacks, obviously. When Chinese delegations come to meet with us, that’s what they want to focus on. They know they have a good law but they ask very basic questions like, ‘How do you keep the Chapter 7 trustees from being corrupt?’ They ask very basic things, because that culture is not just there.”

Smith added that some judges in other countries hire professionals to coach them in the new bankruptcy laws and procedures. “They’ll ask, ‘What does the substantive consolidation thing mean?’ You actually draw them a picture of how they cascade or the capital stack would go if you were substantively consolidated. There is a whole industry in Brazil of professionals who coach the respective judges who are assigned to these cases because this isn’t their bread and butter.” Drain agreed: “Right. They’re not bankruptcy judges. They’re district judges. They deal with all sorts of issues although they have commercial courts. There are very sophisticated commercial judges. In Brazil, they do have a new law. There are some constraints in it. There’s a real timing issue but they’re very creative.”

J. Scott Victor of SSG Capital Advisors agreed that Brazil has a “very, very vibrant restructuring community right now. Their whole automotive section is like we were in 2008. All the tier-1, tier-2, tier-3 suppliers are in big trouble. It’s not just the Delphis of the world but the much smaller mom-and-pop organizations that are all in trouble.” He said a problem with the Brazilian insolvency law that it requires debtor’s consent. “You don’t have a scheme where the secured lender is driving the bus like they do here in the middle market in the United States – and even in the larger markets, because in Brazil you need the debtor’s consent to do any kind of plan. It’s just too much power.”

Troop said, “In fact, there’s not anything in the Brazilian insolvency scheme that wipes out equity. There’s not a concept of absolute priority the way we think about it in Chapter 11.” He echoed Judge Drain’s point about the delays in the process in Brazil: “There are tremendously creative solutions to that problem that have been developed in Brazil and the one that they use I think is just so perfect. You confirm a plan that says, ‘I will later file another plan and confirm it.’ I’m not sure we can get away with that. It’s a very interesting way to go about it.”

“There is a whole industry in Brazil of professionals who coach the respective judges who are assigned to these cases, because this isn’t their bread and butter.”

– Sheila Smith

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Butler said that in his decades of knowing and talking with bankruptcy judges, “Most judges, not all judges, hate scorecards. They hate it when people look or say, ‘This is a really important case,’ because most judges actually care very passionately about their entire docket, about doing the right thing in every case.” He recalled a case several years ago in which a judge “asked a group of us to come into chambers in a much contested case.” He said everyone assumed they were being summoned to talk about that case, when in fact the judge wanted to discuss another case. “[It was a] really meddlesome Chapter 13 issue that was bothering him. I think it’s important that when we understand that there’s a perspective that judges approach their docket and the things that they do holistically, at least most of the ones that I know do.” Of course, Butler noted, while judges may not keep score, “Everybody else does, and people do keep track of what shows up in courtrooms and what doesn’t.” Addressing Judge Drain, whose courtroom is in White Plains, north of New York City, Butler said he has noted an increase in the number of cross-border cases coming into the Southern District of New York. “What are you seeing, and why do you think you’re seeing the activity that you are?” he asked.

Foreign Companies in US Bankruptcy Courts

Drain said he has seen hundreds of cases under Chapter 15, which allows foreign companies access to US bankruptcy courts. “We continue to get Chapter 11 cases, particularly shipping property cases that are largely Greek shipping companies, but not just Greek – Irish, Scandinavian, et cetera. They may be headquartered in Athens or Piraeus, but the creditors are by and large, US creditors [and] US bondholders, and the professionals they’ve hired because of that are US professionals. I think that it’s perfectly appropriate for them to bring their restructuring to a US court when it’s primarily US creditors and that’s been the case for a long time.”

Victor then asked: “The assets aren’t US, right?” Drain responded, saying, “The assets [ships and cargo] are sailing all over the world. It’s really the debt that you’re dealing with and I think the courts have recognized that. I think to their credit, the US trustees and officers recognize that also. They recognize that with a lot of, or primarily, US creditors that are very sophisticated financial US institutions, forcing those [distressed companies] back into their home countries is not really an effective solution. You can’t really efficiently do a cram down [forced debt restructuring] in a shipping company organization without having that type of legal backdrop behind it.”

Troop agreed, saying, “This concept, of restructuring an effectively foreign entity in many ways in the United States because it’s a financial restructuring, makes perfect sense to me.” But he asked the panel, “Are people ever left with a sense that we’re missing something because we’re not focusing enough on the operational restructuring of businesses and that perhaps, if you have that foreign entity here, it’s tougher to do it? Reject contracts, protect assets from local creditors and the like. Does anyone lose a little sleep about that at night?”

Victor then asked Judge Drain: “In these maritime restructurings and the maritime capital of the world, White Plains, how do you protect the assets that are sailing around the world? It’s cargo ships.” Drain answered: “It’s very easy. I’ve been involved in shipping company bankruptcies since

“They may be headquartered in Athens or Piraeus, but the creditors are by and large, US creditors [and] US bondholders, and the professionals they’ve hired because of that are US professionals. I think that it’s perfectly appropriate for them to bring their restructuring to a US court.”

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the '80s. I think the response is, if you had the case in Athens or in Monrovia, you wouldn't be able to reject the contracts. You couldn't really do those operational things, and I think that's one reason why in those cases, even though there might not be any equity value, the people who have been running the company often stay there with more oversight and with a new board. The operational changes are down the road."

"There are fewer operational restructurings because management is waiting too long"
- J. Scott Victor

Butler turned to Troop and asked him what level of operational restructuring he sees going on in Chapter 11 case with U.S. based companies. Troop responded: "Not nearly enough to be blunt about it." He cited one case he worked on where a company [Dutch chemical company LyondellBasell] was in Chapter 11 for 16 months and its advisors reviewed 25,000 contracts. "You might as well use every arrow in the quiver as long as you're here. We could do that in a lot of the businesses here in United States and for exactly the reason you said, Judge Drain. We didn't touch Europe in terms of operational restructuring except to the extent that we could get a hook in the United States. It was just something that we thought really needed to be done. We're not seeing a lot of that right now. At least I'm not seeing a lot of that right now. There are some of it. What we're seeing [are] 363 sales [sales of auctions of assets in bankruptcy]."

Victor noted that a fundamental question in distressed middle market cases these days is: "What is the operational restructuring that's going in? The vast majority of cases I deal with are: 'Quick, let's find a buyer... Let's get a sale done within 60 days.' If there's liquidity crisis and you don't have time for a stock offering, 'Quick, let's file [bankruptcy].' You've got to find a concerned buyer... because the bank wants out." He added that there are fewer operational restructurings because "Management is waiting too long. They're waiting until the lender is putting the absolute screws to the debt, and there's no more liquidity, enforcing the middle market company into an 11. That's been going on for a decade."

Smith cited the American Airlines Chapter 11 case as an example of a company that was "late to the party – they went seven or eight years after everybody else went bankrupt." Her role in working on the case involved looking at a lot of operational issues "while the investment bankers were really working on the financial machinations of the exit of the case and obviously they have great creditor committee counsel. I do commend people to consider having a broader spectrum of professionals and although oftentimes we have to hip-check the investment bankers who want to swim in our lane or don't believe you need a financial advisor because they can do both roles, I believe those are distinct and different roles."

Judge Drain then noted: "You [American Airlines] had billions of cash to deal with. You had liquidity." Smith joked, "Oh, don't. You had to point that out?" Victor noted: "That's not the case in most cases." Drain added: "If you could build that up, you have so much more flexibility."

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“Second Phase” of Energy Industry Restructuring?

Butler then turned the discussion to the energy sector. “You can’t talk about 2016 without talking about energy. Goldman Sachs’ investment outlook talked about the risks that occur, in part because there also capacity constraints in the system in terms of storing all of this stuff. The idea that you just put and leave it all in a tank somewhere...they’re running out of tanks.” He then asked what the implications of distress in the energy sector are.

“Distress in the energy sector could be exacerbated by the expiration of hedges that many producers had in 2015.”

- Andrew M. Troop

“The implications are that everyone who’s in exploration and production, if you’re smaller and don’t have a lot of liquidity, you’re going to shut down because like you said, you just can’t store it,” Victor said. “Our storage capacity is coming to an end and on some of the smaller deals, we’re working on are production companies, we can’t sell it for enough money to satisfy the lender. It’s not even close.” Victor cited one case he is currently working on, where the lender to an operating company decided to simply cap the wells. “They’re just going to hold it and see what happens another day. That’s affecting the service companies. That’s affecting the midstream supply companies. For many of us in this room who are doing a lot of oil and gas, it is a very booming restructuring cycle right now all over the country where there’s gas production, oil production, servicing, midstream, midstream manufacturing and midstream supply, and wholesale. The whole market has just incredibly tanked.”

Butler said, “[I think] we’re in the second phase in the energy restructuring. The first phase to me occurred over the last 18-24 months when there were challenges to pricing, and all of the exploration guys or most of them said, ‘I am going to figure out how to live for another day. This is temporary. I’m going to get through the next year and a half, two years.’ What they did was put the cramp on every expense they could. It was a cost-cutting, cost containment strategy. The restructurings that went on were all supplier based. It was the whole supply chain. You were in big trouble if you were the supply company. The helicopter service, you name it – whatever it might be that was supplying things out to rigs. That was the problem if you had excess equipment, lessors, other folks. They’re trying to cut costs.

“Who knows if it’s going to stay at the prices they are now, but it’s probably not going to go back up to where it was – and people are beginning to think that it may be the case. You’re now seeing our lenders revaluing on reserve reports and other things.”

Victor added: “It could be a 10-year cycle like it was in the early ‘80s, if you remember.” Troop noted that distress in the energy sector could be exacerbated by the expiration of hedges that many producers had in 2015. “That’s going to put even more liquidity pressure on these producers.” As far as taking wells out of production, he noted that in the US, many producers don’t own mineral lands. “If you don’t own the land, you lose your rights if you’re not pumping or you’re not exploring.”

Drain pointed out that event risk “creates both unintended and unanticipated collateral consequences.” He pointed out one of the consequences of low energy prices is a huge increase in vehicle sales in the US. “While maybe energy is not doing so well, the auto industry had its best year ever last year, right?” Drain asked Victor, who replied, “They’re buying SUVs and trucks, which are the most profitable. Consumers are spending for cars; they’re spending. Gas is much cheaper.

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That's where the consumer is spending. It hasn't been in retail. The holiday retail season was not spectacular by any means, but people are buying SUVs and trucks."

Turning to the retail sector, Butler noted that the trend toward more online retail sales hurting traditional brick-and-mortar stores continued through the recent holiday season. "You have this phenomenon now where people are going to look at things in stores and then going back home and ordering them and having them delivered to their house," he said. "The retailers who are taking omni-channel approaches I think are doing pretty well, but 2015 was thought of in retail as the year of the small-box bankruptcy. Lots of chains, large and small, that had relatively small footprint stores went under. Some restructured and reorganized. Most of them did not, and those stores have gone away and gone back into the supply chain." He then asked the panel if they thought this trend would spill into big-box retail chains in 2016.

"The retailers who are taking omni-channel approaches I think are doing pretty well, but 2015 was thought of in retail as the year of the small-box bankruptcy."

- Jack Butler

"I think it's hard to say," said Troop. "J.C. Penney is adding appliances back to its stores. There, you've got a big-box enterprise that has had lots of very public restructuring issues over the years, and it's growing its practice, and growing its business, getting back into an area [it once had market share in]."

Keeping a Wary Eye on Industry Verticals

Smith interjected that, besides retail, "There are industry verticals that we should all be watching." She further noted: "The coal industry will continue to be the gift that keeps on giving. Healthcare will continue to have problems as America ages. I do think that retail will suffer, notwithstanding that we're all going to buy [Cadillac] Escalades. I do think that people are a little reticent. They see the stock market go up 200 points, go down 500 points. I do suggest that firms consider finding industry experts in certain verticals within their [companies], because I think what Judge Drain was saying is that if you have opinions in one coal case, you become a coal expert, and that same jurisprudence seems to go through the next case and the next case. When you go to pitch a case, if you don't have that particular industry experience, it's hard to get an audience with the potential referral resources. When I started in the industry 25 years ago, trouble was generic. It didn't really matter whether it was in the shoe industry or in the coal industry."

Noting that Goldman Sachs' outlook also forecast commodity prices to remain low in 2016, Butler asked Victor for his outlook. Victor said the Goldman commodity forecast "... goes against what they said in their slide, which says that the global economy is going to remain relatively healthy, and the emerging markets are going to rebound. The problem is they haven't. Mining in Australia, oil and gas production – look at just about every industry and the people in the liquidation business will tell you, used machines don't sell for what they used to. If you have a big paper mill, if you have mining equipment, there is not the worldwide market for these legacy assets anymore that there used to be. If you can't sell a business as a going concern and you're looking for the liquidators to come in and give you some value because they can take your mining machine and ship it to Indonesia, it's just not there. It's all part of the same thing. Commodity prices are low because there is not global growth." Victor then said, "In the middle market, there is still a lot of money. There are lenders looking for good deals. In today's market, \$5 million – even a little less than \$5 million – can get you

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a cash flow loan, which is just unbelievable. It tells you the amount of liquidity that's in the middle market looking for deals, but it is tightening."

Discussion turned to the American Bankruptcy Institute's Commission to Study the Reform of Chapter 11, which issued a comprehensive report last year. Butler said that while many of the report's recommendations are being studied in Congress, "I think one of the things that we're beginning to also see is judicial decisions citing to the report, not necessarily following every recommendation but certainly citing to the report and the wealth of information. I did want to ask Judge Drain if there is a judicial perspective or his perspective on the report."

"There's a sense that [bankruptcy] is a marketplace for M&A for a wider group of investors and institutions, and just regular companies in the particular industry."

- The Honorable
Robert D. Drain

Drain replied that that he has seen things in the report that he thinks are affecting how judges look at cases. "The first is the very widespread sense from much respected people – and it's not just the commissioners – that secured creditor rights on certain issues have gone over the top. Secondly, the report is just a great place to send your clerk to because there are sections in it that have really comprehensive listing[s] of cases on both sides of certain issues. Obviously judges, although they like to be right, also want to be consistent and give people a sense that you could predict how an outcome, a legal issue will turn out. I think that's very useful too."

Butler asked the panel to discuss whether bidders are still active in 363 sales. "Bidders are showing up, right? You're not seeing just a single bidder these days in transactions as much."

Drain said, "I think there's a sense that [bankruptcy] is a marketplace for M&A for a wider group of investors and institutions, and just regular companies in the particular industry. We're comfortable with a sale process. They don't shy away from it like they may have a few years ago. If no one shows up, that's a real signal. It's a signal to the judge obviously if no one shows up. The cases fall in one of those two categories. At least two or three show up or no one shows up."

Victor added: "It depends on what you're selling." He cited a paper mill case that he recently worked on. "At the end of the day, there was no concerned buyer. It was shopped for a long time both pre- and post-bankruptcy, and it was a hundred-year-old facility. Nobody wanted it. The price that the liquidators paid was horrible, because you just can't sell these giant tissue machines around the world that you used to back when the prices were higher."

Drain then observed: "Courts are, I think, pretty much accepting that if more than one constituent or even an important constituent in a bankruptcy case wants a sale process to go forward in tandem with a stand alone, there's not much pushback."

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Venue Changes Increasingly Asked in Bankruptcy

Noting that venue is a major issue in many bankruptcy proceedings, Butler said, "One of the things I think is fascinating is that people have these debates about venue. They're often in the abstract, and there are lots of pejorative comments that are made about venue, and the commission chose not to make a recommendation on venue after presenting all sides of the debate in the report." In the current flurry of energy cases, Butler said, he thinks there is a trend. "If we quantified venue disputes

by industry, I think we probably would find that the bar for energy venue disputes is [the] highest of any industry across the country.’

Troop then rejoined, “I think that’s a fair observation. We’ve seen venue get transferred for big energy cases from New York to St. Louis over the last few years. Most interesting, we’ve seen involuntary filings commenced against enterprises, particularly in Texas. From their perspective, the underlying law for oil and gas is so local that they want a judge who grew up with oil or gas or mining, because there is an appreciation [of] the parts of that business that’s not intuitive elsewhere in the country.”

“There are sometimes fights over what increases the value of the enterprise. Those fights I think people would all agree are productive fights.”

- Andrew Troop

Butler said that having served on the ABI reform commission, he believes that the data collected on venue changes, particularly in energy cases, is “showing in practice that cases tend to end up where they are most efficient – not always but a lot of the time – and there are people who believe passionately that you can only sort out energy cases in oil and gas states.”

Wrapping up the discussion, Butler asked the panel to wax philosophical on whether and how much “disruption creates value.” “It doesn’t always destroy value,” he said. “There are a lot of ugly disputes out there, but the basic principle is one that we should all be able to understand – which is that creditors and other investors need to generate value from each other if it’s not available from the business enterprise. The only way you do that is to fight with each other. That may create a lot of inter-creditor disputes for you, judge, to have to deal with, but the reality is what’s driving this is not some awful motive. It’s a primary economic motive, which is ‘I’ve got to find a way to generate value.’”

Smith said she would concur. “People are trying to maintain jobs. They need the distribution channel. All that creates angst. You’re going to fight hard and long over this particular asset.”

Troop added: “Jack, you made it sound very noble. I think that’s one of the things that people struggle with. It’s that are you fighting over something that’s really going to create value. Let me phrase this differently. There are sometimes fights over what increases the value of the enterprise. Those fights I think people would all agree are productive fights.”

Butler observed that “lack of nobility” often comes from leaks of confidential information in court proceedings. “People want to move markets. I want to give Judge Drain the last word, because he made one observation which I thought was really interesting which has to do with what’s going on in the bond market and the high yield market – that fact that bonds are being issued and traded based on what people say the market is. By the time they get to you and you’re supposed to call balls and strikes, you’re focused on legal principles. Someone comes and testifies what the market is – that’s not very persuasive to you,” Butler said.

Drain replied. “This isn’t a new issue,” he said. “This is what led up to 2007 and 2008. The bond market is not just made up of people that do intense analysis of balance sheets and the like. It’s made up of salesmen. Some of the salesmen are lawyers and some of the salesmen are not

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bankruptcy lawyers. They really don't know what they're talking about in terms of what would happen if there's a default."

"Legends grow about what 'market' is," Drain added. "What underlies that notion is often not really close to what the legal reality is. I think one thing restructuring professionals are always cognizant of is reality. I have found as a mediator, it's really important to just break through the psychological dimness of certain people who say, 'Well that can't be true, because I bought these bonds on this assumption.' It is just wrong. It's better to recognize that and cut your losses than just continue thinking the myth because at some point, there's going to be a decision that shows you that it's wrong."

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Video Interviews

To watch exclusive M&A Advisor interviews with these industry experts on the “State of the Restructuring Industry”, click on the following images:



Jack Butler
Chief Executive Officer
Birch Lake Holdings LP



The Honorable Robert D. Drain
Judge
Bankruptcy Court for the Southern District of New York



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Symposium Session Video

To watch the Stalwarts Roundtable, “State of the Restructuring Industry”, at M&A Advisor’s 2016 Distressed Investing Summit in Palm Beach, Florida, click on the following image:



**Stalwarts Roundtable:
State of the Restructuring
Industry**

Presented by



Contributors' Profiles



Jack Butler
Chief Executive Officer
Birch Lake Holdings, LP

Jack Butler is the Chief Executive Officer of Birch Lake Holdings, LP. Birch Lake invests in undervalued high potential companies in transitional situations to facilitate operational transformation and improve long-term shareholder value and advises corporations and investors on mergers and acquisitions, financial restructurings and complex special situations. One of the most well-known and highly regarded dealmakers and thought leaders in the restructuring, corporate reorganization and M&A community, Mr. Butler has been credited as one of the principal architects of restructuring solutions for such companies as Delphi Corporation, Kmart Corporation and Xerox Corporation and on behalf of creditors including American Airlines' reorganization and merger with US Airways Group, Inc. The American-US Airways transaction was cited for its innovation, collaboration and creativity by the Financial Times, which separately profiled Mr. Butler for developing "creative solutions" during the credit crisis. He co-founded the corporate restructuring practice at Skadden, Arps, Slate, Meagher & Flom LLP, where he was a practice leader for twenty-three years, and previously served on the executive leadership team at Hilco Global, where he worked with healthy and distressed companies, their creditors and investors on a broad range of strategic transactions. Mr. Butler is a member of the M&A Advisors' Hall of Fame and the Turnaround, Restructuring and Distressed Investing Industry Hall of Fame. He is a recipient of the Ellis Island Medal of Honor, which is given to Americans who exemplify outstanding qualities in both their personal and professional lives. A founder and past chairman of the Turnaround Management Association, Mr. Butler has served in leadership positions for many other industry organizations, including the American Bankruptcy Institute, American Board of Certification, the Commercial Finance Association and its Education Foundation, INSOL International, and the New York Institute of Credit. He is also a Fellow in the American College of Bankruptcy and International Insolvency Institute. He received an AB from Princeton University and a JD from the University of Michigan Law School. In addition to serving in leadership positions with numerous civic and charitable organizations, Mr. Butler officiated high school and college football for many years and is a lifetime member of the American Football Coaches Association.



The Honorable Robert D. Drain
Judge
Bankruptcy Court for the
Southern District of New York

Robert Drain is a United States Bankruptcy Judge for the Southern District of New York, having been appointed in 2002. Judge Drain received his B.A. degree cum laude with honors from Yale University in 1979 and his J.D. degree in 1984 from the Columbia University School of Law, where he was a Harlan Fiske Stone Scholar for three years. Judge Drain is a fellow of the American College of Bankruptcy and a member of the American Bankruptcy Institute, the International Insolvency Institute, and the National Conference of Bankruptcy Judges. He is a past member and secretary of the Bankruptcy and Reorganization Committee of the Association of the Bar of the City of New York. He is an adjunct professor at St. John's University School of Law and has lectured and written on numerous bankruptcy-related topics.



Sheila T. Smith
 Consultant
 Corporate Restructuring
 Group
 Deloitte

Sheila Smith is a Consultant at Deloitte. Ms. Smith has more than 20 years of professional experience and has participated in hundreds of bankruptcy, restructuring, financial consulting and 363 sell side advisory engagements. She is considered a leading authority in the restructuring marketplace and as such is a sought after speaker, author and industry pundit. She previously led the New England Financial Advisory Services practice overseeing Corporate Finance, Forensic & Dispute, Valuation, Economic Consulting and Business Intelligence Services. Ms. Smith was the 2005 recipient of the Turnaround Management Association's International Outstanding Individual Contribution Award for her eminence in the profession, the first recipient of the New York Institute of Credit (NYIC) Executive Women of the Year in 2008 and the 2010 Turnarounds & Workouts - Top Restructuring People to Watch. She has had numerous industry speaking engagements where she's spoken on topics such as developing private equity turnarounds and workouts, investing in distress, the challenges and opportunities in dealing with distressed firms, developing successful restructuring plans, selecting and preparing expert witnesses, ethics and entrepreneurial management.



Andrew M. Troop
 Partner
 Pillsbury Winthrop Shaw
 Pittman

Andrew Troop is a Partner in the Pillsbury Winthrop Shaw Pittman's Insolvency & Restructuring practice and is located in the New York office. He focuses his practice on business reorganizations and debtors' and creditors' rights. He has represented debtors, creditors, acquirers, landlords, creditors' committees, and equity committees, both in and out of court, in diverse industries, including health care, energy, retail clothing, retail home goods, telecommunications, manufacturing, mail order personal computers, groceries, lodging, regional airlines, automobile replacement parts, and laser printers. He also has represented private equity clients in connection with acquiring, selling, and reorganizing both domestic and international portfolio companies and in defending fraudulent transfer and breach of duty claims. Recently, Mr. Troop was one of the lead lawyers in the successful reorganization of LyondellBasell Industries, the third largest petrochemical company in the world.



J. Scott Victor
 Founding Partner and
 Managing Director
 SSG Capital Advisors

J. Scott Victor is a Founding Partner and Managing Director of SSG Capital Advisors. Scott is a nationally recognized leader in the restructuring industry with 30+ years of experience representing companies in bankruptcy proceedings and out-of-court workouts. He has completed over 150 sale, refinancing and restructuring transactions in North America and Europe for companies facing operational and/or financial challenges. He is an expert in the restructuring, refinancing and sale of middle-market companies and has testified as an expert witness in bankruptcy courts throughout the United States. Prior to his transition to investment banking in 2000, he was a partner and a senior member of the bankruptcy and restructuring department at Saul Ewing LLP. Clients include publicly traded, privately held, private equity sponsored and family owned businesses across many industries. Scott has published multiple articles for several publications and currently serves as an Examiner for the Wall Street Journal in its Bankruptcy Beat. Scott has received the TMA Global Outstanding Individual Contribution Award (2013), Global M&A Top 100 Restructuring Advisors Award (2014) and M&A Advisor Leadership Award (2015).

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