

# GRR Live: Restructuring in the Americas



20 September 2023

Exploring the new cycle of restructuring disputes

## PROGRAMME

All times are in Eastern Standard Time (UTC -05:00)

**09:00-09:30** Welcome coffee and registration

**09:30-09:40** Co-chairs' opening remarks

Donald Bernstein, special counsel, Davis Polk & Wardwell LLP  
Lisa Schweitzer, partner, Cleary Gottlieb Steen & Hamilton

**09:40-10:55** The next restructuring cycle

With increased interest rates and recession fears facing many countries, a new global corporate and real estate restructuring cycle appears inevitable. Will companies continue to have the ability to “kick the can down the road”, or will more encompassing restructurings — whether through insolvency proceedings or not — be required? Will there be a rise in significant commercial real estate restructurings? The panel will share their views on how the corporate restructuring cycle may develop over the next 24 months and how it will differ from past cycles.

The panel are expected to cover:

- Short and long-term factors driving restructurings over the next 24 months
- The impact of direct lending and “liquidity management transactions”
- The latest developments regarding third-party releases
- What mechanisms can be implemented to mitigate current trends?
- How will developers and their financing sources be affected?

Moderator:

Lisa Schweitzer, partner, Cleary Gottlieb Steen & Hamilton

**10:55-11:30** Coffee break

**11:30-12:45** Cross border insolvency cases — headwinds for recognition?

After 40 years of increasing cooperation, coordination and recognition in cross border insolvencies, are we now facing a “recognition crisis”? Will the trends in inter-jurisdictional competition and new divergences in national insolvency regimes make recognition in cross-border insolvency cases more difficult? Is the re-emergence of the Gibbs Rule in England symptomatic of a global trend away from the principles established by the UNCITRAL Model Law on Cross Border Insolvency?

The panel will explore:

- Differences in cross-class cramdown standards from country to country and how courts will react when recognition is sought for cross-class cramdowns that depart from prevailing local standards
- Reviewing newly introduced laws in European jurisdictions
- The further complications for recognition created by the Gibbs Rule and varied responses to it in other countries (e.g., the Modern Land cases)
- The impact of Cayman Islands' new restructuring officer regime

Moderator:

Donald Bernstein, special counsel, Davis Polk & Wardwell LLP

**12:45-13:45** Lunch break

**13:45-15:00** The crypto winter: key takeaways

Within the past year, a number of high-profile crypto currency platforms such as Voyager Digital, Celsius Network and FTX have filed for bankruptcy. The panel will review the basic differences in the functions and products of these platforms and analyse and compare how differences in the structure and trading terms of each platform have affected the subsequent fate and legal outcomes for market participants, and issues raised by other crypto filings. The panel will also explore the how this underdeveloped and largely unregulated sector of finance may change, in light of the results of these early cases, to reduce the legal uncertainty for market participants.

The panel will cover:

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- Survival kit: key lessons that practitioners have learnt from the crypto winter saga
- What are the implications for the structuring of crypto products and trading platforms
- Bankruptcy of FTX: is the cooperation agreement entered by US and Bahamian courts working?
- Looking at the other cases beyond the crypto platforms

Moderator:

Sean O'Neal, partner, Cleary Gottlieb Steen & Hamilton

Panel:

Kyle Ortiz, partner, Togut, Segal & Segal

**15:00-15:30 Coffee break**

**15:30-16:45 Post-insolvency finance**

Insolvency financings, historically primarily a U.S. Chapter 11 phenomenon in the form of “debtor-in-possession financings” (“DIPs”), are now appearing in various forms in other countries. The panel will look at the general topic of post-insolvency finance, focusing in particular on the Americas. What has changed in insolvency laws (for example in Brazil) to encourage these financings, and what financing structures being used? Who is participating and are the deals being successfully executed?

The panel will cover the following:

- The role of foreign lenders, in Brazil for example, since it introduced its new bankruptcy law two years ago
- The use of DIPs by foreign debtors in Chapter 11
- Interesting features of recent DIP facilities for LATAM companies (LATAM, Avianca, Alta Maipo, Aeroméxico) in US bankruptcies – e.g., roll-ups, equity conversions, requirement to seek recognition of DIP orders in foreign jurisdictions

Moderator:

Timothy Graulich, partner, Davis Polk & Wardwell

Panel:

Giuliano Colombo, partner, Pinheiro Neto Advogados

Alejandro Sainz, senior partner, Sainz Abogados

**16:45-17:00 Co-chairs' closing remarks**

Donald Bernstein, special counsel, Davis Polk & Wardwell LLP

Lisa Schweitzer, partner, Cleary Gottlieb Steen & Hamilton