

# Heard on the Street: What is Being Asked of Restructuring Professionals

**CRF November Forum**

**ALVAREZ & MARSAL**  
LEADERSHIP. ACTION. RESULTS.™

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# Executive Summary

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# Executive Summary

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Today we will discuss the following:

- What is being asked of restructuring firms and who is doing the asking
  - A&M market intel
  
- Review of recent market trends
  - Macroeconomic
  - Credit
  - Restructuring
  
- CRF industry review - *A&M has worked with CRF leadership to identify five industries that represent the majority of members*
  - Potential drivers of distress
  - Key considerations in bankruptcy
  - Where creditors should be looking for risk
  - What options exist to mitigate risk and / or increase a potential return

# A&M Market Intel

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*“Restructurings loom. Not only do rising rates have implications for pricing loans, but the Fed was reining in markets and increasing the cost of capital amid slowing growth. Many companies that were once propped up by generous policy found themselves swimming against the tide”*

*“Companies are still dealing with supply chain interruptions and inflation. The geopolitical issues have created uncertainty (especially in Europe), which makes planning very difficult. Energy and labor costs are still difficult to manage. There is real concern about what will happen with energy prices through this winter and whether plants in Europe will have to scale back. The ability (or inability) to pass on price increases to customers is also a big challenge”*

*“Inflationary pressures and rising fuel costs, coupled with suboptimal contract terms, have resulted in unprofitable contracts” – Phoenix Services First Day Declaration (September 2022)*

*“The Fed delivered a widely expected 75bps policy rate hike [in September]... taking policy rates to 3.25%. Given our expectations that core inflation will prove more persistent and stronger than Fed official expectations... [we] now expect a 75bps hike in November, 50bps in December, and 25bps in February, implying a terminal rate of 4.5-4.75%”*

*– Citi Research (September 2022)*

## A&M Market Intel (cont.)

*“Banks do not have enough workout / internal restructuring staff to work through the current volume of amendments and forbearances”*

*“This holiday season looks to be a make-or-break one for the besieged retailer”*

*“After a nearly two-year reprieve, the retail industry could start seeing an increase in bankruptcies”*

*“Rising interest rates will not only increase the debt service at companies with variable rate debt but will also increase the cost of capital, thereby decreasing valuations. We would expect given a decrease in valuations that creditor recoveries will decline”*

*“More than 8 in 10 U.S. consumers said they planned to make further changes to pull back on their spending in the next three to six months” (NPD Group)*

*“Logistics is the common thread in this [supply chain] nightmare. Empty containers / full containers stranded, worker shortages at all levels, transportation links are dysfunctional or broken, e-commerce has changed traditional models of delivery, and significant need for new storage, warehousing and logistics mechanisms”*

*“Recent data show that the rate of transition into delinquency, especially for low-income borrowers, has risen over the past year. Which begs the question: if delinquencies are beginning to pile up in the subprime space, when will we start seeing some real financial distress among lenders in the category? After all, with mortgage rates skyrocketing, we’ve already seen distress in the mortgage space. Is the auto lending market not far behind?” – Petition (September 2022)*



**Morning Brew**    
@MorningBrew



Over the past 100 years, the surest sign of an oncoming financial crisis has been a Philadelphia based baseball team winning the World Series:

- 1929 - Athletics (Won WS)
- 1980 - Phillies (Won WS)
- 2008 - Phillies (Won WS)
- 2022 - Phillies ?

# Macroeconomic, Credit, and Restructuring Market Trends

# Macroeconomic Trends

## GDP Growth & Stock Market Performance

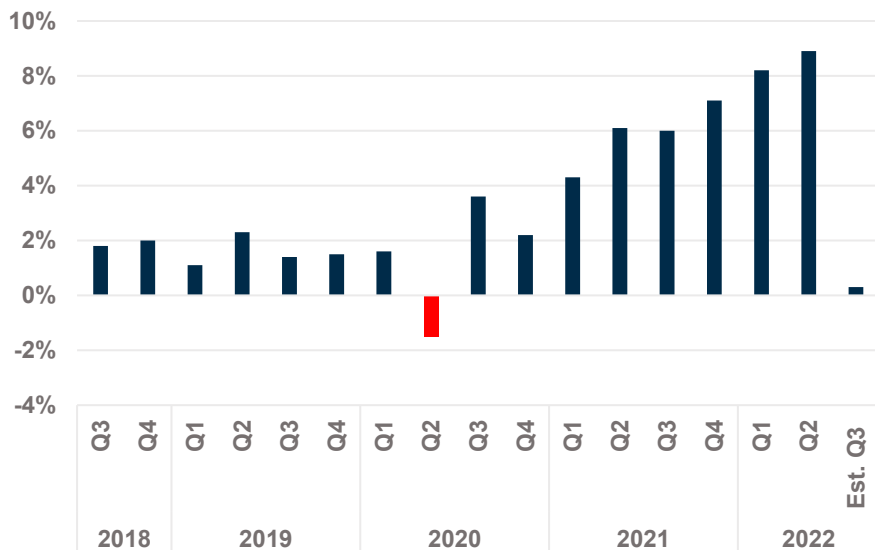
### GDP Growth

- Est. Q3 2022 GDP is expected to significantly decline compared to the prior eight quarters
- The Federal Reserve is forecasting a median change in real GDP of 1.7% in 2022 and 2023, and 1.9% in 2024

### Stock Market Performance

- Increased inflationary pressures, rising fuel costs and an aggressive federal reserve response has seen the S&P 500 fall nearly 25% from its January 2022 peak

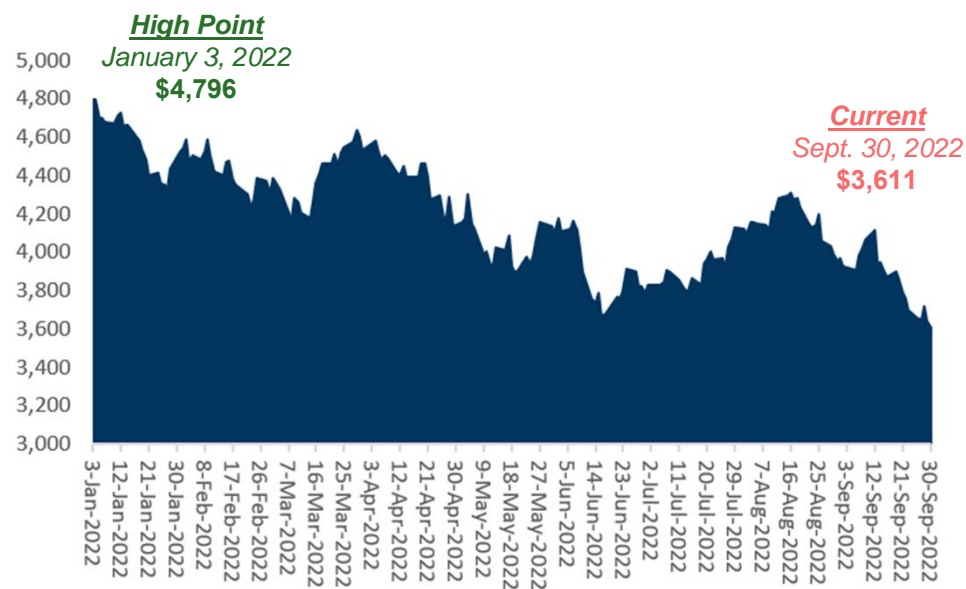
### U.S. Gross Domestic Product (Q/Q % Change)<sup>1</sup>



<sup>1</sup> Bureau of Economic Analysis, U.S. ATL Fed GDPnow Forecast

<sup>2</sup> S&P CapitalIQ

### S&P 500 Index Value<sup>2</sup>

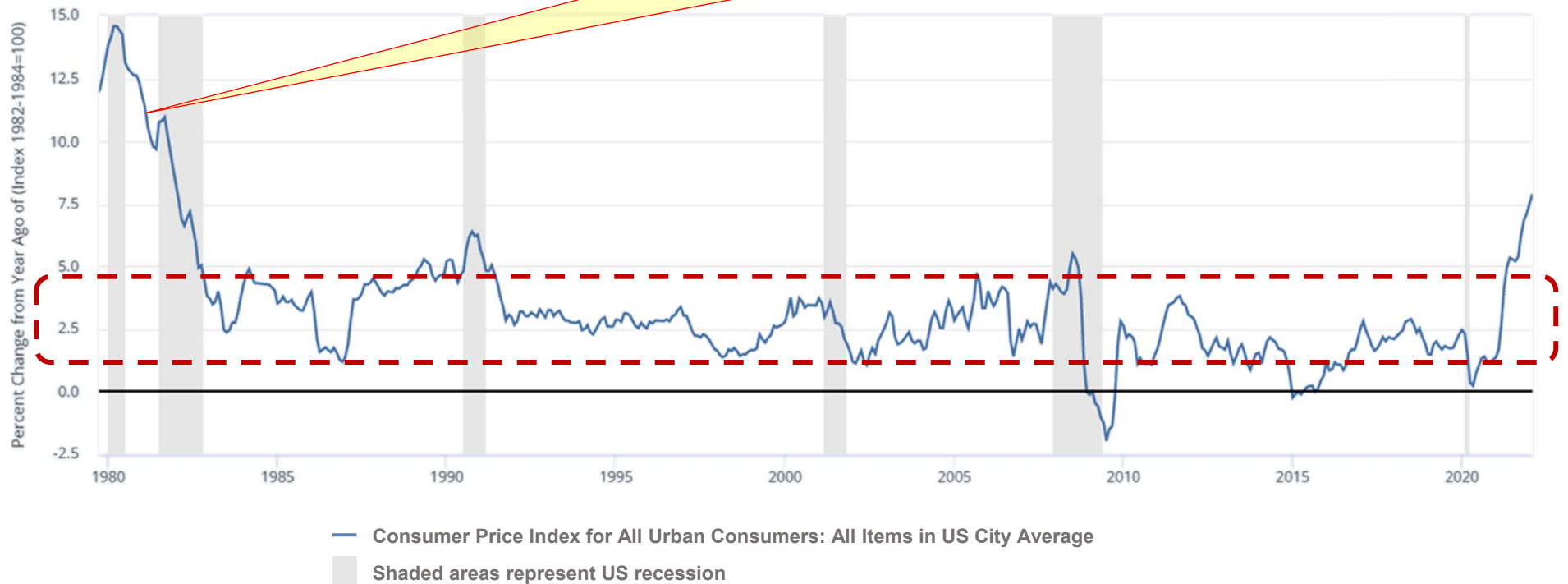


# Macroeconomic Trends

## U.S. Inflation

Inflation is at a 40-year high, after remaining subdued since the Volcker era

Volcker raised the federal funds rate to 20% (in 1981);  
Which led to a recession and CPI fell significantly



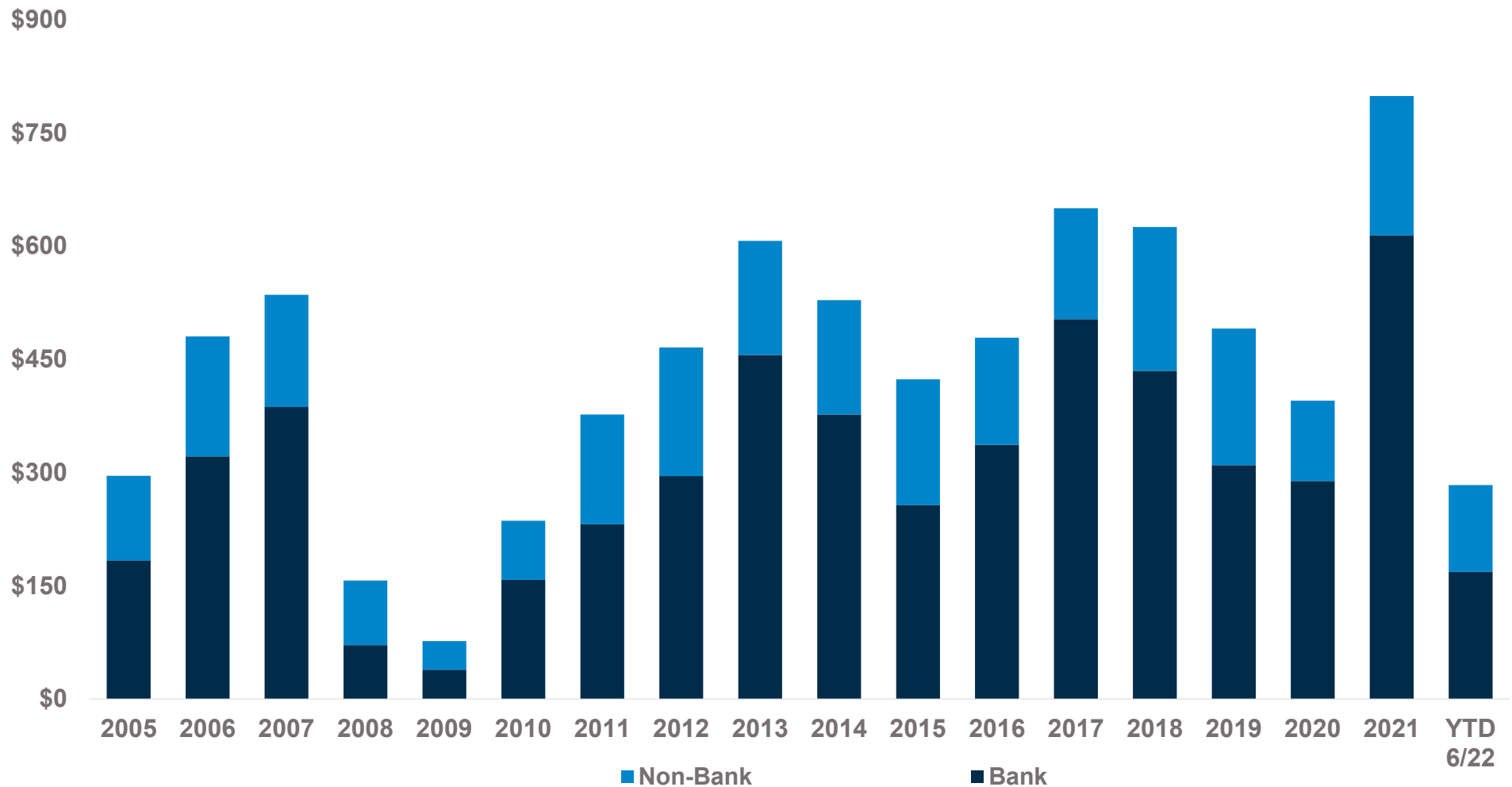
Source: Federal Reserve Economic Data (FRED)

# Credit Market Trends

## US Leveraged Loans

The US Leveraged Loan market has been subdued in 2022, after a record year in 2021

Annual US Dollar Denominated New-Issue Global Leveraged Loans (\$ Billions)



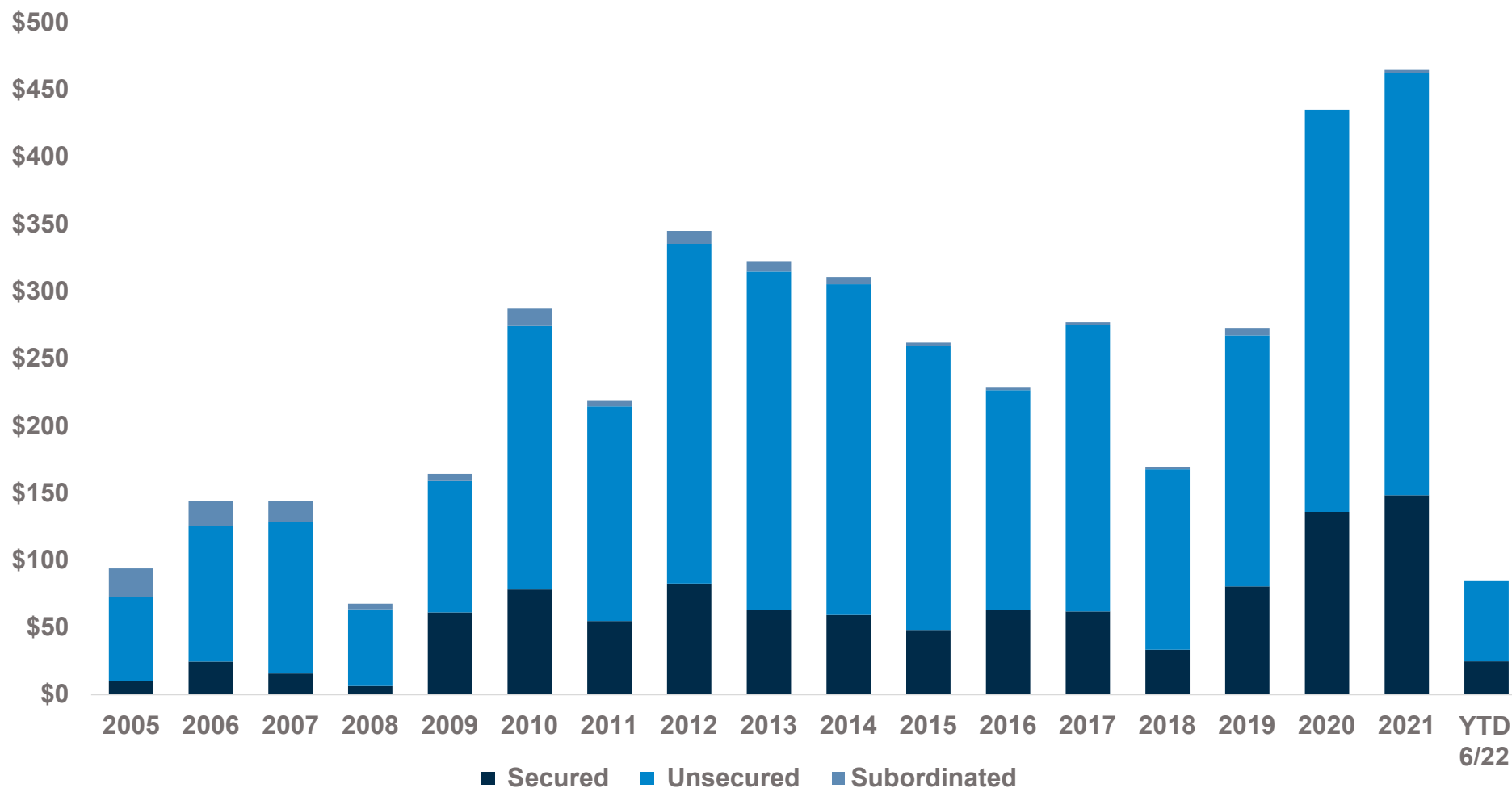
Source: S&P LCD

# Credit Market Trends

## High-Yield Bonds

Similarly, the High-Yield Bond market has seen its lowest new issuance year since the financial crisis in 2008 and 2009

New-Issue US High-Yield Bonds (\$ Billions)



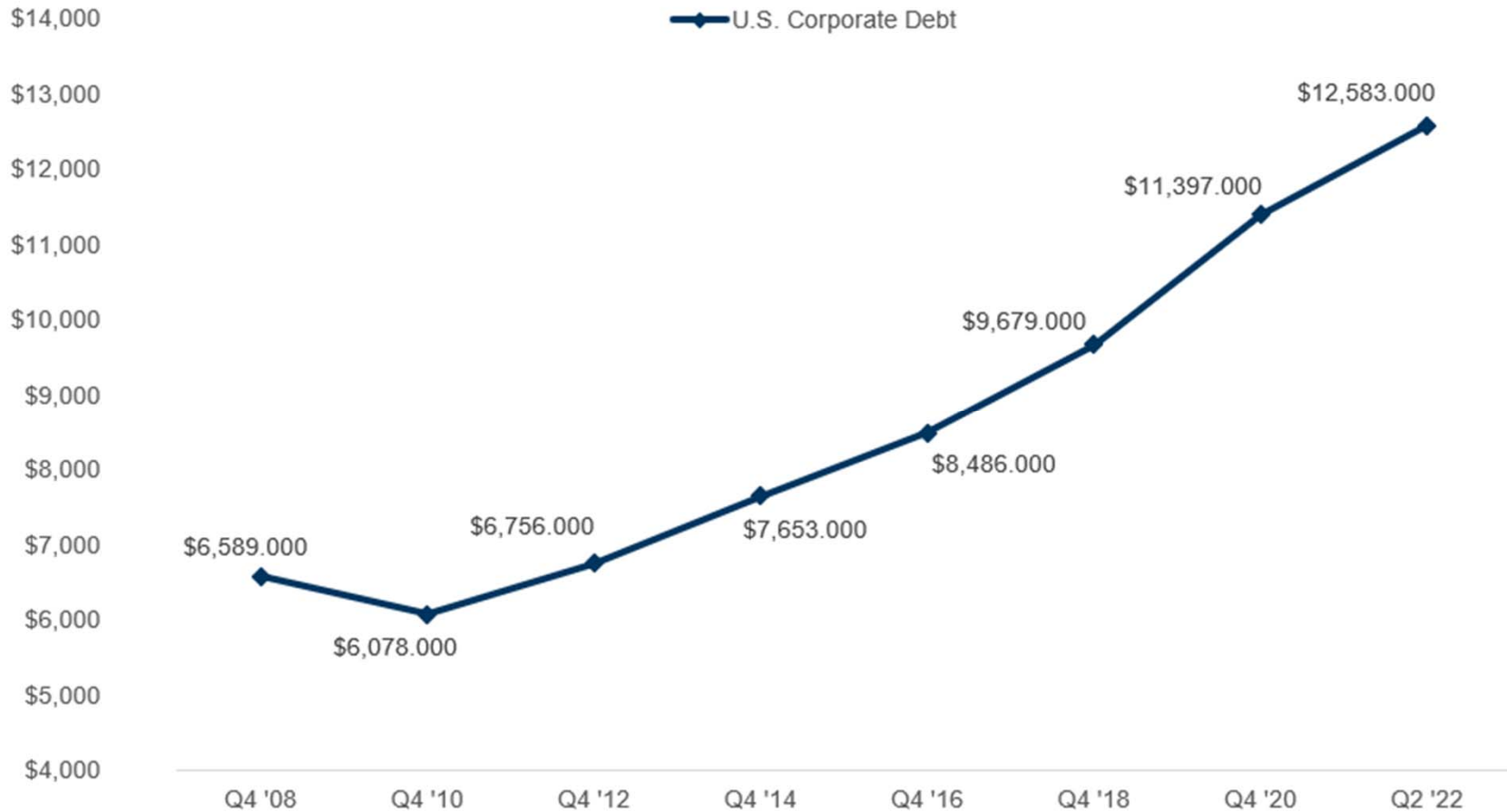
Source: S&P LCD

# Credit Market Trends

## US Corporate Debt

Pandemic stimulus and historically low interest rates fueled the rate at which market participants could raise cheap capital

U.S. Corporate Debt (\$ Millions)

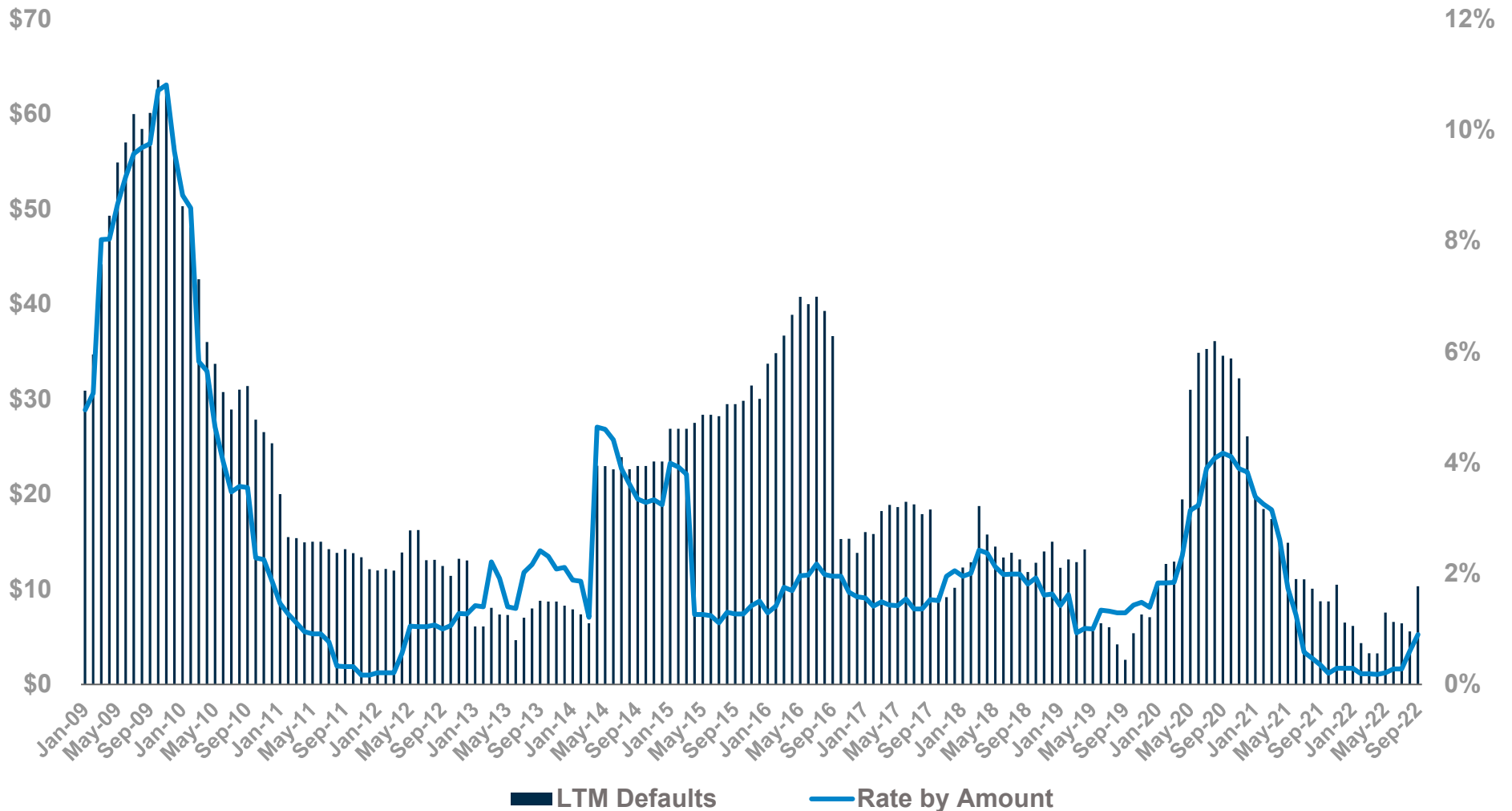


Source: Federal Reserve Economic Data, Bureau of Labor Statistics

# Credit Markets Trends

The Leveraged Loan Default Rate began increasing in 2022 primarily due to an increasing interest rate environment

Leveraged Loan Trailing 12-Month Defaults (Amount in \$ Billions and Rate in %)

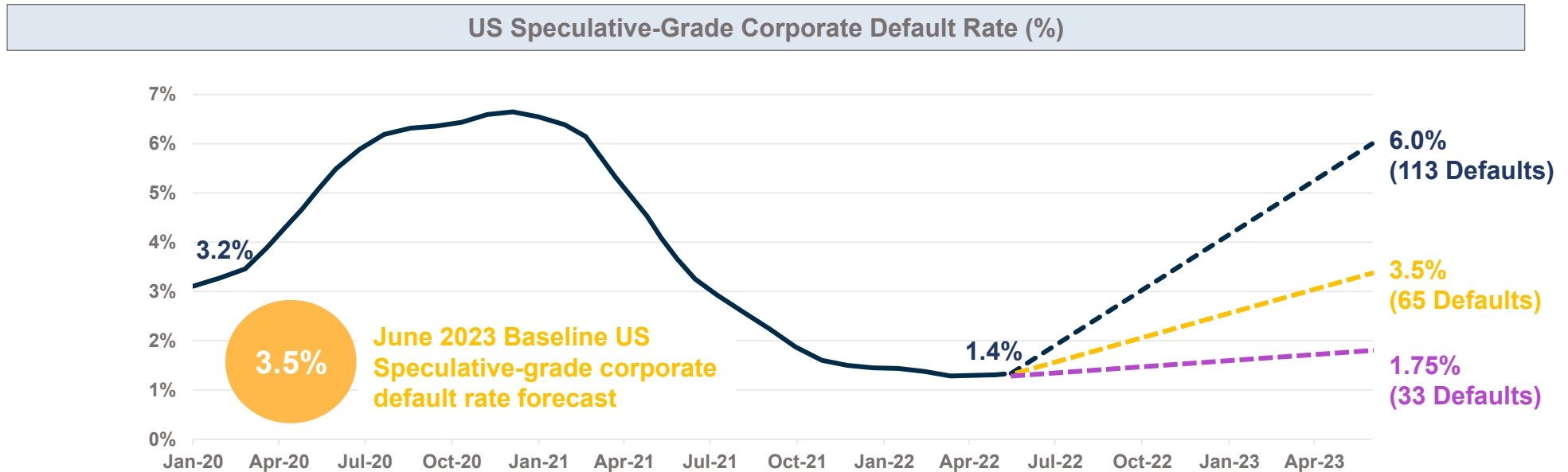


Source: S&P LCD; S&P/LTSA Leveraged Loan Index

# Restructuring Trends

## Default Forecast

The U.S. speculative-grade corporate default rate could reach over 6.0% (over \$200 billion) if the pessimistic scenario turns out to be true



As of June 2022, 1,882 U.S. speculative-grade corporate issuers are rated by S&P Global Ratings







**Pessimistic Scenario:** A more severe recession occurs with high inflation, stalling the economy, reduced purchasing power and rising unemployment

**Base Scenario:** Defaults more than doubled but remain historically low with issuers continue to benefit from cushions built up since the 2020 recession

**Optimistic Scenario:** Very few issuers default as inflation falls, recession is avoided, and financial conditions begin to ease

# Distressed Investors Strategies (Know Your Client)

In times of crisis, sponsor backed companies have made moves to preserve their capital at the detriment of creditors

| Company  | Investor                         | Overview   | Outcome                 |
|--|----------------------------------|--|-------------------------|
|  windstream.                                  | Aurelius Capital                 | Aurelius acquired a stake in the company through a purchase of its publicly traded bonds. The firm argued that its sale lease back of Uniti should be counted as debt, and thus, the company was in violation of its covenants | Litigation / Chapter 11 |
|  PETS <sup>MART</sup>                         | BC Partners                      | Through various maneuvers and relying on loose covenant language, Petsmart transferred 16.5% interest in Chewy to a subsidiary controlled by its private equity sponsor, effectively stripping assets from its lender group    | Litigation              |
| J. CREW  | TPG/LG                           | Used a 'back door' in the credit agreement to transfer \$250 million in IP to an unrestricted subsidiary with the aim of borrowing against it to pay unsecureds at a discount  | Chapter 11              |
|  Party City<br>NOBODY HAS MORE PARTY FOR LESS | THL                              | Negotiated with lenders to exchange senior notes for debt and equity and to strip guarantees for certain unrestricted subsidiaries. The move is seen as moving valuable collateral from lender group                           | Chapter 11              |
|  Travelport                                  | Siris Capital/Elliott Management | Moved valuable assets away from lender group to secure \$1 billion in financing from private equity affiliates   | Litigation              |
|  Sears                                      | ESL Investments                  | Administratively insolvent. Creditors/company claim that the former CEO/investor stripped Sear's of its assets in the period leading up to the bankruptcy  | Litigation / Chapter 11 |
|  Neiman Marcus                              | Ares/CPIIB                       | The company transferred \$1 billion in assets - in the form of MyTheresa - away from the lender group. Seen by some lenders as a enriching the private equity owner to the detriment of creditors                              | Litigation / Chapter 11 |

# CRF Industry Review

# Key Drivers of Distress

The next restructuring wave is coming as result of:

**Inflation**

**Rising Interest Rates**

**Supply Chain**

**Global Conflicts**

**Tight Labor Market**

**Political Landscape**

**Strong Dollar**

**Investor / Lender Psychology**

**Potential Housing Correction & Impact to Consumer**

# 5 Key Supply Chain Shortages

## Aluminum

- Driven by Chinese production decisions to reduce carbon emissions, natural gas prices in Europe, and delays in new CAPEX in the U.S.

## Building Materials

- Inflation risks in all areas driven by price and availability of labor (manufacturers don't have enough labor on the plant floors), materials and shipping costs, long lead times that cannot meet increased demand

## Food

- Labor shortages, shipping, and shortages in fertilizer and pesticides
- Curbs on exports from Russia and China are expected to keep fertilizer demand high beyond 2023

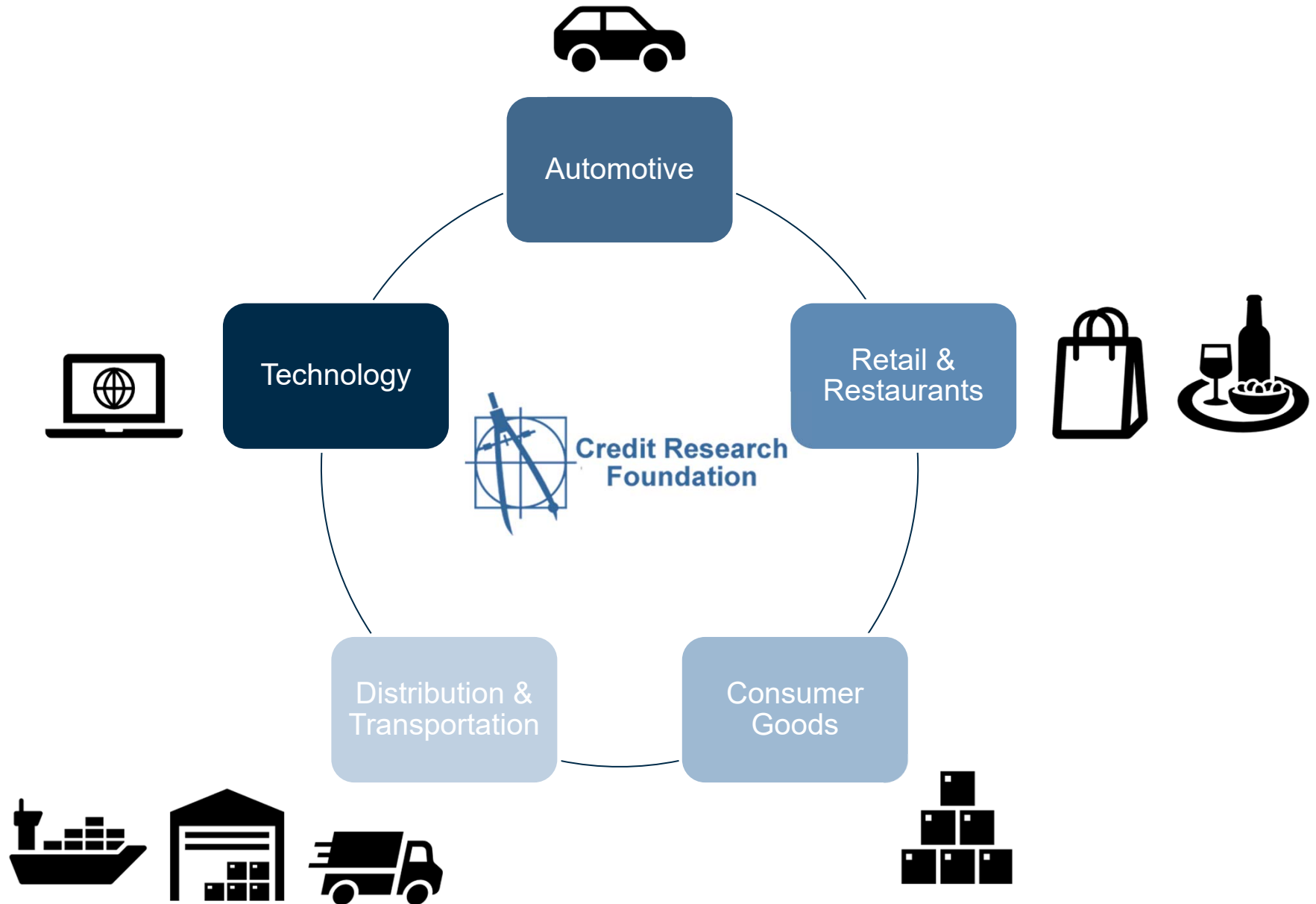
## Plastics

- Driven by resin shortages, power outages in Texas and Southern U.S. Everything from plastic straws to industrial pipes, car parts, and heart valves are facing higher prices. Virgin resin prices are up 30-50% from a year ago (as of late summer 2022)

## Semiconductors

- Affected by shortages in talent, raw materials, manufacturing and shipping as well as shifts in new product uses (5G) – localization of productions is beginning to come online with increasing CAPEX
- Semiconductor shortages over the past 2 years are expected to have resulted in **revenue misses of more than \$500 billion worldwide** for suppliers / customers

# CRF Industry Review



# CRF Industry Review

## Executive Summary

| Industry                        | Drivers of Distress   | Key Considerations   | Outcome   | Risk Mitigation   |
|---------------------------------|---|--|---|---|
| <b>Automotive</b>               | <ul style="list-style-type: none"> <li>▪ Labor shortage</li> <li>▪ Softening demand</li> <li>▪ Supply chain disruption / part shortages</li> <li>▪ Auto loan delinquency</li> </ul>   | <ul style="list-style-type: none"> <li>▪ OEMs are active in reorganizations to avoid supply chain disruption</li> <li>▪ OEM concessions and accommodations (e.g., expedited payments, parts bank)</li> </ul>       | <ul style="list-style-type: none"> <li>▪ Equal likelihood of reorg vs asset sale</li> <li>▪ More likely to be administratively solvent vs other industries</li> <li>▪ EV businesses less likely to liquidate due to shift away from ICEs</li> </ul> | <ul style="list-style-type: none"> <li>▪ Understand impact to your business resulting from accommodation agreement</li> <li>▪ Determine how much of your business is ICE and extend credit appropriately</li> </ul>             |
| <b>Retail &amp; Restaurants</b> | <ul style="list-style-type: none"> <li>▪ Labor shortage</li> <li>▪ Fragile customer demand</li> <li>▪ Inability to pass through food / rent costs</li> <li>▪ Supply chain effects</li> <li>▪ Rent / minimum wage increases</li> </ul> | <ul style="list-style-type: none"> <li>▪ Asset values are typically less than secured debt</li> <li>▪ Insufficient case budget / administrative insolvency</li> <li>▪ Large rent deferral obligations</li> </ul>   | <ul style="list-style-type: none"> <li>▪ GOB / assets sales with few reorgs</li> <li>▪ Unsecured creditors struggling to achieve meaningful recoveries</li> <li>▪ 363 sales may be preferred strategy for brand portfolio addition</li> </ul>       | <ul style="list-style-type: none"> <li>▪ Credit decisions should take into consideration more liquidations are expected</li> <li>▪ Coordinate with shipping department to limit exposure of extending too many goods</li> </ul> |
| <b>Consumer Goods</b>           | <ul style="list-style-type: none"> <li>▪ Housing price decline may decrease demand for housing goods</li> <li>▪ Softening demand</li> <li>▪ Continued work from home may lower demand for office service providers</li> </ul>         | <ul style="list-style-type: none"> <li>▪ Large Covid-19 rent deferral obligations</li> <li>▪ Communication level between Debtors and suppliers</li> <li>▪ Feasibility given increased risk of recession</li> </ul> | <ul style="list-style-type: none"> <li>▪ Recent cases are primarily asset sales vs. reorg</li> <li>▪ Recoveries for unsecured creditors has been minimal</li> </ul>   | <ul style="list-style-type: none"> <li>▪ Develop view re: feasibility early in process, including ability to pass on costs, cost savings, and SKU simplification</li> </ul>   |

# CRF Industry Review (cont.)

## Executive Summary

| Industry                                 | Drivers of Distress   | Key Considerations  | Outcome  | Risk Mitigation   |
|--|---|---|--|---|
| <b>Distribution &amp; Transportation</b> | <ul style="list-style-type: none"> <li>▪ Volatility in shipping and container rates</li> <li>▪ Port congestion and other shipping disruptions</li> <li>▪ Suboptimal contracts / margin pressures</li> <li>▪ Truck and port driver shortage</li> <li>▪ Increased fuel costs</li> </ul> | <ul style="list-style-type: none"> <li>▪ Union / multiemployer pension plans</li> <li>▪ Significant lien claimants</li> <li>▪ Lease rejections through fleet rationalization</li> <li>▪ Ability to retain employees given labor shortage</li> </ul> | <ul style="list-style-type: none"> <li>▪ Likely to end up as reorg or going concern sale as US has need for trucks / railcars and logistics</li> <li>▪ Recently more 363 sales, with binary results for unsecured creditors</li> </ul> | <ul style="list-style-type: none"> <li>▪ Consider timing of potential key liabilities (pension / lease payments) on business viability</li> <li>▪ Understand which customers have multi-employer plans, which may dilute recoveries</li> </ul>  |
| <b>Technology</b>                        | <ul style="list-style-type: none"> <li>▪ Changing consumption patterns</li> <li>▪ New technology (e.g., 5G)</li> <li>▪ Talent, materials shortage / disruption</li> </ul>   | <ul style="list-style-type: none"> <li>▪ Licenses, IP, software agreements are executory contracts subject to rejection</li> <li>▪ Value of IP could be significant driver of UCC recoveries</li> <li>▪ Examine liens on IP</li> </ul>              | <ul style="list-style-type: none"> <li>▪ Generally, reorg vs asset sale</li> <li>▪ Reorganizations have generally provided higher unsecured recoveries</li> </ul>  | <ul style="list-style-type: none"> <li>▪ Know where unsecured claim sits as value often with IP legal entity</li> <li>▪ Beware of dilution of trade claims due to large rejection damages from license / royalty claims</li> <li>▪ Determine if your contract is executory and can be rejected</li> </ul> |



## Industry Review

- The industry is grappling with 8% US inflation
- Semiconductor shortages impacting new vehicle production
- Supply chain disruption of key base metals and inputs sourced from Russia / Ukraine
  - Russia produces ~40% of the world's palladium, which is used to clean vehicle exhaust
  - Russia is also a producer of nickel, which is used in electric vehicle batteries
- Labor shortages across all levels
- Electric or hybrid vehicle adoption is still in its infancy (less than 2.5% of the 250 million cars in the USA as of 2021)
- California stated it would require all new vehicles sold in California by 2035 to be electric or plug-in hybrid electric, banning sales of gas-powered cars by 2035

## Potential Drivers of Distress

- Softening consumer demand, driven in part by inflationary pressures
- Labor shortages constraining capacity ramp up
- Supply chain disruptions leading to production parts shortages
- Increasing auto loan delinquencies
- Margin pressure due to increasing raw material prices
- Capital structure issues
  - Leverage compared to historical trends
  - Variable rate debt increases interest expense in a rising rate environment

# Automotive (cont.)



## Key Considerations in Bankruptcy

- OEMs are heavily involved in a supplier's bankruptcy in order to avoid supply chain issues
- Accommodation agreement with OEMs, OEMs typically grant to Debtor
  - Non-resource provisions
  - Expedited payments
  - Limit of offset provisions against A/R
  - Agreement to buy raw material and finished goods
- Accommodation agreement with OEMs, Debtor typically grants to OEMs
  - Debtor builds a parts bank (to ensure supply)
  - Tooling agreement
  - Access agreement in which customer is given right to access plant in case Debtor fails to produce parts

## Risk Mitigation

- As a supply chain interruption could cause OEMs to lose millions of dollars, OEMs are very careful to ensure a supplier reorganizes as a viable going concern or is sold to a credit worthy party approved by the OEM
- As such, vendors to bankrupt auto suppliers can usually take more comfort as compared to your average bankruptcy that the Debtor will not be administratively insolvent and will emerge as a viable going concern
- A trade creditor should be wary if a portion of the business is reorganized or sold
  - For a business that is liquidated a trade creditor must ensure the wind-down budget is sufficient to pay postpetition payables
  - This will be especially important in auto supplier bankruptcies where a supplier's production is split between electronic vehicles and gas fired vehicles
  - Gas-fired side of the business is more likely to liquidate as OEMs switch more production to EVs

# Automotive (cont.)

## Chapter 11 Bankruptcy Outcomes



| Company   | Prepetition Debt<br>(\$ in millions) | Chapter 11 Outcome                                    | GUC Recovery                              |
|---|--------------------------------------|---|---|
| <b>APC Automotive Tech.</b> (2020)<br>Automotive Components                                 | \$432.2                              | ▪ Debt-for-Equity Reorganization                      | ▪ \$36.9 million (100%)                   |
| <b>American Tire</b> (2018)<br>Automotive Components  | \$2,568.0                            | ▪ Debt-for-Equity Reorganization                      | ▪ \$616.1 million (100%) <sup>1</sup>     |
| <b>Automotores Gildemeister</b> (2021 Pre-pack)<br>Vehicle Distribution                     | \$566.7                              | ▪ Debt-for-Equity Reorganization                      | ▪ \$534.5 million (100%) <sup>2</sup>     |
| <b>Car Outlet</b> (2019)<br>Auto Dealerships  | \$64.7                               | ▪ Replacement Debt and Debt-for-equity Reorganization | ▪ ~\$800K (32.25%) <sup>3</sup>           |
| <b>Fallbrook</b> (2018)<br>Automobile Components  | \$65.0                               | ▪ Debt-for-Equity Reorganization                      | ▪ \$2.4 million (9.9%-12.6%) <sup>4</sup> |
| <b>Garrett Motion</b> (2020)<br>Automobile Components                                       | \$1,860.0                            | ▪ Asset Sale<br>▪ Equity Reinstated                   | ▪ \$597.1 million (100%) <sup>5</sup>     |
| <b>Greentech</b> (2018)<br>Automobile Components  | N/A <sup>6</sup>                     | ▪ Partial Asset Sale<br>▪ Plan of Liquidation         | ▪ \$1.5 million (5.0%)                    |
| <b>Jason Industries</b> (2020 Pre-Pack)<br>Automobile and Industrial Component Manufacturer | \$368.5                              | ▪ Credit Bid Sale and Replacement Debt                | ▪ \$33.5 million (100%)                   |
| <b>Shiloh Industries</b> (2020)<br>Automotive Components                                    | \$336.5                              | ▪ Asset Sale<br>▪ Plan of Liquidation                 | ▪ \$3.1 million (2.6%-3.6%) <sup>7</sup>  |

<sup>1</sup> Includes \$595.0 million in authorized amount per the Court's first day wages, critical vendor, lien claimants and 503(b)(9) orders

<sup>2</sup> Median GUC claims per Debtors' 3<sup>rd</sup> Amended Disclosure Statement's Hypothetical Liquidation analysis

<sup>3</sup> Claims over \$500 (other than Marubeni) will receive their pro rata share of \$250K. GUC amount based on top 10 unsecured creditor from Petition

<sup>4</sup> Midpoint of recovery range multiplied by Debtors estimated claim amount per the Disclosure Statement

<sup>5</sup> Represents value of top 30 unsecured creditors per the Petition

<sup>6</sup> Preferred Equity only

<sup>7</sup> Recovery based on range midpoint multiplied by Debtors' estimated amount of GUC claims



## Industry Review

- Inflation is driving flight to value as cost-of-living rises
- Ongoing supply chain disruptions
  - Constrained freight capacity
  - Geopolitical tensions, e.g., US/China trade war effects
- Labor shortages across all levels
- Structural shifts toward digital requires building distribution networks directly to both businesses and consumers
- E-Commerce has changed traditional models of delivery:
  - Historically, factories shipped goods to warehouses that served brick-and-mortar outlets
  - Currently, deliver to individual consumer, requiring significant need for new storage, warehousing, and logistics

## Potential Drivers of Distress

- Fragile consumer demand from inflationary pressures and squeezed household incomes
- Inability to pass on increasing labor and input costs to consumers
- Supply chain effects:
  - Are supply chain disruptions preventing finished goods from reaching retailers?
  - Are supply chain disruptions leaving retailers with an oversupply of unmarketable goods?
- Increasing rent expense due to the expiration of pandemic era temporary lease abatements
- Regulatory and employment issues for restaurants
  - Federal and local minimum wage increases
  - State and Local regulations re: scheduling, time off, personal leave (ever evolving)
  - PCI Compliance

# Retail & Restaurants (cont.)



## Key Considerations in Bankruptcy

- Asset values are typically substantially less than the secured debt
- Insufficient case budgets and a likelihood of administrative insolvency
- Accelerated case timelines with expedited asset sales
- Rent deferrals will impact negotiations with landlords, reorganized store footprint, cure costs and ultimately the cash available to fund the business
  - For example, over \$350 million of rent deferrals in Cineworld will be a key issue in the chapter 11
- 363 sales might be the preferred bankruptcy strategy as buyers look to add brands to their portfolios
  - Sparc, a joint venture between Simon Property Group and Authentic Brand Group acquired Brooks Brothers and Lucky Brand

## Risk Mitigation

- This past summer, retailers from Gap to Abercrombie & Fitch have said they have too much inventory after shipments arrived late and consumers changed what they were shopping for
  - Shipments to retailers must be closely tracked in order to avoid shipping too much inventory outside the 20-day 503(b)(9) window
  - Key supply chain constraints must be considered, e.g., port, rail, lack of trucking capacity in order to determine potential exposure at distressed companies
- Increasingly difficult for unsecured creditors to achieve meaningful recoveries
- Trade creditors should be concerned about the ability, or lack thereof, to pay for postpetition goods and the feasibility of the Debtor exiting bankruptcy
- Retail companies that have a significant and profitable online presence have a better change of surviving

# Retail & Restaurants (cont.)

## Chapter 11 Bankruptcy Outcomes



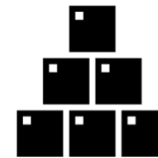
| Company  | Prepetition Debt<br>(\$ in millions) | Chapter 11 Outcome  | GUC Recovery   |
|--|--------------------------------------|---|--|
| <b>Gander Mountain</b> (2017)<br>Sporting Goods Retailer                       | \$442.3                              | <ul style="list-style-type: none"> <li>Asset Sale</li> <li>Plan of Liquidation</li> </ul> | <ul style="list-style-type: none"> <li>\$8.3-\$18.4M (2.5%-6.6%)</li> </ul>  |
| <b>Sports Authority</b> (2016)<br>Sports and Clothing Retailer                 | \$1,067.0                            | <ul style="list-style-type: none"> <li>GOB Sale</li> <li>Plan of Liquidation</li> </ul>   | <ul style="list-style-type: none"> <li>\$3.2M (11%)</li> <li>Includes proceeds from certain causes of action</li> </ul>                      |
| <b>NPC International</b> (2020)<br>Restaurant                                  | \$903.0                              | <ul style="list-style-type: none"> <li>Asset Sales</li> </ul>                             | <ul style="list-style-type: none"> <li>\$3.5 million (7%)</li> <li>Causes of Action Proceeds</li> </ul>                                      |
| <b>Remington</b> (2020)<br>Gun Manufacturer                                    | \$253.7                              | <ul style="list-style-type: none"> <li>Asset Sale</li> <li>Plan of Liquidation</li> </ul> | <ul style="list-style-type: none"> <li>\$394K-\$2.4M<sup>1</sup> (0.2-1.1%)</li> <li>Plus proceeds from certain causes of action</li> </ul>  |
| <b>SportCo</b> (2019)<br>Gun and Sporting Goods Retailer                       | \$272.9                              | <ul style="list-style-type: none"> <li>GOB Sale</li> <li>Plan of Liquidation</li> </ul>   | <ul style="list-style-type: none"> <li>Proceeds from certain causes of action</li> </ul>   |
| <b>Modell's</b> (2020)<br>Sports and Clothing Retailer                         | \$50.2                               | <ul style="list-style-type: none"> <li>GOB Sale</li> <li>Plan of Liquidation</li> </ul>   | <ul style="list-style-type: none"> <li>&lt;\$1.0M (&lt;1.0%)</li> <li>Plus proceeds from certain causes of action</li> </ul>                 |
| <b>Maurice Sporting</b> (2017)<br>Sporting Goods Wholesaler                    | \$60.7                               | <ul style="list-style-type: none"> <li>Asset Sale</li> <li>Dismissal</li> </ul>           | <ul style="list-style-type: none"> <li>\$1.0M (2.0%)</li> </ul>  |
| <b>Advanced Sports</b> <sup>2</sup> (2018)<br>Bike Manufacturer and Wholesaler | \$102.3                              | <ul style="list-style-type: none"> <li>Asset Sale</li> <li>Plan of Liquidation</li> </ul> | <ul style="list-style-type: none"> <li>\$3.2M-\$4.8M (0.2%-3.3%<sup>3</sup>)</li> <li>Plus proceeds from certain causes of action</li> </ul> |
| <b>Chuck E. Cheese</b> (2020)<br>Restaurant                                    | \$1,089.7                            | <ul style="list-style-type: none"> <li>Debt-for-Equity Conversion</li> </ul>              | <ul style="list-style-type: none"> <li>\$22.3 million<sup>4</sup> (12.2%-19.4%)</li> </ul>   |
| <b>MC Sports</b> (2017)<br>Sporting Goods Retailer                             | \$49.4                               | <ul style="list-style-type: none"> <li>GOB Sale</li> <li>Plan of Liquidation</li> </ul>   | <ul style="list-style-type: none"> <li>\$400K (1.4%)</li> </ul>  |

<sup>1</sup> Also recovery from certain unencumbered estate assets

<sup>2</sup> Company had a \$37M secured trade creditor loan

<sup>3</sup> Varying recoveries for each unsecured creditor; total GUC non-deficiency claims of \$151.6 million

<sup>4</sup> Recovery amount based on recovery % midpoint multiplied by estimated claims



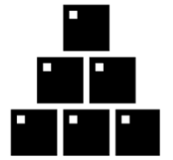
## Industry Review

- The industry is grappling with inflationary pressures
- Digital advertising has become more expensive
- Rise in energy costs has increased manufacturing costs for packaging products
- Capacity constrains with insufficient U.S. manufacturing capacity due to historical trend of offshoring
- Sourcing is concentrated in key global locations due to low-cost production and attractive industrial policy of key nations
  - Taiwanese firms account of 92% of cutting-edge semiconductor production globally
  - China accounts for over 75% of cell fabrication capacity for advanced batteries globally

## Potential Drivers of Distress

- Contractual defaults with suppliers due to supply chain disruptions impacting the revenue cycle
  - Shipping delays and pricing can impact margins and timing of supply and revenue cycle
  - Increased inventory of unused materials or finished goods could prevent realization of profit
- Delay and or permanent shift from working from home to back-to-office has increased headwinds for companies that cater to professionals
- Softening U.S. consumer demand, driven by inflationary pressures and rising input costs
- Decline in housing prices is likely to decrease demand related to housing consumer goods, e.g., mattresses, refrigerators, ovens, etc.

# Consumer Goods (cont.)



## Key Considerations in Bankruptcy

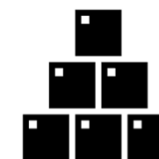
- Potential for large accrued rent deferrals on the balance sheet as a legacy from COVID-19
- Revlon went into bankruptcy with major supply problems. Future Debtor(s) that are transparent and communicate with their suppliers will determine how successful the Debtor(s) is in bankruptcy
- Feasibility
  - While consumer spending is anticipated to grow at an annualized rate of 1.7% over the next five years to 2027, fears of a recession could lead to a reduction in consumer spending

## Risk Mitigation

- Key issues in order to determine if credit should be extended
  - Understand the Debtors' plan to pass on input costs to customers. At Revlon, "global inflation rose at a rate faster than the Company could pass the increased costs through to its customers"
  - Cost saving strategies to mitigate the impact of rising input costs
  - SKU rationalization and impact to ultimate customer such as, Walmart, Target, CVS, T.J. Maxx and others
- The consumer goods companies that are likely to be successful post-chapter 11 are companies with strong brands that generate strong cash flows before debt service

# Consumer Goods (cont.)

## Chapter 11 Bankruptcy Outcomes



| Company   | Prepetition Debt<br>(\$ in millions) | Chapter 11 Outcome  | GUC Recovery                         |
|---|--------------------------------------|---|--------------------------------------|
| <b>AAC Holding Co.</b> (2021)<br>Rehabilitation Services                | \$373.4                              | <ul style="list-style-type: none"> <li>Dismissed</li> <li>Out-of-Court Restructuring</li> </ul> | Not Disclosed (100%) <sup>5</sup>    |
| <b>Alex and Ani</b> (2021)<br>Brick-and-Mortar Retail                   | \$127.4                              | <ul style="list-style-type: none"> <li>Debt-for-Equity Conversion</li> </ul>                    | No Recovery <sup>1</sup>             |
| <b>BHCosmetics Holdings</b> (2022)<br>Beauty Brand                      | \$38.4                               | <ul style="list-style-type: none"> <li>Asset Sale</li> <li>Dismissal</li> </ul>                 | No Recovery <sup>2</sup>             |
| <b>High Ridge Brands</b> (2019)<br>Consumer Packaged Goods              | \$524.4                              | <ul style="list-style-type: none"> <li>Asset Sale</li> <li>Plan of Liquidation</li> </ul>       | Lesser of 5% of GUCs or \$180K       |
| <b>Hollander Sleep Products</b> (2019)<br>Bedding Products Manufacturer | \$233.0                              | <ul style="list-style-type: none"> <li>Asset Sale</li> </ul>                                    | \$600K (0.6%) <sup>6</sup>           |
| <b>Rubie's Costume Co.</b> (2020)<br>Costume Distributor                | \$174.5                              | <ul style="list-style-type: none"> <li>Asset Sale</li> <li>Plan of Liquidation</li> </ul>       | \$4.3 million (34%-61%) <sup>3</sup> |
| <b>VIP Cinema</b> (2020 Pre-pack)<br>Seat Product Manufacturer          | \$209.0                              | <ul style="list-style-type: none"> <li>Asset Sale</li> <li>Dismissal</li> </ul>                 | No Recovery <sup>4</sup>             |

<sup>1</sup> Receive waivers from all claims and causes of action

<sup>2</sup> Case dismissed following sale of substantially all asset, with no recovery for general unsecured creditors

<sup>3</sup> Recovery amount based on midpoint of estimated GUC claims (\$9.0-\$11.0 million) multiplied by midpoint of estimated recoveries

<sup>4</sup> Allowed the lesser of the allowed amount or \$5,000 if they opt-in to certain releases

<sup>5</sup> Debtors only disclosed Senior Subordinated Notes in their Chapter 11 Petition, not general unsecured claims

<sup>6</sup> Entitled to additional recoveries if term loan lenders recover more than 30%

# Distribution & Transportation



## Industry Review

- E-commerce increasingly favors distribution partners that can provide last-mile and same-day delivery
- Industry is likely to change over the next three to five years as the industry adopts more fuel-efficient vehicles, more stringent environmental regulations and potentially drones used to deliver products
- While the use of autonomous vehicles is not anticipated to become widespread, sector participants are expected to continue to invest in this technology

## Potential Drivers of Distress

- Potential volatility in shipping and container rates
- An increase in fuel costs would pressure profits for operators that are unable to pass along higher costs to customer
- Labor shortages including truck and port driver shortages
- Port congestion
- Suboptimal contract terms resulting in margin pressure



# Distribution & Transportation (cont.)



## Key Considerations in Bankruptcy

- Multiemployer pension plan is a pension plan created through an agreement between two or more employers and a union
  - The employers are usually in the same or related industries, like construction or transportation
- Lien claimants
- Fleet rationalization through lease rejections
- Ability to retain enough truck drivers, pilots and other key employees given severe industry shortage of such jobs
- Key Employee Retention Plans (“KERP”) should be prepared and executed in order to keep key rank and file employees from jumping ship to competitors

## Risk Mitigation

- Transportation bankruptcies are likely to end in a reorganization or sale as the U.S. requires more trucks, railcars and logistics to meet demand
- Feasibility analysis - consider timing of potential key liabilities including pension and lease payments on viability of future business
- Unsecured creditors could not only find themselves below DIP financing and secured lenders, but also lien claimants
- A multiemployer pension plan may assert a claim in bankruptcy for the full amount of its withdrawal liability
  - Trade creditors should be aware which of their customers have multiemployer plans, as the claim arising from the plan could dilute recoveries to unsecured creditors

# Distribution & Transportation (cont.)

## Chapter 11 Bankruptcy Outcomes



| Company   | Prepetition Debt<br>(\$ in millions) | Chapter 11 Outcome   | GUC Recovery   |
|---|--------------------------------------|--|--|
| <b>American Commercial Lines</b> (2020 Pre-Pack)<br>Transportation – Shipping | \$1,485.0                            | <ul style="list-style-type: none"> <li>Debt-to-Equity Conversion</li> </ul>                | <ul style="list-style-type: none"> <li>\$443.7 million (100%)<sup>1</sup></li> </ul>               |
| <b>Bouchard Transportation</b> (2020)<br>Transportation – Shipping            | \$229.5                              | <ul style="list-style-type: none"> <li>Asset Sale</li> <li>Plan of Liquidation</li> </ul>  | <ul style="list-style-type: none"> <li>Causes of Action only or available sale proceeds</li> </ul> |
| <b>Celadon Group</b> (2019)<br>Transportation – Shipping                      | \$136.0                              | <ul style="list-style-type: none"> <li>Asset Sale</li> <li>Dismissal</li> </ul>            | <ul style="list-style-type: none"> <li>No Recovery<sup>2</sup></li> </ul>                          |
| <b>Comcar Industries</b> (2020)<br>Transportation – Shipping                  | \$45.5                               | <ul style="list-style-type: none"> <li>Asset Sale</li> <li>Plan of Liquidation</li> </ul>  | <ul style="list-style-type: none"> <li>\$418.0K (2.7%-4.0%)<sup>3</sup></li> </ul>                 |
| <b>Harvey Gulf</b> (2018 Pre-Pack)<br>Passenger Services                      | \$1,220.0                            | <ul style="list-style-type: none"> <li>Debt-to-Equity Conversion</li> </ul>                | <ul style="list-style-type: none"> <li>\$25.7 million (100%)<sup>4</sup></li> </ul>                |
| <b>Jack Cooper</b> (2019)<br>Transport & Logistic Services                    | \$575.4                              | <ul style="list-style-type: none"> <li>Credit Bid Asset Sale</li> <li>Dismissal</li> </ul> | <ul style="list-style-type: none"> <li>No Recovery<sup>5</sup></li> </ul>                          |
| <b>New England Motor Freight</b> (2019)<br>Transportation – Trucking          | \$58.2                               | <ul style="list-style-type: none"> <li>Asset Sale</li> <li>Plan of Liquidation</li> </ul>  | <ul style="list-style-type: none"> <li>\$1.2 million (7%-11%)<sup>6</sup></li> </ul>               |
| <b>Rand Logistics</b> (2018 Pre-Pack)<br>Bulk Freight Shipping                | \$235.9                              | <ul style="list-style-type: none"> <li>Debt-to-Equity Conversion</li> </ul>                | <ul style="list-style-type: none"> <li>\$16.1 million (100%)</li> </ul>                            |

<sup>1</sup> Includes \$351.8 million of vessel lease rejection damages and \$65 million of pension liabilities. Excludes vessel rejection damages for leases that are expected to be assumed in a liquidation

<sup>2</sup> UCC reached a settlement whereby \$133,000 would be carved out to fund the wind-down and UCC professional fees

<sup>3</sup> Recovery amount based on recovery % midpoint multiplied by Debtors' estimated GUC claims

<sup>4</sup> Excludes up to \$892.4 million of RCF and TL deficiency claims

<sup>5</sup> No funds remained following asset sale to confirm chapter 11 plan or make distributions to GUCs

<sup>6</sup> Recovery amount based on the midpoint of the Debtors' estimated GUC claims multiplied by the midpoint of estimated recovery %



# Technology

## Industry Review

- Technology companies typically own or license essential intellectual property
  - Through various contracts such as license agreements, cross-license agreements, web site design and development agreements, software development agreements, web page linking agreements, technology sharing agreements, joint ventures for sharing intellectual property rights and other agreements
- Global supply chain disruptions continue to impact the availability of the materials necessary for technology infrastructure inputs (e.g., data centers), exacerbating the mismatch of expenditures and revenue

## Potential Drivers of Distress

- Changing consumption patterns
- Affected by shortages in talent, raw materials, manufacturing and shipping as well as shifts in new product uses including 5G
- Consumer adoption of new technologies
- Failure to innovate driven by (i) “head in the sand” mentality, (ii) lack of corporate vision, (iii) minimal R&D investment, and (iv) technology disruption
- Examples include:
  - Kodak
  - Blockbuster



# Technology (cont.)

## Key Considerations in Bankruptcy

- License, IP sharing, software development agreements, etc. are typically executory contracts in bankruptcy
- Determine if the Debtors will assume or assign the contract
- Valuation of intellectual property could be a key dispute between unsecured creditors and secured creditors
- Examine if secured lender perfected liens properly in intellectual property
- Common for litigation around intellectual property rights and royalty payments
- Data privacy, customer data and security issues, protection of sale information all could impact ability to successfully reorganize if best practices are not followed

## Risk Mitigation

- Know where your unsecured claim sits
  - Majority of value in a technology company sits at the legal entity where intellectual property resides
- If you sit on an unsecured creditor committee, ask your financial advisor to research arguments and prepare analyses regarding how value flows from the intellectual property legal entity to where your trade claim sits
- Beware of dilution if your trade claim sits at a legal entity where a party can assert a large rejection damage claim from rejection of license or royalty agreement
- Determine if (i) a contract exists with the Debtor, and if yes (ii) ask counsel to determine if the contract is executory
  - Executory contracts, if assumed, must be cured by payment of prepetition liability

# Technology (cont.)

## Chapter 11 Bankruptcy Outcomes



| Company  | Prepetition Debt<br>(\$ in millions) | Chapter 11 Outcome  | GUC Recovery   |
|--|--------------------------------------|---|--|
| <b>Fusion Connect</b> (2019)<br>Cloud Services                         | \$691.5                              | <ul style="list-style-type: none"> <li>Debt-for-Equity Conversion</li> </ul>              | <ul style="list-style-type: none"> <li>\$5.0 million (13.2%)<sup>1</sup></li> <li>Plus proceeds from certain causes of action</li> </ul> |
| <b>Riverbed</b> (2021 Prepack)<br>IT Optimization Products             | \$1,983.5                            | <ul style="list-style-type: none"> <li>Debt-for-Equity Conversion</li> </ul>              | <ul style="list-style-type: none"> <li>\$12.0 million (100%)</li> </ul>  |
| <b>Jagged Peak</b> (2019)<br>Logistics Services                        | \$60.0                               | <ul style="list-style-type: none"> <li>Asset Sale</li> <li>Plan of Liquidation</li> </ul> | <ul style="list-style-type: none"> <li>\$6.6 million (0% / 9.8% / 75%)<sup>2</sup></li> </ul>  |
| <b>Skillsoft</b> (2022 Prepack)<br>Corporate Learning Content Software | \$2,103.0                            | <ul style="list-style-type: none"> <li>Debt-for-Equity Conversion</li> </ul>              | <ul style="list-style-type: none"> <li>\$22.0 million (100%)</li> </ul>  |
| <b>Stream TV</b> (2021)<br>3D Technology                               | \$65.0                               | <ul style="list-style-type: none"> <li>Dismissed with prejudice</li> </ul>                | <ul style="list-style-type: none"> <li>No Recovery; case dismissed with support of UCC<sup>3</sup></li> </ul>                            |
| <b>SunGard</b> (2019 Prepack)<br>IT Recovery Services                  | \$1,261.0                            | <ul style="list-style-type: none"> <li>Debt-for-Equity Conversion</li> </ul>              | <ul style="list-style-type: none"> <li>\$8.1 million (100%)<sup>4</sup></li> </ul>   |

<sup>1</sup> Debtor did not calculate recovery %; GUC recovery is claimants' pro rata share of litigation trust interests. Recovery % is based on \$1.5 million initial trust funding and \$3.5 million trust loan

<sup>2</sup> 9.8% of Jagged Peak Claims (\$6.8 million); 75% of TradeGlobal Claims (~\$8.0 million); 0% of TGNA Claims (\$24.0 million); excludes Canada, Nespresso and SingPost unsecured claims

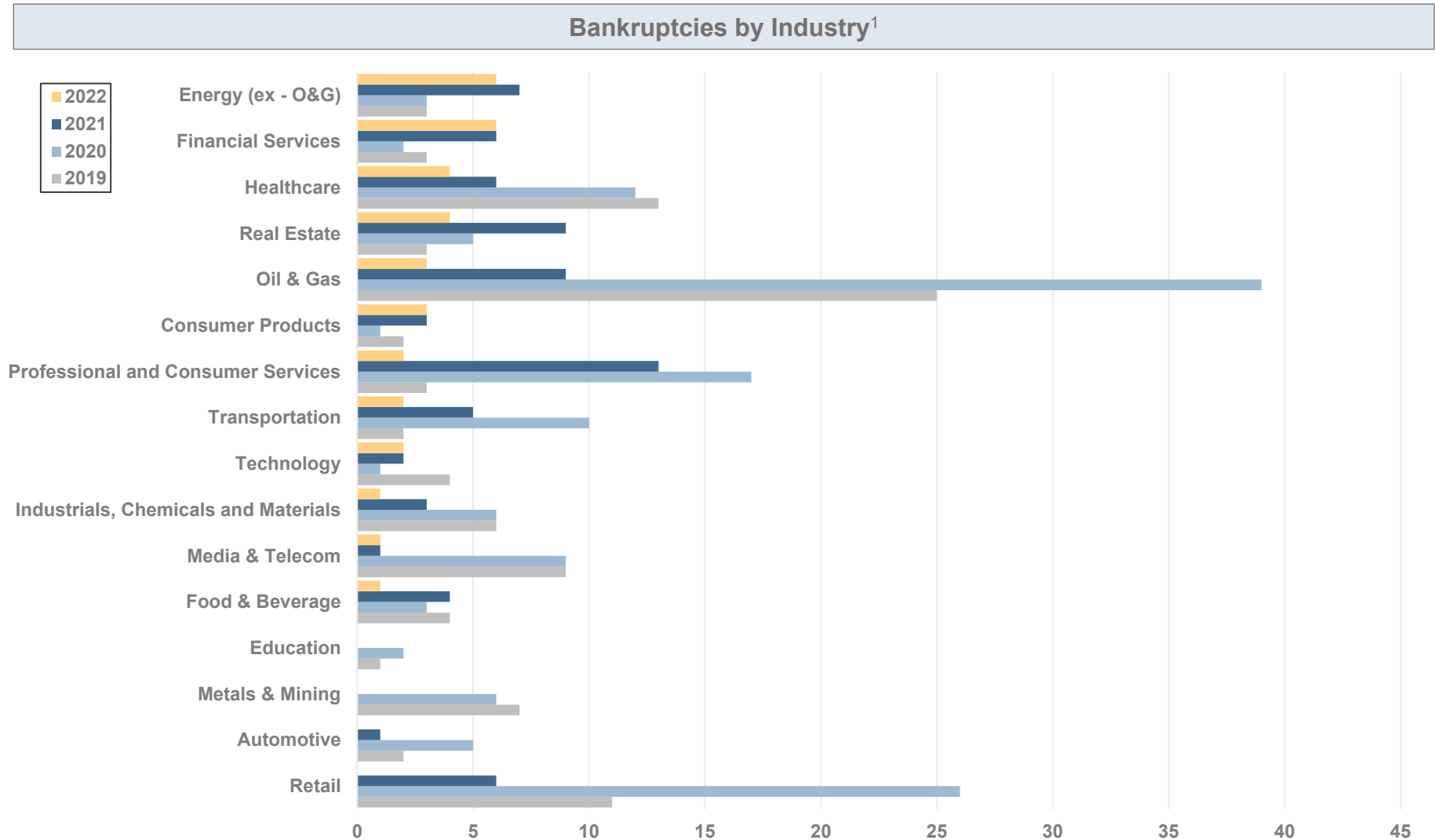
<sup>3</sup> Chapter 11 case was dismissed due to determination of bad faith filing; later chapter 7 was also dismissed

<sup>4</sup> Reflects ten unsecured creditors disclosed in the chapter 11 petition

# Restructuring Trends

## Bankruptcy Filings By Industry

Energy, Financial Services, Healthcare and Real Estate have made up the majority of 2022 bankruptcies



<sup>1</sup> A&M and Debtwire analysis of US bankruptcies with >\$50 million of assets and liabilities. 2022 data is year-to-date as of October 10, 2022

Your A&M Team

# Rich Newman

## Managing Director | UCC Practice Co-Chair

- Richard Newman co-leads Alvarez & Marsal's Unsecured Creditors' Committee practice. Managing Director with Alvarez & Marsal Creditor Advisory in Chicago where he provides financial advisory services to creditors and focuses on representing official committees of unsecured creditors in bankruptcy proceedings. Specializes in 363 sales, liquidity management, business plan review, solvency, formulation of reorganization plans and litigation support
- With more than sixteen years of restructuring experience, Mr. Newman has advised unsecured creditor committees, healthy and distressed companies in leveraged recapitalizations, mergers and acquisitions, and support of interim management roles
- Unsecured Creditor Committee assignments: Avaya, Avianca, Boomerang Tube, Buccaneer Energy, CEC Entertainment, Constar, Endeavour, Getty Petroleum, Global Aviation, Hollander Sleep Products, Keywell LLC, Kodak, LifeCare, Mallinckrodt Pharmaceuticals, NewPage, NPC International, Orchids Paper, NORPAC Foods, Inc., Ryckman Creek Resources, LLC, Shiloh Industries, SunEdison, Synergy Pharmaceuticals, Takata, Tintri, and Westinghouse
- Debtor financial advisory, bank advisory, or out-of-court deals: Appleton Coated, Chesapeake Corporation, Detroit Public Schools, Dresser, Inc., Kimball Hill Homes, Severstal North America, Inc., Tronox Inc., Union Carbide and Visteon Corp
- Testimony experience includes (i) Orchids Paper Products Company Case No. 19-10729, (ii) TK Holdings Inc. (f/k/a Takata) Case No. 17-11375 (November 2017), and (iii) Deposition re: SGK Ventures, LLC (f/k/a Keywell, LLC) Case No. 13-37603 (August 2014), among others
- B.S. in economics from George Washington University and a master's degree in business administration from The University of Texas. Mr. Newman passed all three levels of the CIRA exam and received the Kroll Zolfo Cooper / Randy Waits Award for excellence on the CIRA exam



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# Andrea Gonzalez

## Managing Director | UCC

- Andrea Gonzalez is a Managing Director with Alvarez & Marsal's unsecured creditors practice in Chicago. With more than 20 years of experience, Ms. Gonzalez provides financial advisory and litigation consulting services to unsecured creditors, corporations, boards, government agencies, law firms and other key stakeholders to help resolve high stakes financial, regulatory and legal issues. She also testifies as an expert witness specializing in accounting, forensic analysis and litigation services
- Ms. Gonzalez provides financial advisory services to various constituents in distressed company situations in the bankruptcy court, to investigate potential causes of action and to determine financial viability. Her most recent unsecured creditors' committee assignments include Mallinckrodt plc, Avianca Holdings S.A., LSC Communications, Inc., and CEC Entertainment Inc
- She brings significant experience to clients involved in complex commercial disputes related to fraud, breach of contract, embezzlement and intellectual property. She also assists clients with internal accounting and forensic investigations, and SEC inquiries and investigations
- She works with clients across a wide range of industries, including agriculture, casino/gaming, consumer products, e-commerce, electronics, financial services, foodservice, gaming, healthcare, insurance, manufacturing, medical products, pharmaceuticals, private equity, real estate, shipbuilding, telecommunications, and transportation
- Prior to joining A&M, Ms. Gonzalez spent two years with Cendrowski Corporate Advisors (CCA) as a Senior Manager in their litigation support and valuation practice. Prior to CCA she served as a forensic accountant in the FBI's Chicago Division and was responsible for managing complex financial fraud investigations. Before the FBI, Ms. Gonzalez was a Director at AlixPartners in their Financial Advisory Services practice where she focused on litigation consulting matters
- Ms. Gonzalez earned a bachelor's degree in Accounting from University of Illinois in Champaign-Urbana and is a Certified Public Accountant licensed in the state of Illinois. She is a member of the International Women's Insolvency & Restructuring Confederation (IWIRC) and the Turnaround Management Association (TMA). In addition, she is the Treasurer of the Chicago chapter of IWIRC and serves on the Leadership Committee of the TMA Chicago chapter



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# Seth Waschitz

## Senior Director | UCC

- Seth Waschitz is a Senior Director at Alvarez & Marsal in New York, where he specializes in representing official committees of unsecured creditors in bankruptcy proceedings
- For more than 16 years, Mr. Waschitz has provided advisory services to companies, secured lenders, unsecured creditors and equity holders in M&A, restructuring (in bankruptcy and out-of-court workouts) and capital raise transactions across a wide range of industries including airlines, aerospace and defense, media, technology, telecom, hospitality, business services, financial services, insurance, paper and packaging, pharmaceuticals, consumer products, gaming, infrastructure and transportation
- Mr. Waschitz's notable unsecured creditors' committee assignments include Mallinckrodt Pharmaceuticals, Alto Maipo, Avianca, NORPAC, Shiloh Automotive, NPC International, Lucky Brands, Frontier Communications, Ravn Air, KP Engineering, Bayou Steel, LifeCare, Houlihan's, Hollander Sleep Products, Orchids Paper, Synergy Pharmaceuticals, Scottish Re, Mesa Airlines, Gemini Air Cargo, and Independence Air
- Mr. Waschitz also advised Cenveo on the purchase of National Envelope via a 363 sale process, represented the bondholders in the Chapter 9 restructuring of the Southern Connector Toll Road, represented the Pilot's Union of United Airlines in contract negotiations post-merger with Continental Airlines, and advised IFM's Chapter 11 purchase of the Indiana Toll Road
- Prior to joining A&M, Mr. Waschitz spent 11 years with Macquarie Capital in New York, where he was a Vice President in the Restructuring and Special Situations Group as well as the Technology, Media and Telecom investment banking team. Prior thereto, he was a member of Giuliani Capital Advisors
- Mr. Waschitz graduated cum laude from Boston University's School of Management with a bachelor's degree in Business Administration with a dual concentration in Finance and Business Law. He is also a member of the Turnaround Management Association



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