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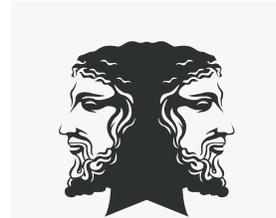
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# FROM THE DESK OF THE EXECUTIVE DIRECTOR



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**2026, the beginning of a new year.** A time to look back and a time to look forward. Many in my CIRA classes have heard me refer to Janus, the Roman god who straddles the year, when speaking about avoidance actions; the importance of knowing your look-back – how far back can one go to pursue an issue in need of remedy, and knowing your look-forward – how much time does one have to investigate and bring the action once a bankruptcy petition is filed.

Looking back, 2025 was another successful year for AIRA. Where other organizations have reported losing ground, AIRA membership is steady, AIRA's conferences were successful, receiving favorable feedback from both speakers and attendees, and AIRA experienced a high degree of participation in the CIRA and CDBV certification programs which points to the relevance and value of these certifications to AIRA's membership.

Looking forward, the AIRA staff and I have plans underway to continue to improve our members' experience with the association. One way is by increasing the opportunities for members to more easily meet their continuing education requirements, whether those requirements are the result of CIRA certification, a professional license requirement, or as may be set by the firm with whom the member is associated. Under the direction of Mike Stull and *AIRA Journal* editor, Alexa Mahnken, AIRA is working on a qualified program to allow members to earn CPE credit for reading the articles in the *AIRA Journal*. With the target rollout on this program set for the second quarter of 2026, members will have the opportunity to go online following a QR code to access questions about the article(s) they've read and having successfully answered those questions, receive CPE credit for the effort. Based on the length of the articles and other factors, members will have the ability to earn 6 to 8 CPE credits over the course of four quarterly journals. With this enhancement, AIRA members will be able to satisfy a significant part of their annual CPE requirements without additional cost.

**Legislation.** AIRA kicked off the new year with our annual winter board retreat. At the retreat, the board approved AIRA releasing a letter to the House Ways and Means and House Judiciary Committees in support of pending legislation proposed in September by House members Daren LaHood (R-IL) and Don Beyer (D-VA). Designated the *Federal Receivership Fairness Act*, H.R. 5146 proposed to provide Receivers with the same process for fast tracking the Internal Revenue Service's review and determination of final tax returns as debtors in possession and trustees currently have emerging from bankruptcy under 11 U.S. Code § 505 - Determination of tax liability.

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11 U.S.C. § 505(b) allows a bankruptcy trustee or debtor in possession to request a prompt determination of any unpaid tax liability of the bankruptcy estate. The Code section outlines the process for submitting such requests to appropriate governmental tax units. Lacking any similar requirements by law, receiverships often times become bogged down and unable to make distributions because of delays in receiving final tax determinations. This delays distributing funds from the receivership, not only to creditors, but also to the governmental units themselves. H.R. 5146 is directly modeled on 11 U.S.C. § 505(b), providing receivers with the same tools for expediting tax determinations as debtors in possession and trustees presently employ. For more information please see the sidebar to Eric Moraczewski's article, "The Evolution, Growth, and Application of Commercial Receiverships in the United States" which begins on page 27.

**Bankruptcy IDEA** is network of organizations whose purpose is to centralize opportunities and resources offered by the member organizations in an effort to achieve the goal of increasing identities and diversity in the bankruptcy restructuring community. AIRA finds itself in good company with ABA Business Law Section, ABI, American College of Bankruptcy, ACT12, IWIRC, JBTAPO, NABT, NACBA, NACTT, NAFER, NCBJ, TMA, WorkOUT, and until a year ago, Department of Justice, US Trustee program, as an ex officio member.

By sharing information on opportunities and resources, the Consortium seeks to increase awareness of career opportunities for those individuals who may not see themselves currently reflected in the bankruptcy and restructuring community.

Our success in this endeavor depends upon recognition and content on the website. To be useful, the website must have a steady supply of postings

for job opportunities and other related information and recognition as a resource from the communities in search of career opportunities. The ability of the Consortium to accomplish these goals depends on the participation of the member organizations' own membership. So, how might AIRA members assist:

- Alert your recruiting and HR departments to the existence of the Consortium website: [www.bankruptcyidea.org](http://www.bankruptcyidea.org) and the ability to utilize the website to post job openings.
- Add your firm job openings to the Consortium Job Board (free!) for any job in the bankruptcy and restructuring industry (also through the website).
- Contact your *alma mater's* career office. Tell them about the website and Consortium Job Board, as well as the career-focused vignettes recorded there by industry participants.
- Contribute bankruptcy and restructuring articles or other resource documents.

With cases on the rise both in court and out, our organizations are looking for the next generation of participants and leaders. Participating in the Consortium's efforts can be an effective way to reach those communities ignored or excluded in the past.

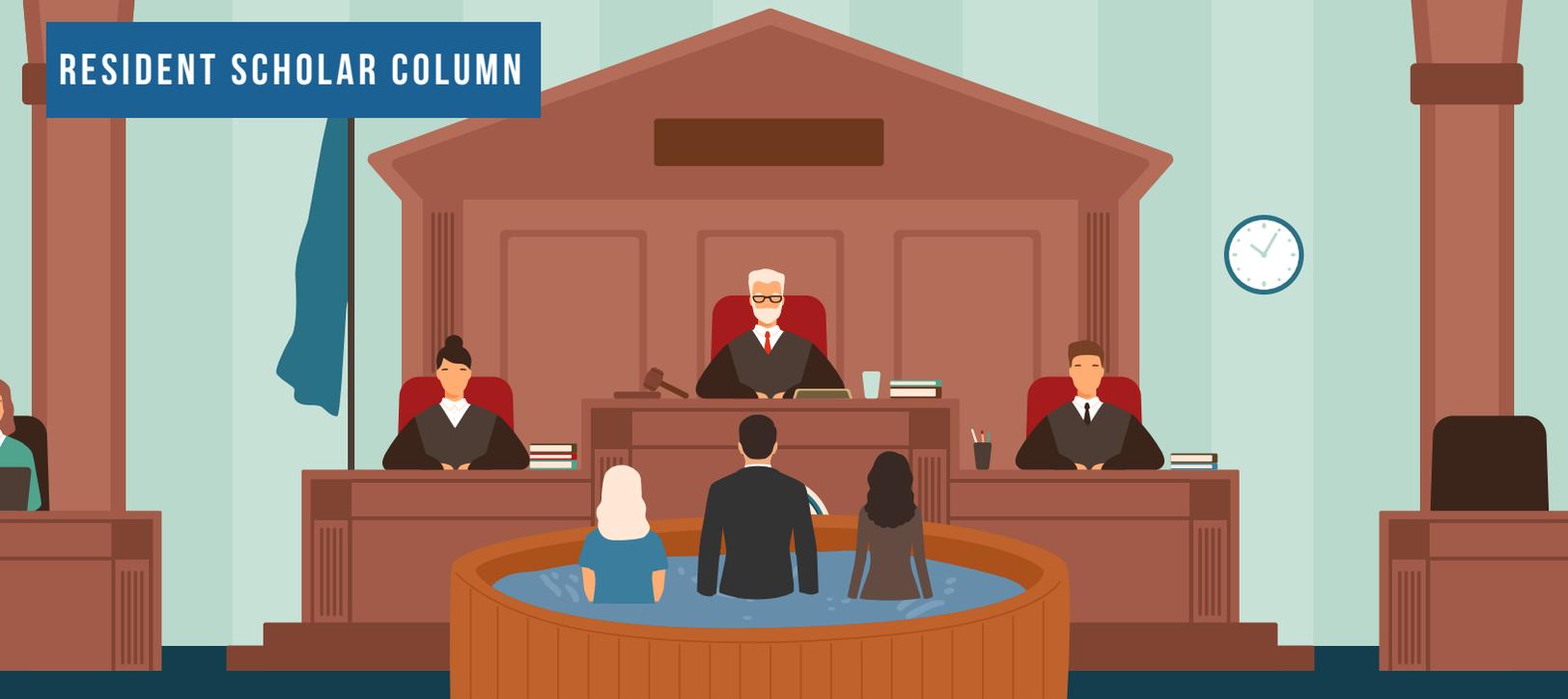
Once again, a collection of informative and well-edited articles follows. Please read, enjoy, and learn (and by the next *Journal*, if all goes according to plan, earn CPE credit).

Jim



**The Bankruptcy Inclusion, Diversity, Equity & Accessibility Consortium** is a network of bankruptcy related organizations. The Consortium centralizes opportunities and resources offered by the member organizations in an effort to further the Consortium's goal of increasing identities and diversity concerning culture, race, ethnicity, gender, (dis)ability, sexual orientation, gender identity, country of origin, and religion in the bankruptcy bench and bar.

[bankruptcyidea.org](http://bankruptcyidea.org)



# HOT TUBBING THE REORGANIZATION: MODERNIZING EXPERT TESTIMONY IN VALUATION HEARINGS UNDER RULE 9014

## Valuation disputes lie at the heart of Chapter 11 confirmation:

plan feasibility, cram down fairness, and creditor recovery often hinge on the court’s assessment of the reorganized debtor’s value. Yet the conventional adversarial presentation of expert testimony often falls short of clarifying differences in the standards of value and interpretations of value for these different purposes. To be sure, my thoughts are not driven by observations of participants and their abilities or any actual or perceived biases. My thoughts are more focused on a systems assessment of how we present valuation evidence to a trier of fact, and particularly the bankruptcy judge.

## SUMMARY

Our traditional approach introduces valuation evidence through a sequential process where counsel conducts a direct examination and opposing counsel conducts a cross examination. The process relies heavily on counsel. By design, the opposing valuation experts may testify days or months apart. The system can offer tradition, stability, and a well-understood process. Yet can we design a better system and stay true to the rules of a Chapter 11 confirmation process? Ought we do so?

This article suggests that we begin a discussion about adapting the “concurrent expert evidence” or “hot tubbing” method of introducing expert

testimony.<sup>1</sup> Concurrent expert evidence, colloquially known as hot tubbing, is a court procedure where opposing expert witnesses testify simultaneously in a panel discussion rather than through traditional, separate cross-examinations. The process has been pioneered in Australian courts and explored by US district court judges, such as the Hon. Jack Zouhary, in other contexts with success. The thought of using a concurrent expert testimony system in Chapter 11 confirmation hearings poses two interesting issues: (1) can we do it in bankruptcy court; and (2) should we do it in a confirmation hearing in a chapter 11 case?

<sup>1</sup> The idea of concurrent expert testimony is not new. There are dozens of articles on the subject from academics, practitioners, and judges.

# CONTESTED VALUATIONS IN BANKRUPTCY

I offer a modest thought experiment: can we use concurrent expert evidence systems in a confirmation hearing before the bankruptcy court? Confirmation hearings are contested matters under Bankruptcy Rule 9014.<sup>2</sup> Historically, bankruptcy courts are famous for their application of flexibility to the process. Within the flexible evidentiary framework of Bankruptcy Rule 9014(c)<sup>3</sup> and Federal Rule of Evidence 611(a),<sup>4</sup> bankruptcy courts possess ample authority to experiment with this procedure. A concurrent process allows competing valuation experts to testify together in a court led discussion. Together, they can answer parallel questions and respond directly to one another's assumptions and other key drivers of value in real time. In essence, they can debate key issues live before the trier of fact.

The potential advantages of this method include enhanced judicial comprehension of complex valuation models, greater procedural efficiency, and reduced competition among experts. It can transform the "battle of the experts" into a focused, collegial examination of methodology. I have studied valuation opinions and testimony for over 30 years, I have testified in many complex cases, and I have served as counsel in several valuation contests. I am often surprised how little separates competing experts, even when their opinion outcomes are dramatically different. Of course, there are real risks, including due process concerns, potential judicial over-involvement, a lessening of control by counsel, and potential dominance by stronger expert personalities; however, I think that these real, but manageable, concerns may be addressed effectively with a written order and balanced questioning. Alas, I do not have those guardrails refined to the point of offering them for discussion, but I am confident that as a profession we can reach a fundamentally fair and greatly improved, more efficient process if we so choose.

Ultimately, hot tubbing aligns with the bankruptcy court's equitable mission and non-jury, fact finding, role. By encouraging dialogue rather than monologue, it promotes decisions grounded in analytical transparency rather than forensic theatrics. Concurrent evidence, carefully structured, offers a pragmatic evolution in how courts ascertain reorganization value.

<sup>2</sup> Bankr. R. 9014.

<sup>3</sup> Bankr. R. 9014(c).

<sup>4</sup> Federal Rule of Evidence (FRE) 611(a) grants courts reasonable control over how witnesses are examined and evidence presented, aiming to make trials effective at finding the truth, avoid wasting time, and protect witnesses from harassment or undue embarrassment.

I have written, "The role of valuation in bankruptcy law is fascinating and presents layers of complexity and nuance, as one seeks to understand and master it and the process that bears its relevance."<sup>5</sup> Valuation sits at the epicenter of nearly every contested Chapter 11 reorganization. Valuation practice, as performed in disputes and as a discipline, continues to evolve.<sup>6</sup> Yet for all of our devotion to enhancing its technical rigor, the manner in which we introduce expert testimony (sequenced presentations of expert testimony) on valuation issues at a confirmation bench hearing has not changed much at all.

In the Australian judicial system (and in international arbitrations), however, this procedural innovation has begun to change that dynamic. The system allows multiple experts to testify side by side, respond to one another, and answer the judge's questions in real time. The goal is not simply to achieve efficiencies, but to seek and find better cognitive alignment. This concurrent system is designed to ensure the decision maker hears the experts engage directly on contested methodologies, assumptions, and other drivers of value, rather than hearing them sequentially through adversarial questioning.

American courts, while protective of adversarial procedure, have quietly begun experimenting with this approach. A notable example is Judge Jack Zouhary's use of the technique in complex antitrust and class certification hearings.<sup>7</sup> I highly recommend this entertaining and thoughtful article for those interested in the topic, which can be found at <https://www.fedbar.org/wp-content/uploads/2015/05/comm2-may15-pdf-1.pdf>.

Here, I explore the first of the questions posed above in greater detail: whether a bankruptcy court can use a concurrent expert testimony or hot tubbing system in a contested confirmation hearing. Specifically, I consider whether hot tubbing fits within the procedural and evidentiary framework of a Chapter 11 confirmation hearing, given the famous flexibility of that process.

To me, the combination of Bankruptcy Rule 9014(c) (allowing flexibility in contested matters) and Federal Rule of Evidence 611(a) (granting the court control over the mode and order of examination) provides

<sup>5</sup> Jack F. Williams, *Teaching Bankruptcy Valuations to Law Students and Other Unnatural Acts*, 39 EMORY BANKR. DEV. J. 51 (2023).

<sup>6</sup> *Id.*

<sup>7</sup> Hon. Jack Zouhary, *Jumping In – A Different Approach to Expert Evidence*, Federal Lawyer 22 (May 2015).

sufficient authority for a bankruptcy court to employ concurrent expert evidence. If so, it would then require us to develop a structured protocol for adopting the concurrent system. That would then lead us to the second question: ought we? My thoughts for this discussion are straightforward: hot tubbing can modernize expert valuation practice in Chapter 11 confirmation hearings by improving judicial comprehension, reducing procedural waste, and enhancing public confidence in the fairness of plan confirmation.<sup>8</sup>

## VALUATION AND ADJUDICATION IN CHAPTER 11

### THE CENTRALITY OF VALUATION UNDER § 1129

The confirmation process under 11 U.S.C. § 1129 requires a court to assess the feasibility and fairness of a proposed plan, including whether the plan satisfies the “best interests of creditors” test (§ 1129(a)(7)) and the “fair and equitable” standard for cram down (§ 1129(b)(2)). Each of these inquiries depends, in large part, on valuation determinations that often involve the valuation of the debtor as a going concern and of the secured creditors’ collateral, if needed.

Courts have long characterized valuation as both a fine art and a science.<sup>9</sup> The composite portrait of the value of a debtor which we are required to draw is made of both that which is amenable to objective measure and that which is not.<sup>10</sup> Valuation is “a discipline born of thoughtful consideration of the appropriate drivers of value, their interconnectedness, the application of a rigorous methodology, and deliberate exercise in judgment.”<sup>11</sup> It is a process that relies upon assumptions about future cash flow, terminal adjustments, market multiples, discount rates, growth rates, and comparable companies and transactions, among others, that necessarily incorporate reasoned and deliberate judgment. As valuation scholars have observed, the differential between two experts’ conclusions can be traced less to mathematics and more to the narrative: the story, predicated on the facts and the application of

reasoned judgment, one tells about the reorganized business’s future.

### THE LIMITS OF SEQUENTIAL EXPERT TESTIMONY

The traditional method of presenting expert evidence in a contested confirmation hearing follows an adversarial sequence: proponents call their valuation expert and examine the expert, the opponent cross examines the expert, and then the opponent later (often much later) introduces its own expert in rebuttal, and the process begins anew. As mentioned, this system bases its legitimacy in its history of use, tradition, and the perception of its intuitive fairness. However, there are three areas of additional contemplation.

My first observation is the concern about the asymmetry of context. Traditionally, each expert testifies without the other present to respond in real time. The court must later reconcile potentially two inconsistent sets of methodologies, assumptions, and other value drivers without contemporaneous dialogue.

My second observation is the concern about over-lawyering. Traditionally, counsel, and not the expert, drives the rhythm of testimony, funneling technical opinions through questions that are asked by counsel. To be sure, counsel and experts discuss the best ways to present testimony, given the facts and circumstances, but expert opinion in the adversarial process is controlled by the lawyer’s questions, frame of reference, and pace. Experts do not ask questions; lawyers do not offer expert opinions. There are strong guardrails in place in the traditional system that ensure all keep to their lanes, but is this an honest dialogue about the valuation issues?

My third observation is about cognitive fatigue. In a days- or months-long valuation hearing, a judge may hear dense testimony involving considerable detail and the depth of valuation practice and theory, for example, on terminal growth rates and weighted average cost of capital. This information is conveyed through disjointed hearings that may be hours, days, weeks, or months apart. Indeed, the process can involve quite an endurance test as many hours of dense testimony are provided in a manner that can lack coherence. Side by side comparisons of key issues are highly challenging.

My critique is not a knock on the adversarial system; far from it. I have dedicated much of my professional life to studying it. The adversarial system excels at exposing factual inconsistencies, inaccuracies, and

<sup>8</sup> David Sonenshein & Charles Fitzpatrick, *The Problems of Partisan Experts and the Potential for Reform Through Concurrent Evidence*, 32 Rev. Litig. 1 (2013).

<sup>9</sup> Williams, *supra*, at 60 and n.28-29.

<sup>10</sup> See, e.g., *In re El Paso Pipeline Partners, L.P. Derivative Litig.*, No. 7141, 2015 WL 1815846, at \*22 (Del. Ch. Apr. 20, 2015).

<sup>11</sup> Williams, *supra*, at 60 and n.28-29.

falsehoods. Yet could it fare better when the dispute turns on professional expert judgment? Bankruptcy valuation disputes flirt with this challenge.

## AUTHORITY FOR CONCURRENT EXPERT EVIDENCE

As mentioned, American bankruptcy procedure does not explicitly authorize “panel testimony.” Yet close analysis shows that broad judicial discretion is available to structure the form of expert testimony and the nature of expert examination.

### FLEXIBILITY IN CONTESTED MATTERS

Rule 9014(c) provides that many of the Federal Rules of Evidence and Civil Procedure apply to contested matters such as plan confirmation hearings, “*unless the court directs otherwise.*” The rule thus empowers judges to modify the evidentiary format in the interest of just resolution. Numerous bankruptcy courts have used this discretion to allow hybrid or “summary” evidentiary procedures. One common procedure, which I discuss with my co-authors in a book concerning valuation disputes in bankruptcy, involves the fashioning of procedures to allow the introduction of expert reports or written declarations of direct expert testimony as substantive evidence to expedite a contested matter.<sup>12</sup> A second approach has been to use a court-appointed expert under Fed. R. Evid. 706 or technical advisors.<sup>13</sup>

Because confirmation hearings are not jury trials, due process concerns are tempered by the fact that the presiding judge serves both as gatekeeper and finder of fact. I think that the absence of a jury simplifies the adoption of concurrent testimony.

### FEDERAL RULE OF EVIDENCE 611(A)

Rule 611(a) grants courts broad control over “the mode and order of examining witnesses and presenting evidence so as to make those procedures effective for determining the truth.” This textual mandate offers ample authority for concurrent evidence. Judge Zouhary explicitly cited it in authorizing the process in an anti-trust multidistrict litigation class action certification hearing, noting that such flexibility “better enables the court to test the accuracy of an expert’s opinion.”<sup>14</sup>

<sup>12</sup> Stan Bernstein, Susan H. Seabury, and Jack F. Williams, *Admitting Expert Valuation Evidence Before the U.S. Bankruptcy Courts* ch.6 (ABI 2017).

<sup>13</sup> *Id.*

<sup>14</sup> Hon. Jack Zouhary, *Jumping In — A Different Approach to Expert Evidence*, *Federal Lawyer* 22-23 (May 2015).

## JUDICIAL GATEKEEPING

The Supreme Court’s *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993), positions the judge as a relevance and reliability gatekeeper under Federal Rule of Evidence 702.<sup>15</sup> When valuation experts espouse conflicting assumptions about cash flow projections, discount rates, or market comparables, concurrent testimony can serve a quasi-Daubert function by allowing the court to probe methodological soundness directly. The hot tub thus becomes both a fact finding and an admissibility tool.

## SOME CONCLUDING THOUGHTS

This is far from the last word on the subject. I do think that the concurrent expert system is worthy of further consideration for use in a Chapter 11 confirmation hearing for the reasons I described above. If this suggestion garners enough attention, then I believe that the framework developed by Judge Zouhary may apply to bankruptcy practice. This could be a great place to start.

A protocol should rest on a detailed pre-trial order that sets out the rules for concurrent expert testimony. It generally includes the (1) traditional designation of experts under Rule 26 of the Federal Rules of Civil Procedure or a court’s scheduling order; (2) scope of concurrent session defining specific issues for joint examination; (3) statement of judicial moderation, stating that court, and not counsel, controls topic selection with counsel retaining a limited power to request follow-up questioning; and (4) careful attribution in the transcript of each expert’s statement or response for appellate review.

The hearing structure could consider the use of (1) opening summaries by counsel (or a written declaration stating direct testimony as used by bankruptcy judges in many districts); (2) concurrent testimony sessions where all experts take the stand together and are questioned by the court with opportunities for follow-up and rebuttal as each expert interacts with the other expert based on topic selection by the judge with advice from counsel; (3) counsel follow-up; (4) expert closing discussion including what the experts believe are areas of general agreement and areas of significant differences (that could be followed up by a written statement detailing the same); and (5) a commitment to maintain the integrity of the record.

<sup>15</sup> See generally Stan Bernstein, Susan H. Seabury, and Jack F. Williams, *Admitting Expert Valuation Evidence Before the U.S. Bankruptcy Courts* (ABI 2017).

Bankruptcy judges are, by temperament and by Bankruptcy Code, pragmatic adjudicators. They manage complex financial reorganizations where the search for truth often collides with the limitations of human cognition and procedural tradition. The sequential use of experts need not be the inevitable script of chapter 11 in every contested matter. Hot tubbing offers a genuine procedural innovation consistent with the court's equitable powers and evidentiary authority. It transforms the valuation hearing from a serial monologue into a genuine dialogue. Like any innovation, it requires discipline, transparency, and sensitivity to fairness. Yet when properly employed, it can yield precisely what the reorganization process aspires to achieve.

## FURTHER READINGS:

- Adam Elliott Butt, *Concurrent Expert Evidence in U.S. Toxic Harms Cases and Civil Cases More Generally: Is There a Proper Role for "Hot Tubbing"?*, 40 Hous. J. Int'l L. 1, 4 (2017).
- Edie Greene and Natalie Gordon, *Can the "Hot Tub" Enhance Jurors' Understanding and Use of Expert Testimony?*, 16 Wyoming L. Rev. 359 (2016).

- Civil Justice Council, *CONCURRENT EXPERT EVIDENCE AND 'HOT-TUBBING' IN ENGLISH LITIGATION SINCE THE 'JACKSON REFORMS': A Legal and Empirical Study* (July 25, 2016).

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# MINDSET MATTERS: THE HIDDEN ADVANTAGE FOR RESTRUCTURING LEADERS IN 2026

In the world of restructuring and bankruptcy, technical knowledge is indispensable—but in times of volatility, it is mindset that separates those who thrive from those who merely survive. Adversity does not just test our skills; it tests our thinking.



## Uncertainty, by definition, is uncomfortable.

We are wired to prefer stability, yet recent years have made one thing clear—disruption is the new normal. The leaders who succeed in this environment are those who intentionally cultivate resilience, optimism, and adaptability, turning obstacles into opportunities for growth and innovation.

It is easy to underestimate the power of belief. Internal narratives like “this is too hard,” “change is risky,” or “I can’t control what’s next” can quietly undermine even the most seasoned professionals. Neuroscience shows us that these patterns are not fixed. By reframing negative self-talk, focusing on what is within our control, and celebrating small wins, we can fundamentally change how we respond to stress and challenge.

Leaders who model this mindset do not just perform better themselves—they build teams that are more agile, more creative, and far less reactive under

pressure. Simple tools such as visualization, positive self-reflection, and focused peer dialogue can accelerate this shift across entire organizations.

As 2026 unfolds, technical excellence will remain table stakes. The true differentiator will be mindset—how we think, adapt, and inspire others through uncertainty. By prioritizing personal growth alongside professional development, restructuring leaders can future-proof both their teams and themselves for whatever comes next.

## WHY MINDSET HAS BECOME A STRATEGIC ASSET

In restructuring and bankruptcy, leaders are trained to assess risk, analyze data, and make decisions under pressure. These competencies are essential, yet they represent only part of what is required in today’s environment. Increasingly, leaders are being

asked to navigate ambiguity—situations where data is incomplete, timelines are compressed, and outcomes remain uncertain despite best efforts.

In these moments, mindset becomes a strategic asset. How a leader interprets uncertainty determines whether it is experienced as a threat or as a challenge. This interpretation influences decision-making speed, communication tone, and the ability to mobilize teams effectively.

Research in cognitive psychology and organizational behavior consistently shows that individuals who adopt a growth-oriented mindset are more likely to persist through difficulty, seek out alternative solutions, and remain engaged under stress. For restructuring leaders, this translates into clearer thinking during negotiations, greater composure during stakeholder pressure, and a stronger capacity to lead teams through prolonged periods of complexity.

Mindset does not replace expertise—it amplifies it. Leaders who combine technical mastery with psychological resilience are better equipped to make sound decisions when the stakes are highest.

## THE COST OF FIXED THINKING IN HIGH-STAKES ENVIRONMENTS

In restructuring scenarios, the margin for error is narrow. Fixed thinking—rigid beliefs about capability, control, or outcomes—can quietly erode performance over time. Leaders may become overly cautious, resistant to new approaches, or locked into patterns that no longer serve the situation at hand.

### Common examples include:

- Avoiding innovative solutions due to fear of failure
- Defaulting to past strategies despite changing conditions
- Interpreting setbacks as personal shortcomings rather than situational challenges

These patterns often emerge under prolonged stress, not due to lack of competence but due to mental fatigue and cognitive overload. When leaders operate in a constant state of threat perception, the brain prioritizes short-term survival over long-term strategy. Creativity diminishes, communication narrows, and teams sense the tension—even if it is never explicitly stated.

Over time, this dynamic can impact morale, engagement, and ultimately, results.

## REFRAMING PRESSURE AS PERFORMANCE FUEL

One of the most effective mindset shifts for restructuring leaders involves reframing pressure. Pressure is often viewed as something to manage or minimize, yet high-performing leaders learn to use pressure as fuel for focus and execution.

This begins with recognizing that pressure itself is neutral. It is the interpretation of pressure that determines its impact. When pressure is viewed as evidence of importance—rather than as a signal of danger—it can sharpen attention and enhance performance.

### Leaders who successfully reframe pressure tend to:

- Prepare more deliberately
- Communicate more clearly
- Remain present during difficult conversations
- Recover more quickly from setbacks

This reframing does not eliminate stress, but it changes the relationship leaders have with it. Instead of reacting, they respond. Instead of avoiding discomfort, they engage with it constructively.

## BUILDING RESILIENT TEAMS THROUGH MODELED BEHAVIOR

Resilience is not a directive; it is a culture shaped by behavior. Teams observe how leaders respond to challenge, uncertainty, and unexpected outcomes. When leaders model calm, adaptability, and constructive problem solving, those behaviors become normalized across the organization.

Conversely, when leaders display chronic frustration, avoidance, or rigidity, those patterns quickly cascade through teams.

### Effective restructuring leaders understand that mindset is contagious. They intentionally model behaviors such as:

- Asking solution-focused questions
- Acknowledging uncertainty without dramatizing it
- Encouraging perspective-taking during conflict
- Celebrating progress, not just outcomes

These behaviors signal psychological safety, allowing teams to contribute ideas, challenge assumptions, and stay engaged—even when conditions are difficult.

# PRACTICAL TOOLS FOR SUSTAINING A HIGH-PERFORMANCE MINDSET

Mindset is not a one-time adjustment; it is a practice. Leaders who sustain high performance over time rely on simple, repeatable tools to maintain clarity and resilience.

**Among the most effective are:**

- **Focused Reflection:** Short, structured reflection periods help leaders process experiences objectively rather than emotionally. Asking questions such as “What worked?” and “What can I adjust next time?” keeps attention on learning rather than blame.
- **Visualization:** Mentally rehearsing challenging conversations or decisions improves confidence and reduces cognitive load when those moments arise. Visualization prepares the nervous system for performance under pressure.
- **Peer Dialogue:** Engaging in focused dialogue with trusted peers provides perspective and reduces isolation. Leaders who share challenges openly are more likely to uncover innovative solutions and maintain emotional balance.
- **Control-Based Thinking:** Directing attention toward controllable factors—preparation, communication, decision quality—rather than uncontrollable outcomes increases effectiveness and reduces unnecessary stress.

These tools are most powerful when integrated into daily routines rather than reserved for moments of crisis.

## MINDSET AND ETHICAL LEADERSHIP

In restructuring and bankruptcy, ethical considerations are ever-present. Leaders must balance competing interests while maintaining professional integrity and transparency. A strong mindset supports ethical leadership by reducing reactive decision making and emotional shortcuts.

**When leaders operate from clarity rather than fear, they are better positioned to:**

- Communicate honestly with stakeholders
- Navigate difficult trade-offs with composure
- Uphold professional standards under pressure

Mindset, in this sense, becomes a safeguard—not only for performance but for judgment.

## PREPARING FOR THE FUTURE OF THE PROFESSION

As the restructuring landscape continues to evolve, leaders will face increasing complexity—technological disruption, regulatory shifts, and heightened stakeholder scrutiny. While technical education will continue to advance, the human side of leadership will become even more critical.

Future-ready leaders will be those who invest in both skill development and mental adaptability. They will recognize that mindset is not a soft skill but a foundational capability that influences every decision, interaction, and outcome.

Organizations that prioritize mindset development alongside technical training will be better equipped to navigate uncertainty, retain top talent, and sustain performance over time.

## CONCLUSION: THE QUIET ADVANTAGE

Mindset does not announce itself. It operates quietly, shaping how leaders think, respond, and lead—often determining outcomes long before they appear on a balance sheet.

As 2026 unfolds, restructuring leaders who cultivate resilience, adaptability, and intentional thinking will possess a quiet but decisive advantage. By strengthening mindset alongside expertise, they will not only navigate uncertainty more effectively but also elevate the performance and stability of the teams and organizations they lead.

In an industry defined by complexity and change, mindset is no longer optional. It is essential.

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# VALUATION OF DIGITAL ASSET BUSINESSES: A CALL FOR RIGOR IN A TRANSFORMATIVE INDUSTRY

## EXECUTIVE SUMMARY

As the digital asset industry continues to mature and advance, accurately valuing businesses within this sector is an increasingly pressing concern for investors, regulators, and entrepreneurs alike. While the characteristics of rapid innovation and change within the industry may tempt some to seek to devise novel methods, history, particularly the dot-com bubble, offers a cautionary tale of the perils of straying too far afield from tested valuation frameworks.

Drawing on our bench of highly credentialed financial experts, which includes experts with extensive industry experience dating back to the very earliest days of crypto, we offer our perspective that investors and the public are best served when analysts adhere to sound and principled valuation analysis, whether valuing blockchain and crypto companies or otherwise. The standard valuation toolkit remains foundational to a rigorous valuation analysis. Moreover, complex commercial disputes involving digital asset businesses often involve large damages claims over lost profits or lost business values. Prevailing in these cases hinges upon the ability to establish and defend reliable company valuations and/or associated business projections.

We begin by briefly outlining the current crypto valuation landscape. Next, we address some of the key value drivers and business risks we observe within firms that operate in the sector. Then, we examine pertinent legal cases that offer relevant insights on digital asset businesses within a disputes context. Finally, we offer a crypto miner example to

demonstrate the types of information that may be considered in a well-constructed valuation.

## INTRODUCTION

The emergence of blockchain technology and cryptocurrencies over the past decade and a half has driven a range of entirely new categories of business enterprises, ranging from layer-1 protocols and decentralized finance (DeFi) platforms to infrastructure providers and centralized exchanges. Market participants in these businesses are a driving force of tremendous change and disruption spanning a diverse range of economic sectors, including finance, technology, politics, art, real estate, and various other industries. However, the disruptive nature of these businesses can also attract a proliferation of unconventional and unsound valuation approaches, many of which mirror some of the more speculative methods seen during the dot-com bubble. With the increasing flow of investment dollars into the industry, coupled with continued scrutiny by both the courts and regulators around the world, the need for standardized, rigorous valuation frameworks remains not only prudent but essential.

## CURRENT STATE OF VALUATION IN THE BLOCKCHAIN SECTOR

### OVERVIEW OF DIGITAL ASSETS

“Digital assets” may be defined as assets created on a distributed ledger based on blockchain technology that are secured through cryptography and include cryptocurrencies, non-fungible tokens (NFTs),

stablecoins, and more.<sup>1</sup> A distributed ledger is a decentralized database that is shared and maintained by multiple independent nodes across a network, where there is no central authority in control of the entire ledger. Cryptography is a field nearly as old as time and involves mathematical or algorithmic techniques through data encryption (and decryption) to secure communication from access and/or tampering by unauthorized adversaries.

Over the past decade and a half, the universe of digital assets grew and evolved rapidly in sync with various technological and automation-driven innovations. The digital assets space is built around the idea that decentralized technology will continue to grow in use while the decentralized nature of the technology acts to support security and resiliency.<sup>2</sup>

Recent developments are positioning 2025 as a pivotal year, including legislation like the CLARITY Act and GENIUS Act in the US that contribute to establishing clearer regulatory frameworks and standards, particularly with respect to stablecoins, and the convergence of artificial intelligence (AI), blockchain, and DeFi protocol technologies. In mid-August 2025, the digital assets industry reached a significant milestone, with the total global cryptocurrency market capitalization surpassing \$4.0 trillion, based on then-current cryptocurrency trading prices.<sup>3</sup>

## CURRENT VALUATION PRACTICES

Valuation practices across the digital assets sector remain inconsistent. Despite growing institutional interest, many ventures, particularly those issuing tokens, often lack conventional publicly available financial disclosures, making the application of standard multiples-based and other valuation methods difficult to apply.

Two broad practices currently dominate:

- **Token-centric valuation models:** Models that rely on projected token price appreciation, on-chain activity metrics (e.g., TVL, wallet count), or “network value to transactions” (NVT) ratios, among other things.
- **Equity-centric models:** More familiar to traditional finance, models that are often used for centralized entities like Coinbase or Circle, focusing on cash

<sup>1</sup> Crypto Intangible Assets: Issues In-Depth for Accounting by Entities that are not Broker-Dealers or Investment Companies, KPMG, Dec. 2024.

<sup>2</sup> Look Ahead, Fidelity Digital Assets Research, Jan. 7, 2025.

<sup>3</sup> See Cryptocurrency Prices Today by Market Cap, Forbes, <https://www.forbes.com/digital-assets/crypto-prices/?sh=6773134b2478>, last accessed Aug. 15, 2025.

flow, revenues, and guideline public company analysis.

While both may have merits, many token-centric approaches suffer from a lack of empirical validation, transparency, or consistency, and often obscure risks and inflate valuations.

## STANDARD VALUATION METHODOLOGIES

Traditional valuation methodologies, such as discounted cash flow (DCF), Guideline Public Company Method (GPCM), and precedent transactions, are established frameworks that are grounded in principles of finance and economics, and offer critical insights to investors:<sup>4</sup>

- **DCF models:** Drive clarity on cash flow generation, performance risks, and capital efficiency.
- **GPC models:** Contextualize a company in relation to its peer group and/or industry and sector benchmarks.
- **Precedent transactions models:** Provide insights into market sentiment and comparable public and/or private deal values.

Applying these methods to blockchain businesses may require adaptation but abandoning them entirely risks opening the door to misleading assumptions and poorly supported investment decisions.

## VALUING DIGITAL ASSET BUSINESSES: LESSONS FROM THE DOT-COM BUBBLE

As cryptocurrency investing and the popularity of digital asset companies continue to rise, investors and courts must consider what approaches and methods to apply in conducting fair and accurate valuations of companies operating across the digital assets industry. Relying on misleading or inapplicable criteria could lead to over- (or under-) valuations.

For those of us with long memories, the dot-com bubble provides a cautionary tale. The introduction of personal computers and the World Wide Web led to a rapid and widespread wave of new investments in internet and technology startup companies. Investors, caught up in the excitement of a rapidly transforming economy, often ignored fundamental business analyses and focused on what ultimately proved to be inconsequential performance metrics.

In an effort to keep up with the pace of innovation, far too many investors and financial analysts turned

<sup>4</sup> Valuing Young, Start-up and Growth Companies, NYU Stern School of Business, Damodaran, A., 2022.

towards novel metrics such as “price per eyeball” or “clicks per day” in place of more traditional revenue and/or profit-based valuation metrics. The use of such speculative valuation metrics arguably contributed to the massive over-investment by investors as they eagerly bought up stocks and poured money into the various internet-startup companies despite a lack of demonstrable, viable business models. Rather than evaluating companies based on the viability and economic soundness of their businesses, revenue generation capabilities, expected cash flows, and abilities to create and capture value, investors turned toward metrics such as website traffic growth and/or other more superficial performance indicators, leading to greatly inflated valuation considerations.<sup>5</sup>

When the dot-com bubble burst in 2000, investors quickly learned a lesson concerning dubious business models, and many startups found themselves strapped for cash and unable to continue operations. The collapse of the dot-com bubble resulted in a drastic decline in the Nasdaq index and contributed to a prolonged economic recession. The Nasdaq index, which reached its peak in March 2000, fell 77% by October of the same year and would not reach those heights again until 15 years later in April 2015.<sup>6</sup>

Parallels abound to today’s digital assets space, where some analysts have proposed valuing projects solely based on esoteric metrics like:<sup>7</sup>

- **TVL:** Without assessing capital retention or protocol monetization.
- **“Token velocity” theories:** Many of which lack reliable empirical support.

- **User growth:** Without evidence of conversion to monetizable services.

Just as the collapse of Pets.com, for instance, reminded investors that successful ventures must be based on solid business plans that create and capture value,<sup>8</sup> so too do recent crypto failures like Terra/Luna and Celsius reveal the dangers of prioritizing hype over fundamentals. It remains the view of this paper’s authors that the wise investor must remain cautious of novel valuation approaches that stray too far from tried-and-true finance- and economics-based methodologies and frameworks.

## UNDERSTANDING KEY VALUE DRIVERS AND RISKS

So what does a defensible business valuation entail? Of course, each business is subject to different specific facts and circumstances. However, what is universal is the need for the valuation to properly demonstrate a keen understanding of the underlying business of the subject company, including its key mechanisms to create and retain value. For example, for digital assets companies, such as crypto exchanges, one might evaluate the questions and considerations posed in the table below.

A defensible valuation analysis may consider a range of complexities, such as asset volatility and price fluctuations, along with rapid technological developments and advancements, among other things. Risks associated with the subject business may be considered through adjustments to cash flows or the discount rate. Analysts may also consider conducting sensitivity analyses to test

	QUESTIONS	CONSIDERATIONS
 <b>Revenue Generation Drivers</b>	How does the company make money?	Transaction fees, service charges, staking commissions, lending spreads.
 <b>User Acquisition and Retention</b>	Who uses the company and its products?	This may be especially relevant in DeFi and NFT platforms.
 <b>Tokenomics and Supply Control</b>	Can the company develop economic moats?	Token inflation or poorly structured emissions can dilute value.
 <b>Network Effects</b>	Can the company exploit gains from scale?	Networks derive part of their value from developer engagement and interoperability.
 <b>Regulatory Compliance Capabilities and Legal Clarity</b>	Is the company prepared for regulatory and legal scrutiny?	Critical to long-term operability and relevant for assessing risk, though often overlooked.

<sup>5</sup> Remarks at Aspen Security Forum, U.S. SEC, Gensler, G., 2022.

<sup>6</sup> The Late 1990s Dot-Com Bubble Implodes in 2000, Goldman Sachs, 2019.

<sup>7</sup> Valuation in the Age of Digital Assets, CFA Institute, 2023.

<sup>8</sup> IPOs and the ghost of Pets.com’s sock-puppet, Financial Times, 2014, <https://www.ft.com/content/db124a89-98bf-3474-97e3-83df3cf6b5ee>, last accessed Aug. 29, 2025.

the reasonableness of their assumptions and conclusions.

## LEGAL CASES<sup>9,10,11</sup>

### SEC V. RIPPLE LABS (2020–2024)<sup>12</sup>

One of the most significant legal cases in crypto regulation – the Ripple case – centered around whether its native cryptocurrency XRP was a security. The court ultimately found that Ripple’s programmatic sales did not meet the definition of a security, but its institutional sales did. The decision emphasized the need to distinguish between how tokens are sold and their broader utility, a nuance that should inform valuation analysts when projecting regulatory costs and risks.

### CELSIUS NETWORK BANKRUPTCY (2022)<sup>13</sup>

Celsius promised high yields through crypto lending, staking, and other activities but was unable to fulfill those promises. During bankruptcy, many token holders discovered they lacked enforceable claims. The court’s analysis revealed that Celsius had marketed its CEL tokens as investments, but the tokens failed to offer corresponding rights. A separate civil lawsuit accused the company of operating as a “classic Ponzi scheme” and defrauding its customers. The Celsius incident underscores the importance of understanding the business model, capital structure, and economic rights conveyed to participants in the digital asset space.

### TERRA/LUNA COLLAPSE (2022)<sup>14,15</sup>

Valuation models for Luna often relied on circular logic, assuming sustained demand for the TerraUSD stable coin, UST, to prop up Luna’s price. When demand evaporated, both collapsed. This event exposed the flaw in reflexive (i.e., circular or self-

fulfilling) valuation models that ignore economic fundamentals.

## CONCLUSION

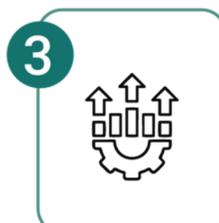
Valuing digital asset businesses requires a careful balance of adaptation and discipline. While these industries are innovative and fast-moving, that does not justify abandoning time-tested valuation principles. The lessons from the dot-com episode remain highly relevant. By insisting on rigorous frameworks, transparency, and sober analysis, investors can avoid repeating history and contribute to a more sustainable future for digital assets.



**1 Apply traditional methods wherever possible:**  
Even token-based projects can often be modeled using cash flow proxies or ecosystem-wide revenues.



**2 Consider legal and regulatory risks:**  
Such risks can be evaluated in project cash flows or through the discount rate.



**3 Demand Transparency :**  
Projects may publish financials, token emissions schedules, governance structures.



**4 Be skeptical of novel metrics:**  
If a valuation method lacks academic or industry precedent, it likely carries greater risk.

9 Bitcoin Mining Industry Primer and Outlook, Jones Trading, Glagola, S., Dec. 12, 2024.

10 HODL, Corporate Finance Institute, CFI Team, <https://corporatefinanceinstitute.com/resources/cryptocurrency/hodl/>, last accessed Jul. 10, 2025.

11 What is crypto mining and how does it work?, Britannica, Garnett, A.G., edited by Montevirgen, K., updated Jul. 4, 2025.

12 Securities and Exchange Commission v Ripple Labs Inc No 20 Civ 10832 (AT), 2023 WL 4507900 (SDNY 13 July 2023).

13 Celsius Network LLC, et al., No 22-10964 (MG) (Bankr SDNY 9 July 2025).

14 Securities and Exchange Commission v. Terraform Labs Pte Ltd and Do Hyeong Kwon, No 1:23-cv-1346 (JSR) (SDNY 12 June 2024).

15 Terra Research and Analysis Reports, Coin Center, 2023.

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# A PRACTICAL EXAMPLE: BITCOIN MINER



**At its most basic level, crypto mining (e.g., Bitcoin mining), serves to audit the existing transactions recorded in a blockchain and verify new transactions.**

Each new block is linked to the preceding ones in such a way that mining the next block necessarily confirms the previously contained information. This continuous auditing of the blockchain and the transaction information stored within each block is incentivized by the granting of a reward to compensate miners for their efforts.

One of the most well-known Digital Assets is Bitcoin, the first cryptocurrency and one of the most widely mined. Bitcoin miners have unique equipment, expenses, assets, and regulatory requirements that must be considered when assessing their value. For example, crypto mining companies have different energy consumption and environmental impacts compared to other businesses, as the substantial electricity required for mining can significantly influence sustainability and operational costs. Technological infrastructure is another critical factor, including the need for specialized hardware, which often involves considerable capital investment and ongoing expenses as mining machines are depreciated over very short periods and newer, more efficient technology replaces older models. Additionally, these companies navigate diminishing profitability due to rising competition and scheduled reductions in block rewards.

Many of the largest Bitcoin miners also profess to subscribe to the so-called “hold on for dear life” (“HODL”) strategy of holding mined bitcoin indefinitely, rather than selling it off to generate revenues, based on the view that bitcoin is an appreciating asset. As a result of the HODL strategy, Bitcoin miners incur expenses and make investments in fiat currency (e.g., electricity, wages, rent, new machines), but revenues are almost exclusively generated in cryptocurrency (i.e., bitcoins). Similar to dot-com startups in the 1990’s, to cover their cash outflows, Bitcoin miners often seek outside investment through debt and equity raises, with investors willing to participate up to this point.

A critical question is then: How does the valuation reconcile a so-called HODL strategy with an eventual return of and return on capital that must occur for there to accrue economic value to the investor? As such, within the context of a DCF model-based valuation, one consideration is the business strategy of the miner, including if it employs the so-called HODL strategy. Ultimately, a DCF valuation model may entail some mechanism that converts bitcoin into fiat currency or the equivalent thereof over time. Alternatively, a replacement cost-based valuation approach may be also considered for Bitcoin miners since these companies are relatively asset-heavy businesses that make frequent investments in hardware and other infrastructure to replace aging machines.



*A Bitcoin Farm*

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# THE EVOLUTION, GROWTH, AND APPLICATION OF COMMERCIAL RECEIVERSHIPS IN THE UNITED STATES



## ABOUT COMMERCIAL RECEIVERSHIPS

A commercial receivership is a court-supervised process in which a neutral officer of the court (the “receiver”) is appointed to oversee an entity or asset in dispute, default, or distress, most commonly as an alternative to an involuntary bankruptcy. Receiverships can be administered through state or federal courts, with federal jurisdiction typically grounded either in a federal question (for example, RICO, federal securities, or federal tax claims) or diversity jurisdiction.

In federal court, commercial receiverships based on jurisdictional diversity are more common, while receiverships grounded in federal law are frequently seen in federal equity receiverships brought by agencies such as the SEC or FTC. In either forum, the remedy is fundamentally equitable, designed to preserve and protect the value of assets pending a resolution among stakeholders.

In practice, commercial receiverships are most commonly used in loan default situations where a lender seeks to remove the owner from control but does not wish to foreclose or take on operational responsibility, such as with operating hotels, apartment complexes, or businesses with employees. Receiverships are also regularly used in partnership and shareholder disputes, and in some states even in contentious divorce proceedings involving closely held businesses (two states that utilize this regularly

are Texas and Ohio), to stabilize operations and facilitate a restructuring, dissolution, or buyout.

It is critical to remember that receivership is an equitable remedy focused on preservation of value, not necessarily liquidation. Assets need not be sold, liquidated, or divested; in appropriate circumstances, the business can be returned to its owners after issues such as compensation or distributions, contributions, governance, and transparency are resolved. In many partnership disputes, the receiver operates the entity while the parties pursue arbitration, mediation, or negotiated resolutions, ensuring that no party can unilaterally damage or alter the enterprise during the pendency of the dispute.

## KEY BENEFITS COMPARED TO ALTERNATIVES

The primary benefits of commercial receiverships relative to alternatives like foreclosure or Chapter 11 are speed, cost, and neutral control.

- **Speed** – In distressed situations, value often deteriorates rapidly as employees depart, infrastructure decays, and uncertainty drives customers and vendors away. Moving quickly can be critical to preserving going-concern value, and receivership procedures often allow for faster appointment and sale processes than a traditional Chapter 11. Through the receivership appointment order, a receiver is tasked with many duties that do not require further court approval. This ensures that the receiver can move quickly to



the saying goes, “you don’t want someone learning on the company dime,” because inexperience can slow the process and increase costs. The Commercial Receivers Association regularly receives requests for referrals to experienced, credentialed receivers across jurisdictions and industries, and resources such as DailyDAC’s state court receiver directory ([www.dailydac.com/state-court-receiver-directory/](http://www.dailydac.com/state-court-receiver-directory/)) provide additional access to practitioners.

## HISTORICAL DEVELOPMENT

Commercial receiverships in US courts predate many modern insolvency mechanisms. The concept developed in English equity courts during the reign of Queen Elizabeth I (1558–1603) as a creditor remedy, and the United States later adopted receiverships, initially in connection

with railroad restructurings in the mid-to-late 1800s to preserve railroads as going concerns rather than liquidating them piecemeal.

In the 1960s and beyond, courts also used receivership to seize control of public institutions, including public school systems resisting desegregation in the wake of *Brown v. Board of Education*. More recently prisons and other public entities have been placed into receivership to address constitutional or operational failures. For much of the twentieth century, commercial receiverships remained largely a case law-based remedy, with relatively limited statutory guidance in many states.

## EVOLUTION AND UCRERA

While receiverships are an old remedy, their usage in commercial contexts waned for a period, often limited to commercial real estate as an alternative or adjunct to foreclosure. This began to change in 2004 when Washington enacted a comprehensive receivership statute, effectively codifying many aspects of the remedy. Minnesota followed with its own statute in 2012, and Missouri in 2016.

Building on those efforts, the Uniform Law Commission (ULC) undertook an extensive study of state receivership statutes and, in 2015, promulgated the Uniform Commercial Real Estate Receivership Act (“UCRERA”). UCRERA provides a framework

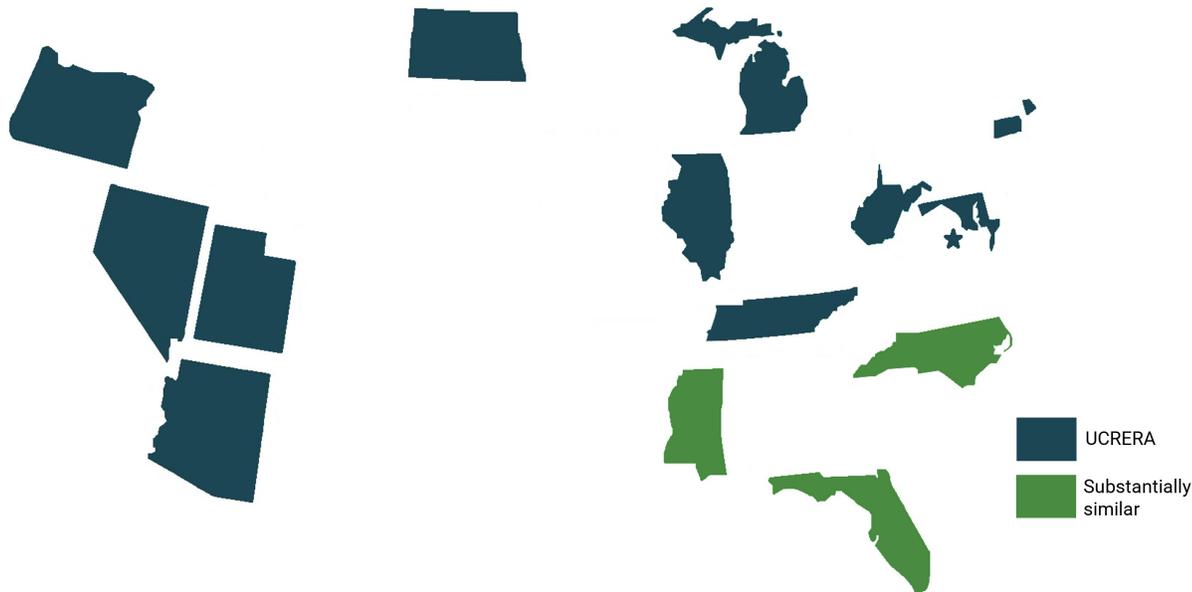
stabilize and maintain the entity. A good receiver will return to court for approvals of items like sale proceedings, sale orders, and claims processes and should provide regular reports to the court ensuring visibility and transparency.

- **Cost** – The speed and streamlined nature of receivership proceedings frequently translate into lower overall professional and administrative costs when compared to bankruptcy, particularly for smaller enterprises. With the rising cost and complexity of Chapter 11—and the reduction of the Subchapter V debt ceiling to the original lower threshold (as adjusted for inflation)—many small businesses are effectively pushed toward liquidation in bankruptcy, even where a going-concern solution may be viable in receivership.<sup>1</sup>
- **Neutral Control** – Neutral control can be essential where there is loss of confidence in existing management, serious intra-owner conflict, or lender distrust. A court-appointed receiver can increase stakeholder confidence, facilitate broader marketing efforts, and give buyers and lenders comfort that the process is being run in good faith. This often leads to higher sale prices and more efficient resolutions.<sup>2</sup>

To maximize these benefits, it is important to engage qualified, experienced receivership professionals. As

<sup>1</sup> <https://www.whiteandwilliams.com/resources-alerts-Benefits-of-Subchapter-V-Under-the-Bankruptcy-Code-to-Private-Equity-Funds-in-Managing-Distressed-Assets-Update>, <https://www.barclaydamon.com/alerts/streamlining-business-bankruptcy-subchapter-v-compared-to-chapter-11>.

<sup>2</sup> <https://www.dorsey.com/newsresources/publications/client-alerts/2023/12/uniform-commercial-real-estate-receivership-act>.



for commercial real estate receiverships, including appointment standards, receiver powers, procedures for sales free and clear of liens, executory contract treatment, and claim administration.<sup>3</sup>

Utah became the first state to adopt UCRERA in 2017, and since then multiple states have enacted UCRERA or substantially similar legislation, with adoption continuing to expand; as of late 2025, the ULC’s enactment tracker reflects more than a dozen adopting states, including Alabama, Arizona, Connecticut, District of Columbia, Florida, Maryland, Michigan, Nevada, North Carolina, Oregon, Rhode Island, Tennessee, Utah, and West Virginia, with additional recent adoptions by Illinois and North Dakota going into effect on January 1, 2026. A current list of enactments can be found on the ULC website.<sup>4</sup>

The codification of receivership law has produced a noticeable increase in receivership filings in adopting states, driven largely by the greater clarity, predictability, and perceived fairness of the process for lenders, trade creditors, and potential buyers. That increase is not always immediate; usage typically ramps up over several years as lawyers, lenders, and judges become more familiar and comfortable with the statutory framework.

3 <https://www.uniformlaws.org/committees/community-home?CommunityKey=f8e2d89b-f300-40eb-a419-ad41902fcad2>, <https://www.dorsey.com/newsresources/publications/client-alerts/2023/12/uniform-commercial-real-estate-receivership-act>.

4 <https://www.uniformlaws.org/committees/community-home?CommunityKey=f8e2d89b-f300-40eb-a419-ad41902fcad2>.

## CURRENT APPLICATION AND USE CASES

The adoption of UCRERA and similar state statutes has expanded the application of receiverships well beyond traditional commercial real estate. In many states, commercial receiverships now function as a state law analog to corporate bankruptcy, with courts appointing receivers to operate businesses, sell assets, or wind down operations across a wide range of industries.<sup>5</sup>

Three current developments are particularly noteworthy to practitioners:

- **Rising Volume** – In some jurisdictions, receivership case volume is at or near record levels, keeping practitioners active and building a deeper bench of experienced receivers, counsel, and financial advisors. This activity also exposes more judges to the tool, which can improve consistency and sophistication in receivership jurisprudence.
- **Industry Expansion** – Certain industries increasingly rely on receivership due to constraints in using bankruptcy or other federal remedies. Cannabis is the most prominent example: because cannabis remains illegal at the federal level, cannabis businesses generally cannot access bankruptcy relief and have turned to state law receiverships as a principal restructuring tool. More broadly, small and mid-sized businesses that fall outside Subchapter V thresholds or

5 <https://www.dorsey.com/newsresources/publications/client-alerts/2023/12/uniform-commercial-real-estate-receivership-act>.

cannot justify the cost and complexity of Chapter 11 are turning to receiverships, attracted by the advantages of speed, cost efficiency, and neutral control.<sup>6</sup>

- **Demonstrated Successes** – Successful cases have materially increased lender and trade creditor confidence in receiverships. In *Commerce Bank NA v. Gladstone Food Product et al.* (Case No. 25CY-CV03381, Clay County, Missouri Circuit Court),<sup>7</sup> the borrower had ceased operations three months before filing but had a tentative offer that would have paid most of the secured debt. Through an expedited receivership, the receiver marketed the business, sourced additional bidders, and consummated a sale that paid the secured lender in full, paid unsecured creditors in full, and returned millions of dollars to equity holders. Although outcomes like this are not typical, they illustrate the potential of receivership when supported by an engaged lender, skilled professionals, active buyers, and a fast-moving court process.

Ultimately, receivership is one tool in the insolvency toolkit. It is not appropriate for every case or every capital structure, but a solid understanding of the receivership option—alongside Chapter 11, Subchapter V, assignments for the benefit of creditors, foreclosures, and Article 9 dispositions—equips professionals to craft strategies that better align with stakeholder objectives and value maximization.

<sup>6</sup> Ibid.

<sup>7</sup> <https://www.nmblstrategies.com/change-management-receivership-gladstone>.

## ABOUT THE AUTHOR



**Eric Moraczewski**  
NMBL Strategies

Eric is the CEO of NMBL Strategies. He acts as a Court Appointed Receiver, CRO, and turnaround consultant skilled in fast-paced, intensive environments. Eric is also a Co-Founder and Board Member of the Commercial Receivers Association (“CRA”). He is a regular speaker on receivership, accounting, cannabis, bankruptcy alternatives, and fraud detection for the CRA, the AIRA, DailyDAC, and ABI. Eric has been named to the ULC’s ABC Committee, is a co-author of *Strategic Alternatives for and against Distressed Businesses* (Westlaw) and has also published the book *Succeeding at Business in Southeast Asia: Common Mistakes Companies Make and How to Avoid Them* (Wiley Publishing). He is currently writing a book on Nonprofit Insolvency, Turnarounds and Restructuring.

For more information on commercial receiverships, visit [www.commercialreceiver.org](http://www.commercialreceiver.org).

## AIRA MEMBERSHIP ALERTS:

### FEDERAL RECEIVERSHIP FAIRNESS ACT WOULD PROVIDE RECEIVERS WITH THE SAME RULES FOR RECEIVING TAX DETERMINATIONS AS DEBTORS AND TRUSTEES IN BANKRUPTCY

In September 2025 Congressman Darin LaHood and Congressman Don Beyer co-sponsored H.R. 5146, the Federal Receivership Fairness Act, to allow receivers to obtain federal tax determinations in the same manner as debtors and trustees obtain under Bankruptcy Code section 505(b). The legislation which is pending is modeled on section 505(b) and would provide receivers with the same process for achieving timely federal tax determinations. AIRA supports this legislation as it would enhance the out of court restructuring process and allow for more timely resolution of such matters.

Currently, receivers face unnecessary delays and jurisdictional complications when dealing with federal tax determinations. These delays directly impact families and businesses in your district waiting for distributions—whether tenants seeking return of security deposits, creditors owed money, or investors awaiting proceeds from asset sales. Federal tax uncertainties can stall any type of receivership proceeding, leaving constituents in financial limbo.

This legislation would provide the critical framework needed to streamline federal tax determinations while maintaining appropriate procedural safeguards. The bill’s comprehensive approach—including a sovereign immunity waiver and clear procedures for tax determination requests—addresses the practical challenges receivers face in serving courts and protecting assets for stakeholders.

A copy of AIRA’s letter to the House Ways and Means and House Judiciary Committees may be found at <https://aira.org/aira/alerts>. Progress of this legislation may be tracked at <https://www.congress.gov/bill/119th-congress/house-bill/5146>.

# CORPORATE CARVEOUT ACQUISITIONS IN BANKRUPTCY: CREATING VALUE UNDER PRESSURE



## **Corporate carveout acquisitions are an important strategy for private equity sponsors and strategic buyers.**

Instead of buying an entire company, buyers acquire a specific business unit or asset that fits a defined investment or strategic goal. Even in healthy markets, carveouts require careful planning and execution. In bankruptcy, the difficulty increases significantly. Accelerated timelines, financial distress, and uncertainty among stakeholders shift the focus away from price and toward execution.

Within private equity, carveout buyouts represent a relatively small portion of activity—typically around 8-10% of total deal volume. Despite their lower frequency, carveouts attract experienced sponsors. These transactions are more specialized and operationally complex than traditional buyouts. That added complexity increases risk, but it also limits competition. As a result, carveouts, particularly in distressed or bankruptcy situations, often offer higher potential return profiles for buyers that can execute effectively.

## **WHAT MAKES A CARVEOUT DIFFERENT**

A carveout forces a business to operate on its own, often for the first time. The business typically relies on shared systems, centralized functions, and intercompany arrangements that were never designed

to be separated. Buyers must separate these dependencies while keeping the business running.

Private equity sponsors often pursue carveouts to unlock value within large organizations. These businesses may be underinvested, deprioritized, or treated as non-core assets. With focused leadership and capital, they can often perform much better as standalone companies. Strategic buyers, by contrast, usually pursue carveouts that strengthen existing operations, expand capabilities, or add attractive brands or customer relationships.

Success depends on clearly defining what is being acquired and having a practical plan for how the business will operate after closing.

## **WHY BANKRUPTCY ACCELERATES CARVEOUT ACTIVITY**

Bankruptcy and restructuring processes frequently create carveout opportunities. When a company faces liquidity pressure or an unsustainable capital structure, selling the entire business may not be realistic. Instead, stakeholders may choose to sell individual businesses that can survive on a standalone basis.

Bankruptcy sales, commonly structured under Section 363 of the US Bankruptcy Code, allow buyers to acquire assets free and clear of certain liabilities. This

*The best carve-out transitions prioritize early communication to reduce execution time. This includes sharing the overall project plan, holding weekly meetings across every work stream, and clearly prioritizing today versus tomorrow decisions. It's not just about doing the work faster, it's about reducing cycles and downtimes.*

**Greg Bilazarian, co-founder Amazon Web Services Private Equity carve-out program and current CEO-in-Residence with NextGen Growth Partners**

is attractive to private equity sponsors looking for a clean entry point and to strategic buyers seeking to reduce risk. The tradeoff is speed. Buyers have less time to diligence, plan, and negotiate, which increases execution risk. Similar carveout considerations relate to Assignments for Benefit of Creditors (ABC) as well.

## RECENT BANKRUPTCY CARVEOUT EXAMPLE

A recent example is the carveout of the Thrifty Ice Cream business from Rite Aid during Rite Aid's 2025 Chapter 22 bankruptcy. While the broader retail pharmacy chain faced serious financial challenges, Thrifty Ice Cream remained a well-known consumer brand with its own manufacturing operations, proprietary recipes, and loyal customers. The carveout was operationally complex. Ice cream production had to continue without interruption, even though many Thrifty retail locations were inside Rite Aid stores that faced closures, lease rejections, and operational uncertainty. Maintaining production, managing distribution, and preserving customer access during a shrinking and distressed retail footprint required careful planning and clear separation boundaries. The transaction shows how, in bankruptcy carveouts, execution risk extends beyond legal structure and directly affects day-to-day operations. The private investment group that acquired Thrifty can now give this strong brand a fresh start as a standalone business.

## WHY ACCELERATED BANKRUPTCY PROCESSES RAISE THE STAKES

Bankruptcy carveouts compress months, or even years, of planning into just a few weeks. Buyers must

make important decisions quickly and often with limited information.

Time pressure impacts every part of the process. Buyers may need to submit binding offers before fully resolving separation details, Transitional Services Agreement (TSA) requirements, or long-term operating plans. At the same time, seller resources are limited. Management teams are focused on court deadlines, liquidity issues, and keeping the business running.

Operational risk is also higher. Buyers often rely on a financially distressed seller for shared services, which increases the risk of disruption. Employees, customers, and vendors may reassess their relationships once a bankruptcy filing becomes public. If concerns are not addressed early, value can erode quickly. In this environment, strong execution is more important than complex financial structuring.

## THE ROLE OF FINANCIAL AND OPERATIONAL DUE DILIGENCE

Financial and operational due diligence is critical in any carveout, but it is especially difficult in a bankruptcy setting. Financial data is often incomplete or prepared only on a consolidated basis. Allocated costs may not reflect true standalone economics. Intercompany transactions may be poorly documented. Working capital can also be distorted by liquidity constraints.

Operational diligence is equally challenging. The business may depend on the parent for IT systems, procurement, logistics, or key personnel. These dependencies are not always obvious in an accelerated process.

Because of these challenges, buyers often benefit from using experienced advisors. Financial advisors can help rebuild standalone financials, normalize earnings, and assess sustainable cost structures. At Skyview, we have built detailed carveout playbooks. These playbooks address the unique financial, operational, and separation challenges these transactions present.

Operational experts can identify separation risks, TSA needs, and gaps that must be addressed before closing. In bankruptcy carveouts, diligence is not just about validating history, it is about understanding how the business will function at closing and beyond.

# IMPROVING **OUTCOMES** IN BANKRUPTCY CARVEOUTS

While bankruptcy carveouts are challenging, buyers can significantly improve outcomes by focusing on a few core execution priorities.

## DEFINE THE TRANSACTION PERIMETER CLEARLY

Buyers must be precise about what transfers with the business. This includes assets, liabilities, contracts, intellectual property, and employees. Lack of clarity can lead to operational gaps, disputes, and unexpected costs. Early definition is critical, especially in accelerated processes.

## STRUCTURE REALISTIC TRANSITIONAL SERVICES AGREEMENTS

TSA's are essential in most carveouts, particularly in bankruptcy. TSA's should focus only on critical services. They should be short in duration, include clear exit rights, and assume that service levels may decline. Buyers should be ready to replace services quickly if needed.

## COMMUNICATE EARLY AND OFTEN WITH STAKEHOLDERS

Clear communication helps stabilize the business. Buyers should engage early with lenders and investors, communicate transparently with employees, reassure customers about continuity, and work closely with vendors to maintain supply and commercial terms. Silence or delayed communication can quickly damage value.

## ENSURE DAY-ONE OPERATIONAL READINESS

In accelerated carveouts, there is little margin for error at closing. The business must be ready to operate immediately. This requires interim leadership, cash management, payroll and benefits administration, compliance infrastructure, and basic financial reporting. Buyers that prioritize day-one readiness protect value and build momentum.

## CONCLUSION

Corporate carveout acquisitions in bankruptcy test a buyer's ability to execute under pressure. While carveout buyouts represent a smaller share of private equity activity, their complexity and risk often support higher potential returns for buyers with the right experience and resources.

Private equity sponsors and strategic buyers that clearly define scope, conduct rigorous diligence, structure realistic TSA's, manage stakeholders proactively, and ensure operational continuity can unlock meaningful value. For buyers that build repeatable carveout capabilities, bankruptcy carveouts can become a durable and differentiated acquisition.

## ABOUT THE AUTHOR



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Matt Thompson is an Operating Advisor at Skyview Equity, a private investment firm with over 20 years of experience executing carveout transactions. Prior to Skyview, Matt worked at The Gores Group, Alvarez & Marsal, FTI Consulting, and PwC, where he advised on complex carveouts, restructurings, and operational transformations.

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# THE USE OF AI TOOLS IN VALUATION AND DAMAGES ASSESSMENTS

Balancing Innovation with Professional Responsibility



Could relying on artificial intelligence (“AI”) in developing expert opinions turn a defensible position into a credibility crisis? For business valuers and damages experts, that question is no longer hypothetical. AI is already reshaping how professionals conduct research, draft reports, and analyze complex data. The technology promises speed, efficiency and deeper insights. It also raises difficult questions about accountability, confidentiality, and credibility, particularly when expert evidence is scrutinized in the courtroom.

There has been significant and ongoing discussion around the use of AI among damages and business valuation experts. At the Chartered Business Valuators (“CBV”) Institute Conference “Connect” in Toronto, Ontario, Canada in June 2025, a poll of participants revealed just how rapidly AI is being adopted in the valuation community: 87% of respondents said they already use AI tools, with 79% leveraging them for research, 55% for report drafting, 23% for analysis, 9% for math checks, and 21% for other uses. Despite this uptake, 59% cited privacy and confidentiality as their top concern, highlighting the tension between innovation and risk.<sup>1</sup>

Evidence of the growing importance of AI in Canada has come with the appointment of its first Minister

of Artificial Intelligence and Digital Innovation in May 2025, a move signaling that AI’s development, governance and ethical use are now matters of public policy.<sup>2</sup>

As AI capabilities evolve at a rapid pace, the real challenge for business valuers isn’t whether to use these tools, but how to harness their capabilities responsibly and effectively. While the risks are real, particularly in the context of expert testimony, the opportunities are equally significant.

Understanding where AI can provide practical value is the first step towards integrating it into professional practice in a way that strengthens, rather than undermines, credibility.

<sup>1</sup> Audience response at CBV Institute Connect 2025 presentation: Greg Endicott, “The AI Revolution: Why It Matters to Valuers,” Strategic Value Group LLC, Jun. 12, 2025.

<sup>2</sup> CBC News, <https://www.cbc.ca/news/politics/artificial-intelligence-evan-solomon-1.7536218>, accessed on Aug. 29, 2025.



## HOW AI CAN HELP BUSINESS VALUATORS

When properly integrated, AI offers more than just research assistance. It can fundamentally enhance the valuation process:

**Accelerate efficiency gains:** Automate routine tasks like data identification, data extraction, and document summarization. For instance, AI tools can rapidly scan documents such as financial statements and shareholder agreements for relevant valuation inputs.

**Enhance complex analysis:** AI excels at processing large and/or unstructured data sets, enabling valuers to perform faster, more complex analysis and providing them more time to focus on interpretation and insights.

**Strengthen decision support:** AI can help model various valuation scenarios, run sensitivity analyses, and offer comparative insights that sharpen professional judgment, not replace it.

**Improve report quality:** With careful prompting and review, AI can assist in generating clear, well-structured narrative sections while maintaining the expert's insights.

These benefits are tangible and measurable, but they are realized only when AI is used as a supporting

tool, rather than relied upon to form conclusions or opinions in place of professional judgment.

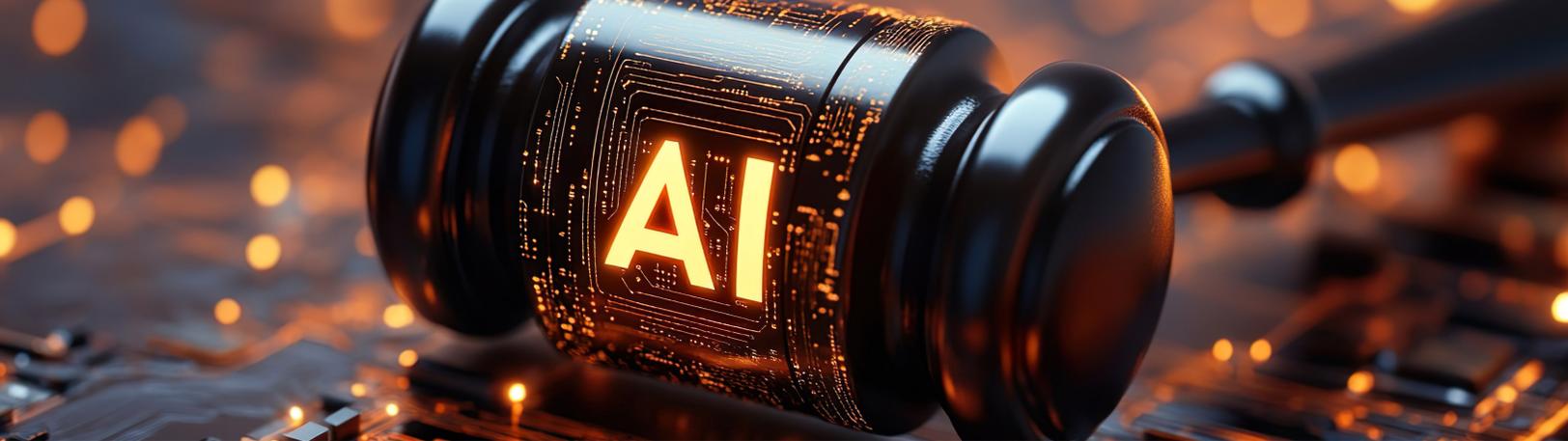
## THE CRITICAL IMPORTANCE OF HUMAN OVERSIGHT AND ABIDING BY PROFESSIONAL STANDARDS

Efficiency should never come at the expense of diligence. Valuation professionals, and expert witnesses in particular, must ensure all AI-assisted work meets professional standards: based on sufficient facts, thorough analysis, and reliable methods. Failure to maintain rigorous oversight can have serious consequences.

The courts have already delivered sharp warnings. In 2024, in *Zhang v. Chen*, the British Columbia Supreme Court ("BCSC") in Canada sanctioned a lawyer for citing fake cases generated by an AI tool (often referred to as AI "hallucinations").<sup>3</sup> Similarly, in *Matter of Weber* in New York, a damages expert admitted to using AI tools for calculations but could not explain the basis or sources behind them, rendering their testimony unreliable.<sup>4</sup>

<sup>3</sup> BCC Courts, <https://www.bccourts.ca/jdb-txt/sc/24/02/2024BCSC0285cor1.htm>, accessed on Aug. 29, 2025.

<sup>4</sup> Justia U.S. Law, <https://law.justia.com/cases/new-york/other-courts/2024/2024-ny-slip-op-24258.html>, accessed on Aug. 29, 2025.



In both cases, the outcome was the same: AI's capabilities were overshadowed by its risks and by the user's lack of awareness of its limitations, leading to outcomes that undermined rather than advanced the case.

## NAVIGATING THE REGULATORY LANDSCAPE: STAY AHEAD

Courts, arbitral institutions, and professional bodies worldwide are issuing guidance and protocols to ensure the ethical and responsible use of AI. These directives share consistent themes:

**Transparency:** Disclose when and how AI tools are used, particularly in documents prepared for court or arbitral submissions. Some jurisdictions have mandatory AI disclosure requirements.<sup>5</sup>

**Accountability:** Professionals remain fully responsible for content, regardless of AI involvement.

**Verification and oversight:** All AI outputs must be independently reviewed for accuracy, reliability, and appropriateness. For example, AI platforms may be trained using flawed or unrepresentative data.

**Confidentiality:** Sensitive client data should never be entered into public AI platforms without clear safeguards or consent.

These directives are becoming more prescriptive. For example, in March 2025, the Chartered Institute of Arbitrators ("CI Arb") released a detailed guideline on AI in arbitration.<sup>6</sup> Not only does it address issues

such as those listed above, but it also introduces procedural orders for AI use and outlines risks to due process, data security, and enforceability, of which expert witnesses should also be aware.<sup>7</sup>

For CBVs, the CBV Institute has not yet set official guidelines specific to the use of AI in engagements. In June 2024, the CBV Institute published a "Primer on Artificial Intelligence,"<sup>8</sup> or the "CBV Primer," intended to outline considerations for CBVs incorporating, or contemplating the incorporation of, AI into their professional practice.<sup>9,10</sup>

The CBV Primer offers a timely reminder: Even as AI evolves, existing professional obligations still apply. Key points include:

**Accountability and competence:** Do not rely on AI to replace professional judgment. It should serve as a tool to distill information, aid research, and facilitate analysis, rather than being relied upon for decision making. CBV Institute Practice Standard No. 120 requires that "valuations are adequately planned and properly executed, with due care and with an objective state of mind."<sup>11</sup>

**Verify all inputs and outputs:** Biases and hallucinations are well-known issues in generative AI. In accordance with Section 201 of CBV Institute's Code of Ethics, CBVs must not make, or be associated

<sup>7</sup> The new guidelines specify that "the arbitrators may impose certain AI-related disclosure obligations on the parties including any party-appointed experts or factual witness. In this context, arbitrators may make directions as to the type of AI covered by the obligation to disclose, circumstances in which disclosure is, to whom disclosure is to be made and within which timeframe." The guidelines contain a template "Agreement on the Use of AI in Arbitration" as well as a template "Procedural Order on the Use of AI," which reference party appointed experts.

<sup>8</sup> <https://cbvinstitute.com/wp-content/uploads/2024/06/AI-Primer-June-2024-Final-EN.pdf>.

<sup>9</sup> CBV Institute Primer on Artificial Intelligence, p. 3.

<sup>10</sup> The International Valuation Standards has also released commentary on AI, including its paper "Navigating the Rise of Artificial Intelligence in Valuation: Opportunities, Risks, and Standards" (dated Jul. 2025) that serves as a forward-looking perspectives paper that explains how recent AI and valuation technologies are reshaping valuation practice, assesses the opportunities and threats AI presents to business valuers, and offers guidance on using AI tools responsibly—emphasizing transparency, human judgment, and compliance.

<sup>11</sup> CBV Institute Primer on Artificial Intelligence, p. 5.

<sup>5</sup> For example, a number of Canadian courts (including the Federal Court), require written disclosure if AI is used in court filings. Federal Court of Canada issued Notice to the Parties and the Profession, The Use of Artificial Intelligence in Court Proceedings on Dec. 20, 2023 (updated on May 7, 2024); Court of King's Bench of Manitoba issued a Practice Direction Re: Use of Artificial Intelligence in Court Submissions on Jun. 23, 2023; Supreme Court of Yukon issued a Practice Direction Use of Artificial Intelligence Tools on Jun. 26, 2023; Provincial Court of Nova Scotia issued Use of Artificial Intelligence (AI) and Protecting the Integrity of Court Submissions in Provincial Court on Oct. 27, 2023.

<sup>6</sup> Chartered Institute of Arbitrators Guideline on the Use of AI in Arbitration (2025).

with, any statement that they know (or should know), is false or misleading.<sup>12</sup>

**Maintain confidentiality:** Section 500 of the CBV Institute Code of Ethics still applies, requiring that CBVs safeguard clients' confidential information.<sup>13</sup> Input data may be visible to technology providers and used to train their systems, raising concerns about confidentiality and data protection. Some firms are already taking steps to address issues of confidentiality. For example, FTI Consulting has expended significant resources to develop its own proprietary AI platforms, allowing its experts to benefit from AI's capabilities without compromising data security.

**Document clearly:** Practice Standard No. 110 requires transparency about sources relied upon.<sup>14</sup> Business valuers should document their methods and rationale, including how AI-supported content was verified.

Until AI-specific valuation standards are released, the foundational principles in existing practice standards and codes of conduct must guide the use of AI by business valuers and damages experts.

## BEST PRACTICES FOR IMPLEMENTATION

In light of the issues outlined above, business valuers should reflect on best practices to adopt prior to integrating AI into their work. Some examples include:

**Establish clear AI usage policies:** A formal policy provides a governance framework detailing when, how, and under what conditions AI may be used in professional work. Such policies should address, for example, approved and prohibited use cases, rules for handling client information while maintaining confidentiality, safeguards against bias or threats to independence, guidance on disclosing AI use in reports or testimony, and a process for regularly reviewing the policy as laws, professional standards, and AI tools evolve.

**Develop practical checklists:** Checklists help translate policies into actionable, day-to-day guidance. They can cover pre-engagement steps (including obtaining client consent when AI is used with client data), data handling protocols, AI tool selection, workflow

integration, output verification, and reporting and disclosure procedures.

**Implement structured training:** Training ensures AI tools are used effectively, ethically, and in line with professional and legal obligations. Given the rapidly evolving AI landscape, periodic refresher sessions are essential to maintain awareness of emerging tools, regulatory developments, and evolving best practices.

## FINAL THOUGHTS

AI offers extraordinary potential to elevate the work of valuation and damages experts. Those who use it thoughtfully can gain a competitive edge in both efficiency and insight. Misuse of the technology, however, can carry serious consequences – from reputational damage to evidentiary exclusion.

The AI landscape is evolving rapidly with courts, regulators, and professional bodies paying close attention. Staying current with evolving standards and guidelines and embedding responsible AI practices into workflows is not just advisable – it is essential.

Looking ahead, the differentiator will not just be who uses AI, but who uses it well. A truly responsible adopter of AI is one who views AI not as a replacement, but as a carefully managed complement. They will leverage AI to streamline tasks like data gathering, calculations, and report drafting, while maintaining full accountability for the outcomes, verifying outputs rigorously and safeguarding client confidentiality. By doing so, they will set the benchmark for credibility in legal proceedings and for leadership in the profession.

## ABOUT THE AUTHOR



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Natalie Quinn is a Managing Director at FTI Consulting based in Vancouver, Canada. Natalie has specialist experience in the assessment of economic damages and valuation in complex disputes in both commercial litigation and international arbitration settings. A Chartered Accountant for more than twenty years, she has prepared expert reports for a broad range of dispute advisory engagements including class actions, expropriation, post-acquisition disputes, breach of contract, shareholder disputes, and other financial disputes. Natalie has extensive industry sector experience within Australia and the Americas, including mining, oil & gas, renewable energy, software, automotive, financial services, government, hospitality, manufacturing, retail, and construction.

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

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**THREE-DAY PROGRAM OVERVIEW**

<b>DAY ONE</b> <b>WEDNESDAY</b> June 3, 2026	<b>DAY TWO</b> <b>THURSDAY</b> June 4, 2026	<b>DAY THREE</b> <b>FRIDAY</b> June 5, 2026
<ul style="list-style-type: none"> <li>• Bankruptcy Taxation (Morning)</li> <li>• Financial Advisors' Toolbox (Morning)</li> <li>• Luncheon</li> <li>• Bankruptcy Taxation (Afternoon)</li> <li>• Financial Advisors' Toolbox (Afternoon)</li> <li>• Opening Reception</li> </ul>	<ul style="list-style-type: none"> <li>• Keynote</li> <li>• Bloody Mary Bar</li> <li>• 2 Plenaries</li> <li>• Luncheon &amp; Awards</li> <li>• 2 Session Choices</li> <li>• Cocktail Reception</li> <li>• Dine Arounds (optional)</li> </ul>	<ul style="list-style-type: none"> <li>• 2 Session Choices</li> <li>• Mimosa Bar</li> <li>• 1 Session Choice</li> <li>• Luncheon</li> <li>• Judges Roundtable</li> <li>• Ethics/AI</li> <li>• Margarita Bar</li> </ul>

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\*Based on a 50-minute hour and includes both the preconference and main conference.



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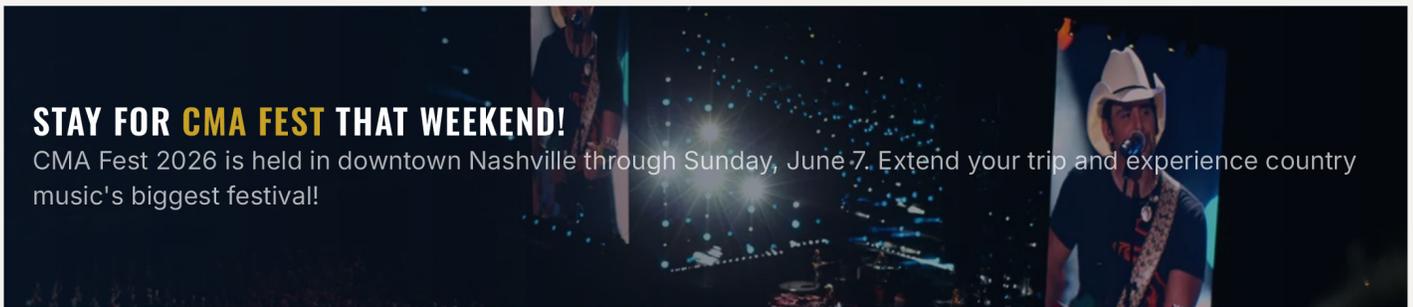
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# EXPLORING CORPORATE REAL ESTATE IN M&A AND DIVESTITURES

**Corporate real estate is often one of the largest controllable cost categories inside a company,** yet it is frequently brought into M&A and divestiture planning too late. During integrations and separations, decisions about offices, facilities, and physical assets directly affect deal timelines, cost outcomes, business continuity, and longterm value. In this article, we explore how corporate real estate can shift from a downstream execution function to a strategic lever during transactions, helping organizations move faster, manage risk, and unlock value when it matters most.

Real estate is one of the largest controllable cost categories for most corporations – often ranking second only to labor, and comprising a significant portion of selling, general, and administrative expenses. And it is uniquely exposed during transactions, restructurings, and divestitures. Depending on the industry and operating model, rent and indirect facilities costs can represent upward of 13% of revenue, making real estate a material

driver of enterprise cost structure and value creation. Corporate Real Estate (CRE) is the enterprise function responsible for aligning an organization’s physical footprint with its business strategy, operating model, and capital objectives – serving as a strategic integrator across finance, operations, human capital, and growth to support enterprise goals.

Despite the substantial costs involved, the C-suite and integration or separation management offices often consider CRE too late in the acquisition or divestiture transaction lifecycle. This oversight can prove costly. When transactions involve a physical operational footprint, establishing early control of that footprint can have a considerable impact on deal value.

Transaction leadership teams can generate incremental value by involving CRE teams early and strategically throughout the deal lifecycle. This coordinated involvement underpins value creation that directly impacts the bottom line. For instance, companies that are spun-off (SpinCos) often face

**Real estate is one of the largest controllable expenses, rivaling advisory, HR, and IT transition spend. It is also a key lever for creating value.**

immediate pressure from activist investors to streamline operations and reduce costs, including rationalizing their real estate footprint immediately after separation. This pressure directly threatens enterprise value if not anticipated early, but when handled proactively, it becomes an opportunity for disciplined optimization that bolsters financial performance and shareholder returns.

This article explores real estate's role and value during two distinct events: integrations through acquisitions and divestiture-driven separations.

## OPTIMIZING REAL ESTATE DURING INTEGRATIONS AND ACQUISITIONS

Integrations and divestitures are both significant undertakings, but they differ substantially in their respective goals, challenges, and guiding operational principles. Acquisitions are undertaken to expand markets, acquire new capabilities, or capture economies of scale, while separations are designed to disentangle operations, create independence, and sharpen focus. In either transaction type, CRE should not be regarded as a passive cost but as a necessary functional discipline to ensure the appropriate steps are taken to separate or integrate the footprint and operating model.

Global real estate leaders are often responsible for the company's leased and owned office and commercial properties, with responsibilities outside the yellow lines for manufacturing sites. They often work with R&D teams and specialty asset groups, leveraging their expertise in the company's real estate and operations. Integrating these leaders into the deal team results in faster separations and integrations, increased value creation, improved speed to value, mitigated execution risk, on-time and on-budget construction management, happier and more productive employees, and decreased stranded, one-time, and run-rate costs.

When companies announce synergies related to their real estate footprint and underlying facilities network, many do not realize these benefits within the intended timeframe. This happens because of issues in execution, reactive planning, and unrealistic expectations that fail to link pre-deal rationale with post-deal execution.<sup>1</sup> This friction stems from fragmented data, misaligned resourcing requirements between the integration management office (IMO)

and functional teams like real estate trying to deliver against multiple competing priorities.<sup>2</sup>

The immediate priority for the new, combined organization is to maintain business continuity. Companies must stabilize operations to ensure customer and stakeholder expectations are met. For real estate, this means:

- Ensuring critical sites can function from an occupancy and operational standpoint
- Maintaining access to utilities, systems, services, and security during the transition
- Standardizing and updating branding across the global portfolio

In today's environment, business leaders are asked to achieve more by balancing competing priorities – stabilizing the new organization while simultaneously capitalizing on synergy realization. The same holds true for CRE leaders, who must pursue stabilization and rationalization in parallel to drive successful integrations. This dual focus demands urgency and close collaboration with the IMO, alongside functions such as HR, IT, finance, and supply chain, to stabilize the newly acquired business, qualify synergy targets, and align the necessary resources for optimal results.

Qualifying synergy targets requires data visibility down to the lowest level feasible, mining every lease clause, service contract, rent escalator, site utilization, temporary service agreement (TSA), and geographic cluster across the combined organization. Capturing this detail early by developing a singular “source of truth” establishes a reliable baseline for bottom-up synergy identification and the real estate rationalization roadmap. It should encompass all aspects of the acquired real estate – from costs and services to the underlying CRE operating model. **Successful integrations will pursue this level of detail across disparate sources when building the rationalization roadmap.**

Using this foundation of data, the integration process should include a thorough evaluation of the acquired business's CRE operating model alongside the acquiring company's structure to design a fit-for-purpose organization capable of supporting the newly combined real estate footprint. Key functional pillars – such as portfolio management, lease administration, facility management, and transaction management – are often reliant on costly TSAs from the seller, which can include price markups and

1 Harvard Law School Forum on Corporate Governance, “The Value Killers,” Jan. 8, 2020, <https://corpgov.law.harvard.edu/2020/01/08/the-value-killers/>.

2 “Lessons Learned, Best Practices and Frameworks for an M&A Implementation,” April 2025 <https://www.referencepoint.com/insight/lessons-learned-best-practices-and-frameworks-ma-implementation?referrer=grok.com>.



**In an ideal world, CRE leaders should be involved before a deal is announced. They often are not.**

obfuscate operational dependencies, which hinder synergy realization. To mitigate this, CRE leaders should immediately and rigorously assess all real estate and facilities-related TSAs, determining their explicit terms, exploring options for early termination and associated penalties, and identifying in-house capabilities that can replace these services swiftly. Proactive TSA exit planning not only accelerates operational independence but also unlocks value and shapes the future operating model for the combined portfolio sooner.

Complementing these efforts, corporations should assess CRE processes and technologies for automation opportunities, harnessing the analytic capabilities of existing AI platforms to manage data more effectively, streamline workflows, boost efficiency, minimize tactical tasks, and shift focus toward strategic value-add initiatives across the expanded portfolio. By prioritizing a unified operating model supported by modernized technology, the CRE function positions itself as a proactive driver of long-term value for the combined entity.

For most CRE leaders, large-scale M&A events are often unfamiliar territory, presenting significant challenges that can strain teams and lead to burnout amid the surge in required effort. CRE leaders should take time to understand the level of effort necessary to deliver across integration mandates and business-as-usual activities. Start off on solid ground by determining how to best utilize internal and external resources. It is important to ask for help. Deal teams typically allocate budgets for external advisors, and astute functional leaders act quickly to leverage them. Without adequate resourcing and focus, real estate decisions drift, synergy potential erodes and publicly announced synergy targets are not realized.

## **EFFECTIVELY EXECUTING SEPARATIONS AND DIVESTITURES**

Typically, separations are executed to sharpen focus, unlock shareholder value, or enable strategic independence for divergent businesses. In practice, they require the creation of two functioning enterprises from one, necessitating separate legal entities, leases, services, and physical assets.

Independent academic research and capital market analysis consistently show that carve-outs and tax-free spin-offs involve material one-time separation costs, driven by the need to replicate standalone operations, disentangle shared systems, and physically separate assets. While the magnitude varies by separation complexity and industry, operational separation costs, which implicitly include facilities and real estate separation, are among the largest contributors to separation costs.<sup>3</sup> These costs typically run between 1% - 4% of the divested business' revenue and could be higher depending on the size and complexity of the new entity.<sup>4</sup> This reflects the operational and physical challenges of achieving independence.

Based on Alvarez & Marsal's internal case experience and industry benchmarks, real estate consistently represents **a disproportionate share of one-time separation costs**, typically accounting for **10%–20% of total separation costs for asset heavy companies**. Given this magnitude, CRE leaders must establish regular cost reporting and secure budget allocations early, before standalone frameworks lock in funding. In practice, separation cost estimates evolve significantly in the early phases of a transaction,

<sup>3</sup> Spin-Off Guide (Wachtell, Lipton, Rosen & Katz), <https://www.wlrk.com/wp-content/uploads/2025/05/2025-Spin-Off-Guide.pdf>.

<sup>4</sup> How to Minimize Divestiture Separation Costs, <https://www.revpartners.com/how-to-minimize-divestiture-separation-costs/>.



often requiring numerous iterations as assumptions are refined. As execution begins months later, these estimates must transition into disciplined tracking of actual costs to maintain control and avoid downstream surprises. This ongoing vigilance is essential, as the complexity and extended timelines inherent in real estate separations can quickly amplify expenses if not managed proactively.

Real estate and facilities indeed have one of the longest paths to independent operation, sometimes taking 18 months or more to complete – a timeframe that underscores the need for early CRE involvement, ideally before a deal’s announcement, though this often falls short in reality. The list of tasks during separations is extensive and multifaceted, encompassing the replication of contracts, leases, and services; conducting vendor reviews and selection processes; the physical separation of office spaces, manufacturing and production facilities; and the establishment of new global headquarters. While this array of activities is daunting, the key to execution, and to containing those elevated costs, lies in collaboration. Separation execution requires a CRE organization working in lockstep with cross-functional counterparts. For example, ensuring landlords and facilities service providers are paid on Day 1 demands a joint effort from IT, Sourcing, Finance, and CRE. Without a highly interconnected network of cross-functional partners, pertinent details are overlooked, work plans are executed out of sequence, and separation costs rise, eroding the transaction’s overall value and strategic objectives.

Beyond these execution-driven expenses, separations typically introduce stranded costs for both the Parent Company and SpinCo/CarveCo – residual overhead from shared assets that neither entity can immediately use. Historically, the overriding priority in separations has been “speed to separate,” with

nothing more critical than achieving operational independence within the tight time constraints of a divestiture, often at the expense of deeper value optimization. Drawing from real-world examples, like the tax-free spin-off of an advanced energy equipment manufacturer, where \$110 million in property sales proceeds and \$147 million in real estate run-rate reductions were delivered during separation, seasoned leaders have demonstrated that cost reduction and separation timelines need not be mutually exclusive. In that case, distinct separation and value creation teams worked in tandem to reshape the future-state footprint. This parallel execution is not just feasible but represents a strategic imperative in today’s transaction landscape, capitalizing on the unique environment of a separation where every real estate decision, from disentangling shared sites to establishing standalone operations, can be tightly coupled with future-state utilization modeling. By viewing each impacted location as an opportunity to optimize standalone costs for both entities, CRE teams can transform potential liabilities into drivers of long-term value, balancing speed to independence with disciplined, forward-looking efficiencies that directly offset stranded costs, enhance transaction economics, and position the new organizations for sustained success.

Ultimately, successful separation execution depends on treating real estate not as a downstream implementation detail, but as **a strategic lever embedded in the broader separation strategy**. Real estate decisions influence cost, timing, operational resilience, and the credibility of the divested business from Day 1. Organizations that involve CRE leadership early, integrate real estate planning into cross-functional workstreams, and actively manage both separation costs and value creation levers are far

better positioned to achieve the strategic objectives that motivated the separation in the first place.

## CONCLUSION

Real estate sits at the intersection of finance, operations, and transformation, directly influencing both the **cost and timing** of corporate integrations and separations. It serves as a catalyst for synergy realization during integrations and as a nucleus for cross-functional execution during separations – both of which demand early CRE involvement, accurate data, and disciplined governance.

Each scenario requires a distinct operating model, and Corporate Real Estate teams must adapt accordingly. During integrations, success is measured by the speed and sustainability of synergy capture; during separations, by the ability to achieve operational independence without disruption. In both cases, traditional metrics such as cost per square foot give way to outcomes tied to execution quality and enterprise readiness.

The complexity of these events is often underestimated. Separation timelines can extend beyond 18 months and drive significant one-time costs, while integrations require tightly coordinated strategies to meet aggressive timelines, manage cultural risk, and unlock economies of scale. Organizations that fail to elevate CRE to a strategic role can incur unnecessary delays and costs because of decisions made without full visibility into physical and operational implications.

Embedding Corporate Real Estate as a core workstream – with clear authority over portfolio decisions, cost management, and synergy or separation roadmaps – is essential to meeting Day 1 objectives and accelerating value realization. When treated as a strategic function, CRE becomes a critical enabler of cleaner transitions, condensed timelines, and stronger long-term returns.

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 **PROVINCE**

# LIABILITY MANAGEMENT AFTER CONVERGEONE: EQUAL TREATMENT, EXCLUSIVE OPPORTUNITIES, AND THE NEXT PHASE OF “LENDER-ON-LENDER” WARFARE

## FOR MORE THAN A DECADE, BORROWERS AND THEIR SPONSORS HAVE USED LIABILITY MANAGEMENT EXERCISES

(“LMEs”) to create runway, preserve liquidity, and rationalize capital structures outside of formal insolvency proceedings. In market parlance, these transactions include “uptiers,” “double-dips,” “drop-downs,” non-*pro rata* exchanges, debt-for-debt tenders, and rights offerings calibrated to reward cooperation and speed. These mechanisms are designed to address two persistent features of distressed credit markets: first, the high cost of unanimity in widely-held capital structures; and second, the latitude afforded by modern credit agreements to amend with majority consent as long as “sacred rights” are unchanged except upon each affected lender’s consent.

The headline risk in these deals is lender-on-lender conflict. Majority lender groups may authorize priming or otherwise create structurally senior tranches in exchange for new money or enhanced economics, effectively subordinating nonparticipants. Sponsors, arrangers, and companies have argued that these are lawful innovations that reflect commercial reality. Excluded lenders have sometimes framed them as

breaches of *pro rata* treatment or end-runs around sacred rights.

As the use of LME financial mechanisms has matured, appellate courts have begun to supply durable rules—most prominently in *In re Serta Simmons Bedding, L.L.C.*, 125 F.4th 555 (5th Cir. 2024), *petition for cert. filed*, No. 24-1322 (U.S. June 18, 2025), and *Ocean Trails CLO VII v. MLN Topco Ltd.*, 233 A.D.3d 614 (N.Y. App. Div. 2024) (“*Mitel*”)—and bankruptcy courts have grappled with whether plan mechanics can distribute incremental value to supportive cohorts without violating the Bankruptcy Code’s “equal-treatment” requirements (discussed below). The U.S. District Court for the Southern District of Texas’s recent *ConvergeOne* decision squarely joins that latter debate. See *In re Ad Hoc Group of Excluded Lenders*, No. 4:24-cv-02001 (S.D. Tex. Sept. 25, 2025) (Dkt. 54) (“*ConvergeOne*”).

What follows briefly situates *ConvergeOne* within the LME landscape, synthesizes the key strands of *Serta*, *Mitel*, *In re Peabody Energy Corp.*, 933 F.3d 918 (8th Cir. 2019), *In re iHeartMedia, Inc.*, 597 B.R. 339 (Bankr. S.D. Tex. 2019), and *Bank of Am. Nat. Tr. & Sav. Ass’n v. 203 N. LaSalle St. P’ship*, 526 U.S. 434 (1999), and then provides an analysis of *ConvergeOne*’s facts, issues,



legal reasoning, and practical implications for ongoing restructurings and documentation strategy. In brief, *ConvergeOne* underscores a simple rule of decision: Debtors must either give every creditor in a class a genuine opportunity to participate on the same terms, or validate exclusivity through a credible market test.

## THE STATUTORY BACKGROUND

Section 1123 of the Bankruptcy Code sets forth various requirements for a chapter 11 plan. Among them is the requirement in section 1123(a)(4) that a plan must “provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest.” Section 1123(a)(4) addresses only the “equal treatment” of claims or interests in the same class of claims and interests, not a chapter 11 plan’s overall treatment of creditors or interest holders. See generally COLLIER ON BANKRUPTCY 1123.01[4][b] (16th ed. 2025).

Some circuit courts of appeals have concluded that a chapter 11 plan may treat certain claimholders more favorably than others, provided that the disparate plan treatment is based on identified rights or contributions from the favored claimants separate from their claims. See *Ahuja v. LightSquared Inc.*, 644 F. App’x 24, 29 (2d Cir. 2016) (section 1123(a)(4) was not violated where a plan treated certain interest holders more favorably than other interest holders with interests in the same class because the favored interest holder: (i) held a secured claim in addition

to its interest; and (ii) had “agreed to attribute” to the reorganized debtor certain causes of action against third parties); *Mabey v. Sw. Elec. Power Co. (In re Cajun Elec. Power Coop., Inc.)*, 150 F.3d 503, 518–19 (5th Cir. 1998) (a plan proponent’s payments to certain members of a debtor power cooperative did not violate section 1123(a)(4) because the payments were “reimbursement for plan and litigation expenses,” not payments “made in satisfaction of the [members’] claims against [the debtor]”); *Acequia, Inc. v. Clinton (In re Acequia, Inc.)*, 787 F.2d 1352, 1362–63 (9th Cir. 1986) (upholding confirmation of a plan that provided payments to one shareholder because payments were for the shareholder’s service as a director and officer of the debtor, not for the shareholder’s ownership interest).

Section 1129(b) of the Bankruptcy Code governs “cram-down” or nonconsensual confirmation of a chapter 11 plan, mandating that a cram-down plan’s treatment of dissenting impaired unsecured claims must be both “fair and equitable” and not “discriminate unfairly.” Section 1129(b)(2)(B) of the Bankruptcy Code provides that a plan is “fair and equitable” with respect to a dissenting impaired unsecured class if the creditors in the class “receive or retain” property of a value equal to the allowed amount of their claims or, failing that, in cases not involving an individual debtor, if no creditor of lesser priority, or no equity holder, receives or retains any distribution under the plan “on account of” its junior claim or interest. This requirement is sometimes referred to as the “absolute priority rule.”

## SURVEY OF THE CASE LAW

Two bodies of law dominate recent LME jurisprudence: New York contract law governing syndicated loan agreements and federal bankruptcy law, especially the Bankruptcy Code’s equal-treatment and priority provisions.

*Serta* reframed the “open market purchase” debate. Applying New York law, the U.S. Court of Appeals for the Fifth Circuit held that the chapter 11 debtors’ private, bilateral exchange employing an “open market purchase” exception could not be reconciled with the term’s plain and trade usage. An “open market purchase,” the court explained, refers to purchases on the designated secondary market for syndicated loans, not bespoke, invitation-only swaps used to induce consents that circumvent *pro rata* sharing. That holding reinvigorated sacred-rights protections and narrowed borrowers’ ability



to use open market exceptions to accomplish non-*pro rata* uptiers by consent.

On the plan side, the court also excised targeted indemnity protections incorporated into the debtors' confirmed plan. It concluded that the provision functioned as an impermissible "resurrection" of disallowed contingent reimbursement claims and, in any event, violated equal treatment because its expected value varied dramatically depending on whether a creditor had participated in the prepetition uptier.

*Mitel* went the other way. The New York Appellate Division held that the obligor's uptier did not trespass sacred rights because the amendments did not actually waive, amend, or modify protected terms; rather, majority lenders tendered their loans back and received new loans under amended agreements. Crucially, the obligor's documents authorized it to "purchase by way of assignment," without the "open market" limitation that proved dispositive in *Serta*. That textual difference and the court's insistence that "purchase," "refinancing," and "exchange" are not mutually exclusive concepts preserved discretion for majority-led refinancings where drafting is less constrained.

*Peabody* and *iHeart* frame two additional poles. In *Peabody*, the U.S. Court of Appeals for the Eighth Circuit rejected equal-treatment challenges to preferred equity and backstop economics embedded in a chapter 11 plan where all similarly situated creditors could qualify on the same terms by providing consideration (i.e., commitments, plan support, and backstop obligations). The court emphasized equality of *opportunity*, even if equality of *outcome* was not achieved. Conversely, in *iHeart*, the bankruptcy court rejected efforts to impose equitable liens tied to "springing lien" theories, holding that the borrower's decision to manage maturities and avoid immediate encumbrances reflected legitimate business judgment and did not trigger the indenture's equal-and-ratable protections or support unjust enrichment.

*LaSalle* supplies the U.S. Supreme Court's touchstone for exclusive opportunities in chapter 11. The Court read the phrase "on account of" in section 1129(b)(2)(B)(ii) to mean "because of," and held that a plan giving old equity an exclusive chance to acquire the reorganized enterprise without competition or market valuation violated the absolute priority rule. While *LaSalle* addressed junior interests under the cram-down statute rather than intraclass equality under section 1123(a)(4), its insistence on either open competition or a credible market test to validate



exclusive, value-bearing rights has become the analytical template courts invoke when assessing whether plan-granted opportunities confer additional "treatment" on claims or interests.

Read together, these cases draw several lines: Open market purchase clauses will be read narrowly; "purchase by assignment" clauses admit borrower-led exchanges absent "open market" constraints; equal treatment under section 1123(a)(4) tolerates different outcomes where all class members receive a *bona fide* opportunity to qualify by furnishing equivalent consideration; exclusive, value-rich opportunities must be subjected to competition or credible market testing to avoid being treated as granted "on account of" the recipient's existing claim or interest; and equitable remedies will not rewrite clear contracts or police rational capital structure management absent actual breach.

## **CONVERGEONE: FACTS, ISSUES, ANALYSIS, AND DISPOSITION**

*ConvergeOne* arrived against this backdrop with a prepackaged plan negotiated under a restructuring support agreement ("RSA") executed immediately prepetition. The plan contemplated a rights offering at a substantial discount to plan equity value, backstopped by a subset of first lien lenders. Those backstoppers received lucrative, exclusive economics—both the discount and a premium—tied to the backstop commitment. Minority lenders in the same impaired class were not invited to participate in backstop negotiations or the backstop itself; they objected at confirmation and then appealed, arguing that the plan violated section 1123(a)(4)'s equal-treatment requirement because the exclusive opportunity yielded materially higher recoveries for some class members "on account of" their claims.

The factual record was straightforward. The debtors, the sponsor, and a majority lender group negotiated through late 2024 and early 2025 and entered into an RSA just before the debtors filed for chapter 11 protection. The plan was filed immediately thereafter and moved rapidly to confirmation on the strength of prepetition votes exceeding 80% of first- and second lien claims. The backstop was never market tested; the RSA contained a no-shop clause. The minority lenders were candidly excluded from the prepetition process and were told participation was "restricted" to the largest creditors. After filing, the excluded lenders

proposed two alternatives within the compressed prepack timeline. Neither gained traction in light of the confirmable plan already in hand.

The bankruptcy court confirmed the debtors' chapter 11 plan, and the minority lenders appealed the ruling to the district court, which denied the appellants' motions for a stay pending appeal and direct certification of the appeal to the Fifth Circuit.

On appeal, the district court faced three legal questions: whether the appeal was "equitably moot"; whether the exclusive backstop was "treatment for [a] claim" within the meaning of section 1123(a)(4); and if so, whether the plan nevertheless satisfied equal treatment because the extra value was simply market compensation for new obligations.

On mootness, the district court held relief was available without unwinding the plan. According to the court, the remedy could be surgical, such as by ordering the favored lenders to sell the incremental equity to excluded lenders on equivalent terms. The appeal thus proceeded.

On the merits, the district court drew heavily from *Serta* and *LaSalle's* "on account of" reasoning and from *Peabody's* equality-of-opportunity refrain. The court accepted that the exclusive backstop was "treatment" for a claim because the opportunity and its embedded economics were only offered to holders of claims in the class and resulted in meaningfully higher recoveries on those claims. It then examined whether the opportunity was either: (i) offered equally to all class members; or (ii) sufficiently market-tested such that the exclusivity was on demonstrably full-value terms unrelated to the claim.

Neither condition was met. Unlike in *Peabody*, where any creditor could qualify by tendering specified consideration, the *ConvergeOne* debtor's backstop cohort was handpicked in a closed prepetition process. Minority lenders were blocked from the negotiating table and given no realistic path to qualify on equal terms. And unlike the market-based checks *LaSalle* envisioned, there was no competitive bidding, third-party process, or other mechanism to establish that the exclusivity itself was fairly priced. The debtor's banker acknowledged no market test occurred; the RSA's no-shop foreclosed alternatives. The court also rejected the notion that brief, post-filing windows to propose alternatives in a prepack with locked-up votes could satisfy either equal opportunity or market testing.

Two additional points anchored the holding. First, the court underscored *Serta's* "function over form" approach to equal treatment. Dressing the exclusivity

up as "new consideration for new obligations" could not obscure the unequal effect on recoveries within the same class when excluded lenders were never afforded the opportunity to furnish the same consideration on the same terms. Second, the court emphasized that while plans can produce different outcomes among equals, section 1123(a)(4) demands at a minimum an equality of opportunity, not a baked-in distributional tilt that depends on prepetition gatekeeping.

Disposition followed from the analysis. The district court reversed the confirmation order to the extent it overruled the minority lenders' section 1123(a)(4) objection and remanded for proceedings consistent with its opinion. In denying equitable mootness, the court flagged practical remedial options that would avoid plan unwinding while curing the equal-treatment violation.

## HOW *CONVERGEONE* FITS—AND WHAT IT MEANS

*ConvergeOne's* core contribution is not to expand *Serta's* "open market purchase" analysis—that remains a New York-law contract question—but to situate equal treatment firmly in the center of prepackaged plan design where exclusive, value-rich investment rights are used to secure creditor support. Three features bear emphasis.

First, equal opportunity matters. *Peabody* remains good law precisely because participation was open to all class members willing to furnish the same consideration. *ConvergeOne* signals that exclusive, negotiated-backroom economics that drive a 20–30% recovery differential within a single class are vulnerable unless similarly situated creditors have a *bona fide* chance to participate on the same terms.

Second, market testing or a substitute that creates genuine competitive tension matters. *LaSalle* did not enshrine a single methodology, but it made clear that exclusive opportunities untethered from market price discovery are suspect when they deliver value "because of" the recipient's status and support. Where backstop fees, discounts, or side economics are awarded without competition or credible alternatives, courts will scrutinize whether the opportunity itself has been fairly priced vis à vis the excluded class members.

Third, form does not trump function. *Serta's* equal-treatment analysis focused on the real-world value differential across a class, not the nominal symmetry of plan text. *ConvergeOne* applies the same lens.

Calling disparate economics “compensation for new money” will not save a plan if the new money lane was walled off by design and yielded inflated recoveries unavailable to equally situated creditors.

These principles yield practical guidance. Credit agreement drafting still drives the options that are available for prepetition restructurings and plan structures. *Serta* constrains borrowers relying on “open market purchase” exceptions; *Mitel* shows that “purchase by assignment” language expands flexibility. Borrowers and sponsors should expect sharper lender focus on sacred rights architecture, “uptier blockers,” assignment restrictions, and explicit definitions of permitted buybacks and exchanges.

On plan architecture, prepackaged deals that pair rights offerings with backstop fees and exclusive discounts should build equal-access pathways or a record of market testing. Where the economics are restricted to a subset, the record must demonstrate either that any creditor could have qualified by providing equivalent consideration on the same timeline and terms, or that the opportunity’s exclusivity and pricing were set through a process that credibly mimics competitive tension.

Process discipline now carries outsized weight. No-shop RSAs, compressed prepackaged timelines, and curated invite lists may achieve speed but create litigation risk under section 1123(a)(4) when they produce meaningful intraclass recovery disparities. These choices are increasingly outcome-determinative evidence for equal-treatment challenges.

On remedies and risk allocation, *ConvergeOne*’s rejection of equitable mootness for targeted relief raises the cost of betting that confirmation and prompt consummation will insulate exclusive economics. Parties should anticipate remedies that surgically redistribute incremental value post-confirmation.

## KEY TAKEAWAYS

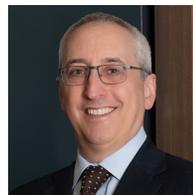
*ConvergeOne* pushes parties toward a more level playing field in chapter 11 plan economics for similarly situated creditors. It does not bar rights offerings or backstops; it regulates their exclusivity. If all class members can opt in on the same terms, or if exclusivity is validated by an authentic market

process, differential outcomes may survive attack, as *Peabody* illustrates. If not, *Serta*’s function-over-form approach to equal treatment will expose a plan to reversal or remedial reallocation.

The broader arc is that courts are converging on a coherent framework for LMEs and plan design. Under New York law, textual nuance is dispositive. “Open market purchase” means what it says; “purchase by assignment” means something else, and uptier blockers and sacred rights drafting carry real bite. Under the Bankruptcy Code, equal treatment requires more than artful phrasing and spin. Plans cannot target exclusive, value-rich opportunities within a class without offering an equal opportunity or establishing that the exclusivity itself is fairly priced by market forces. Sponsors, arrangers, and borrowers retain meaningful tools to manage liabilities. But exclusivity without access or market discipline is a litigation magnet, with *ConvergeOne* providing the roadmap for how those challenges will be analyzed and remedied.

The debtors in *ConvergeOne* appealed the district court’s reversal of the bankruptcy court’s confirmation order to the Fifth Circuit on October 22, 2025. The first lien ad hoc group followed suit on October 24, 2025.

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# PRIVATE EQUITY VALUATION: INSIGHTS FOR A CHANGING MARKET

Private equity valuation is no longer a periodic audit ritual but a decision engine for portfolio management, translating post-acquisition operating plans, capital structures, and financing conditions into defensible marks.

With leverage more expensive, exits uneven, and platforms increasingly reliant on add-ons for growth, valuations guide capital allocation and pacing, inform liquidity management, and communicate conviction to limited partners, while meeting rising governance expectations.

With deal volumes slowing and exits deferred, managers face longer holding periods and compressed liquidity, increasing the emphasis on interim valuations and stress-testing of capital assumptions.

## VALUATION LANDSCAPE IN PRIVATE EQUITY TODAY

### CAPITAL ALLOCATION AND UNDERWRITING DISCIPLINE

Investment teams need valuations that explicitly link value to operational and financing levers, such as debt covenants tied to EBITDA growth, preferred return thresholds influencing equity value, or margin expansion assumptions driving exit multiples, so that underwriting can be stress-tested against today's financing terms and tomorrow's exit environment through sensitivity- and scenario-based analyses around exit multiples, timing, and buyer universe. Older deals may also require recalibration when leverage conditions or market spreads shift materially. Stress-testing capital structures under current debt costs can reveal sensitivities that inform refinancing or distribution planning. These dynamics are most visible in capital-intensive sectors such as industrial services, healthcare, and software, where higher debt costs and delayed exits have compressed entry valuations.

**GLOBAL BUYOUT DEALMAKING LOST MOMENTUM IN THE SECOND QUARTER OF 2025**  
Global Buyout Deal Value, by Region (\$ in Billions)



Sources: Dealogic, Bain analysis.  
As of June 2025.

## PRIVATE EQUITY VALUATIONS TODAY ARE NO LONGER ONE-SIZE-FITS-ALL

The complexity of investment structures, with layered terms, bespoke investor arrangements, and evolving financing features, requires valuation models that capture contingent payoffs, participation thresholds, and optionality embedded across the capital stack. Modern incentive plans often incorporate multiple performance hurdles, tiered waterfalls, and contingent scenarios. Whether structured around option pricing models (OPMs), probability-weighted expected return methods (PWERMs), or hybrid approaches, management incentive unit (MIU) valuations require specialized expertise to reflect the true economic outcomes for management and investors.

### PACING AND FUND CONSTRUCTION

Valuation marks drive distributed to paid-in capital (DPI) and residual value to paid-in capital (RVPI), which in turn affect pacing, reserves for add-ons, and timing on continuation vehicles or secondary trades. Credible, comparable metrics let investment committees assess cross-portfolio trade-offs with greater precision.

### LIQUIDITY MANAGEMENT

In today's market, liquidity is a defining constraint for both general partners (GPs) and limited partners (LPs). As exit timelines extend, managers are increasingly turning to NAV-based lending, secondary transactions, and continuation vehicles to satisfy liquidity needs. Valuations provide the connective tissue across these mechanisms, linking fund-level and asset-level value, and establishing consistent benchmarks that underpin pricing for hybrid solutions. In parallel, NAV lenders and LPs are demanding interim fairness and scenario-testing to support financing or secondary liquidity across portfolios.

### PORTFOLIO CONSTRUCTION UNDER STAGGERED EXITS

Valuations can provide visibility into which companies appear closer to exit versus which may require additional capital. This perspective may help sequence liquidity across early-, mid-, and late-stage assets, so pacing decisions better align fund-level cash flow with LP expectations.

## Stakeholder Confidence

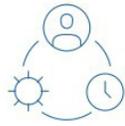
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**GP funds** need defensible marks that reconcile operating momentum with market multiples and debt capacity.



**LPs** compare consistency across vintages and managers, plus clear bridges from company performance to fund-level NAV trends.



**Auditors and regulators** expect robust governance and repeatable processes that hold up across cycles.



**Lenders** focus on downside models, covenant headroom, and valuation under "higher-for-longer" rate regimes.



**Retail channels** demand more frequent, audit-ready marks to support internal or tender mechanisms, as regulators weigh increased retail access to private funds.

## THE BAR FOR 2026-READY VALUATIONS

Private equity valuations today must be grounded in operating reality and anchored in market-participant evidence. They triangulate discounted cash flows (DCF) with guideline public companies and transaction methods, make financing terms explicit, quantify add-on and roll-up value with timing and execution risk, and show clear bridges from EBITDA to fund-level NAV at a cadence that supports critical decisions. The bar has risen: expect more frequent marks when liquidity tools or retail structures are in play; WACC, leverage, and covenant capacity explicitly modeled, rather than loosely inferred; integrated choices on recycling and NAV facilities; and macro and policy assumptions flowing through margins, capex, and durability under disciplined governance.

# MACRO DISRUPTIONS, SHIFTING VALUE DRIVERS, AND THEIR VALUATION IMPLICATIONS

The macro regime has shifted, and private equity valuation frameworks must adapt to certain structural forces. Current market conditions are the most favorable for debt issuers since the pandemic, and possibly the most supportive since 2007. Early Q4 borrowers are taking advantage of tighter spreads, greater leverage capacity, reduced equity contributions, aggressive EBITDA add-backs, looser covenant packages, and borrower-friendly terms. These dynamics have driven a wave of issuances, though the bulk of activity consists of repricings and refinancings rather than fresh LBOs or recapitalizations. Further, the Fed cut rates by 25 basis points in October 2025, and the cut in December added further momentum. Still, risks persist as elevated issuance levels could prompt lenders to become more selective, tightening terms, while broader macro headwinds (such as tariffs, geopolitical uncertainty, and slowing growth) cast doubt on the sustainability of this environment. Valuations must be more macro-aware and operator-informed.

## GEOPOLITICS: TARIFFS, NEARSHORING, CONFLICTS

### Business Reality

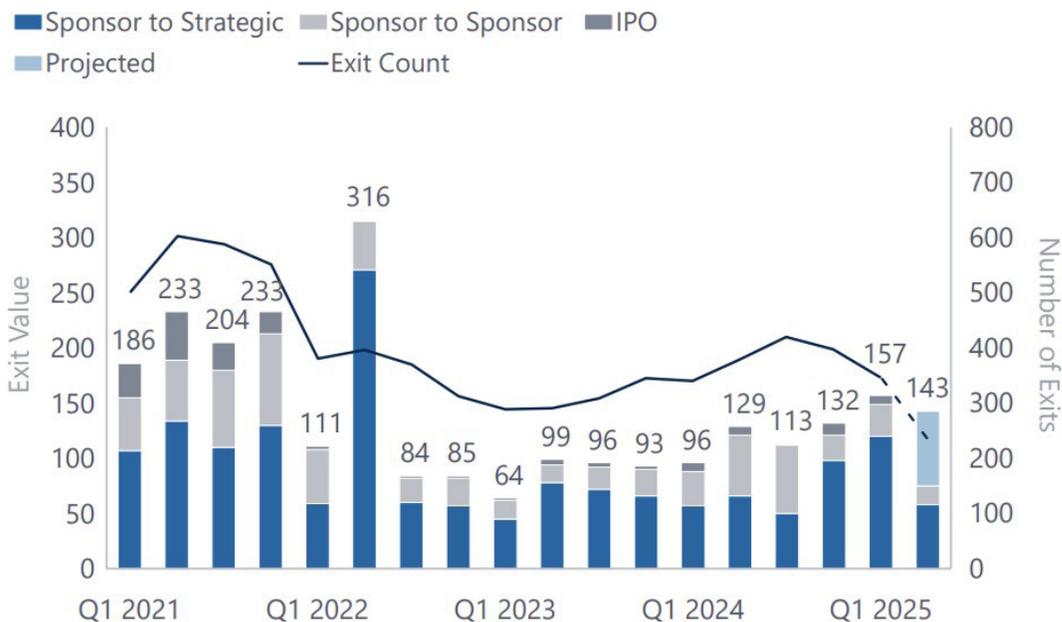
Supply chains are being rebuilt for resilience, not just cost. Tariffs and restrictions create step-changes in landed cost, nearshoring reintroduces capex and transition friction, and regional conflicts inject tail-risk into logistics and energy.

### Valuation Implications

- **Margin architecture:** Model tariff-adjusted gross margins and logistics costs explicitly; use cost curves by region/supplier rather than static historical margins.
- **Capex and ramp risk:** Reflect nearshoring and dual sourcing capex, ramp delays, and temporary inefficiencies in free cash flow and mid-term multiples.
- **Customer and country concentration:** Incorporate scenario weights or discounts for exposure to restricted trade corridors (both sales and inputs).
- **Supply redundancy:** Incorporate the cost and timing impact of multi-sourcing and inventory buffers into forecasts.

### THE EXIT OUTLOOK DIMMED AFTER A PROMISING FIRST QUARTER

Global Buyout-Backed Exit Value, by Channel (\$ in Billions)



Sources: Dealogic, Bain analysis. As of June 2025.

## RATES AND RECESSION RISK

### Business Reality

“Higher for longer” has lifted required returns and compressed the portion of value that can be ascribed to multiple expansion.

### Valuation Implications

- **Cost of capital:** Use ranges (not single-point WACCs) and tie spreads and leverage to current LBO financing markets and covenant structures, since these markets set practical limits on debt capacity for private equity deals.
- **Exit math:** Anchor base-case exit multiples to current market conditions because they define today’s financing and leverage constraints. Then, incorporate scenario analysis for potential future environments, including long-term averages, rate changes, and macro shifts—since actual exits will occur years from now.
- **Downside resilience:** Build recession cases with explicit volume/price and working capital stresses; carry those through to debt capacity, covenants, and liquidity rather than treating them as purely equity shocks.
- **Cash conversion:** Consider cash metrics (FCF/ EBITDA, cash taxes, WC turns) in underwriting and valuations, in stressed sectors. Strong cash conversion signals the ability to service debt and sustain operations.

## POLICY: INDUSTRIAL STRATEGY AND FISCAL PACKAGES

### BUSINESS REALITY

Large policy programs, industrial incentives, domestic manufacturing credits, energy transition subsidies, infrastructure spending, and evolving trade measures are reshaping demand and capex cycles while introducing compliance and durability risk.

### VALUATION IMPLICATIONS

- **Subsidy durability:** Treat credits and incentives as probabilistic cash flows, understanding potential clawback and sunset clauses; discount policy-linked cash flows separately, if appropriate.
- **Crowded capacity:** In subsidized categories, underwrite margin pressure from accelerated capacity build-outs; avoid capitalizing temporary scarcity rents.

- **Compliance cost and timing:** Include reporting/ ESG/compliance spend and regulatory delays in investment phase economics.
- **Second-order effects:** Recognize how policy drives customers’ investments (e.g., onshored suppliers, grid upgrades), affecting your portfolio company’s mix and pricing power.

## FROM FINANCIAL LEVERAGE TO OPERATIONAL VALUE CREATION

All three forces (geopolitics, interest rates, and policy) push value determination toward operations: resilient supply chains, pricing discipline, productivity, and cash conversion. Practically, that means valuations should:

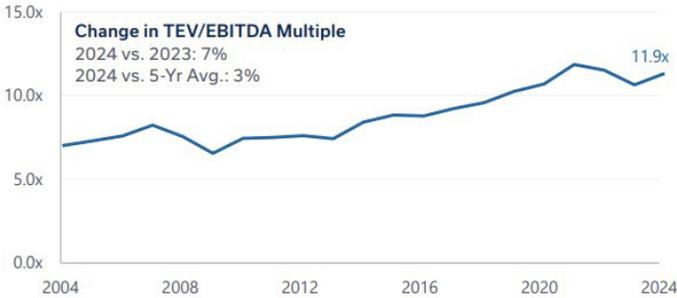
- **Quantify operator levers** (e.g., price, mix, procurement, footprint, SG&A redesign, etc.). While valuations may not explicitly model these factors, deal and operating teams should evaluate drivers such as pricing, mix, or SG&A redesign to support their value-creation thesis. Our role is to ensure those assumptions, when relevant, are reflected consistently within fair value analyses and calibration frameworks;
- **Link financing terms to the plan** (what capital structures are supported by the business under base and downside cases). While valuation analyses do not prescribe capital structures, they should consider whether the existing debt terms align with base and downside scenarios. Deal and finance teams can use this linkage to test the sustainability of leverage and ensure value conclusions remain grounded in realistic capital assumptions; and
- **Communicate with bridges** so LPs and investment committees can see how macro assumptions flow to NAV and liquidity decisions. In practice, many funds revisit NAVs in conjunction with semi-annual or year-end cycles rather than continuously, unless a major market or credit event occurs.

When done well, valuation becomes the common language between deal, operating, and finance teams, allowing sponsors to act earlier on add-ons, accelerate or defer exits, and navigate today’s macro environment without over- or under-reacting to short-term noise.

# HOW VALUATIONS SUPPORT FUND STRATEGY AND EXIT IMPACTS

## DEAL MULTIPLES ON THE RISE FOR THE U.S.

North America—Median Total Enterprise Value (TEV)/EBITDA Multiple



Sources: SPI by StepStone; Pitchbook LCD; LSEG.

## DEAL MULTIPLES ON THE RISE FOR EUROPE

Western Europe—Median TEV/EBITDA Multiple



## EVOLUTION OF PRIVATE EQUITY STRATEGY: FROM MULTIPLE ARBITRAGE TO OPERATIONAL VALUE CREATION AND ROLL-UP EXECUTION

Early private equity strategies relied heavily on multiple arbitrage: acquiring businesses at lower multiples and exiting at higher ones. However, increasing market efficiency and competition have reduced multiple arbitrage opportunities, prompting a shift toward focusing on operational improvements (cost-cutting, margin expansion, digitization, etc.) to create value. In addition, roll-up strategies have gained traction—acquiring smaller companies (often at lower multiples than the portfolio company’s multiples) to create scale and pricing power and improve strategic positioning.

Valuations help quantify and substantiate the incremental value creation from operational movements, providing investment and valuation committees with credible, audit-ready deliverables.

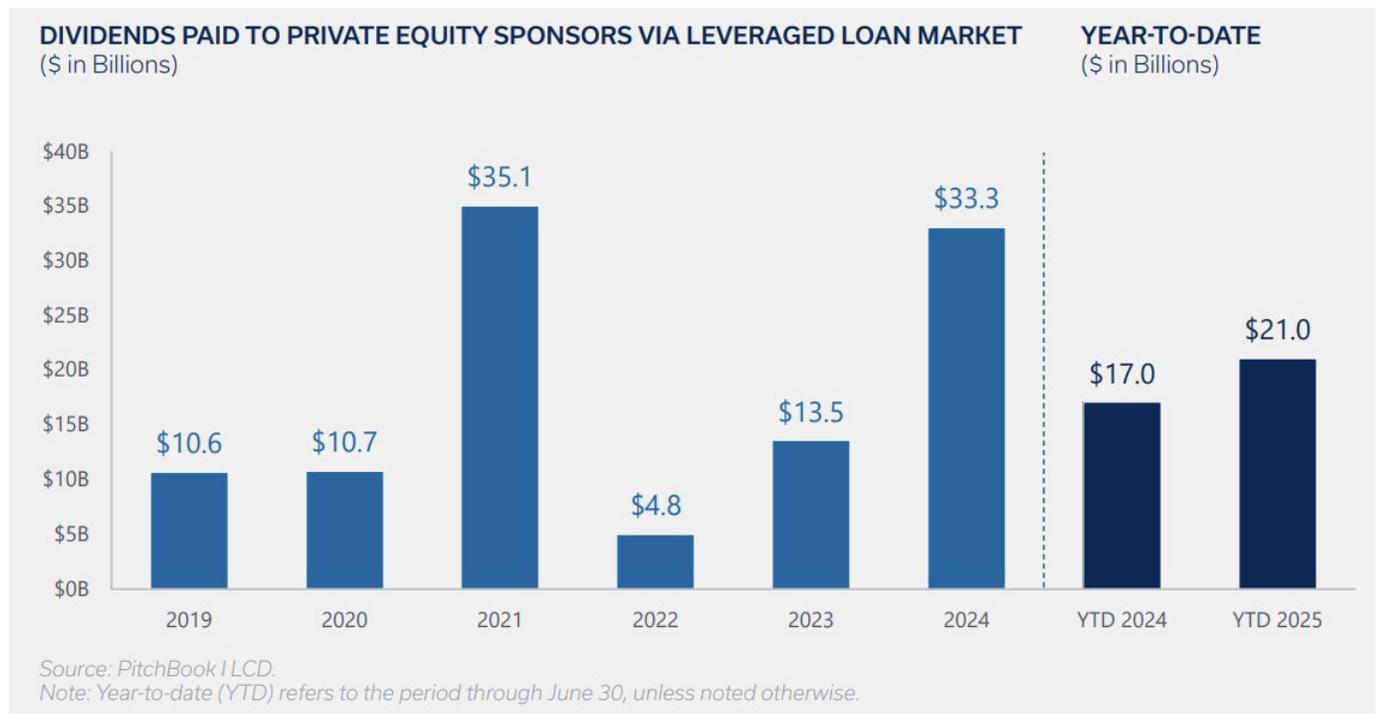
## THE ROLE OF VALUATIONS IN ROLL-UPS, BUYOUTS, DISTRESSED, AND CARVE-OUTS

Private equity valuations need to be tailored to the individual portfolio company under review and consider the short- and long-term strategies of the portfolio company, as well as the strategy of the private equity fund itself.

- **Roll-Ups:** Third-party valuations are informative in gauging whether tuck-in acquisitions are accretive. This relies on valuing synergy estimates, understanding pro forma financials, gauging execution risk, and ensuring consistency in valuation methodology.
- **Buyouts:** Regular valuations help private equity fund managers to determine appropriate risk-adjusted discount rates, market-participant-based leverage and equity contributions to the capital structure, and valuation multiples.
- **Distressed:** Third-party valuations account for downside protections and liquidation values in addition to the going concern value of the portfolio company, often incorporating potential restructuring and debt-equity conversion scenarios.
- **Carve-Outs:** Valuations are helpful in isolating the stand-alone equity values of carved-out businesses, as well as accounting for transitional operating agreements and one-off costs, ultimately helping inform private equity.

## VALUATION ROLES IN EVALUATING EXIT OPTIONS

The M&A landscape remains tepid, with sponsors extending average holding periods for private equity. Valuations can help portfolio managers benchmark internal reviews of exit readiness against market participant expectations, providing independent context for assessing potential liquidity options. When holding periods must be extended, valuations



can also provide support for additional options like GP-led secondaries and continuation vehicles.

- **Timelines:** While valuations are not predictive of future market recovery or timing, they provide an analytical baseline grounded in observable market evidence, supporting fund managers in evaluating exit alternatives or transaction fairness.
- **Secondary Transactions:** Robust valuations support pricing for LP interest sales or structured secondary solutions.
- **GP-Led Secondaries and Continuation Vehicles:** Independent valuations underpin fairness opinions or transaction valuation opinions, align GP and LP interests, and support transparency.

## DIVIDEND RECAPS GAIN MOMENTUM

Dividend recap activity has accelerated in 2025, with issuance already outpacing prior-year volume. Stable-to-declining rates, limited M&A and IPO exits, and longer private equity hold times are fueling demand as investors seek liquidity. At the same time, leverage levels remain elevated while spreads and yields have not yet normalized.

As dividend recap volumes grow under these conditions, boards and councils are placing greater focus on solvency. Independent transaction opinions provide directors and sponsors with critical protection.

## MID-HOLD EQUITY: A GROWING TREND IN FLEXIBLE CAPITAL

Mid-hold equity is gaining momentum as sponsors seek flexible capital solutions in today's constrained exit environment. Unlike continuation vehicles, which are typically driven by LP liquidity needs, mid-hold equity is designed to fund growth initiatives or recapitalize companies while maintaining exposure through a new fund or special purpose vehicle (SPV).

These structures can also arise when a fund is fully invested and seeks to retain exposure to a high-performing company, or when a portfolio company requires additional growth capital. Third-party valuations play a key role in this context by ensuring pricing fairness, mitigating potential conflicts of interest, and helping LPs and boards streamline approvals and execution timelines.

## GOVERNANCE AND RISK

Valuations in private equity are increasingly scrutinized by regulators, media, and LPs, with coverage in financial press and attention around retail and 401(k) access helping drive that focus.

While this scrutiny is well recognized, the practical takeaway is that governance itself is becoming a differentiator. Boards of directors and LPs are interested in whether managers have a repeatable process, clear documentation, and transparent bridges from company performance to fund NAV. Public Company Accounting Oversight Board (PCAOB) standards and recent amendments around

audit evidence and use of specialists are a reminder that auditors, too, face heightened expectations, making credible governance frameworks even more valuable in reducing friction during reviews.

### Possible takeaways:

- Emphasize repeatability and documentation ownership.
- Use clear bridges from portfolio performance to fund-level NAV to support limited partners and board confidence.
- Scenario and stress frameworks can show discipline and help withstand earlier, more probing audit reviews.
- Strong governance may also help differentiate sponsors in fundraising and audit processes, especially as auditors respond to PCAOB guidance.

## PCAOB AMENDMENTS AND VALUATION EVIDENCE

The PCAOB's standard on auditing accounting estimates, including fair value (AS 2501), has applied since 2020. This standard elevated auditor expectations around skepticism, evaluation of management inputs, and documentation, all of which remain central to audit readiness today.

In June 2024, the PCAOB adopted additional amendments related to technology-assisted audit procedures (primarily to AS 1105 and AS 2301), with conforming changes to AS 2501. The PCAOB's amended standards do not change fair value measurement principles but heighten auditor expectations around how valuation evidence is supported, documented, and tested under AS 2501 and related standards.

For private equity funds, this means governance frameworks and repeatable valuation processes are not just best practice, but are now central to audit readiness. Managers should anticipate auditors asking more questions earlier and place greater weight on the transparency of bridges from company performance to fund-level NAV (read more at PCAOB Standards and Evidence Project, <https://pcaobus.org/oversight/standards/auditing-standards/details/AS2501>).

### Effective Dates:

- AS 2501 (original): fiscal years ending on or after Dec. 15, 2020.
- 2024 amendments (technology-assisted procedures): Staggered implementation for audits of fiscal years beginning Dec. 15, 2024, with full application by Dec. 15, 2025.

## FROM COMPLIANCE TO CONFIDENCE

In today's private equity environment, valuations are no longer viewed as just a compliance exercise but serve as a foundation for investor confidence, governance credibility, and market readiness. A disciplined valuation framework can strengthen sponsor credibility during fundraising and liquidity events, where transparency and analytical rigor remain key differentiators.

Strong governance does not eliminate valuation uncertainty, but it helps build a process that investors, auditors, and boards can trust, reinforcing the bridge from compliance to confidence.

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# FROM DISTRESS TO DISTINCTION: A NEW LOOK AT VALUATION THROUGH OPTION PRICING

In my 30-plus years of experience in banking, particularly in managing leveraged finance loans for major regulated banks, I have witnessed firsthand the high-stakes environment surrounding distressed companies. Loans made to these firms are often considered among the riskiest in a financial portfolio, and when they underperform, the emotional response can be intense. The immediate reaction is often to explore selling the loans in the secondary market or, if that is not feasible, to engage in a blame game targeting management or the private equity firm that owns them.

However, if one can strip away the emotional turmoil and focus on the fundamental questions, one can better evaluate not only the debt that needs restructuring before bankruptcy but also the potential value of the firm post-bankruptcy. After transitioning from banking to advising startup businesses, I have come to realize that distressed companies and startup businesses often share similar traits: negative cash flows paired with the hope of recovery. This understanding is crucial in developing effective valuation methodologies for distressed entities, allowing investors to see beyond the immediate challenges and identifying pathways for such entities to generate future value.

In my current role advising startups on how to commercialize their ideas, I often refer to the first one to two years of the investment horizon as “the Death Valley.” During this critical phase, startups require a substantial amount of cash investment to navigate toward commercialization. I employ a probability approach to assess whether these companies can successfully make this transition. This involves estimating the likelihood of moving from concept approval to successful commercialization.

Interestingly, the same methodology can be applied to distressed companies facing periods of negative cash flow due to high leverage. If the underlying business has merit, the transition to deleveraging is often like that of a startup transitioning to commercialization. By evaluating the probability of a successful turnaround, one can better understand the potential

for these companies to resume operations and thrive in the future. This parallel highlights the importance of strategic investment and careful analysis in both cases, ultimately paving the way for recovery and growth.

## DISTRESSED COMPANY VALUATION OVERVIEW

To effectively value distressed companies, various methodologies are utilized to capture the complex financial dynamics involved. Each approach provides unique insights into the company’s potential for recovery and its ability to manage existing debt. The discounted cash flow (DCF) method offers a forward-looking analysis by estimating future unlevered cash flows, which aids in determining the present value of both equity and debt. Meanwhile, the option pricing method, based on the Black-Scholes model, assesses the probability of recovery and estimates the sustainable debt capacity of the company. Together, these methodologies create a robust framework for appraising distressed companies, allowing stakeholders to make well-informed decisions regarding investment and recovery strategies. In the remainder of this article, the DCF and option pricing methodologies will be applied to a real-world case study of Spirit Airlines’ bankruptcy. By combining these two approaches, one can determine the appropriate restructured debt level for the company post-bankruptcy.

## DESCRIPTION OF VALUATION METHODS

**DCF Method:** This estimates the company’s value based on its strategic plan spanning three to five years, focusing on unlevered cash flows (i.e., assuming no debt). By applying an appropriate discount rate, the present value of both equity and maximum debt can be determined. Note that cash flows in the initial one to two years are likely to be

negative, primarily due to the necessity of additional investments to facilitate business recovery.

The DCF valuation provides an estimate of the enterprise value of the firm, which represents one of the variables for the option pricing methodology discussed below.

**Option Pricing Method:** This approach utilizes the Black-Scholes model to assess the probability of recovery for a distressed company. It also helps determine the optimal amount of debt the company can sustain, considering the potential for recovery and the associated risks.

Using stochastic calculus, Black and Scholes came up with an approach to estimate the probability of future value or future payoff even if the intrinsic value of a call option today is out of the money. Their famous formula for calculating the up-front bet or premium for a European-style call option ( $C$ ) on a stock is:

$$C = S e^{-\delta t} N(d1) - X e^{-it} N(d2)$$

Where  $S$  is the current price of the stock,  $X$  is the exercise price at expiration,  $i$  is the risk-free rate and  $t$  is time to expiration. The formulas for calculating the probability factors  $d1$  and  $d2$  applied to  $S$  and the discounted value of the exercise price, respectively, are as follows:

$$d1 = \frac{\ln\left(\frac{S}{X}\right) + \left(i - \delta + \frac{\sigma^2}{2}\right)t}{\sigma\sqrt{t}} \text{ and } d2 = d1 - \sigma\sqrt{t}$$

Where  $\sigma$  is the standard deviation of  $S$  (usually estimated based on historical values) and  $\delta$  is the stock's dividend yield.  $N(d1)$  and  $N(d2)$  refer to the values calculated at  $d1$  and  $d2$  from a normal distribution of returns with mean  $i - \delta$  and standard deviation  $\sigma$ .

## CASE STUDY: SPIRIT AIRLINES CORPORATION

The study uses Black-Scholes to value the equity for a company that is currently in distress or bankruptcy. Of course, the equity value of such a company is expected to be close to zero or negative as the liabilities reported are higher than the assets of the company. Option pricing theory estimates the total value of the enterprise and its equity based on the present value of future cash flows post-bankruptcy. The following text box contains a news brief that

describes the key financial parameters of Spirit's bankruptcy restructuring filing.

### SPIRIT AIRLINES FILES FOR CHAPTER 11 BANKRUPTCY RESTRUCTURING

Spirit Airlines (SAVE) said Monday it has entered into Chapter 11 bankruptcy restructuring with the support of a supermajority of its debtors.

The bankruptcy, filed with the U.S. Bankruptcy Court for the Southern District of New York, will result in the likely delisting of the company from the New York Stock Exchange and the cancellation of its shares, the company said.

The discount airline said it has received commitments for \$350 million in equity investments and \$300 million in financing from existing debtors. The company will also equitize \$795 million in debt.

The company said flights, ticket sales, and reservations as well as payments to employees, vendors, and secured debtors are to continue as normal during the bankruptcy proceedings. The airline's Free Spirit loyalty program and Saver\$ Club perks and credit card terms for its customers will also continue, it added.

The restructuring of finances is meant to reduce debt, provide financial flexibility, and provide investments in passenger services, the company said.

The company said it expects to complete the financial restructuring process in Q1 of 2025.

MT Newswires. Mon, Nov. 18, 2024, at 12:02 p.m. EST

### SPIRIT AIRLINES CORPORATION CASE STUDY PARAMETERS

At the time of the filing, the amount of debt outstanding was \$3.3 billion with a weighted average duration of five years. This represents the exercise price  $X$  in applying Black-Scholes, as Spirit's equity investors will receive residual enterprise value after paying creditors, if any remain. To establish the (unlevered) value of Spirit's equity, enterprise value needs to be calculated.

**Table 1**  
**Debt and Equity Value at time of Bankruptcy**

Debt Assumptions		Value Assumptions (Pre-Bankruptcy)	
Debt Outstanding (\$ million)	\$3,266.9	Stock Monthly Variance (3 years before BK)	3.35%
Weighted Average Duration (years)	5.0	Bonds Monthly Variance (3 years before BK)	2.16%
Weighted Average Maturity (years)	8.7	Correlation between Stock/Bond (3 Years)	0.25
Weighted Average Cost of Capital (WACC)	10%	Debt Proportion (3 Years)	88.30%
Tax Rate	26%	Outstanding Shares (million)	109.52

Spirit's management put together a business plan including five years of financial projections (see assumptions in Table 2 below). In the first year, the company plans to spend more money on restructuring costs and downsizing. Based on the five-year projection, the equity analyst can calculate the present value of future cash flows, plus an estimated terminal value, discounted at the firm's weighted average cost of capital of 10.5%.

## APPLYING THE OPTION PRICING MODEL FRAMEWORK

Equity investors in the distressed company essentially own a call option in the distressed company with a strike price equal to the value of the company's debt. Therefore, the payoff formula or intrinsic value of the option is as follows:

$$\text{Option payoff} = \text{Max}(0, S - X)$$

where S is the stock price and X is the exercise price.

To calculate the enterprise value (EV) of the firm:

$$EV = E + D - C \text{ or } EV = E + \text{net D}$$

Where E is the equity value, D is the value of debt and C is the amount of cash available. D - C represents

net debt (net D) and represents the amount of debt remaining after paying down debt with cash on hand.

Solving for equity:

$$E = EV - \text{net D}$$

The equity in a firm is the residual value after the company defaults. That is, the equity is at the bottom of the waterfall from any proceeds from selling the firm. These proceeds are used to pay the debt and other financial claims first, and anything that is left over is payable to equity holders.

## PUTTING IT ALL TOGETHER

To calculate the present value of the equity of the firm during distress where the current value of equity is negative, that is the debt is higher than the enterprise value or in option terms  $S - X < 0$ , the analyst can use the Black-Scholes model based on future cash flows post-debt restructuring or bankruptcy.

The equity can be viewed as a call option (C) premium, which can be valued whereas the debt and other financial claims can be viewed as the exercise price (X) and the enterprise value can be viewed as the current stock price (S). Since the debt of the firm has a maturity date, the equity investors can liquidate the firm at any time prior to that date, analogous to

**Table 2**  
**Proposed Financial Projections post-Bankruptcy**

Operating Assumptions	2022	2023	2024	2025	2026	2027	2028	2029
Revenue Growth Rate		5.8%	-4.4%	0.0%	10.0%	10.0%	10.0%	10.0%
Cost of Revenue as % of Revenue	98.4%	89.0%	94.5%	94.5%	85.0%	85.0%	80.0%	80.0%
Operating Expense as % of Revenue	17.5%	18.3%	18.8%	19.0%	18.0%	17.0%	15.0%	15.0%
Discounted Cash Flow Analysis (\$ million)	2022	2023	2024	2025	2026	2027	2028	2029
Revenue	\$ 5,068.4	\$ 5,362.5	\$ 5,126.7	\$ 5,126.7	\$ 5,639.4	\$ 6,203.3	\$ 6,823.7	\$ 7,506.0
Cost of Revenues	(4,989.4)	(4,771.7)	(4,845.1)	(4,845.1)	(4,793.5)	(5,272.8)	(5,458.9)	(6,004.8)
Operating Expenses	(888.8)	(983.1)	(964.6)	(974.1)	(1,015.1)	(1,054.6)	(1,023.6)	(1,125.9)
Earnings Before Interest and Taxes (EBIT)	(809.8)	(392.3)	(683.0)	(692.5)	(169.2)	(124.1)	341.2	375.3
Interest				-	-	-	-	-
Taxes				(180.0)	(44.0)	(32.3)	88.7	97.6
Net Income				(512.5)	(125.2)	(91.8)	252.5	277.7
Less Maintenance CapEx (offset by depreciation)				-	-	-	-	-
Less Working Capital (assuming \$0)				-	-	-	-	-
<b>Cash Flow</b>				<b>(512.5)</b>	<b>(125.2)</b>	<b>(91.8)</b>	<b>252.5</b>	<b>277.7</b>
Terminal Value (10.0x EBIT)								3,753.0
				<b>\$ (512.5)</b>	<b>\$ (125.2)</b>	<b>\$ (91.8)</b>	<b>\$ 252.5</b>	<b>\$ 4,030.7</b>
<b>Enterprise Value (Present Value of the firm)</b>								<b>\$2,036.9</b>

exercising a call option any time before the option expires (American-style option).

The following steps perform the necessary calculations for Spirit Airlines.

### Step 1 - Find the annualized variance in the firm's stock and bond prices

Annualized Variance in Stock Price ( $\sigma_s^2$ )	0.401902	(annual)
Annualized Variance in Bond Price ( $\sigma_d^2$ )	0.259200	(annual)
Standard Deviation of Stock ( $\sigma_s$ )	0.633957	
Annualized Variance in Bond Price ( $\sigma_d$ )	0.509117	

### Step 2 - Find the annualized variance in firm value

$$(W_e^2 \times \sigma_e^2) + (W_b^2 \times \sigma_b^2) + 2 \cdot W_e \cdot \sigma_e \cdot W_b \cdot \sigma_d \cdot \text{Cor}$$

Weighted Average of Equity ( $W_e$ )	11.70%	Correlation (Cor)	0.25
Weighted Average of Debt ( $W_d$ )	88.30%		
Annualized Variance in firm value	0.211765		

The five-year bond rate (corresponding to the weighted average duration of 5.1 years) is 6.0%.

### Step 3 - Find the value of call based upon the following parameters of equity as a call option

Value of the underlying asset = S = Value of the firm	\$ 2,036.9
Exercise Price = X = Face Value of outstanding debt	\$ 3,266.9
Life of the option = t = Weighted average duration of debt	5 years
Variance in the value of the underlying asset = $\sigma^2$	0.2117651
Riskless Rate = I = T-bond for option life	6.00%

$$d1 = \frac{\ln\left(\frac{S}{X}\right) + \left(i - \delta + \frac{\sigma^2}{2}\right)t}{\sigma\sqrt{t}} \text{ and } d2 = d1 - \sigma\sqrt{t}$$

Value of the call (Equity)	\$ 695.1 million
Per share	\$ 6.35

Restructuring of Debt	\$ 2,571.8 million
Debt Recovery	78.70%

Even though the current value of Spirit's equity is approximately -\$1.2 billion (Enterprise Value of \$2.1 billion – Debt of \$3.3 billion), indicating that the implied call option is out of the money, the present value of equity at maturity is estimated to be \$695 million. Subtracting this amount from the current pre-bankruptcy debt of \$3.3 billion results in approximately \$2.6 billion of debt value that needs to be restructured, translating to an expected recovery rate of 78.7% (\$2,571.8/\$3,266.9).

## CONCLUDING THOUGHTS

Valuing any entity with a narrative involves a variety of methodologies. For instance, a startup that requires significant investment but currently has no revenue may present a compelling story about how its innovative idea could yield substantial returns for investors once fully developed. Conversely, a company may retain value even after experiencing negative cash flow that leads to bankruptcy, provided that its substantial debt obligations can be restructured, allowing the company not only to survive but also to thrive.

Regardless of whether one is evaluating an emerging startup or a distressed company, the valuation process can be successfully executed by considering three critical questions that guide the assessment:

- How is the company performing compared to the previous year or over the past few years, indicating a trend toward success? This is known as "trend analysis."
- How does the company measure up against its peers? This is referred to as "peer analysis."
- How is the company performing relative to established expectations of success? This is called "expected analysis."

By effectively addressing these three questions, the valuation process can be streamlined. Various methods, including DCF analysis to assess trends, peer analysis to evaluate competitive positioning, and options-based approaches to gauge expectations of success, can then be utilized to produce a comprehensive assessment.

*This article was originally published by the Society of Actuaries, April 2025.*

## ABOUT THE AUTHOR



**Chris Droussiotis**  
Kinisis Ventures

Chris Droussiotis is an author, lecturer, and financial advisor with over 30 years of experience in investment banking. He has held senior roles at Bank of America Merrill Lynch, MUFG, and Sumitomo Mitsui Banking Corporation, leading Private Equity, M&A, and Leveraged Finance teams. He is currently a Senior Managing Partner at Kinisis Ventures Limited, advising international startups expanding into the US market, and a Lecturer at Columbia University. He is the author of three textbooks on valuation, credit risk, and investment strategies.

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## MEMBERS ON THE MOVE

### MICHAEL FUSSMAN, CIRA, CDBV PROMOTED TO PARTNER AT COHNREZNICK



January 7, 2026 – CohnReznick, a leading professional services firm, today announced the promotion of 14 professionals to its partnership, effective February 1, 2026, including Michael Fussman, CIRA, CDBV. Michael is located in the Chicago office, where he leads the Dispute Resolution practice of CohnReznick Advisory LLC.

Michael has more than 20 years of experience in valuation, corporate finance, fraud and forensic investigations, performance improvement, and mergers and acquisitions. He has been retained to offer opinions on reorganization value, solvency, and the value of distressed assets. Additionally, he provides valuation services in the context of litigation, financial reporting, and mergers and acquisitions. He has valued going concerns and various assets in industries including manufacturing, technology, oil and gas, building materials, real estate, financial services, Software as a Service (SaaS) and media. His fraud investigation work has encompassed securities fraud, financial reporting fraud, and embezzlement. His experience in mergers and acquisitions includes buy side and sell side assignments such as identification and valuation of targets and deal due diligence. Michael also has experience in the valuation and marketing of intellectual property.

Prior to joining CohnReznick, Michael was the co-leader of Baker Tilly's Bankruptcy and Restructuring Practice. Past experience includes positions with Huron Consulting Group, Charles River Associates, InteCap, Navistar, and Gibson & Associates. He was also one of the founding members of the Internet start-up, Salon 123, Inc., a SaaS provider to the salon industry. Michael received his MBA from the University of North Carolina Kenan-Flagler Business School and a BBA in Finance from the University of Notre Dame.



## ROBERT KLAMSER APPOINTED CHIEF INNOVATION OFFICER AT STRETTO

IRVINE, Calif., Jan. 13, 2026 – Stretto, a market-leading legal services and technology firm, appointed Robert Klamsler as chief innovation officer. In this newly created role, Robert will lead the company's artificial intelligence (AI) strategy, product innovation, and the advancement of its technology platforms serving legal and financial professionals.

"At Stretto, we've fostered a culture of innovation and executed on our vision to build a comprehensive technology platform that serves legal and financial professionals engaged in complex transactions," comments Jonathan Carson, co-CEO at Stretto. "Robert has played a significant role in this journey, and we are excited that he is taking on this new position to drive the company's continued evolution as a market leader in technology solutions for the legal and financial market."

As chief innovation officer, Robert will direct the development and implementation of technologies designed to streamline complex legal and financial matters. He will also oversee the expansion of Research Suite by Stretto, a research and insights AI-powered platform purpose-built by restructuring professionals and used in over 70% of the nation's largest Chapter 11 cases. Drawing on his business acumen and record as a successful founder and executive, Robert will focus on architecting solutions that anticipate market needs and deliver measurable value for Stretto's clients.

Prior to joining Stretto, Robert co-founded UpShot Services, the company that introduced electronic claims and ballot filing to the corporate restructuring industry. After the acquisition by Stretto, Robert served as chief revenue officer, leading revenue strategy at the company. He was featured in *The Wall Street Journal*, *ABI Journal*, and *Law360*. Robert has received the American Bankruptcy Institute's "40 Under 40" Award and *The M&A Advisor's* Emerging Leader Award.

"I am excited to be leading the charge as Stretto continues forward on its mission of bringing new solutions to our clients," Robert comments. "Our industry is ready for new tools that enable professionals to make smarter decisions faster by transforming raw data into actionable insight. As the legal and regulatory landscape is continually

changing, Stretto focuses on helping them stay one step ahead."

Earlier this year, Stretto introduced Stretto Conductor, the first generative AI communication and research platform designed specifically for Chapter 11 cases. With leading-edge AI technology purpose-built for bankruptcy proceedings, Stretto Conductor automates document analysis and streamlines information retrieval while also ensuring that critical case information reaches stakeholders instantaneously.

The introduction of Stretto Conductor represents the debut offering from Stretto Intelligence, showcasing the company's commitment to pioneering AI-enabled solutions that empower legal professionals to achieve unprecedented levels of efficiency and success. Under Robert's leadership, Stretto plans to expand its suite of AI-powered innovations with a continued focus on elevating the efficiency of case management.

### *About Stretto*

Stretto delivers a full spectrum of technology tools, case-management services, and depository solutions to legal and financial professionals. Offering a comprehensive suite of corporate-restructuring and consumer-bankruptcy capabilities along with multi-faceted deposit and disbursement services, Stretto provides an unparalleled portfolio of solutions under the executive leadership of industry veterans Eric Kurtzman and Jonathan Carson. Stretto leverages subject-matter expertise and market insights to facilitate every aspect of case and cash management for its clients. For more information about Stretto, visit [www.stretto.com](http://www.stretto.com).

### *About Stretto Intelligence*

As Stretto's innovation engine, Stretto Intelligence applies AI where it delivers the greatest value across the complex, high-stakes workflows of legal and financial professionals with AI-fueled tools, research, and insights. Every innovation in the Stretto Intelligence portfolio meets the highest standards of security, confidentiality, and control. It embodies Stretto's commitment to staying ahead – deploying emerging technologies with precision to drive meaningful, measurable impact.

AIRA PROFESSIONAL CERTIFICATION

# 2025 CIRAs & CDBVs

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<b>Kyle Chapman</b> <i>KTC Accounting</i> New Paltz, NY	<b>Brett Joshpe</b> <i>M3 Partners</i> New York, NY	<b>Boris Steffen</b> <i>Province, LLC</i> Miramar, FL	
<b>Paul Coloma</b> <i>Alvarez &amp; Marsal</i> Atlanta, GA	<b>Joseph Josifoski</b> <i>KPMG LLP</i> Detroit, MI	<b>Warren Su</b> <i>Alvarez &amp; Marsal</i> Long Island City, NY	

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### UPCOMING COURSES

#### CIRA 2026 COURSE SCHEDULE

**Part 2: Plan Development**  
April 15–23, 2026 ONLINE (WEBEX)

**Part 3: Financial Reporting, Taxes & Ethics**  
May 13–21, 2026 ONLINE (WEBEX)

**Part 1: Managing Turnaround & Bankruptcy Cases**  
June 1–2, 2026 NASHVILLE, TN

**Part 2: Plan Development**  
July 8–16, 2026 ONLINE (WEBEX)

**Part 3: Financial Reporting, Taxes & Ethics**  
September 2–10, 2026 ONLINE (WEBEX)

**Part 1: Managing Turnaround & Bankruptcy Cases**  
October 13–21, 2026 ONLINE (WEBEX)

#### CDBV 2026 COURSE SCHEDULE

**Part 2: Advanced Business Valuation**  
March 3–12, 2026 ONLINE (WEBEX)

**Part 1: Bankruptcy Code & Valuation**  
June 1–2, 2026 NASHVILLE, TN

**Part 3: Valuation in Bankruptcy**  
August 11–20, 2026 ONLINE (WEBEX)

**Part 1: Bankruptcy Code & Valuation**  
October 13–21, 2026 ONLINE (WEBEX)

● **Arrive early for BRC.** CIRA/CDBV Part 1 is held in Nashville June 1–2 at the Loews Vanderbilt Hotel, right before the Bankruptcy & Restructuring Conference (BRC26) begins. See page 36 for BRC details.



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# AN INVITATION FROM THE *AIRA JOURNAL* EDITORIAL BOARD

## SUBMIT YOUR ARTICLE OR PROPOSE A TOPIC

AIRA members and others are invited to submit articles, proposed topics and content-related questions to the *AIRA Journal* Editorial Board at [editorialboard@aira.org](mailto:editorialboard@aira.org)

Articles are currently being accepted for upcoming quarterly issues; see *AIRA Journal* information and Authoring Guidelines at [www.aira.org/journal](http://www.aira.org/journal).

To inquire about placing an ad or press release in the *AIRA Journal* contact Cheryl Campbell, [ccampbell@aira.org](mailto:ccampbell@aira.org).

# AIRA Distinguished Fellows Program

The AIRA Distinguished Fellows Program was created by AIRA's Board of Directors to recognize significant contributions to the art and science of corporate restructuring. The nomination period is open now for 2026 inductions.

## Purpose of Distinguished Fellows Program

- To provide a senior-level status that recognizes AIRA member achievements and contributions to the field of corporate restructuring and to AIRA.
- To distinguish AIRA members who exemplify the highest level of excellence in professional practice and whose contributions have left a significant positive legacy to the profession and the organization.

## Nomination Process

Elevation to the status of AIRA Distinguished Fellow is by invitation only through a nominating process which includes:

- Submission of completed forms by any AIRA member, and
- Approval by AIRA's Board of Directors.

AIRA members who meet the following criteria are eligible to be nominated. At the time of nomination, a nominee must:

- Be an AIRA member in good standing for at least 10 years, and
- Have made contributions to the art and science of corporate restructuring and to the AIRA that may be deemed outstanding by AIRA's Board of Directors.

Additional information about AIRA's Distinguished Fellows Program and nomination forms are available at [www.aira.org](http://www.aira.org).