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Winston & Strawn Sponsors the American Bankruptcy Institute's Annual Spring Meeting

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Winston & Strawn's Restructuring & Insolvency Practice was a proud sponsor of the American Bankruptcy Institute's Annual Spring Meeting.

KEY TAKEAWAYS

1. Winston leads the world in digital asset and cryptocurrency lending platform and exchange insolvency filings. This is a new industry that only recently, with the filing of the Cred Inc. case in 2020, where Craig Rasile represented the Unsecured Creditors Committee, has encountered the creation of new law governing the insolvency of companies that feature digital assets and the blockchain as their primary business drivers. Since Cred's bankruptcy in December 2020, several cryptocurrency exchanges have filed bankruptcy including Voyager Digital, Celsius Network, Three Arrows Capital, FTX, Blockfi, and Genesis. Panelists at the ABI Spring Meeting advised the professionals in attendance to continue to watch for more peripheral companies in this industry, both large and small.
2. Several panelists anticipated an increase in bankruptcy filings for the next 24 months where the primary purpose was to conduct a 363 sale in the bankruptcy court where purchasers of assets can obtain a sale order that transfers the seller's assets to the buyer free and clear of liens, claims, and encumbrances. Commentators struggled to name just a few large Chapter 11 cases where the primary purpose of the case was to reorganize the debtor company as a going concern. That still happens in the airline and health care industries to a certain extent but usually with the largest providers in those industries.
3. A new trend among debtor lawyers who anticipate problems among creditors, the U.S. Trustee, and even the Court with the prepetition management team upon the filing of a new Chapter 11, is to pepper the Board of Directors with "independent" directors or a chief restructuring officer (CRO) prior to the bankruptcy filing. These are individuals who can provide a fresh perspective to a financially or operationally challenged company and who have no fault for the company's current distressed situation. The U.S. Trustee from Boston spoke about his office's concerns with the infusion of new management on the eve of a bankruptcy filing, specifically advising the audience that the UST's Office remains skeptical about the infusion of new personnel. This was an interesting dynamic insofar as the other panelists highly touted this strategy as a good way to identify who the real perpetrators were that allowed the company to enter the zone of insolvency.

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Craig V. Rasile



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