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## THE RISE OF BANKRUPTCY DIRECTORS AND THE EVOLUTION OF CORPORATE GOVERNANCE IN CHAPTER 11

*The growing use of “bankruptcy directors” has emerged as a notable development in chapter 11 practice, particularly in sponsor-controlled restructurings. These directors — often restructuring professionals appointed shortly before a bankruptcy filing — are frequently tasked with negotiating restructuring transactions, evaluating insider claims, and managing conflicts involving controlling shareholders. Proponents argue that bankruptcy directors enhance board expertise and help address governance conflicts that arise when financially distressed companies are controlled by private equity sponsors or other insiders. Critics contend that the practice can shift investigative authority away from unsecured creditors’ committees, which traditionally serve as the principal watchdog for creditor interests in chapter 11 cases. Drawing on recent empirical research and several prominent restructurings — including Cengage Learning, Nine West, Payless Shoes, and Neiman Marcus — this article examines how bankruptcy directors operate in practice and how their role affects the balance of power between debtor boards and creditor committees. The article concludes that while bankruptcy directors may improve governance in some circumstances, their growing prevalence raises important questions about transparency, independence, and the appropriate allocation of investigative authority in chapter 11 proceedings.*

By Stephen B. Selbst \*

### INTRODUCTION

Chapter 11 is constantly changing. Amendments to the Bankruptcy Code often codify developments in practice rather than drive them. Congress’s enactment of section 524(g) of the Bankruptcy Code was a codification of the lawyers’ structure, not a legislative innovation.<sup>1</sup> It was lawyers and the late Judge Burton Lifland who created the trust structure for the benefit of asbestos victims.<sup>2</sup> Although the drafters of the Bankruptcy Code assumed that the goal of a successful chapter 11 case was confirmation of a plan of reorganization and

continuation of the debtor’s business, beginning in the 1980s sales of a debtor’s business became the dominant form of industrial reorganization.

It is therefore unsurprising that corporate governance in chapter 11 has evolved as well. The increasing use of “bankruptcy directors” reflects that evolution. Their use adheres to the form of traditional corporate governance but often departs from it in operation. These directors, typically restructuring professionals such as former investment bankers, restructuring advisors, or attorneys, are appointed to the debtor’s board shortly before or after the commencement of chapter 11 proceedings. They are often tasked with evaluating potential claims against insiders, negotiating restructuring transactions, and addressing conflicts of interest that arise in connection with the restructuring. Many bankruptcy

<sup>1</sup> 11 U.S.C. § 524(g).

<sup>2</sup> DAVID A. SKEEL, JR., *DEBT’S DOMINION: A HISTORY OF BANKRUPTCY LAW IN AMERICA* 131–59 (2001).

\* STEPHEN B. SELBST is a partner at Herrick, Feinstein LLP’s New York City office. His e-mail address is [sselbst@herrick.com](mailto:sselbst@herrick.com).

directors have served in that role on multiple occasions, giving rise to criticism that they function as repeat players within the restructuring ecosystem. Advocates argue that bankruptcy directors bring expertise that incumbent directors frequently lack and are willing to engage directly with the restructuring process. The increasing use of bankruptcy directors reflects several related developments. Many distressed companies are controlled by private equity sponsors that may face potential claims by creditors. Restructuring transactions have become more complex and often involve negotiations among multiple creditor constituencies with competing interests.

Empirical research has documented the increasing prevalence of bankruptcy directors, particularly in sponsor-controlled cases, and has identified a relatively small group of repeat-player directors who serve in multiple large chapter 11 cases.<sup>3</sup> Critics argue that repeat-player bankruptcy directors, often appointed by boards influenced by restructuring advisors and private equity sponsors, may alter the balance of power in chapter 11 by relocating investigative authority from creditor committees to debtor-appointed fiduciaries. Proponents contend that bankruptcy directors provide expertise, efficiency, and a mechanism for managing conflicts within the debtor's governance structure.

This article examines the rise of bankruptcy directors and their implications for corporate governance in chapter 11 cases. Part I reviews the allocation of authority between debtor boards and creditor committees under the Bankruptcy Code. Part II examines who serves as bankruptcy directors and the structural features of their appointment. Part III analyzes the interaction between bankruptcy directors and creditor committees, particularly in sponsor-controlled cases in which insider claims are central to restructuring negotiations. Part IV examines several recent cases — including Cengage Learning, Nine West, Payless Shoes, and Neiman Marcus — that illustrate how bankruptcy directors can influence investigative authority and settlement outcomes. The article concludes by considering whether the increasing use of bankruptcy directors represents a

natural evolution of chapter 11 governance or a development that warrants heightened judicial scrutiny.

## I. CORPORATE GOVERNANCE FRAMEWORK IN CHAPTER 11

The Bankruptcy Code does not displace a debtor's corporate governance structure upon the commencement of a chapter 11 case. With limited exceptions, the debtor remains in possession of its assets and continues to operate its business.<sup>4</sup> The board of directors retains authority to make decisions regarding the management of the enterprise, including the pursuit or settlement of litigation, the negotiation of restructuring transactions, and the approval of the sale of the debtor's business.<sup>5</sup>

The debtor-in-possession model was itself a departure from prior practice under the Bankruptcy Act, under which trustees were frequently appointed in Chapter XI cases and managerial control was more routinely displaced.<sup>6</sup> The 1978 Code reflected Congress's judgment that continuity of management would generally preserve value more effectively than automatic trustee control.

At the same time, Congress recognized that leaving control with existing management created the potential for conflicts, particularly where creditors rather than shareholders are the primary economic stakeholders. To address that concern, the Code provides for the appointment of an official committee of unsecured creditors.<sup>7</sup> The committee serves as a fiduciary representative of unsecured creditors and is authorized, among other things, to investigate the debtor's financial affairs and to participate in the formulation of a plan.<sup>8</sup>

The investigative authority granted to creditor committees is not incidental. Committees routinely examine prepetition transactions, evaluate potential

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<sup>4</sup> 11 U.S.C. § 1107(a).

<sup>5</sup> 11 U.S.C. § 363(b).

<sup>6</sup> Skeel, *supra* note 2, at 107–10.

<sup>7</sup> 11 U.S.C. § 1102(a)(1).

<sup>8</sup> 11 U.S.C. § 1103(c).

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<sup>3</sup> Jared A. Ellias, *Bankruptcy Directors*, 94 S. CAL. L. REV. 1307 (2021).

avoidance actions, and investigate transfers involving insiders and affiliates. Where a debtor declines to pursue colorable estate claims because of conflicts, courts have authorized creditor committees to pursue such claims derivatively on behalf of the estate.<sup>9</sup> The rationale for derivative standing is straightforward: where those in control of the debtor are conflicted, an independent fiduciary may be required to protect creditor interests.

Chapter 11 establishes a dual governance structure. Debtor boards retain managerial authority; creditor committees exercise investigative and oversight powers. The increasing use of bankruptcy directors operates within, and potentially recalibrates, that framework.

## II. WHO SERVES AS BANKRUPTCY DIRECTORS AND WHAT ROLES THEY PLAY

### A. *The Case for Bankruptcy Directors: Expertise and Fiduciary Prudence*

Supporters of the practice advance a fiduciary-based defense. Many incumbent directors lack meaningful experience in restructuring or creditor negotiations. Delaware jurisprudence has long emphasized that directors must act on an informed basis and obtain competent expert advice when confronting complex transactions.<sup>10</sup> Against that backdrop, appointing restructuring professionals to a board can be understood as an effort to ensure that the board itself possesses the expertise required to discharge its duties in a distressed environment.

Under this view, bankruptcy directors enhance governance integrity rather than undermine it. The board, faced with extraordinary financial distress and complex negotiations among multiple creditor constituencies, supplements itself with directors possessing the experience necessary to manage those challenges. That approach is presented not as an abdication of responsibility, but as a fulfillment of fiduciary duty.

### B. *The Practical Role of Bankruptcy Directors*

In practice, bankruptcy directors often lead restructuring efforts. Empirical research shows that in a significant majority of cases in which they are appointed, bankruptcy directors play a central role in negotiations.<sup>11</sup> Their responsibilities frequently include

<sup>9</sup> *In re STN Enters., Inc.*, 779 F.2d 901, 904–05 (2d Cir. 1985).

<sup>10</sup> *Smith v. Van Gorkom*, 488 A.2d 858, 872–73 (Del. 1985).

<sup>11</sup> *Ellias*, *supra* note 3, at 1338–41.

leading negotiations with secured lenders and unsecured creditor groups, overseeing preparation for a chapter 11 filing, evaluating debtor-in-possession financing proposals, negotiating section 363 sales, analyzing sponsor conflicts, and investigating and negotiating resolution of potential estate claims.

In sponsor-controlled cases, bankruptcy directors may evaluate transactions in which the sponsor acts simultaneously as equity holder, proposed debtor-in-possession lender, and stalking horse bidder in a section 363 sale. These transactions, absent procedural safeguards, would ordinarily implicate the entire fairness standard under Delaware law.<sup>12</sup>

### C. *Repeat Players and Sponsor Influence*

Professor Jared Ellias’s study identified a relatively small group of repeat players who serve in numerous large chapter 11 cases.<sup>13</sup> Investment bankers comprised approximately 41 percent of bankruptcy directors, and attorneys approximately 19 percent.<sup>14</sup> Twenty “super-repeaters” averaged 17 cases each, and one served in 31 cases.<sup>15</sup> In roughly 71 percent of the cases studied, bankruptcy directors led restructuring efforts.<sup>16</sup>

In sponsor-controlled companies, private equity sponsors and their advisors frequently influence board composition. Bankruptcy directors are typically appointed shortly before filing, without creditor approval and without bankruptcy court review. Unlike professionals retained under section 327, they are not subject to statutory disinterestedness requirements.<sup>17</sup>

Those structural features become significant when bankruptcy directors are tasked with investigating claims against the sponsors who influenced their appointment. Delaware law permits cleansing of controlling shareholder conflicts through properly structured independent committees, including under the framework articulated in *Kahn v. M&F Worldwide Corp.* (“MFW”).<sup>18</sup> Bankruptcy practice has, in effect,

<sup>12</sup> *Weinberger v. UOP, Inc.*, 457 A.2d 701, 710–11 (Del. 1983).

<sup>13</sup> *Ellias*, *supra* note 3, at 1332–36.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 1340.

<sup>17</sup> 11 U.S.C. § 327(a).

<sup>18</sup> *Kahn v. M&F Worldwide Corp.*, 88 A.3d 635 (Del. 2014).

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borrowed from that jurisprudence. The appointment of a bankruptcy director is often presented as a mechanism for restoring independence within the board.

Whether the analogy holds in insolvency, where creditors rather than shareholders frequently occupy the position of residual risk-bearers, is a more complicated question.

### **III. BANKRUPTCY DIRECTORS AND THE POTENTIAL DISPLACEMENT OF THE CREDITOR COMMITTEE'S INVESTIGATIVE ROLE**

#### **A. Borrowing from Delaware**

Delaware law has long encouraged independent directors and special committees to manage conflicts, and under certain circumstances their use can shift review from entire fairness to business judgment.<sup>19</sup> Bankruptcy practice has borrowed from this model. In sponsor-controlled cases, appointing a bankruptcy director is often presented as curing internal conflicts and enabling board action.

The analogy, however, is imperfect. In insolvency, creditors frequently replace shareholders as the residual risk-bearers. Whether the deference accorded to independent directors in solvent company settings should apply automatically in sponsor-led reorganizations remains open to serious question.

#### **B. Disclosure and Transparency**

In public-company governance, director backgrounds and affiliations are subject to mandatory disclosure. Bankruptcy directors, often appointed on the eve of filing, are not subject to section 327 retention procedures or verified disclosure statements. This stands in tension with the long-recognized principle that bankruptcy depends upon transparency and full disclosure.<sup>20</sup>

#### **C. Impact on Derivative Standing and Investigative Authority**

Where a bankruptcy director investigates insider claims and concludes they lack merit, committees may find it more difficult to obtain derivative standing. The inquiry shifts from insider conflict to the adequacy of the investigation. That shift can materially affect leverage and judicial framing of disputes.

The case law reflects that this tension is not theoretical. In a number of large sponsor-controlled restructurings, bankruptcy directors and unsecured creditors' committees have found themselves in direct opposition. Bankruptcy directors have asserted sole authority to conduct investigations of insider transactions and to determine whether estate claims should be pursued. Committees, in turn, have sought derivative standing or expanded investigative authority, arguing that investigations controlled by board-appointed fiduciaries are structurally conflicted or insufficiently rigorous.

In some cases, bankruptcy directors have opposed committee efforts to retain independent financial advisors or valuation experts. In others, debtors have resisted efforts by committees to expand investigative budgets or extend investigative timelines, contending that the directors' review was adequate. The resulting disputes are not merely procedural. They go to the core allocation of authority contemplated by chapter 11: whether investigation of insider conduct resides primarily within the debtor's governance structure or within the adversarial oversight role of the creditors' committee.

As the next section illustrates, these conflicts have shaped negotiations, influenced settlements, and, in certain cases, affected ultimate recoveries.

### **IV. CASE STUDIES: BANKRUPTCY DIRECTORS IN PRACTICE**

The structural dynamics described above are not theoretical. They have played out in a series of large sponsor-controlled chapter 11 cases in which bankruptcy directors were appointed to investigate insider transactions and manage restructuring negotiations. These cases illustrate how the appointment of bankruptcy directors can influence investigative authority, shape leverage between debtor and creditor constituencies, and affect settlement outcomes. They do not establish a uniform pattern. They do, however, demonstrate that when control of the investigative process shifts to board-appointed fiduciaries, the balance between debtor governance and creditor oversight may be recalibrated in consequential ways.

#### **A. Cengage Learning**

Cengage Learning was acquired by Apax Partners in a leveraged buyout valued at approximately \$7.75 billion, financed in large part by \$5.6 billion in debt incurred by the company.<sup>21</sup> After Cengage experienced

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<sup>19</sup> Weinberger, 457 A.2d at 710–11; *see also* MFW, 88 A.3d at 644–45.

<sup>20</sup> *See, e.g., In re Coastal Plains, Inc.*, 179 F.3d 197, 208 (5th Cir. 1999) (emphasizing bankruptcy's strict disclosure obligations).

<sup>21</sup> Ellias, *supra* note 3, at 1342–44 (discussing Cengage).

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financial distress, the value of its first-lien bank debt declined significantly. Apax repurchased more than \$1 billion of that debt at a discount, positioning itself to retain control following restructuring.

In anticipation of its chapter 11 filing, Cengage appointed Richard Feintuch, a former bankruptcy partner, as a director tasked with evaluating restructuring options and investigating potential claims arising from the sponsor's debt repurchases and related transactions.

After the chapter 11 filing, the official committee of unsecured creditors moved to suspend Feintuch's investigation, arguing that the investigation could undermine or preempt the committee's own statutory authority to investigate insider claims. The committee's position reflected the derivative standing framework discussed above: where insiders may be conflicted, an independent fiduciary representing creditors should evaluate potential estate claims.

Feintuch completed a prepetition investigation and concluded that pursuing claims against Apax was not in the best interests of the estate. The case ultimately resulted in a negotiated restructuring supported by major constituencies.<sup>22</sup>

Whether unsecured creditors would have achieved a different outcome in the absence of Feintuch's investigation cannot be definitively determined. But the case illustrates how a bankruptcy director's prepetition investigation can frame the scope of potential claims before a committee is appointed and can influence the leverage dynamics of the case from the outset.

### **B. Nine West Holdings**

Nine West presents a similar, but more contested, example. Sycamore Partners acquired Jones Group, including Nine West, in a leveraged buyout valued at approximately \$2.2 billion.<sup>23</sup> Following the acquisition, Sycamore sold valuable assets and extracted significant dividends. Creditors later alleged that these transactions transferred substantial value to the sponsor while leaving Nine West overleveraged.

As Nine West prepared for chapter 11, it appointed two restructuring professionals — Alan Miller and Harvey Tepner — to its board as independent directors.

The existing board acknowledged that it was conflicted in evaluating potential claims against Sycamore and delegated responsibility for investigating those claims to the newly appointed directors.

Once in chapter 11, the creditor committee sought authority to conduct its own investigation and pursue claims. The debtor and its bankruptcy directors opposed those efforts, asserting that the investigation should remain under board control. The bankruptcy court permitted the independent directors to control the investigation.<sup>24</sup>

The bankruptcy directors ultimately negotiated a settlement of potential claims against Sycamore for approximately \$100 million. The creditor committee objected, arguing that both the investigation and the resulting settlement undervalued the claims.

Nine West illustrates how the appointment of bankruptcy directors can shift investigative authority from the creditor committee to the board. The conflict was not over the existence of investigative authority, but over who would exercise it.

### **C. Payless Shoes**

The Payless Shoes cases further demonstrate the practical implications of bankruptcy director investigations. Payless was acquired by private equity sponsors Golden Gate Capital and Blum Capital Partners in a leveraged buyout valued at approximately \$2 billion.<sup>25</sup> After emerging from an initial chapter 11 case in 2017, Payless filed a second chapter 11 case in 2019.

Prior to the second filing, Payless appointed Charles Cremens as a bankruptcy director and tasked him with investigating potential claims against the private equity sponsors, including claims arising from dividend payments.

Cremens conducted an investigation that was later criticized as limited in scope. He interviewed a relatively small number of witnesses, did not obtain tolling agreements from potential defendants, and did not retain a solvency expert. During the chapter 11 case, Payless opposed efforts by the creditor committee to retain its own professionals to conduct an independent investigation and did not permit the committee to participate in the director's investigative process.

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<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 1345–48 (discussing Nine West).

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<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 1348–50 (discussing Payless).

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Cremens ultimately negotiated a settlement that resulted in recoveries to unsecured creditors of approximately five percent.<sup>26</sup>

The Payless case illustrates the disclosure and leverage concerns identified above. The investigative process was conducted within the debtor's governance structure, with limited committee participation. The resulting settlement reflected the conclusions reached by the bankruptcy director rather than the product of a committee-led adversarial investigation.

#### **D. Neiman Marcus**

The Neiman Marcus chapter 11 case provides perhaps the most visible example of tension between bankruptcy directors and creditor committees. Neiman Marcus was acquired in a leveraged buyout that left it with approximately \$5 billion in debt. Prior to filing for chapter 11, the company transferred its valuable MyTheresa business beyond the reach of creditors.

Shortly before the filing, Neiman Marcus appointed two restructuring professionals — Marc Beilinson and Scott Vogel — as directors tasked with addressing conflicts involving the private equity sponsors, including potential claims arising from the MyTheresa transaction.

In chapter 11, the debtor sought to limit the creditor committee's ability to investigate the MyTheresa transfer, arguing that the investigation conducted by Beilinson was sufficient. The committee sought the appointment of an examiner.

The bankruptcy court expressed significant concern regarding the adequacy of the director's investigation. Following a contentious hearing, Beilinson resigned. The creditor committee conducted its own investigation and concluded that the MyTheresa business had substantial value.<sup>27</sup>

Before the committee could present its findings, the remaining bankruptcy director negotiated a settlement of potential claims for approximately \$172 million. The creditor committee criticized the settlement as inadequate. Shortly thereafter, MyTheresa was taken public at a valuation of approximately \$2.2 billion.<sup>28</sup>

Neiman Marcus illustrates the interplay between board-led investigations and committee oversight. It also

demonstrates that courts do not automatically defer to bankruptcy directors and may scrutinize the adequacy of their investigative efforts. At the same time, the case underscores how control of the investigative process can shape the timing and terms of settlements.

#### **E. Observations**

Taken together, these cases do not demonstrate that bankruptcy directors uniformly disadvantage creditor constituencies. Nor do they establish that sponsor-controlled boards cannot appoint independent fiduciaries capable of conducting meaningful investigations.

They do, however, illustrate a recurring structural feature: in sponsor-controlled restructurings involving significant insider transactions, bankruptcy directors frequently occupy the central investigative role. When that occurs, the statutory investigative authority of the creditor committee is often reframed as secondary, duplicative, or contingent.

The resulting tension is not merely procedural. It affects leverage, settlement posture, and, in some cases, ultimate recoveries.

### **V. NORMATIVE AND PRACTICAL IMPLICATIONS**

The increasing use of bankruptcy directors does not represent a departure from corporate law. Boards may add directors. They may delegate authority. They may form special committees to address conflicts. The Bankruptcy Code does not prohibit these practices.

The question is not legality. It is institutional design.

#### **A. The Sponsor "Triple-Hat" Problem**

In many modern sponsor-controlled restructurings, private equity firms wear multiple hats. They may simultaneously be:

- The sole equity holder;
- The proposed debtor-in-possession lender; and
- The proposed stalking horse bidder in a section 363 sale.

At the same time, they may be potential defendants in fraudulent transfer, fiduciary duty, or other estate litigation arising from prepetition transactions.

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<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 1350–55 (discussing Neiman Marcus).

<sup>28</sup> *Id.*

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Under traditional Delaware corporate law principles, transactions involving controlling shareholders are subject to heightened scrutiny unless structured to replicate arm's-length bargaining.<sup>29</sup> Independent directors and special committees can, under certain circumstances, shift judicial review toward a more deferential standard.<sup>30</sup>

In the chapter 11 context, the appointment of bankruptcy directors can function similarly. An independent director evaluates DIP financing from the sponsor. An independent director negotiates a sale to the sponsor. An independent director investigates potential claims against the sponsor. The board then presents its decisions as the product of independent fiduciary deliberation.

The structural concern arises where the same sponsor influences the appointment of the director who is tasked with evaluating the sponsor's conduct. While this does not render the process invalid, it raises the question whether the business judgment framework should apply with the same force as it does in fully arm's-length corporate settings.

### ***B. Business Judgment and Derivative Standing***

The interaction between bankruptcy directors and creditor committees also affects standards of review.

If a creditor committee seeks derivative standing to pursue insider claims, it must typically demonstrate that the debtor unjustifiably refused to pursue colorable claims.<sup>31</sup> Where a bankruptcy director has conducted an investigation and concluded that claims should not be pursued, courts may be inclined to defer to that determination absent a clear showing of inadequacy.

The appointment of a bankruptcy director can therefore alter the evidentiary posture. Rather than evaluating whether a conflicted board declined to act, the court evaluates whether an independent fiduciary's investigation was so deficient as to justify overriding the board's decision.

This does not eliminate committee authority. But it shifts the burden dynamic. The existence of a bankruptcy director can make it more difficult for a

committee to obtain derivative standing, even where substantial insider transactions are at issue.

### ***C. Disclosure and Process Safeguards***

The disclosure distinction discussed earlier suggests that greater transparency may mitigate some concerns associated with bankruptcy directors.

Professionals retained under section 327 must disclose connections with parties in interest.<sup>32</sup> Bankruptcy directors are not subject to comparable statutory disclosure requirements. Courts, exercising their equitable powers, may inquire into a director's independence and investigative process, but such review is typically reactive rather than mandatory at the time of appointment.

Practitioners advising debtors who appoint bankruptcy directors would therefore be well served to consider voluntary disclosure of material connections and to ensure that investigative processes are documented, rigorous, and capable of withstanding judicial scrutiny. In cases involving significant insider transactions, procedural safeguards — such as clearly defined mandates, retention of independent financial advisors, and structured reporting — may enhance credibility.

### ***D. Institutional Balance***

The modern chapter 11 process depends on an equilibrium between debtor control and creditor oversight. The debtor-in-possession model presumes that boards will act as fiduciaries for the enterprise. The statutory role of the creditor committee recognizes that conflicts may arise and provides a mechanism for oversight.

Bankruptcy directors occupy a space between those two poles. They are intended to address conflicts internally while preserving debtor control. In many cases, they may facilitate efficient negotiations and avoid protracted litigation. In others, their presence may constrain the scope of creditor investigations and alter leverage dynamics.

The growing prevalence of bankruptcy directors reflects the adaptive nature of chapter 11 practice. Whether that evolution enhances or distorts the statutory

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<sup>29</sup> Weinberger, 457 A.2d at 710–11.

<sup>30</sup> MFW, 88 A.3d at 644–45.

<sup>31</sup> STN Enters., 779 F.2d at 904–05.

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<sup>32</sup> 11 U.S.C. § 327(a).

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balance depends less on the concept itself than on the rigor of its implementation.

Courts are unlikely to prohibit the practice. But they may increasingly scrutinize the independence, methodology, and transparency of bankruptcy director investigations in sponsor-controlled cases.

## **CONCLUSION**

Corporate governance in chapter 11 continues to evolve alongside changes in ownership patterns and capital structure. Bankruptcy directors are now a recurring feature of sponsor-controlled restructurings.

They may enhance expertise and facilitate negotiations. They may also reshape investigative authority and influence standards of review in cases involving significant insider transactions.

The debate is not about legality, but about preserving the balance that chapter 11 contemplates. As bankruptcy directors become more prevalent, particularly in cases involving substantial sponsor involvement, courts will determine whether formal independence suffices or whether substantive independence and demonstrable rigor are required to preserve the integrity of the restructuring process. ■