1. Financing in Retail Cases
• David/Julia: Can you explain how retail companies are generally financed (discuss ABL financing, FILOs, IP Financing etc.) and how, if at all, has this changed post pandemic? JFD: Describe calculation of ABL borrowing base, what is generally included, NOLV calculations (based on appraisals and timeline for liquidation), increase in FILO lending, where IP can sit – as TL priority collateral, in BB, or in stand-alone IPCo unencumbered (requiring agreement w/r/t right to use). Post-pandemic: increase in high-yield financing, typical criss-cross liens and ICAs, amend and extends with anti-cash-hoarding provisions (haven't necessarily held in new deals) • Christa: How have changes in consumer buying habits changed the financing of retail cases? Has the pandemic impacted this analysis due to changes in either consumer buying habits or supply chain issues? • Michael: Why, and how, are you investing in retail? What attracts you to distressed retail opportunities?
2. Intra-lender Issues and the Recent Dynamic in Many Cases
• David: Describe the recent dynamic between creditors in many cases (including JCPenney and Neiman) and some of the intra-lender issues. • Michael: Are there particular negotiation tactics specific to retail cases or is what we are seeing a broader market dynamic?
3. Effecting Operational Change in Short-Lived Cases
• Julia: The last five years or so have seen something of a "retail apocalypse." How have some of the short-lived cases managed to effect necessary operational changes with the tools afforded by the BK Code? JFD: Josh – I see the 3-5 as interconnected and driven by the exigencies imposed by the 120/90 mandate of 365. It starts with the fundamental ABL in-the-box lending premise of appraisals based on NOLVs that assume an orderly liquidation in place over a set period of time. So retail cases are generally necessarily short-lived because the debtors and lenders are operating under the constraints of the Code's timeline (imposed by the landlord lobby, but that's another story), starting with 210 and then *backing out* the weeks required to conduct an orderly liquidation to obtain the NOLVs upon which the appraisals (and thus advance rates) are premised. This puts pressure on very early determination of an exit, even when dual tracked.

That said, "operational changes" include heavy reliance on e-comm, messaging to consumers from the first days of a case, "mothballing" and rent deferral motions.

- David: Having spent time on both the legal and banking sides of retail cases over the past several decades, do you see opportunities for change in the Bankruptcy Code or restructuring generally that would help retailers survive? [JFD: I hope David will advocate for an overturn of the landlord stranglehold on timing! If not I will.]

- Christa: What are some typical challenges to organizations as they attempt to transition and transform in an abbreviated period, and what can the organization do to avoid these typical pitfalls?

- Michael: Can organizations both maintain an effective cost management structure that is attractive to investors and aggressively invest in operational change?

4. Landlord Considerations and the Pressure of 210 Days

- Christa: What goes into evaluating a particular lease/a brick-and-mortar portfolio, and how does increased skepticism on a real estate footprint as value affect how leases are evaluated?

- David: How has the enactment of the 210-day-drop dead period pressured retailers?

  JFD: I think we have to set this stage – all of 4 really – as a predicate for 3 and 5

- Julia: How does a retailer's decision to assume/reject a lease affect how ABL lenders evaluate the retailer's inventory?

  Appraisals presume orderly liquidation in place. Driving considerations in the case include early motion to extend time to assume/reject from 120 to 210, rent/stub rent issues, and ability to manage liquidity through reserves, including lease reserves. Note also the potential domino effect on commercial real estate and the "defensive" strategy of landlords in forming jvs to hold retailers coming out of an 11, avoiding dark boxes and obtaining an advantage with respect to negotiation with respect to other leaseholds.

5. Winding Down a Retailer

- David: How do you compare a reorganization alternative vs. liquidation?

- Julia: How do ABL lenders evaluate go-forward credit vs. a liquidation?

  JFD: Go-forward is largely as in a new credit, including adequate capitalization, etc. – liquidation is driven by timeline and projected recoveries. Strategic consideration on when/if to re-appraise. If not discussed earlier (likely in (1)), touch on DIP to exit commitment structure.

- Christa: How has COVID-19 changed liquidation sales?

6. Technological Disruption

- David: How has the "Amazon effect" changed consumer behavior?

- Michael: From an investment standpoint, how can retailers counter the Amazon effect?

- Christa: How can brick and mortar retailers leverage technology in stores?

- Julia: Other than the obvious on-line purchasing, what other disruptions have led to the many retail bankruptcies that we have experienced?

  JFD: It's not just Amazon killing retail. Generational shifts in shopping, e-commerce, social media, and fast-fashion have impacted it as well. But COVID and civil unrest have created dramatic challenges to retailers. The ability to react through e-comm, social media platforms, and being nimble have differentiated retailers who can adapt and those that liquidate.

7. Future of Retail: Only a handful of retailers have survived chapter 11, and many have gone chapter 22.

- Michael: What is the future of retail in the U.S. and abroad? Is there a place for brick and mortar stores?

- Christa: How will consumer habits change in a post-pandemic world?

- David: What can retail companies do to avoid chapter 11?