



Ep. 9: State of the Insolvency World: A Look at Recent Trends that May Affect Bankruptcies and Restructuring in the Year Ahead

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Host: Welcome to RumbergerKirk's Legally Qualified podcast, where we answer important questions facing businesses today and discuss hot topics in the legal industry, from employment law to commercial litigation, product liability, and everything in between. We've got it covered.

Scott Williams: Hello, thank you everyone for joining us today for this episode of Legally Qualified. Today we're going to be discussing bankruptcy and restructuring and what's happening in the world and what to expect in the future. I'm Scott Williams. I'm a partner in RumbergerKirk's Birmingham office. I have got a long established bankruptcy and restructuring practice that's kept me busy for a lot of years and across many venues.

Joining me today is my friend Jennifer Kimble, who is the 2022 chair of the International Women's Insolvency and Restructuring Confederation. She's a corporate restructuring attorney at the Lowenstein Sandler firm in New York. Welcome to Legally Qualified Jennifer.

Jennifer Kimble: Thanks so much for the invitation to join you today Scott. I'm really looking forward to our discussion.

Scott Williams: Hey Jen, we worked together for many years before you left Birmingham for the big city. And although you've been in New York for the last six years, I'm glad to say that our paths still get to cross from time to time. I want to congratulate you on being the chair of IWIRC this year and thought you could just begin by tell us a little bit about that organization.

Jennifer Kimble: Thanks Scott. I work as the in leading international networking and professional development organization for women in the restructuring and insolvency industries. Our membership includes attorneys, financial advisors, investment bankers and other restructuring professionals. IWIRC's really focused on the connection, promotion and success of restructuring professionals across our more than 50 networks in Asia, Europe, North America and South America. I'm excited to say we actually just launched our 51st network in Scotland, and we have almost 1800 members worldwide.

Scott Williams: That's really exciting Jennifer. I know you've been involved in IWIRC for many years. How has that organization influenced your career?

Jennifer Kimble: Scott, in more ways than I can probably detail over this podcast. But it's really been integral to my career growth. It's provided a wealth of leadership opportunities. Whether that was starting the IWIRC Alabama network back in 2010 early in my career and then ascending to the IWIRC board of directors and now chairing the executive board of IWIRC. IWIRC's really helped me build a huge network of referral sources, of friends and colleagues in the industry. And it was that network that helped me move to New York more than a decade into my career.

Scott Williams: I'm really happy for you. I know you had some really incredible opportunities and experiences through IWIRC. As chair this year, what are some of the things you're looking to accomplish?

Jennifer Kimble: Yeah, first it's an incredible honor to chair IWIRC. A number of great women have come before me. This year I'm particularly focused on how IWIRC can be a model for increasing diversity within the restructuring industry. While great strides have been made, there are still numerous challenges that women professionals face. Another thing that I'm focused on is that while IWIRC has been an international organization for, it's almost 30 years of existence, for much of that time most of the leadership has come from North America.

So we're really looking for ways that we can increase our leadership pipeline from around the world and grow internationally. One of the results of COVID is that the restructuring world has actually opened up so many doors for IWIRC and made virtual meetings more acceptable and frequent. Which has been great for IWIRC. It's given our members from around the world an opportunity to grow and connect with each other and share their knowledge and their experiences and really benefit and learn from all of our members. Which when you're situated around the globe and across more than a few time zones, can be difficult.

Scott Williams: I understand that that is really an interesting connection, some of the things you've been facing in IWIRC and how that relates to the restructuring world. Obviously the past two years have really been challenging. Let's talk a little bit about the industry, the business and the restructuring practice and the lessons you've learned over the last couple of years as a result of COVID and all the disruption that it's caused.

Jennifer Kimble: Yeah, restructuring is an area that functions in disruption. So the last two years certainly have changed and shown us a lot of different things. First I think we realized how nimble we are as restructuring professionals. And we've really changed the way that we practice over the last two years. Going back to the day Scott when you and I practiced together and drove and flew all over the country. We never would have imagined that we'd be taking depositions, trying cases, confirming Chapter 11 plans virtually. Not sure that that thought ever crossed our minds. But it is now the way of life as a restructuring professional thanks to COVID.

So certainly the way we've practiced has changed. And then from a bankruptcy perspective, COVID has really opened up the courts and opened up access to so many creditors who would not have had the opportunity but for proceedings moving to the virtual realm. You and I have both pitched creditors, committees and the days of spending all day in Delaware for a formation meeting and creditors having to come to Delaware for that formation meeting, are really a way of the past, at least as we currently sit. So it'll certainly be interesting to see how many of these changes stick around as the world slowly emerges from our home offices and returns to court.

Scott Williams: The world has changed so much as it relates to what judges are expecting. I think we're going to see that some judges have gotten very comfortable with this virtual world. I think the Boy Scout restructuring case actually conducted a month long trial all virtually. But at the same time, some of the other judges are looking to get us back in the courtroom. I think it's going to be very interesting venue to venue, judge to judge what may be happening. What are some of your views about how cases are going to be operating in this new reality?

Jennifer Kimble: Yeah, as you just said, I think it's going to be vary greatly across jurisdictions. Certainly I think one trend that we've seen, maybe even pre-pandemic, but certainly more so during the pandemic is that cases are just getting increasingly shorter and moving at a faster speed than they were before. And so I think this is a trend that we're going to see continuing as we move through. And then like you said, it's going to be very judge dependent on how much time we end up back in court.

I have one case right now where in person hearings have resumed. But they certainly feel different because they're hybrid. And some people are in the courtroom, and some people are on the phone, and others are just monitoring the proceeding over Zoom. Which is a change that we did not see prior to COVID.

Scott Williams: It's really interesting how the virtual work is going to change. I don't think that dynamic has actually halted. I think it's going to continue to evolve, and we're going to understand what judges want, what clients want, what type of effect that's going to have on courthouses. Another effect on the restructuring world, other than just the pure work that we do, it's really impacted our networking and our mentoring and how we relate to customers and clients and that professional development perspective. What are your thoughts on that?

Jennifer Kimble: Yeah, I think that it's certainly impacted both mentoring and networking, which I think are two different pieces of business development and also of our practice. From a mentoring perspective, you don't have associates sitting in the background listening to conference calls, in your office listening to your interactions, either with the client or with opposing counsel. And so there's been this huge loss of a training opportunity that's really hard to recreate in a purely virtual world.

From the same standpoint from networking, again, very different to network virtually. You have to be so much more targeted and precise in your reach outs and in your interactions with clients. Because you don't run into them grabbing lunch downstairs. You don't pass them in the courthouse if they're there on a different case. So it's certainly been a lot more work, and a lot more goes into keeping a list of contacts, making sure you're reaching out to them regularly and staying in touch. Because I can guarantee you, if you aren't staying in touch with your contacts, either someone else is or will.

Scott Williams: I can't agree more. There's nothing like that human touch or having lunch with somebody, being able to stop by somebody's office and ask a question or talk about what's going on in your day or their life. Hey, do you know this person I just had lunch with? We can do some of it virtually, but there's really no replacement for that human touch. And I think we're going to see some type of a boomerang effect. I think we're going to see people, as we come out of some of the pandemic world, getting back and really making a conscious effort to have that human touch. You talked about being back in front of a courthouse and back in front of a judge in one of your cases

right now. I think it's really interesting because pre-COVID, so many agreements and deals and cooperation happen not in the courtroom, but out in the hallway. That's where deals got done. With Zoom there is no hallway. And if we're all in the same place and we're all working together, we can seem to get a lot of things done and get things expedited. It'll be something to see how this plays out on a going forward basis.

Jennifer Kimble: Yeah, Scott you're right. People really do crave personal connections, and we are going to see this coming back together of people at live events versus the virtual world. Which I think folks are really kind of over at this point. But I will say one of the really positive things with respect to the virtual world is it does allow you to connect with colleagues, with clients, with contacts that are in a different geographical location than you are.

So whether it's a colleague across the country or in a different country, you can connect virtually and still have those meaningful connections. For example, my mentee right now is a young practitioner in São Paulo, Brazil. And but for the virtual world we wouldn't have the ability to sit down and meet face to face.

Scott Williams: I think that's really fascinating Jennifer. I know with your work with Lowenstein and IWIRC, you get to really connect with people across the globe, and that's one of the reasons I wanted to ask you to join me today, so we could talk about the restructuring world and what's been going on. What are you seeing – what is your crystal ball telling you about what's going to be happening in the restructuring and bankruptcy world?

Jennifer Kimble: Yeah, I feel like we've had this constant conversation about when there was going to be an increase in cases. And in 2020 we talked about it being in 2021. And now that we're through the first quarter of 2022, we're all still waiting for that next wave of restructuring to happen. Cases certainly have picked up, but exactly when we're going to see that, we'll have to wait and see. From the standpoint of where the next wave of restructuring is coming from, I think there's really been a few industries that

the pandemic has really impacted and (inaudible) for restructuring in the future. And those are retail, the travel and hospitality industry and then real estate.

Scott Williams: Let's talk for a little bit about retail maybe first. I know we saw a lot of early bankruptcies in 2020, and the current has environment has been a little slow. I think a lot of that has to do with the government put so much money into the economy, that retail was okay. That things were continuing to move and people were buying stuff. But what are some of the factors that can lead to an increase in some of the retail filings that you're seeing?

Jennifer Kimble: Yeah, a few things Scott. The pandemic really changed the way people shop. So much more online versus actual brick and mortar stores. I think we've also seen a change in the work environment. We saw huge growth (inaudible – leisure) during the pandemic and as people returned to their offices, is this an area where there's just a tremendous amount of over saturation of the market. I think we're going to continue to see stores that have a large footprint look for ways to either reduce their number of stores or reduce their square footage. And depending on their leasing situations, it may be a situation where bankruptcy would be beneficial from the standpoint of being able to reject those leases.

And then I think we're going to continue to see consolidation of brands. And whether that happens either in a bankruptcy or through a merger or acquisition, I think we're going to continue to see that across the market. I know – I think at the end of this year Louis Vuitton and Tiffany combined. And so we're going to continue to see consolidation in the retail space.

Scott Williams: I think COVID has really done some interesting things with the retail market as well because it's created opportunities for others as well. We talk and deal with a lot of restructuring and insolvency side of things. But you've seen retailers, like Bombas socks or Warby Parker eyeglasses, people have done really well. What I always tell my clients, that opportunities come along and change and COVID and what's going on in the marketplace, it can either be bad for you or it can be good for you.

It's going to really depend on are you nimble? Are you going to be able to change how you operate to meet the latest demands? Retail is going to continue to be interesting, as I think some of the money in the world's economy and the US economy dries up a little bit and some of the supply chain issues get solved. But it's going to continue to be challenging, and for some people it's going to go well. And some people it's not going to go on very well. Let's talk maybe for another industry that's been turbulent, and that's the travel, hospitality world. It seems like there's always been an airline filing bankruptcy or going through a restructuring constantly. And restaurant businesses have always been challenging. What are you seeing in this travel, hospitality, restaurant marketplace that you want to share?

Jennifer Kimble: Yeah, the travel industry in particular has gone through these crazy phases of slowing down and picking up and then slowing back down. So while we're on an uptick now, I think we've seen that a number of airlines are still struggling to meet demand and are still struggling financially, having tapped the majority of governmental assistance that's available. Other factors play into this equation. Most notably we're again, talking about fuel prices being on the rise and for a company or for an airline, that could be what sends them over the edge.

Again, starting to see an uptick in travel, and I think the real question is does travel return to a normal rate quick enough for the airlines not to need an additional influx of capital or need to restructure?

Scott Williams: Well, I think that's going to be really an interesting question because I'm hearing all kinds of different things and speculation. And really that's what it is, is speculation. I think fuel prices and demand, as we're coming out of COVID, there is a huge pent up demand where people want to just get out and get away or see friends and family. So you're going to see a huge demand. But that opportunity cost, how high it's going to be with fuel and whether or not the airlines can staff baggage supplies and pilots and flight attendants to be able to meet that demand and what are those costs going

to be like? It's going to be a really challenging and interesting time in the travel industry.

Let's talk a little bit about the restaurant industry. It's one of those things where we know that that is always a challenging world. What do you see going forward in the restaurant world?

Jennifer Kimble: Yeah, the restaurant area is really one where the landscape changed so dramatically during the pandemic with restaurants closing and never reopening. I think we're certainly going to see varying challenges that are going to be geographically driven. And likely only see restructurings in the case of large chains. For the most part restructurings are such a low margin business that if a business is in distress, it's likely going to throw the keys on the table and turn off the lights and walk away. Versus actually go through a formal restructuring.

But again, an area where the scene continues to evolve. The influx and the creation of outdoor dining, of to go beverages, certainly here in New York City kept restaurants holding on through much of the pandemic. And just a couple of weeks ago New York extended to go beverages with a substantial food purchase for the next three years in an attempt to help the restaurant industry here in New York Hold on as people come back to the city and return to their offices.

But again, an area that we're going to continue to see substantial pressure. Whether that's from, as you mentioned, labor shortages, increased pricing pressures, from food and cost of goods. It's going to be an area where we continue to see ongoing distress.

Scott Williams: I think that labor shortage issue is really going to be tough. So many people are competing for workers. I could tell you as somebody who put myself through college waiting tables, it's not easy work. It's challenging. It's hard. Sometimes it's not compensated very well. People want to get out and eat, but the restaurants are going to be able – are they going to be able to find the staff to cook and serve the

food? It's going to be a really interesting thing. But as you pointed out, the restaurants that are surviving are the ones that are adapting and changing and seeing hurdles in the marketplace and figuring out ways to overcome those hurdles to be able to survive.

You mentioned earlier COVID has really changed how people work and had some profound effects, an area that I think is really interesting is the real estate world. And we're seeing some reckonings that are starting to take place. What are you seeing from your vantage point right now?

Jennifer Kimble: Yeah, I think we're seeing two totally different things depending on whether we're talking about commercial real estate where there is an overabundance of space. Versus residential real estate where there's more demand than supply across the country. So in the commercial real estate world, I mean we're just seeing so much office space in a real forthcoming distress in that area. Firms are looking to downsize their square footage. There's so much empty office space in New York City and in other major metropolitan business centers, that there is no doubt that a reckoning is coming for commercial real estate.

Scott Williams: I can't agree with you more. I think it's not only New York. Even here in Birmingham there are clearly a lot of offices and buildings that are nearly vacant. It is going to create some challenges. What those challenges are going to be, can those buildings be repurposed? Can they turn into residential space? How are you going to use those buildings, are going to be a real challenge in the future. Now another part of the commercial world is the retail world we keep hearing about and suburban malls. What are you seeing in that kind of space?

Jennifer Kimble: Yeah, I think across the country we're seeing malls hanging on by a thread. And as you mentioned, it's not just in the commercial world in major metropolitan areas. But we're seeing malls in suburban areas being repurposed into more of a community gathering point. Whether it's a community center or some type of housing. Certainly seeing a change in how commercial retail space is structured and

raises the age old question, are malls dead? Perhaps rhetorical. I think the answer is no, but certainly they're changing shape as consumers have changed their shopping habits.

Scott Williams: I couldn't agree more. I think that a great example just happened recently when – I know in downtown Chicago in the retail world, the iconic Water Tower Place in downtown Chicago was handed back over to its lenders. They just couldn't make it. It is a very different world, flipping from commercial to the residential side of real estate. On the residential side it is really a crazy time. We're hearing of people desperate for housing and where interest rates are going. What are you seeing on the residential side of things?

Jennifer Kimble: Yeah, just that Scott. There's more buyers looking for houses than there is inventory available. And I don't think it makes a difference whether you're talking about more suburban areas or even here in New York City. I know we talked about commercial real estate and the abundance of commercial real estate. But from the residential side, even in New York, continuing to see crazy rent prices and crazy amounts of demand for residential space.

Scott Williams: That is something that is really universal I think. We saw parts of that early even before the pandemic in places like San Jose and San Francisco, California where the demand was so high that costs went crazy. We're seeing that all over the place. One of the fears that I have, having lived through the great recession, are we looking at a residential real estate bubble? I think time is going to tell. I think a lot of that has to do with where supply chain and where are we going to be able to get inventory for homeowners and home renters, and what is in that pipeline? Supply chain is such a big issue in our world Jennifer. What are some of the challenges you're seeing in the supply chain side of things that is causing disruption, and what can we expect?

Jennifer Kimble: Yeah, I don't think there's a single industry, maybe other than commercial real estate, that the supply chain doesn't impact in one way or another. I'm not sure that we'll see the level of shortages and delays like we saw at the start of the pandemic

in the spring and the summer of 2020. But there's so much disruption going on in the world right now, between Ukraine, between continued shortages of materials, between certain countries in Asia going back under lockdown, that we're going to continue to see issues in the supply chain, delays. And for a business hanging on by a thread, with limited liquidity, supply chain and the disruption in the supply chain could just be the issue that sends that business over the edge.

Scott Williams: It's interesting that what is going on in the marketplace and the supply chain issues and what's happening with inflation right now, is really playing into a lot of the dynamics we've been talking about. Clearly the Fed is trying to slow down the US economy and using its tools to tighten monetary supply and increase interest rates. But that global uncertainty, both due to COVID and the Ukraine situation are making markets very uncertain and unpredictable. We in the US – I know we feel uncomfortable with our economy. But if you look at it on a global basis, that candidly you have insight into because of your involvement with IWIRC, we are a very stable economy.

The influx of money and goods into the US has greater stability than anywhere else in the world. We may feel uncomfortable, but the world money supply continues to go here. Does that drive up inflation? What does that mean for supply chain? I think what's going to be interesting is smart businesses are going to be able to take opportunities that have been presented by COVID and presented by restructuring things, to right size their business. And they may come out stronger because of the economic support that all the COVID money provided.

There are others who just are going to spend it. And once that money goes away, they're going to continue to bleed, and that's where we're going to see a lot of distressed businesses. Before we wrap up everything, I want to give you a chance to get out your crystal ball and share some of the predictions that you have about where we're going to go based on some of the things we've covered today.

Jennifer Kimble: Yeah, thanks Scott. I feel like we've talked a lot about doom and gloom. But as restructuring attorneys we're always thinking ahead and about how today's problems or today's events may influence companies that aren't technically in distress, but that perhaps are on the cusp of distress as we move forward. I think one of the things that makes restructuring a unique area of the law is that we are really great problem solvers.

And fortunately there's going to continue to be businesses that are in distress, that have problems, that aren't quite as nimble as they should be, as they're facing distress. And so that will keep us busy going forward.

Scott Williams: Well, we've talked a lot about that uncertainty and where businesses are going. And you've heard me preach this. We've been friends for a long time. One of the things that I tell clients and anybody who will listen, that if you're having issues, please see a restructuring lawyer before the bank is looking to close things down. If you're seeing hiccups in your supply chain, in your monetary policy or maybe you're going into some type of a technical default on your loan with your bank, come talk to somebody in advance. There may be opportunities.

We've got a whole toolkit that restructuring gives us that we can be those problem solvers that you talked about, that we can solve those problems on the front end. But when the bank is closing down and you're facing a foreclosure, it really closes out a lot of the things that we may be able to do. So my word to the wise and my thought and advice for people, if you're seeing issues, you're having problems, give your restructuring person, friend, client, colleague a call. Talk through some of these issues. There may be greater opportunities than you are even realizing.

Jennifer, I think that you've provided a really great insight about, not only IWIRC, but about what's been going on in the restructuring world and what's been happening. And we'll continue to work through some of these challenging times.

Jennifer Kimble: Scott, thanks so much for inviting me to join you today. It's been a fun conversation, and it's been really great as always, to catch up with you.

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