Restructuring Professionals Q&A

BY EILEEN WUBBE

Restructuring professionals are one of the many partners enabling lenders to bring deals to fruition. Here, TSL's senior editor speaks with several of the outstanding restructuring experts representing our industry: Jennifer Cann, managing director, Wells Fargo Retail Finance; Cheryl Carner, senior managing director, Crystal Financial; Carlyn Taylor, co-leader of Corporate Finance & Restructuring at FTI Consulting | TMT industry financial & business consulting expert; and Sandra Vrejan, partner, Morgan Lewis PC.

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What is it about restructuring that initially attracted you to the field and what has kept you in it?

TAYLOR: I was a telecom specialist at Price Waterhouse Coopers, then PwC, back in the '90s and worked on a ton of transactions and business plans and diligence and strategy engagements for private equity to build telecom companies. PwC, at the time, had the top restructuring practice in the U.S. One of the partners there asked me to do a pay-phone syndicate with him and I got involved in this case and I thought, 'Wow, this is really fun; where has this been my whole career?' The industry crashed in the middle of 2000 with the internet bubble burst. I thought that restructuring was the most fun thing I had ever done in my consulting career. At the time, I had about 17 people on my telecom team, and I moved my whole team over into the restructuring practice.

I enjoy getting to be involved in all aspects of the business. I've done a fair amount of debtor work and some UCC work, but probably three-quarters of my cases, probably more than 100 out of 140 restructurings, have been secured lender. I enjoy secured lender the most, especially when, in my tenure, secured lender was usually the fulcrum, which wasn't really necessarily good for the lenders. Those companies were crashing to such an extent that the secured lenders were the fulcrum. But it really did put you in the driver's seat. We were in the position of having to make a lot of decisions about what to do with the companies and the operations.

CARNER: Restructuring is a piece of what I do at Crystal, but I got into the lending business by accident and, therefore, restructuring also by accident. I started my career in the retail industry and, a few years into it, joined a newly formed specialty finance company that was focused solely on the retail industry. That firm wanted to blend the industry expertise of former operators with the credit expertise of lenders. It was there that I started to learn about asset-based lending, borrowing bases and liquidity profiles. You can't be a lender in the retail industry and not have experience in restructuring.

CANN: I actually got lucky and fell into this field. I interned at Gordon Brothers my senior year and was offered a full-time job during my second semester. Early in my career, I worked in different units of their business and I got into the tranche B lending business my last year there. That led me into lending money to retailers, which gave me credit experience in addition to appraising and liquidation of retailers. From there, I was able to transfer my skill set to Wells Fargo where I became a credit analyst in their retail lending platform.

My position at Wells Fargo Capital Finance requires me to be involved in all lifecycles of our borrowers. Given my group is responsible for retail ABL products, I've had the opportunity to work on more than two dozen bankruptcies in my 17-year tenure. So, while not a restructuring professional per se, I've been involved in my fair share of this side of the business because the restructuring piece is an important part in our loans. It helps us manage and underwrite new loans as we're always learning the practical piece.

VREJAN: I started off my career by clerking for a bankruptcy judge. What attracted me to the restructuring field back then and still now, is in the restructuring field, nothing is ever cookie-cutter. After practicing for 20-some-odd years, obviously you've learned a lot and seen a lot, but still restructuring is never routine or rote, partially because you get to apply your knowledge base across a number of different industries. That's intellectually rewarding.

Oftentimes, in the restructuring field, professionals operate in emergency mode. As a lawyer, you are dealing with a critical moment for a client in a trusted advisor role from a strategic standpoint to help a situation move forward. You are very much conscious of the fact that what you're doing is impacting lives. It's impacting jobs, the health of the company, a client's recovery and performance.

What are the key restructuring issues lenders need to be aware of in 2018 and moving forward?

CARNER: I think the two key issues, albeit not new, that I see companies grappling with as they contemplate restructuring are time and complexity. Typically, companies don't behave proactively in order to effectuate a turnaround strategy and therefore a successful restructuring. They are generally reactive to certain specific events and, in these cases, time is not on their side. There have been retailers recently who have been pressured to file unexpectedly due to outside forces. In these situations, the options and opportunities for a successful outcome become more limited.

Given that the bankruptcy process has a much shorter timeline, which particularly impacts retailers due to the time period they have to accept or reject leases, there is the impetus to be proactive and file with a plan.

On the complexity side, capital structures are more complicated, certainly so since the last recession. Many of today's transactions contain layers of debt tranches secured by different collateral and lien positions that are interconnected. The inherent complexity makes restructuring that much more challenging and these structures haven't been as tested in terms of workouts.

TAYLOR: First of all, the leveraged lending guidelines that were recently declared nonbinding guidance by the SEC and the Fed, they are likely to be revised or rescinded. Bank lenders seem to have already been pursuing deals that might have previously not been done by them or would have been criticized by regulators under those previous guidelines. Second, it looks to us like we're in the tail end of one of the longest economic expansions in U.S. history, certainly recent history, and we know from the last cycle that a lot of the worst loans get made in the last year and a half or two years of the cycle.

Putting those two things together, we're also seeing first lien secured loans now as a greater share of buyout financing than they were in the prior cycle, where junior debt and bond financing accounted for more of the capital mix. So, when you put all those things together, I think we are seeing more risk-taking at the senior lender spot than in past cycles. And now a lot of funds, instead of just banks, are heavily invested in the secured lender position.

In general, we think the secured lender position is becoming a little bit riskier and likely to be the fulcrum purposely or, more often than in the past, when we get to the next recession cycle. Right now, the thing to watch for, if you're a secured lender, is making sure your eyes are wide open to the risks you're taking. A lot of secured lenders are doing it on purpose and willing to engage with that level of risk.

From a restructuring standpoint, we see more activity, not less, from our secured lender clients in restructurings, now and in the future, because of that greater risk position being taken at the first lien position.

CARNER: I agree with Carlyn's views, and I think what has driven the riskier nature of secured debt today is the popularity of unitranche loans. There has been a proliferation of new non-bank entrants to the market in the last handful of years. These entities are not subject to these restrictions. In addition, with so much capital raised, there is tremendous pressure to put this money to work. It's a classic supply/demand imbalance where competition has created more aggressive structures in terms of leverage and/or advance rates, looser covenants and lower pricing.

CANN: I think one of the biggest challenges happened to retail back in 2006 when the bankruptcy rules changed that stated all leases need to be rejected and it needs to happen within 210 days of a bankruptcy process unless approval is granted from the landlords otherwise. This changed the amount of time retailers could be in a bankruptcy process and ensure ABL lenders would have enough time to liquidate their collateral.

As retailers continue to build and grow their online platform and try to shrink their brick and mortar footprint, retail is becoming more of an omni-channel platform. This has had a huge result

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in restructuring deals to restructuring leases. Many retailers find themselves in the situation to shrink their store footprint because they are not making the sales out of the brick and mortar any longer and are growing online.

The process, unfortunately, does not allow a lot of time for retailers to deal with renegotiating their leases, deal with their other debt, or find a buyer. The time within a bankruptcy process is very tight. In order for asset-based lenders to insure they can be repaid, their focus is on the timeline.

VREJAN: There have not been huge changes in law in the past year. The tax changes have been important, but those have not impacted the restructuring field yet, so more to come on that.

Late in 2017, there were changes to how the U.S. Trustee calculates its quarterly fee. That issue is on my personal radar because the increase was significant enough to have an impact on carve-outs and to impact smaller-to-medium Chapter 11 filings.

Finally, from a restructuring standpoint, it will be interesting to watch the cannabis industry in certain states. Because bankruptcy courts are federal courts, bankruptcy courts and bankruptcy trustees are prohibited from administering cannabis assets. That leaves a very big question mark in terms of restructuring in this field.

What trends are happening now in restructuring, either in general or within a specific sector you focus on?

TAYLOR: Within the media industry, we are seeing a number of media restructurings, with some of the larger bankruptcies going on right now, such as Cumulus and iHeart. We've seen a fair amount of distress relative to historical periods in the film and production industries. We've also seen more coming in the distribution of media and obviously, there's print. For years print media has been going through a long-run secular decline, being disrupted by digital and the internet. So there's this long-run wave in print media. And then other traditional media like broadcast TV and radio are undergoing stress. Some of them got overleveraged. Some of the ones in bankruptcy are not just because of the declines necessarily in their industry, but really because of the deals that got done in the past in combination with slow declines. A lot of media is now direct-to-consumer, and it's disrupting many distribution channels that are built into the structure of the industry and into the capital structures and debt stacks of a lot of companies.

CARNER: Whether it's healthcare, energy, media or retail, change is what will always lead to some level of restructuring activity, even for industries that historically have been stable. It might be a situation of slower evolutionary change, as just described, due to the dynamics of an industry's demand drivers. Or, the change may be of a revolutionary, crisis-oriented nature. For example, when the price of oil plummeted, that led to substantial levels of restructuring activity in 2015 – 2017 in that sector. It's just a question of whether it's rapid change that people were unprepared for, or whether it's a slow, continuous change.

CANN: With retailers, given so many of them are highly leveraged right now, the biggest trend we've been seeing is the relationship and support from their debt holders. Last year we saw a number of companies that were able to emerge from bankruptcy with support from their debt holders. They converted a majority of their debt to equity and funded additional capital to insure that they would have the liquidity to emerge from a bankruptcy process with an improved balance sheet.

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We have also seen companies where the debt holders were not on the same page and it makes the process much more challenging to be able to find a buyer and exit bankruptcy. It's much harder to have that happen versus having the support from your full capital structure.

VREJAN: There has been a large amount of activity in retail, closely followed by the energy field recently. We need a little bit more time, based on where we are in the cycle, to have a clear picture of what the next trend is.

TAYLOR: Private equity-sponsored companies are also accounting for a growing share of Chapter 11 filings since 2016. In 2016, for example, they were only about 20 percent, and last year they were over 31 percent. In the first quarter of 2018 they were at 36 percent.

I think this is because of the wave of massive overleveraged companies coming through PE buyouts in a couple of the last cycles, because that's a lot of the companies. At the same time, there is a greater share of the market capital of our economy becoming private equity-sponsored. I don't think that's a bad thing; I think PE sponsors are generally better at running companies than public boards. They run more efficient companies, but they tend to over-lever them and they're more aggressive on leverage.

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So, when they get into trouble, some private equity firms very much like the 'kick the can' option, trying to extend their options and, in some respects, it makes sense if you're in a volatile industry. Maybe if you can just make it to the next frothy cycle, you might actually get somewhere, even though many other people think it's inevitable. But you tend to see private equity funds extending the runway as long as possible just trying to play out their option.

When they do go through some sort of restructuring, even though we're seeing more of them ending up in Chapter 11, you're also seeing many more of them do out-of-courto-type exchanges. They're very proactive about trying to get that done. I've worked on a lot of them. I think sometimes private equity firms are willing to put in a little bit more money in order to get an exchange done, and that often works.

In terms of restructuring trends that we're seeing at FTI, there's been this interesting departure between default rates and restructuring activity. Default rates are very low right now and yet restructuring activity isn't hot, but it's certainly not super slow, it's kind of moderate right now. We believe we at FTI are taking market share despite the proliferation of more restructuring firms and more boutiques in the industry and greater competition.

Part of that is the PE phenomena I discussed earlier that a lot of PE funds have bought middle-market companies and levered them with private debt, and those aren't necessarily always rated. There's a lot of middle-market activity and we're doing a lot of cases in $200 million to billion-dollar companies.

CARNER: I would add that different lenders in the same credit can have different views on whether a loan is impaired. Therefore, it can be challenging to make a connection to potential restructuring activity. It is often easier for lenders to "amend and extend" vs. taking the pain of a discount or write-off that may result from a restructuring.

What challenges have you faced being a woman in a male-dominated field and how have you overcome them?

CARNER: I have two challenges. One, I don't play golf. Two, I don't know much about other sports either. When you're in a male-dominated industry, not that all men like golf and sports, and considering that many other topics (politics, religion etc.) should be avoided and sports isn't an option, it can be a challenge to establish rapport and build relationships.

I did take up skiing, and that helped. I learned how to ski as an adult in my mid-20s which was not easy, but I'm glad I did that. However, I have found two things that most people do like to talk about—vacations and their family. After being in this industry for 25 years, I can safely say that I have been able to navigate around this issue.

TAYLOR: Cheryl, that's so true about golf. I used to play a little bit and I'm awful, but I would play scrambles with my own team, but not with clients. Then I broke a bone in my right hand and any hope of ever playing is gone. I did learn to love football so I can talk a little bit about that but, I agree with you, it's not the easiest thing.

I would say the hardest thing, though, for me and it was probably a little harder when I was younger, was inviting male clients or potential clients to a meal because you didn't want it to be taken the wrong way. I had quite a few different sort of funny and not-so funny incidents when I was still in my late 20s. I made partner at PwC at 29 and was doing a lot of business development then and there were a couple of incidents, that I won't repeat, that wouldn't have happened if I'd been 45.

It's just harder to be proactive in trying to network with people. The best networking is one-on-one and you want it to be very clear that it's just about business and the vast majority of the time that's pretty clear and it's not a problem.

CARNER: No question that networking in a male-dominated industry can be challenging. I have been fortunate to work with people and organizations where everyone was professional. However, the #MeToo movement has exposed that many have had different experiences and it has created a heightened awareness around these issues. I have heard that some concerns about potential backlash where men may be hesitant to network one-on-one with women. I certainly hope that this dynamic does not become the case.

CANN: I've been fortunate to have great role models and mentors, both female and male, who have helped guide me throughout my career. However, I have faced my fair share of challenges and, to Cheryl's point, one of them is being able to network and find commonalities, especially in a male-dominated field. That being said, whether male or a female, I believe, if you love what you do, you will find success in any challenge thrown your way.

VREJAN: I remember very well my very first time in court, being the only woman in the courtroom. That has definitely changed in my 20-plus years of practice, and that's been nice because it's always nice to see more diversity. When you are starting your career, it's helpful to see someone that you can identify with as a role model and it is helpful if you are lucky enough to have role models in both genders. I was fortunate in that eventually I ended up at a firm where there were a comparatively greater number of senior women so I consider myself one of the lucky ones because I had the opportunity to have both women and men as mentors. Having the opportunity to compare different styles, different approaches to problem solving was valuable in career development.

What do you know now that you wish you knew at the beginning of your career?

TAYLOR: This one is a little more on how to make your career and your life work. I've gone to some fantastic conferences and picked up things, and I really focus on how to make your life work, not just your work work. I hate to plug somebody's book but I really loved it so muchl; it's called *The Power of Full Engagement*. It talks about making sure that you run your life in a way that you have the most energy to do your best at work. That includes mental breaks, and knowing how your brain works, especially taking time in your life to exercise and work out. I had always been reasonably good at it, but between that book and one I read years and years ago that said that exercise actually improves your brain, not just your body, it has been a huge help in my career. I now work out between five and seven times a week depending on my travel schedule.

CARNER: I'll plug somebody as well -- a woman named Carla Harris. She's a very senior person at Morgan Stanley, and I saw her speak at a women's conference. What she was said was so simple and obvious, but yet so impactful: "You have to ask."

So, perhaps it was me, or perhaps it's a perspective that many women have which is: "I'm going to be committed and focused. I'm going to work twice as hard as anybody else, especially in a male-dominated field, and that's how I'm going to get ahead." But I've learned that you can't simply wait for your bosses to figure out what you need or what you want, and/or that you should be recognized. You have to ask for the promotion. You have to ask for the raise or bonus. You have to ask for new opportunities or more responsibility. . This concept also translates to asking for business from referral sources, potential clients, borrowers etc. I honestly only figured this out two to three years ago and no question would have been better off learning this critical lesson earlier.

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VREJAN: I'm naturally reserved or was naturally reserved and I wish I would have learned earlier in my career that reaching out to people was not an imposition. Having the confidence to ask for help, asking for advice, for opportunities. Somehow back then I never felt entitled to do it. I viewed it as an imposition.

CANN: I wish I realized that you don't need to be perfect at everything. At the beginning of my career, I was always so focused on making sure I could do everything and I would never say no to anything. I would take on as many projects and responsibilities as I possibly could and sometimes doing that actually hurts you versus helps you. I think it's more about how you focus and delegate; you don't have to take on everything yourself. As a detail-oriented person, I understand it is hard to delegate, but you really need to do that, not only for yourself, but to better the people that you work with. **TSL**

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Jennifer Cann is a managing director at Wells Fargo Capital Finance in the Retail Finance Division, a leading provider of secured financing to middle-market and large corporate retailers across the United States and Canada. Based in Boston, she is the leader of a team responsible for managing approximately $4 billion of loan commitments.

Jenn joined Wells Fargo Capital Finance in 2001. Prior to Wells Fargo, Jenn spent several years in the appraisal analysis and Tranche B lending groups with Gordon Brothers, a firm that helps retail businesses manage through strategic change.

Jenn holds a bachelor degree and an MBA from Suffolk University in Boston.

Cheryl Carner is senior managing director at Crystal Financial and is responsible for business development, originations and marketing strategy. She sources, structures and underwrites senior and junior secured debt financings for middle-market companies across a wide range of industries.

Prior to joining Crystal, Cheryl was a SVP with GE Franchise Finance focused on debt financings for private equity-backed restaurant companies. At CapitalSource, she led the Retail & Consumer specialty lending team and provided over $1.0 billion of commitments to private equity-backed retail, restaurant, apparel and consumer product companies. Her 20 years of experience in the financial services sector, began with Fleet Retail Finance and its predecessor entities. Cheryl received her BBA at the University of Massachusetts at Amherst and her MBA at the F.W. Olin Graduate School of Business at Babson College.

Sandra Vrejan represents borrowers and lenders in complex multinational finance transactions and financial restructurings. Her diverse client base includes financial institutions, specialty finance companies, investment funds, and public and private companies in many industries. She advises these clients in transactions involving multiple tiers of debt capitalization requiring complex intercreditor arrangements, syndicated leveraged transactions in asset-based and cash flow contexts, acquisition financings, and debtor-in-possession and exit financings. Sandra serves of the Women's Network Advisory Board of the Greater Boston Chamber of Commerce and she has also previously served as the hiring partner for Morgan Lewis's Boston office.

Carlyn Taylor is the global co-leader of the FTI Consulting Corporate Finance & Restructuring segment, the firm's Industry Initiative Leader and Chairperson of FTI Capital Advisors, FTI Consulting's investment banking subsidiary, and is based in Denver. Carlyn is a widely recognized expert in financial and business consulting in the telecom, media and technology ("TMT") industries. She has more than 25 years of experience leading hundreds of engagements involving strategy, business transformation, restructuring and transaction related services. Carlyn is a member of the firm's Executive Committee.

As a trusted partner, Carlyn takes a collaborative approach in providing strategic counsel and transformative advice to optimize outcomes for an extensive roster of communications and media clients. She counts Level 3 Communications, AT&T, Windstream, Charter Communications, Earthlink, Sprint, Conde Nast, Hearst, Lightower, Securus Technologies, E.W. Scripps, Meredith, Media General, Postmedia, Trusted Media Brands, Fairpoint and Integra Telecom among her broad base of corporate clients. Her clients also include major financial institutions and funds such as JPMorgan, Bank of America, Goldman Sachs, Platinum Equity, Citigroup, HIG Capital, One Equity Partners, Tennenbaum Capital, Anchorage Capital Group, GE Capital, Angelo Gordon, Morgan Stanley, TD Securities and Silverpoint Capital.

In the mergers and acquisitions ("M&A") arena, Carlyn advises on all aspects of transactions across the deal continuum involving both healthy and financially distressed targets for diverse client interests, ranging from buyers and sellers to financing sources and private equity investors.

Carlyn has led more than 140 restructuring and bankruptcy engagements, advising debtors and creditors on cases such as Tribune Company, Charter Communications, Dex Media, Advanstar, Integra Telecom, Global Crossing, Hawaiian Telcom, Genuity, XO Communications, Williams Communications, Excite@Home, Qwest, MFN, Allegiance Telecom, Teligent and Broadwing.

Sought for her vast industry expertise, Carlyn has provided expert witness testimony in dozens of litigations, arbitrations and other cases involving lost revenue and profits, valuation and telecom industry trends. Among her notable engagements are the bondholder litigation objecting to the BCE LBO transaction in Canada; multiple Delaware Chancery court appraisal actions involving telecom industry M&A; the minority shareholder litigation objecting to Carl Icahn's buying the remaining public shares of XO Communications; the bondholder trustee litigation in Excite@Home; and defending Columbia/HCA against a multi-billion claim regarding a worldwide telecom contract.

Prior to her appointment as global co-leader, Carlyn founded and served as the National Leader of the firm's TMT industry practice. Over a 20-year period, she built a leading TMT industry consultancy, which today is a global team of more than 120 professionals situated throughout United States and the United Kingdom. Carlyn joined FTI Consulting with the acquisition of PricewaterhouseCoopers' ("PwC") BRS group in 2002.