

The Subprime Lending Industry: A Look At The Restructuring of a Market in Turmoil

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I. Introduction¹

The estimated \$1 trillion subprime lending industry is currently in turmoil, creating a challenging landscape for lenders, borrowers, investors, and regulators. Mortgage defaults in the next 12 months could total about \$225 billion. The Center for Responsible Lending estimates that subprime mortgages originated in recent years will ultimately result in the loss of a home for 2.2 million families. According to Bloomberg, L.P., at least 60 mortgage companies have ceased operations, filed for bankruptcy, or pursued sales since the beginning of 2006. Congress is eyeing tougher standards for subprime lenders. Federal bank regulators are calling for lenders to enforce stricter guidelines for risky mortgage lending. Difficulties in the subprime sector have impacted the housing sector, as tighter credit standards have taken buyers out of the market even as inventories of unsold homes have reached multi-year highs. Certain hedge funds have experienced material portfolio losses due to their holdings of securities backed by subprime mortgages; some analysts believe such problems will become more widespread in upcoming months. Pension funds, many of which bought securities backed by subprime mortgages, may also be significantly affected. Many subprime lenders are located here in California, but the cases are filing nationally, and the impact is certainly felt across the country. Our panel will discuss: (1) how the subprime industry got here; (2) implications for related industries; (3) what is currently going on both in out-of-court restructuring and in court; (4) what restructuring professionals can do to assist either creditors or potential debtors; and (5) some of the legal and operational issues that one can expect to encounter in dealing with distressed subprime lenders.

Turmoil engulfed the subprime lending industry over the last six months. Six significant subprime lenders, ResMAE Mortgage, Ownit Mortgage Solutions, Mortgage Lenders Network, People's Choice Home Loan, Inc., New Century Financial, and SouthStar Funding, have filed for bankruptcy since December 2006. Fremont General, the second largest independent subprime lender, has ended its participation in subprime lending. The third largest subprime lender, New Century (which filed in April 2007), is the subject of a federal criminal inquiry into its accounting and trading in its securities. Two other leading subprime participants, Accredited Home Lenders and Novastar Financial, have pursued change of control solutions to address increasing financial pressures.

In 2006, subprime mortgages were a \$600 billion business that accounted for nearly one-fifth of all home loans—and more subprime mortgages were originated in California than any other state. There is, therefore, widespread speculation that we will see more bankruptcy filings among California subprime lenders this year.

Additionally, Subprime mortgage bonds made up about \$100 billion of the \$375 billion of collateralized debt obligations (“CDO”) sold in the United States in 2006. CDOs are created by bankers and money managers who bundle together securities and divide them into slices to sell in the market.

¹ This paper does not represent the news of any individual member of the panel and is intended only as a general summary.

Our panelists have been deeply involved in all aspects of the subprime crises, and they will discuss: (1) the dynamics that created the current crisis, (2) breaking developments in out-of-court restructurings and recently filed cases, (3) the legal and operational issues arising with distressed subprime lenders, and (4) anticipated opportunities for restructuring professionals assisting debtors or creditors in the subprime industry.

Panelists Suzanne Uhland, Dennis McGettigan, Jim Stang and Sam Newman each have significant experience in current transactions and subprime industry trends.

Mr. Stang is the founding partner of Pachulski Stang Ziehl Young Jones & Weintraub, which represents the debtors in Ownit, People's Choice and National Mortgage.

Mr. Newman of Gibson, Dunn & Crutcher LLP represents parties in each of the ResMAE, People's Choice and New Century bankruptcies. In ResMAE, Gibson Dunn served as Special Counsel to the Debtor for the sale process and debtor-in-possession financing.

Mr. McGettigan is a partner of Gordian Group LLC, an investment bank specializing in distressed and complicated situations. In 2007, Mr. McGettigan has provided financial advisory services with respect to a \$900 million portfolio with significant subprime exposure. Mr. McGettigan also leads Gordian's distressed debt research efforts (including the *Distressed Debt Investor* research service for institutional investors), which has focused on housing sector issues in recent months.

II. The Panel

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III. Background

A. The Subprime Mortgage Business

Subprime lending consists of three principal businesses: loan origination, loan sales (or securitization), and loan servicing. Each presents its own challenges to the restructuring of subprime lenders.

1. Loan Origination

Subprime lenders, acting as originators, originate mortgage loans through both wholesale and retail channels. Wholesale channels involve the originator acting as lender for loans originated by independent mortgage brokers. Retail channels involve the originator providing direct loans to individual borrowers through branch offices and networks of affiliated mortgage brokers.

Originating mortgage loans, whether through wholesale or retain operations, requires huge sums of capital. In the industry, originators satisfy these capital requirements in two ways. First, they look to financial institutions for the temporary capital necessary to originate mortgage loans. Second, they sell originated mortgage loans into the secondary market to liquidate the value of those loans.

a. Warehouse Lines

Temporary funding for origination is generally obtained through revolving loan relationships with financial institutions, commonly referred to as “warehouse” arrangements. In some cases, warehouse arrangements take the form of credit facilities that are basically secured revolving credit facilities in which the lender advances funds secured by an interest in the loans originated with those funds.

b. Repurchase Agreements

Another common arrangement through which originators obtain temporary funding for origination are “repurchase” arrangements. Repurchase arrangements, generally governed by a document referred to as a Master Repurchase Agreement, provide for originators to enter into transactions, from time to time, in which the originator agrees to transfer mortgage loans to a financial institution against the transfer of funds by the buyer. These funds are used, in part, to originate mortgage loans.

In repurchase arrangements, the financial institution is obligated to transfer the mortgage loans back to the originator against the transfer of funds by the originator at a specified time in the future. While these relationships have many characteristics of warehouse lines, and are at times discussed in terms suggesting they are also secured loans, in fact these repurchase arrangements are documented as buy-sell arrangements, which has important implications for how the loans originated through repurchase arrangements are treated in reorganizations, workouts and bankruptcies.

c. Margin Calls

As a condition to most warehouse lines and repurchase agreements, the lenders or repurchase participants have the right to periodically mark to market the value of the loans funded by the warehouse line or repurchase facility. To the extent warehouse lenders or repurchase participants identify a deficiency in the value of the mortgage loans on the facility, the warehouse lenders or repurchase participants may issue a margin call and demand additional funds be posted by the originator to augment the value of the property on the facility. Originators typically post cash to meet such margin call requests.

2. Securitizations and Loan Sales

The second mechanism for raising capital is selling originated mortgage loans into the secondary market through securitizations.

a. Securitizations

Originators in the subprime mortgage industry expect that most of the loans they originate will be securitized, i.e., the mortgage loans will be transferred to special purpose vehicles and the equity of those special purpose vehicles will be sold to diverse investors in the public markets. In some cases, the originators securitize the loans themselves, and in other cases, the originators sell the mortgage loans to third party buyers, known as Loan Purchasers, who then securitize the loans. In either event, the end result is that most of loans originated by subprime mortgage lenders are held in such securitized arrangements.

b. Loan Sales

Generally, within 90 days following the origination of a mortgage loans, and prior to securitization, originators sell most contemporaneously originated loans to financial institutions. In some cases, the originators are unable to sell the originated mortgage loans promptly, and are forced to retain the mortgage loans. Such retained loans are known in the industry as “scratch and dent” loans.

In the case of mortgage loans originated under a line of credit, the mortgage loan would be sold and the lender repaid. In the case of mortgage loans originated under a repurchase arrangement, the mortgage loans would be repurchased by the originator and then sold. The terms of these sales of mortgage loans were generally governed by agreements with the Loan Purchasers called, creatively, Loan Purchase Agreements.

c. Repurchase Obligations Under Loan Purchase Agreements

In connection with sales to Loan Purchasers and securitizations, subprime mortgage lenders make certain representations and warranties relating to the quality of the mortgage loans sold. These representations and warranties include representations and warranties that the mortgage borrowers under the mortgage loans will make the initial payments under the mortgage loans. Failure by the mortgage borrowers to make such initial payments is referred to as an “Early Payment Default” or “EPD”.

If EPD provisions are breached due to early defaults by mortgage borrowers, as was the case with many of the subprime mortgage loans originated and sold by the now-bankrupt originators, the Loan Purchase Agreements required the originators to repurchase loans subject to such Early Payment Defaults. The originators repurchased many of these EPD mortgage loans as required by these Loan Purchase Agreements, which loans became owned by the originator. The originators were unable to satisfy other EPD obligations, giving rise to unsecured claims against the originators in favor of the Loan Purchasers.

3. Servicing

In addition to origination and mortgage loan sales, subprime mortgage lenders perform a servicing function, which included the collection, consolidation and remittance of monthly principal, interest and impound payments for taxes and insurance on mortgaged properties. Most all subprime lenders service the mortgage loans held on their warehouse lines and repurchase facilities on an interim basis, from the origination date to approximately 90 days after the sale to third party loan purchasers.

In addition to interim servicing, some subprime lenders continue to service loans they originated once the loans are sold or securitized. In either case, the subprime mortgage lenders are compensated for their servicing function.

B. Dynamics that Created the Current Crisis

Converging events resulted in the recent filing of chapter 11 cases by subprime lenders. These events include warehouse line liquidity issues, repurchase requests from Loan Purchasers, margin calls from warehouse lenders and reduced pricing for nonprime loans in the secondary market.

Increased delinquency rates on mortgage loans caused a corresponding increase in the number of loans the subprime lenders have been required to repurchase and an increase in margin calls. At the same time, the overall non-prime market has entered a decline and the subprime lenders' warehouse lenders terminate funding such that the subprime lenders were unable to fund new mortgage loans or operate their business in the normal course. Meanwhile, in their role as sub-servicer, the subprime lenders faced a shortfall with respect to their remittance obligations to the securitization trusts.

Congress and the Federal Reserve have expressed their concern over the meltdown of the subprime lending industry. The Federal Reserve suggested that the current difficulties may continue for one or two years. The House of Representatives' Financial Services subcommittee has held hearings on the situation, and has suggested that there may be legislation to deal with the subprime lending industry.

1. Warehouse Line Liquidity Issues

As delinquencies rise in the subprime mortgage market, the warehouse lenders and repurchase participants have taken two steps, which are pressuring subprime mortgage lenders. First, they have made significant margin calls, requiring the subprime mortgage lenders to post valuable cash in support of their warehouse lines. In addition, some warehouse lenders have

terminated funding to subprime mortgage lenders entirely. Both of these moves have diminished vital liquidity to the subprime lenders.

2. Repurchase Requests from Loan Purchasers

Increased delinquency rates on mortgage loans have also caused corresponding increases in the number of loans the subprime lenders have been required to repurchase. Repurchasing these loans also puts tremendous pressure of the available liquidity of the subprime lenders.

3. Reduced Pricing for Nonprime Loans in the Secondary Market

Overall, the market for subprime mortgages has entered a decline. Investors have become increasingly uninterested in purchasing the riskiest assets in the subprime market. Investors are offering lower prices for pools of mortgage loans and interests in the special purpose vehicles holding these mortgages. In addition, some originators are unable to place the lower-rated strips of such securitizations. The result is, for some originators, it now costs more to originate mortgage loans than the originator can sell the mortgage loans in the market. Faced with such operating losses, all but the most heavily-capitalized players are facing severe liquidity issues.

4. Regulatory Issues

In March, 2007, federal bank regulators suggested new standards for subprime mortgages to target loans with low initial rates that reset at higher levels. Regulators have taken the position that mortgage borrowers should only be offered such mortgages if they can afford the expected, fully-indexed rate, as opposed to the initial rate. This change in regulation of stated-income loans, where borrowers provide little documentation of what they earn, will negatively impact the volume of mortgages because fewer borrowers will qualify for loans. For example, sixty percent of Countrywide's customers seeking hybrid adjustable-rate mortgages would fail to qualify under new guidance, Countrywide Chief Financial Officer Eric Sieracki said earlier this month, according to Reuters.

C. Breaking Developments in Out-Of-Court Restructurings and Recently Filed Cases

Due to these extreme pressures, 15 of the 25 top subprime mortgage lenders in 2006, including most of the independent subprime specialists, have either been acquired, are seeking buyers, or have shut down. Subprime lenders still operating have generally implemented a variety of underwriting, operational, and portfolio controls to manage their subprime exposure.

Continuing Operations	Consummated or Pursuing Transactions	Shut Down
<p>Wells Fargo</p> <p>HBSC</p> <p>Countrywide</p> <p>WMC [20% of staff let go]</p> <p>Washington Mutual [some branch closures starting late 2006]</p> <p>CitiMortgage [staff reductions implemented]</p> <p>GMAC</p> <p>ChaseHome Finance</p> <p>EMC</p> <p>Decision One [owned by HSBC; rumored to be up for sale]</p>	<p>Option One</p> <p>First Franklin [acquired by Merrill Lynch from National City for \$1.3 bln]</p> <p>ResMAE [acquired by Citadel (still operating)]</p> <p>ECC/Encore [bought by Bear-Stearns]</p> <p>Fieldstone [bought by C-Bass]</p> <p>MLN [Much of the sales force has gone to Lehman]</p> <p>Accredited Home [Sale pending to Lone Star funds]</p> <p>Novastar [up for sale]</p> <p>BNC [subsidiary of Lehman, merged with Lehman's Aurora Loan Services Group]</p>	<p>New Century</p> <p>Fremont General</p> <p>Ownit</p> <p>Aegis [not doing subprime anymore]</p> <p>FirstNLC [almost totally shut down]</p> <p>Ameriquest [retail operations shut down]</p> <p>Southstar Funding, LLC [shut down through chapter 7 bankruptcy]</p>

D. Legal And Operational Issues Arising With Distressed Subprime Lenders

The Bankruptcy Code has several unique provisions that apply to the subprime lending industry, which may be unfamiliar to most bankruptcy attorneys. The Bankruptcy Code provides expanded protections to counterparties to certain derivative transactions (a contract whose value is based on the performance of an underlying financial asset or investment) since the passage of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 through certain safe harbor provisions.

Under those safe harbor provisions, a counterparty which is a “Qualifying Party” to a “Qualifying” derivative transaction may terminate the transaction and foreclose on its collateral even after the commencement of a bankruptcy. Qualifying Parties may set off if the set off relates to a margin payment or a settlement payment arising out of the qualifying contract or agreement. Qualifying derivative transactions are not subject to avoidance actions if the “transfer . . . is a margin payment . . . or settlement payment . . . made by a commodity broker, forward contract merchant, stockbroker, financial institution, financial participant or securities clearing agency.” These safe harbor provisions mean that many of the most valuable tools are not available to subprime mortgage lenders in bankruptcy.

Repurchase transactions such as those contemplated by Master Repurchase Agreements common in the subprime mortgage lending industry have been assigned a distinct legal status under the Bankruptcy Code. *Granite Partners, L.P. v. Bear, Stearns & Co.*, 17 F. Supp. 2d 275, 304 (S.D.N.Y. 1998). For example, the Bankruptcy Code permits the enforcement of ipso facto clauses in qualifying repurchase agreements because “[t]he effective functioning of the repo market can only be assured if [repurchase] investors will be protected against open-ended market loss arising from the insolvency of a dealer or other counter party in the [repurchase] market. *In re Residential Resources Mortg. Inv. Corp.*, 98 B.R. 2, 20 (Bankr. D. Ariz. 1989), citing *S. Rep. No. 98-65*, 1st. Sess. 44 (1983). In order to promote this important public policy, the Bankruptcy Code includes several safe harbor provisions that protect the operation of such transactions in bankruptcy.

The safe harbor provisions that are applicable to the operations of subprime mortgage lenders include Sections 555, 559, and 362(b)(6) and (7) of the Bankruptcy Code.²

- Similarly, Section 555 provides, “The exercise of a contractual right of a stockbroker, financial institution, financial participant, or securities clearing agency to cause the liquidation, termination, or acceleration of a securities contract . . . because of a condition of this kind specified in section 365(e)(1) of this title shall not be stayed, avoided, or otherwise limited by operation of any provision of this title[.]”
- Section 559 states, in part, “The exercise of a contractual right of a repo participant or financial participant to cause the liquidation, termination, or acceleration of a repurchase agreement because of a condition of the kind

² All references to “sections” herein are to sections of the Bankruptcy Code, 11 U.S.C. §§101-1530, as amended.

specified in section 365(e)(1) of this title shall not be stayed, avoided, or otherwise limited by operation of any provision of this title.”

- Section 362(b)(6) and (7) respectively provide that the filing of a bankruptcy petition does not operate as a stay to “the exercise by a commodity broker, forward contract merchant, stockbroker, financial institution, financial participant, or securities clearing agency of any contractual right . . . under any security agreement or arrangement or other credit enhancement . . . related to any commodity contract, forward contract or securities contract” or “the exercise by a repo participant or financial participant of any contractual right . . . under any security agreement or arrangement or other credit enhancement . . . related to any repurchase agreement[.]”
- These safe harbor provisions apply to “Securities Contracts”, which term is defined in Section 741 to include:
 - (i) a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan, any interest in a mortgage loan, a group or index of securities, certificates of deposit, or mortgage loans or interests therein (including an interest therein or based on the value thereof), or option on any of the foregoing, including an option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option, and including any repurchase or reverse repurchase transaction on any such security, certificate of deposit, mortgage loan, interest, group or index, or option (whether or not such repurchase or reverse repurchase transaction is a “repurchase agreement”, as defined in section 101;
 - (ii) any option entered into on a national securities exchange relating to foreign currencies;
 - (iii) the guarantee (including by novation) by or to any securities clearing agency of a settlement of cash, securities, certificates of deposit, mortgage loans or interests therein, group or index of securities, or mortgage loans or interests therein (including any interest therein or based on the value thereof), or option on any of the foregoing, including an option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option (whether or not such settlement is in connection with any agreement or transaction referred to in clauses (i) through (xi));
 - (iv) any margin loan;

(v) any extension of credit for the clearance or settlement of securities transactions;

(vi) any loan transaction coupled with a securities collar transaction, any prepaid forward securities transaction, or any total return swap transaction coupled with a securities sale transaction;

(vii) any other agreement or transaction that is similar to an agreement or transaction referred to in this subparagraph;

(viii) any combination of the agreements or transactions referred to in this subparagraph;

(ix) any option to enter into any agreement or transaction referred to in this subparagraph;

(x) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), (iii), (iv), (v), (vi), (vii), (viii), or (ix), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a securities contract under this subparagraph, except that such master agreement shall be considered to be a securities contract under this subparagraph only with respect to each agreement or transaction under such master agreement that is referred to in clause (i), (ii), (iii), (iv), (v), (vi), (vii), (viii), or (ix); or

(xi) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this subparagraph, including any guarantee or reimbursement obligation by or to a stockbroker, securities clearing agency, financial institution, or financial participant in connection with any agreement or transaction referred to in this subparagraph, but not to exceed the damages in connection with any such agreement or transaction, measured in accordance with section 562; and

(B) does not include any purchase, sale, or repurchase obligation under a participation in a commercial mortgage loan

Repurchase participants generally take the position that these provisions give them the absolute right to enforce the terms of their Master Repurchase Agreements and Loan Purchase Agreements as originally agreed by the parties.

E. Anticipated Opportunities For Restructuring Professionals

There are a variety of opportunities for restructuring professionals to become involved in subprime mortgage restructurings on both the company and creditor side.

Company-side opportunities include:

- Company legal and financial advisors;
- Company turnaround consultants or crisis managers; and
- Implementing financial controls in distressed companies.

There are also a variety of creditor-side opportunities, including:

- Creditor's Committee legal and financial advisors; and
- Supporting Warehouse lenders' and Loan Purchasers in liquidating their claims.

Also, as has been seen, the crisis in the subprime mortgage industry has led to a variety of potential transactions, which restructuring professionals have been involved in, including:

- Purchases of serving operations;
- Purchases of origination operations; and
- Providing financial and legal advice to potential purchasers and new lenders.

Many financial players are also looking to purchasing mortgage loans, pools of such loans and securities backed by such loans. These transactions require significant financial and legal advice.

F. Conclusion

Looking forward, the issues causing delinquencies in the subprime mortgage industry could spread further. This could open up requirements for restructuring professionals in the Alt-A mortgage universe and in other consumer finance vehicles such as auto loans, manufactured housing loans, and subprime credit cards.

IV. Glossary

Alt-A Lending	lending to borrowers with a FICO between 620 and over 700 . Alt A lending allows consumers to take advantage of products that are outside FNMA/FHLMC or generic jumbo guidelines.
Customer Direct Lending	See Retail Lending
Direct Mortgage Lender	A lender that makes loans to borrowers (either on a wholesale or retail basis) using its own source of funds, including a warehouse line of credit. Mortgage lenders typically sell their loans in secondary market.
Early Payment Default (EPD)	A loan that has defaulted (i.e., payment default) within a specified period following the sale of a loan to an investor. EPD periods are typically 30-90 days following the transfer of the loan from the lender to the investor.
Investor	A person that purchases a loan from a mortgage lender. The investor may often pool or aggregate loans purchased from a number of different lenders for deposit into a trust or similar vehicle for securitization.
Option Arms	An adjustable rate loan, typically with a low start rate (known as a “teaser” rate) in which the borrower has the option, at each adjustment date, to cause some or all of the payments to become fully amortizing. These loans often negatively amortize during their term.
Premium recapture	If the lender is required to repurchase a loan due to EPD , fraud , not meeting the underwriting guidelines or merely because the loan is paid off within the first 6 months following the sale of the loan to the investor. The investor will also seek to recapture the servicing released premium.
Retail Lending	lending to borrowers directly by a lender. The retail lenders’ employees act as its sales force to secure loans. Retail lenders may also source loans through direct mail, internet leads or call centers. The loan is made in the name of the lender.
Secured Option Arm	An adjustable rate loan, typically with a low start rate for a fixed term. This loan allows the borrower to “secure” a fixed rate of interest during the 3,5 or 7 year initial period of the loan, still allowing the borrower to make the lower initial payment. These loans will negatively amortize.

Servicer	A party that services a loan on behalf of the owner of the loan. Mortgage lenders typically engage in “interim servicing” during the period between loan funding and the sale of the loan to an investor. The investor will then service the loan itself (including after securitization).
Servicing Released	a transaction in which the loan and the related servicing rights are sold as a single package. Most lenders sell their loans on a Servicing released basis to increase their liquidity.
Servicing Released Premium	The premium or amount in excess of the par value of the loan that is paid in connection with the sale of a loan on a servicing released basis.
Servicing retained	a transaction in which the loan and the servicing are separated and the Collateral is sold separately from the servicing (and the servicing retained by the holder of the loan).
Subprime Lending	Generally refers to lending to borrowers having a FICO score of under 620, or between 620 and 680 with one or more credit “impairment” characteristics such as high LTV, high debt to income or other characteristics
Subservicer	The party that services a loan on behalf of an owner of a loan.
Table Funding	Means a transaction in which the broker promotes the products offered by the lender to originate the loan. The loan is underwritten by the wholesale lender, however the loan documents are drawn in the name of the broker.
Warehouse Line of Credit	A revolving line of credit provided by a financial institution that is secured by the collateral of the loan being funded by the mortgage lender. Warehouse lenders include commercial banks and thrifts (including BofA and Wamu), non-depositories (including RFC) and wall street investment banks (such as EMC/Stearns, Lehman, Merrill Lynch, CSFB and JP Morgan/Chase). The lender in such transaction is referred to as a “warehouse lender” and the loans held as collateral by the warehouse lender are referred to as “loans in inventory.” A warehouse line of credit is typically (but not always) secured only by the Collateral (Note) funded under the line of credit and not by all assets of the borrower. Most lenders have multiple lines of credit.
Wholesale Lending	Lending to borrowers using a mortgage loan broker as an intermediary. Wholesale lenders do not communicate directly with borrowers. Rather, the borrower looks to the broker to structure the loan and shop the loan with one or more wholesale lenders. The

broker relies on the wholesale lender to underwrite, draw loan documents and to use lender funds to close the loan.

V.
Panel Biographical Information

JAMES I. STANG

Jim has broad experience in bankruptcy reorganization, and has acted as a chapter 11 trustee and receiver in numerous cases. Mr. Stang has lectured and written extensively on both bankruptcy and receivership issues. He is a graduate of UC Berkeley and received his J.D. from Hastings College of Law, where he was editor in chief of Hastings International and Comparative Law Review. Mr. Stang is admitted to practice in California, and is a resident in our Los Angeles office.

SAMUEL A. NEWMAN

Sam is an associate practicing in the Los Angeles office of Gibson, Dunn & Crutcher LLP, where he is a member of the Business Restructuring and Reorganization Group. He represents buyers and sellers in M&A transactions involving distressed companies, as well as lenders and debtors in financing transactions involving distressed companies. Some of his recent engagements include: (i) Represent controlling noteholders in acquiring representation on board of a privately-held \$300 million manufacturing and distribution company. Currently represents the company in connection with a series of asset dispositions and other restructuring measures; (ii) Represent holder of secured debt issued by manufacturing company in effort to force sale of company to third-party acquirer; (ii) Represent defaulting debtor in connection with foreclosure efforts by lender group; (iv) Represent Federal Home Loan bank in buying and selling participation interests in Federally insured mortgages to participating banks. He also represents creditors and parties in interest in bankruptcy cases, state law liquidations and foreclosures. Recent matters include the bankruptcies of Northwest Airlines, Delphi, HA-LO, K-B Toys, the Winston Tire Company, Franchise Pictures and Future Media Productions. Prior to joining Gibson, Dunn & Crutcher LLP, Mr. Newman held political and fundraising positions with the Democratic National Committee (DNC) in Washington, DC and served in legislative and policy positions for Senator John Glenn (OH) and Representatives Gary Ackerman (NY) and Rob Andrews (NJ). He earned his law degree magna cum laude from Georgetown University Law Center where he was elected to the Order of the Coif. He received a Bachelor of Science degree in Foreign Service from Georgetown University's School of Foreign Service in 1992. He is admitted to practice law in California, and is an active member of the American and L.A. County Bar Associations. He is also an active member of the Turnaround Management Association, the Financial Lawyers Conference and the Los Angeles Bankruptcy Forum. He lives in Manhattan Beach, California with his wife, Katja, and their sons, Jakob and Max.

SUZZANNE UHLAND

Suzanne is a partner in O'Melveny & Myers' San Francisco office and Chair of the Restructuring Practice. She practices in the areas of finance, corporate, and bankruptcy law and represents lenders and borrowers in lending transactions and restructurings. Suzanne has significant public company bankruptcy experience and has substantial expertise in addressing intellectual property issues in the bankruptcy context. She frequently collaborates with the firm's Intellectual Property and Technology attorneys in bankruptcy cases and in structuring transactions to avoid bankruptcy-related risks. Suzanne was recently selected by her peers for

inclusion in the 2006 edition of *The Best Lawyers in America* and was recognized by *Orange Coast* magazine as one of the Best Lawyers in Orange County. Suzanne has considerable experience representing: (i) Debtors-in-possession, creditors, and DIP lenders in business chapter 11 cases of public and private companies; (ii) Buyers and sellers in Bankruptcy Code Section 363(b) sales and other distressed mergers and acquisitions; (iii) Financial institutions and public and private companies in connection with credit financing transactions; (iv) Licensors and licensees of intellectual property in connection with preserving or acquiring intellectual property rights in distressed situations; (v) Real estate lenders, landlords, and owners, including the reorganization of one of the largest office complexes in Orange County. Her recent matters include representation of: (i) Replay TV (SonicBlue, Inc.) as special bankruptcy litigation counsel in its litigation with Intel, Inc.; (ii) Excite/At Home in its Chapter 11 proceeding, and the At Home Liquidating Trust in the wind down of the estate; (iii) The successful bidder and acquirer of substantially all of the assets of Read Rite Corporation; (iv) Roxio, Inc. in its acquisition of the Napster assets from Chapter 11; (v) Warehouse Entertainment, Inc., one of the nation's largest music retailers, in its Chapter 11 proceeding; (vi) SeraCare Life Sciences, Inc., as special litigation and corporate counsel in its Chapter 11 case; (vii) Copyright holders in the Chapter 11 case of Scour, Inc.; (viii) Crow Winthrop Operation Partnership, owner of one of Orange County's largest office complexes, in its Chapter 11 case; and (ix) Premier Laser Systems, Inc., a public medical device company, in its Chapter 11 case. Her education includes: Yale University, J.D., 1988: Co-Editor in Chief, *Yale Journal on Regulation*; Stanford University, M.A., 1986; Stanford University, A.B., 1984: with distinction; Phi Beta Kappa. She clerked for the Honorable Mariana R. Pfaelzer, U.S. District Court, Central District of California, 1989-1990. Admitted, California. Adjunct Professor, Secured Transactions, Southwestern University School of Law, 1990. Board of Governors, Financial Lawyers Conference (1997-present); Speaker, "Bankruptcy and Intellectual Property; When Worlds Collide," Financial Lawyers Conference, February, 2006; "Can It Be Done By the Numbers?," Turnaround Managers Association, 2003 Spring Conference; "Current Issues in Bankruptcy Litigation," American Bankruptcy Institute, Bankruptcy Battleground West, 2003

DENNIS MCGETTIGAN

Dennis joined Gordian Group in 1996 and has been a partner since January 2004. He has over 10 years experience in corporate finance, including extensive experience in corporate restructurings. Representative engagements include: (i) financial advisory in respect of a \$900 million portfolio of asset-backed securities, (ii) Mississippi Chemical Corporation (debtor financial advisory), (iii) Pinnacle Holdings, Inc. (debtor financial advisory), (iv) Ben & Jerry's Homemade, Inc. (financial advisory culminating in sale to Unilever), (v) Waste Systems International Inc. (debtor financial advisory), (vi) Liberty House, Inc. (equity financial advisory), and (vii) Anker Coal Group (company financial advisory). He also leads Gordian's research function, including the development of *Distressed Debt Investor*, a bi-weekly research service targeted at institutional investors which Gordian publishes in collaboration with FridsonVision, LLC. He received a Bachelor of Economics degree, with a concentration in management from The Wharton School, University of Pennsylvania, and received a Master of Business Administration degree from the Columbia Business School, Columbia University. His academic honors include Dean's List and Beta Gamma Sigma.