



## INSOLVENCY RELATED ISSUES IN THE BOARDROOM

### TOP TAKEAWAYS

1. Fiduciary duties continue to exist in bankruptcy.
2. When the corporation is insolvent or in the “zone of insolvency,” the duties are owed not only to shareholders but also to creditors.
3. Directors remain protected by the business judgment rule even while insolvent.
4. Advisors play an important role in ensuring that directors make *informed* decisions.
5. *Gheewalla* decision by Delaware Supreme Court held that creditors of a Delaware Corporation that is either insolvent or in the zone of insolvency have no right to assert direct claims for breach of fiduciary duty against corporation’s directors.
6. *U.S. Energy Systems* decision by Delaware Chancery Court held that the automatic stay did not apply to the scheduling or holding of a shareholder meeting of the debtor. The Chancery Court issued an order directing U.S. Energy to schedule a shareholder meeting at the request of a shareholder.
7. Control of the corporation may change in bankruptcy if a Chapter 11 Trustee is appointed.
8. Bankruptcy forum may be preferred to avoid burdensome non-bankruptcy corporate governance requirements such as shareholder approval for asset sales.