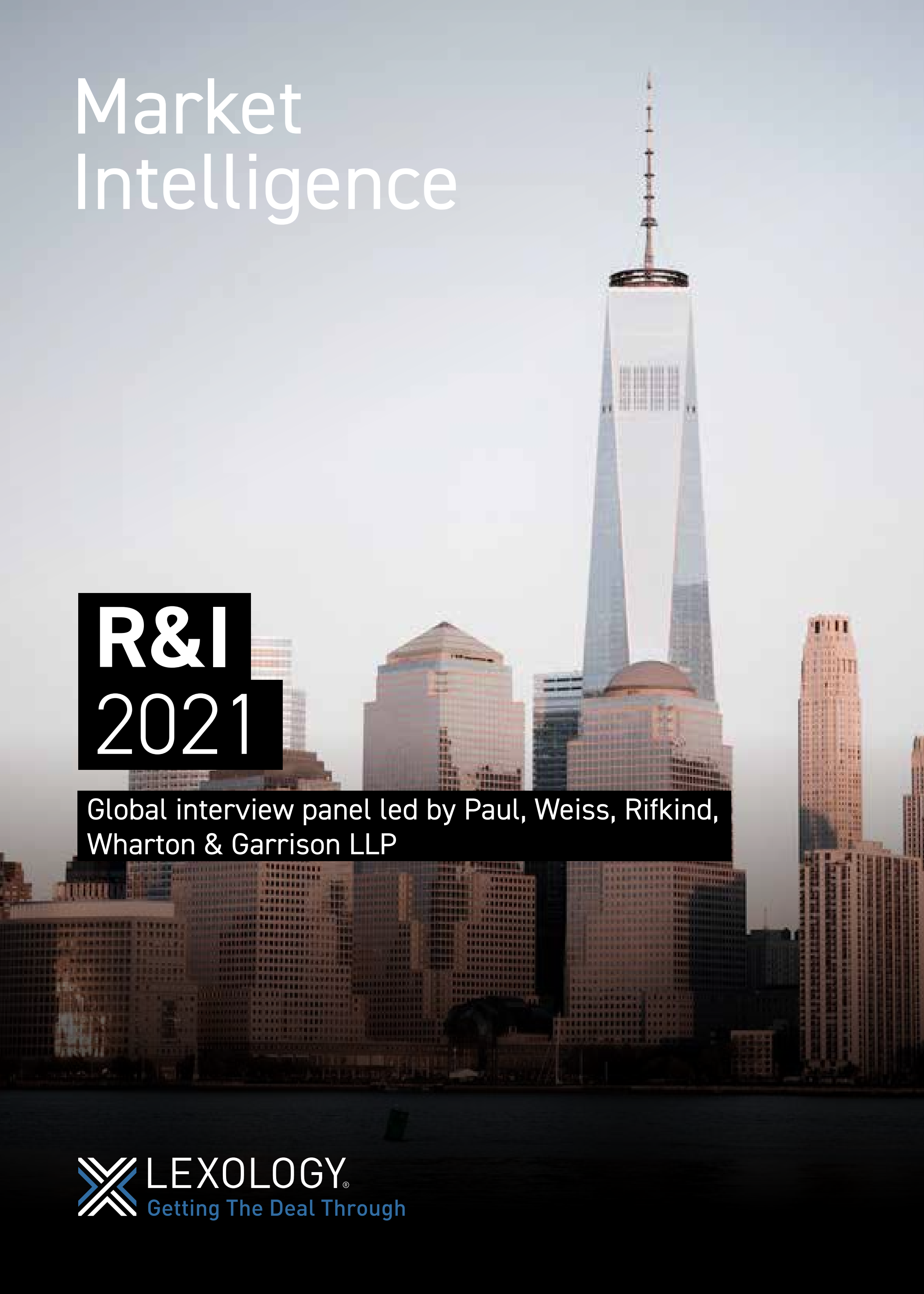

Market Intelligence

R&I 2021

Global interview panel led by Paul, Weiss, Rifkind, Wharton & Garrison LLP

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Getting The Deal Through

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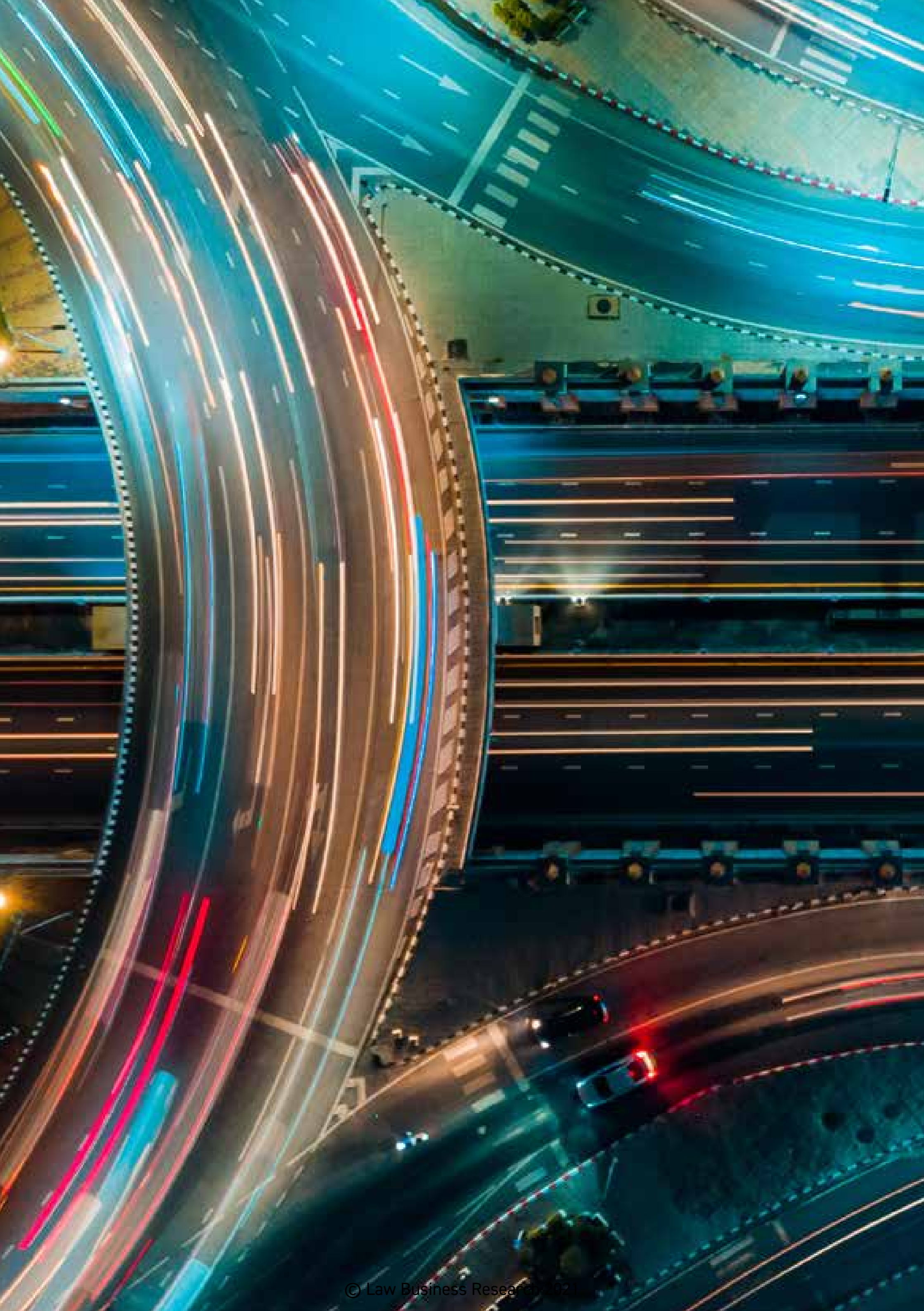

Global Trends

A partner in the restructuring department at Paul, Weiss, Rifkind, Wharton & Garrison LLP, Jacob Adlerstein has broad experience advising a variety of clients in bankruptcy cases and corporate restructurings, including debtors, official and ad hoc creditor committees and distressed investment funds. Jake's company-side representations include Hexion, Cumulus Media, Pinnacle Agriculture Holdings and AbitibiBowater, and recent creditor and private equity sponsor representations include Guitar Center, Ligado Networks, J.Crew, Associated Materials, GNC Holdings, PDVSA, EP Energy, American Tire Distributors, Bellatrix Exploration, Energy Future Holdings, Pacific Exploration, Dynegy and Aspect Software.

Jake has been recognised by *The Legal 500* and he was named in Lawdragon's inaugural list of "500 Leading US Bankruptcy & Restructuring Lawyers". In 2016, Jake's work in Aspect Software's Chapter 11 case was recognised by The M&A Advisor in its annual Turnaround Awards as their "Information Technology Deal of the Year (Over $250MM)". He regularly participates on panels sponsored by industry organisations, including Practising Law Institute.

The global impact of the covid-19 pandemic cannot be overstated. The pandemic, together with the measures that governments took to combat it (social distancing and otherwise), had a dramatic effect on large swathes of the global economy. Some of these consequences were felt immediately, while others may linger for years to come. But 2020 will also be remembered as a tale of two years. The first half of the year was marked by a significant increase in restructuring activity (both formal insolvency proceedings and out-of-court arrangements), volatility and financial distress across a number of jurisdictions and sectors. Seemingly few industries or businesses were spared. But by the second half of the year, markets had largely stabilised and ultimately rebounded, in large part fuelled by unprecedented levels of government support and optimism regarding the distribution of an effective vaccine. Notably, taken as a whole, many contributors report that their jurisdictions did not experience an uptick in actual insolvency filings in 2020, as observed by the authors from Germany, France, Israel and Argentina, among others.

For example, although the pandemic had a dramatic effect on Germany's economy, the contributors from that jurisdiction note that the most significant development in 2020 was the absence of the wave of corporate insolvencies that one would have otherwise expected, with filings actually falling by more than 8% compared to 2019. Similar observations are made by the contributors from France, where the pandemic caused significant disruptions and slowdowns of business activity, but nevertheless business failures remained at a historically low number. The contributors from Israel similarly did not witness an increase in the number of corporate insolvency filings, but did observe a rise in insolvency filings by small and medium-sized businesses. Among the reasons noted for this seemingly counterintuitive trend were low interest rates, government intervention and legislative relief. The contributors also noted the willingness of creditors to engage in consensual workouts with borrowers to stave off formal insolvency proceedings, at least temporarily. Whether this trend will continue in 2021 remains to be seen.

There was a burst of legislative activity in 2020, as governments moved swiftly to attempt to counteract the global market disruptions caused by the pandemic. Many of these efforts included legislation to modify insolvency regimes – in certain instances temporarily, and in others permanently – to facilitate access or streamline procedures. Other changes were made to avoid a rash of potentially unnecessary filings while the pandemic was just beginning to unfold. For example, as the authors from Germany note, a suspension of the obligation to file for insolvency in certain circumstances helped businesses avoid formal insolvency filings – at least in the short term.

The year 2020 also marked the long-anticipated conclusion to Brexit and the end of the associated transition period, though there are many related issues that will

nevertheless hang over cross-border European restructurings for some time. As a result of Brexit, as certain of the contributors note, the EU Insolvency Regulation will no longer apply as a uniform legal regime in respect of cross-border cases between the United Kingdom and the European Union member states. Certain contributors note that this decrease in standardisation – and in the associated predictability of outcomes – means that European cross-border cases may become more costly and complex. Moreover, as the French authors note, before Brexit, there was a flourishing restructuring practice in the United Kingdom for foreign debtors. Whether and to what extent this continues post-Brexit will be an open question in the months and years to come.

Globally, and quite visibly in the United States, the market dislocation caused by the pandemic greatly accelerated certain pre-existing industry trends and associated financial distress. In the energy sector, falling commodity prices resulted in a number of high-profile insolvency filings in the United States. Similarly, the bricks-and-mortar retail sector, already in a weakened position because of the growth of online channels, experienced significant financial distress, with numerous large retailers forced to seek insolvency protection in 2020. Thankfully, while retail restructurings can often

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be protracted and challenging for stakeholders, this past year saw several successful restructurings in the sector. In Germany, the *Galeria Karstadt Kaufhof* insolvency case was an example of a large retailer (Germany's largest department store chain) being able to restructure quickly and effectively. Similarly, in the United States, JCPenney, the 118-year-old American retail icon, is an example of a bricks-and-mortar retailer that was able to successfully reorganise its business at the height of the pandemic.

Across jurisdictions, as contributors to this volume of Market Intelligence R&I highlight, the extent to which any regime can be characterised as more creditor-friendly or debtor-friendly varies meaningfully. Importantly, these characterisations also remain fluid, as certain jurisdictions have evolved their approach over the years, migrating from debtor-friendly to creditor-friendly and vice versa. All of which underscores the critical importance of understanding the nuances and distinctions among the varied insolvency regimes that may be implicated by any cross-border restructuring transaction.

Finally, and relatedly, a common theme that transcends jurisdictional boundaries is the importance of identifying insolvency counsel with extensive experience in their field. Moreover, given the increasing complexity of today's insolvency transactions, it is essential that an insolvency counsel can field a cross-disciplinary team of specialists to protect and advance a client's interests in all facets of a restructuring transaction. If 2020 taught us anything, it is that the future is uncertain. Restructuring professionals will need to remain nimble and creative to help solve their clients' most challenging problems in the years ahead.

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