



Creditor  
Rights  
Coalition

# Creditor Corner

for the week ended February 16, 2024

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*Your weekly curated content from the Creditor  
Rights Coalition*

*President's Day Edition!*

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## BREAKING NEWS

Robertshaw LME sh\*tsh\*w, WeWork Examiner Sought, Boy Scouts stopped in their tracks, Ergen against the ropes, Private credit versus broadly syndicated market, Houston continues to have a PO Box issue, and much, much more!

## SPECIAL FEATURE

Ed Neiger & Nick Brown Speak Up  
Committee Standing

## FEATURED CONTENT

Bruce Richards on the Markets:

Scroll through to read all of our content

## Tweets of the Week

New Apollo and Old Apollo

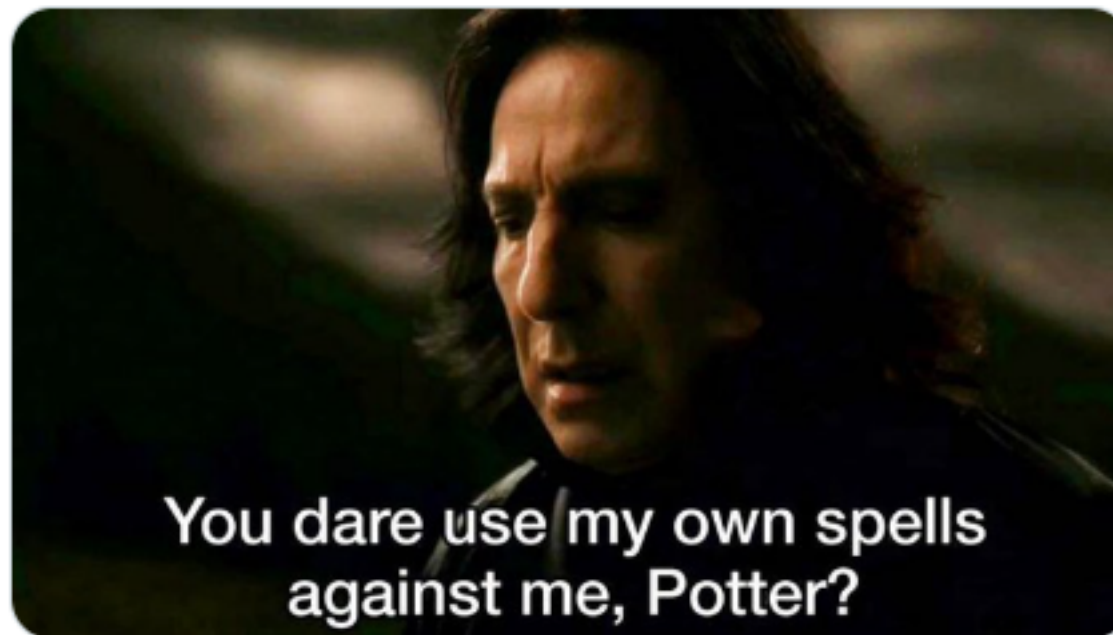


**High Yield Harry** ✓

@HighyieldHarry



Apollo when they're the lender and a Sponsor moves value away from the collateral package



9:18 AM · Feb 15, 2024 · 55K Views

↻ lever up reposted



**lever up** @\_LeverUp · Feb 14, 2022

Roses are red

Covenants are hollow

All your collateral belongs to Apollo



## Exclusive Content

LME SH\*TSH\*W

# BankruptcyData

### **Robertshaw US Holdings Corp**

Global Appliance Parts Manufacturer

Controlled by One Rock Capital Partners

Files for Bankruptcy with Over \$500mn of

Debt; Will Look to Stay Litigation Relating to

2023 "Uptiering" Transaction and Pursue

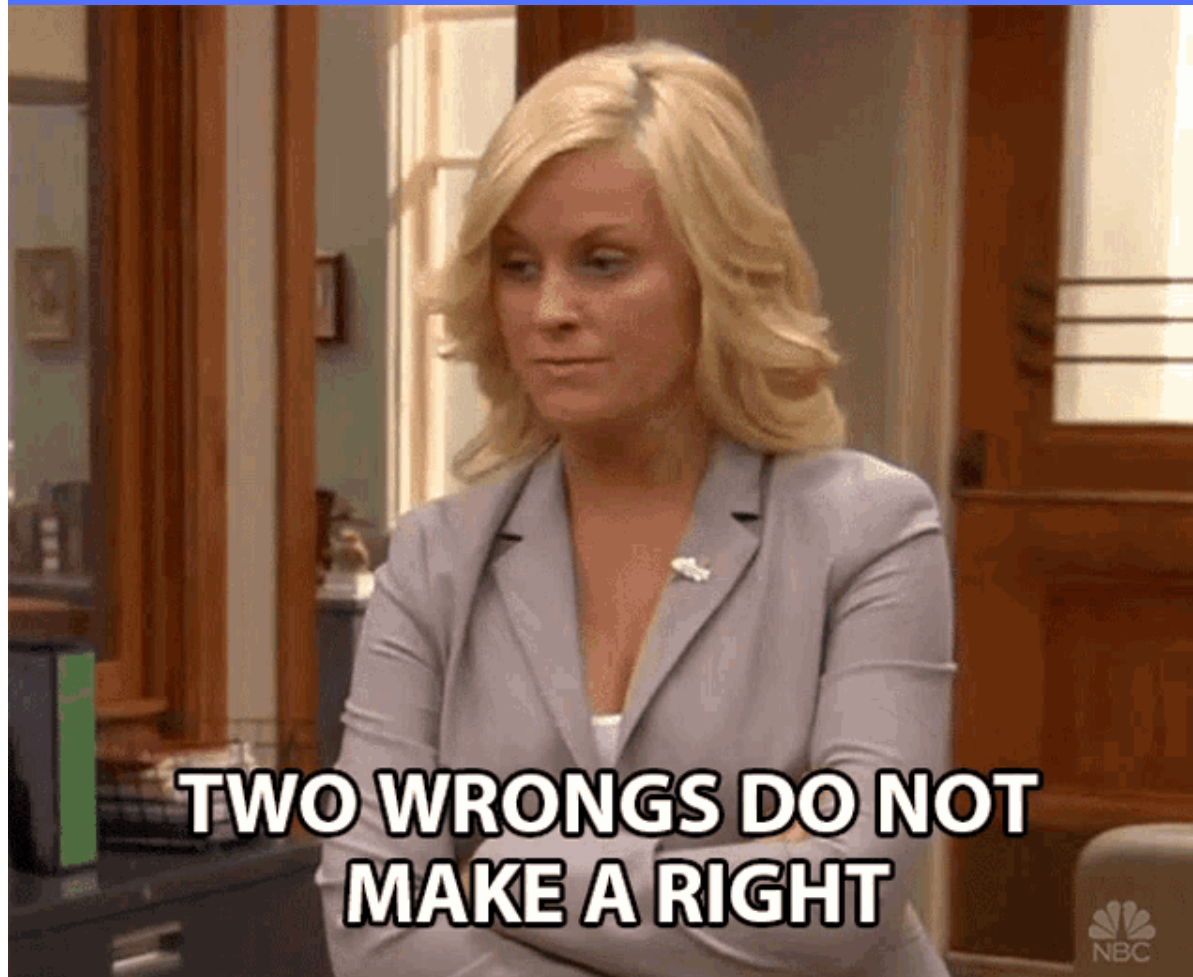
Asset Sale

Click on the Image to Access the Full Report

*One-time registration required*

# Exclusive Content

Two wrongs don't make a right!



**9fin**

**Robertshaw bankruptcy filing shows that two LMEs don't make a right (9fin)**

Max Reyes | [max.reyes@9fin.com](mailto:max.reyes@9fin.com)

## Special Feature: Committee Standing

### Creditor Rights Coalition

*The leading voice representing all stakeholders with  
an interest in protecting creditor rights.*

### The Contributors Speak Up

*A recurring feature from the Creditor Rights Coalition.*



Ed Neiger

ASK LLP



Nick Brown

ASK LLP



Earlier this month a Delaware bankruptcy judge ruled that a creditors' committee has standing to pursue breach of fiduciary duty claims on behalf of a Delaware limited liability company's bankruptcy estate against the company's officers. This holding is significant because at

least three prior Delaware bankruptcy court cases held that creditors were barred from pursuing such derivative claims by operation of Delaware state law.

Prior to the court's decision in *In re Pack Liquidating, LLC*, bankruptcy courts in Delaware had rejected creditors' requests for derivative standing to bring lawsuits belonging to an LLC's bankruptcy estate. Those courts pointed to the Delaware Limited Liability Company Act, which expressly requires that a member or assignee of the company must bring such claims. These decisions left few vehicles for recovering on claims of managerial misconduct where the managers themselves remained in control of the debtor. Without the ability to pursue such claims derivatively, creditors hoping to monetize these claims were forced to consider more extreme avenues such as appointing a trustee or converting the case outright.

Breaking with his peers, Judge Goldblatt found that the Bankruptcy Code implicitly authorizes courts to grant derivative standing to pursue estate causes of action which the estate's fiduciaries refuse to bring. Judge Goldblatt relied on the Third Circuit's decision in *In re Cybergenics*, which held that a committee's standing is derived from federal bankruptcy law. As such, a state statute imposing limitations on derivative standing has no impact on the bankruptcy court's authority to grant standing to a creditors' committee to pursue claims on behalf of the bankruptcy estate.

The decision in *Pack Liquidating* furthers bankruptcy's goal of maximizing value for the benefit of the estate and is a victory for creditors. It remains to be seen if other bankruptcy judges will follow this court's lead, however, Judge Goldblatt's opinion makes a compelling case that the bankruptcy court's authority to grant derivative standing to committees is dictated by binding Third Circuit precedent and the Bankruptcy Code itself.

## In The News

whoa... read-through to Purdue no bueno!



### US Supreme Court's Alito pauses Boy Scouts \$2.46 billion abuse settlement

By Dietrich Knauth

February 16, 2024 3:47 PM EST · Updated a day ago

# Exclusive Content

This should be juicy...

R



## WeWork Ad Hoc Unsecured Noteholder Group Seeks to Appoint Examiner to Investigate Prepetition Transactions With SoftBank, Asks for Derivative Standing to Pursue Litigation Claims

Mon 02/12/2024 12:44 PM

[Click on the Image to Access the Full Report](#)

## In The News

Ergen against the ropes?



FINANCIAL TIMES



# How distressed debt brought a billionaire's satellite empire crashing to earth

Charlie Ergen's audacious restructuring plan at Dish Network is emblematic of telecoms industry's troubles



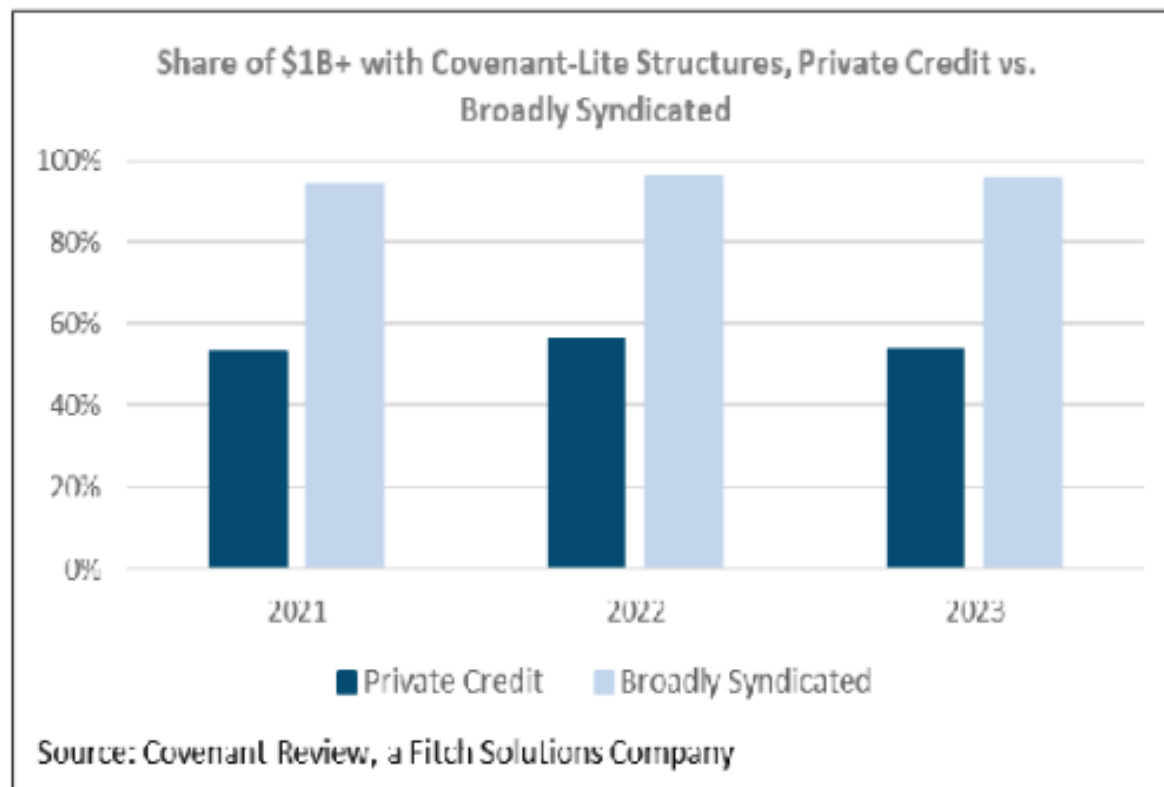
Charlie Ergen 'has broken a lot of trust and credibility that he had in the market,' said one EchoStar bondholder © FT montage; Reuters

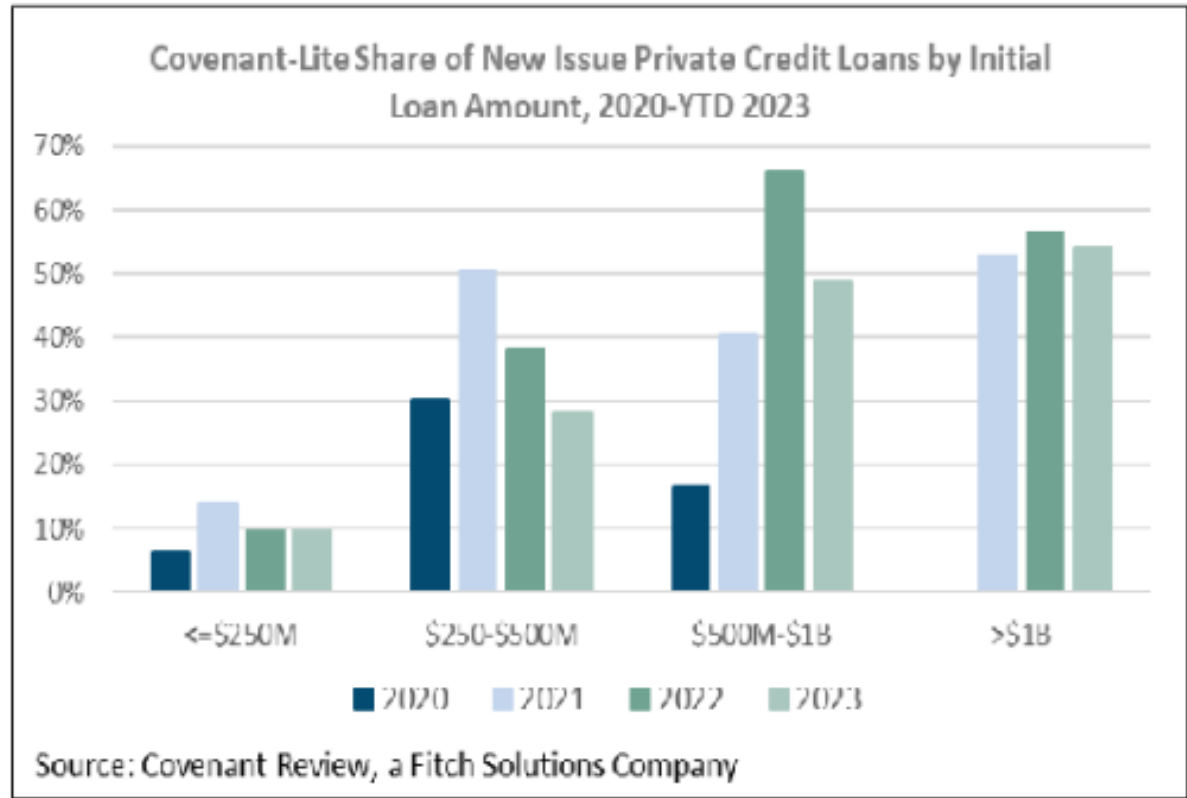


**Sujeet Indap** and **Harriet Clarfelt** in New York YESTERDAY



Exclusive Content





[Click on the Images to Access the Full Report](#)

**One to Watch**  
pull up a chair...



THIS IS GETTING GOOD

## Houston has a P.O. Box Issue Part 2

U.S. Trustee seeking to dismiss Sorrento or transfer the case because Jackson Walker created venue just hours before filing for BK.

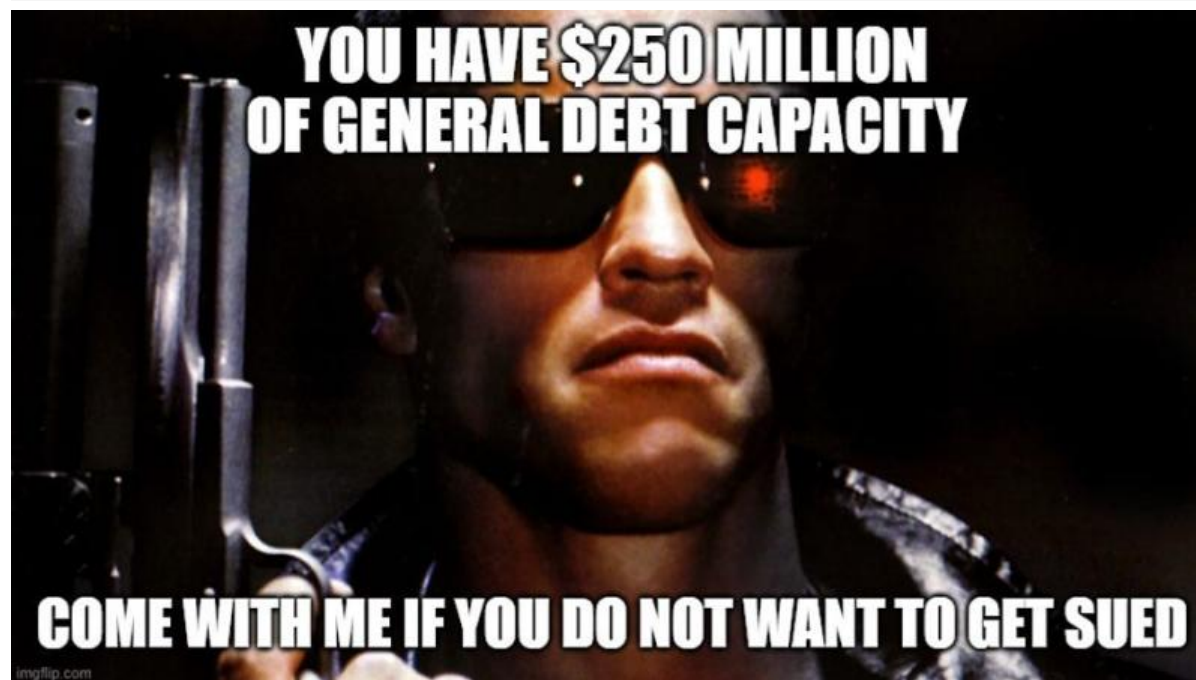
[Read the UST's Filing Here](#)

## What We're Reading

Read Petition on Double Dips



🌟 Everybody's "Double Dipping" 🌟



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# Data Download

Exclusive Content

## BankruptcyData

### Asset Sale Report – FY 2023

**TOTAL BID PROTECTIONS\***. In FY23, the average break-up fee was 2.5%, with a median of 2.7%, showing a decrease from the previous year's rates of 2.8% and 3%, respectively. The highest bid protection, reaching 16.1%, was awarded to Grander Acquisition LLC, the stalking horse bidder for PolarityTE. Most of the total bid protections were within the 2-4% range. Additionally, 41% of stalking horse bids featuring a credit bid component do not necessitate bid protections.

Click on the Image to Access the Full Report  
*One-time registration required*

### What We're Reading

EVERYONE IS TALKING ABOUT  
BANKRUPTCY DIRECTORS

*Robert W. Miller\**

Prof. Miller Tops our List  
Two Weeks in a Row!

### Podcast of the Week



[Read it Here](#)

J.P.Morgan

## Making Sense



What's The Deal? | What to Expect  
at the 2024 High Yield & Leveraged  
Finance Conference?

[Visit Podcast](#)

## Data Download

Margins ARE the story

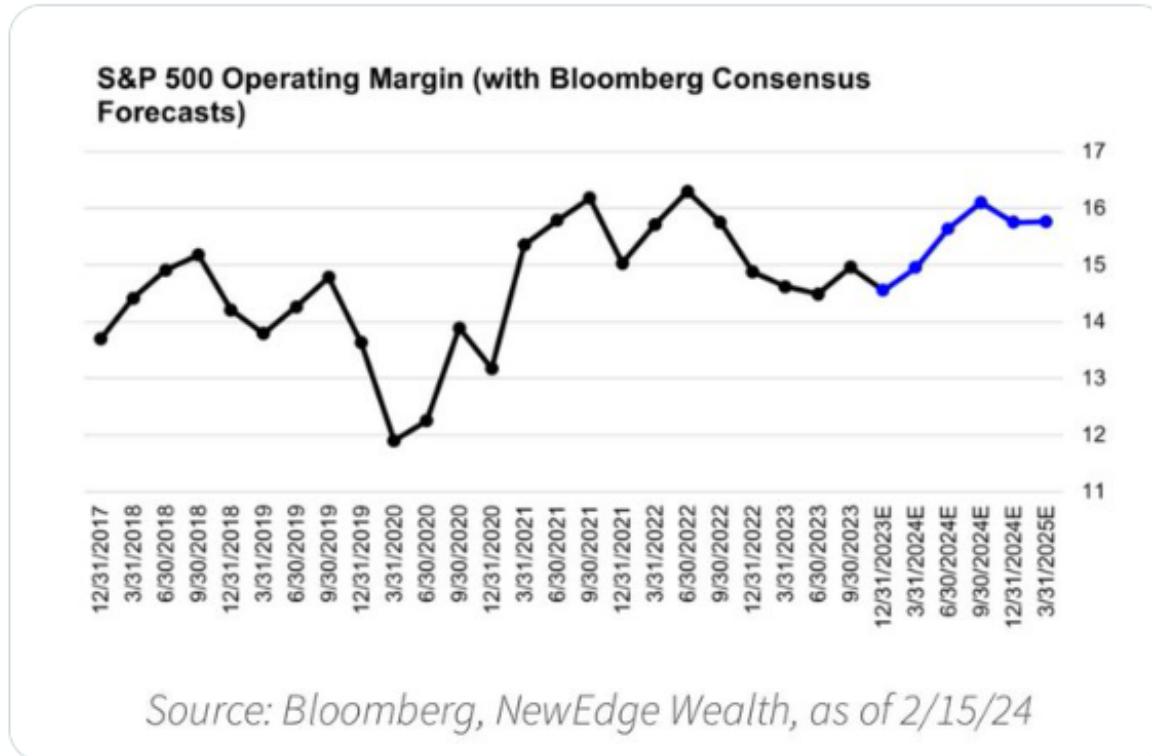


**Cameron Dawson** ✓  
@CameronDawson



Margins continue to be the key watch item for earnings moving forward.

The 2023 earnings “recession” had nothing to do with weaker demand (like an economic recession), but instead was driven by margin normalization after pricing power drove margin upside post pandemic.

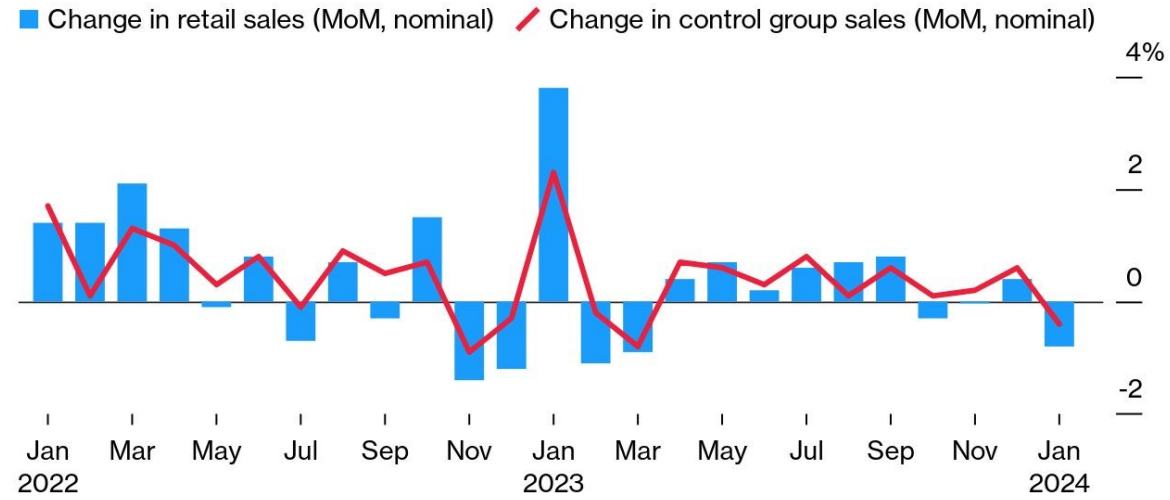


7:54 AM · Feb 17, 2024 · 1,974 Views

**Data Download**  
Bad news is actually good news for Bulls



## US Retail Sales Fell by Most in Nearly a Year

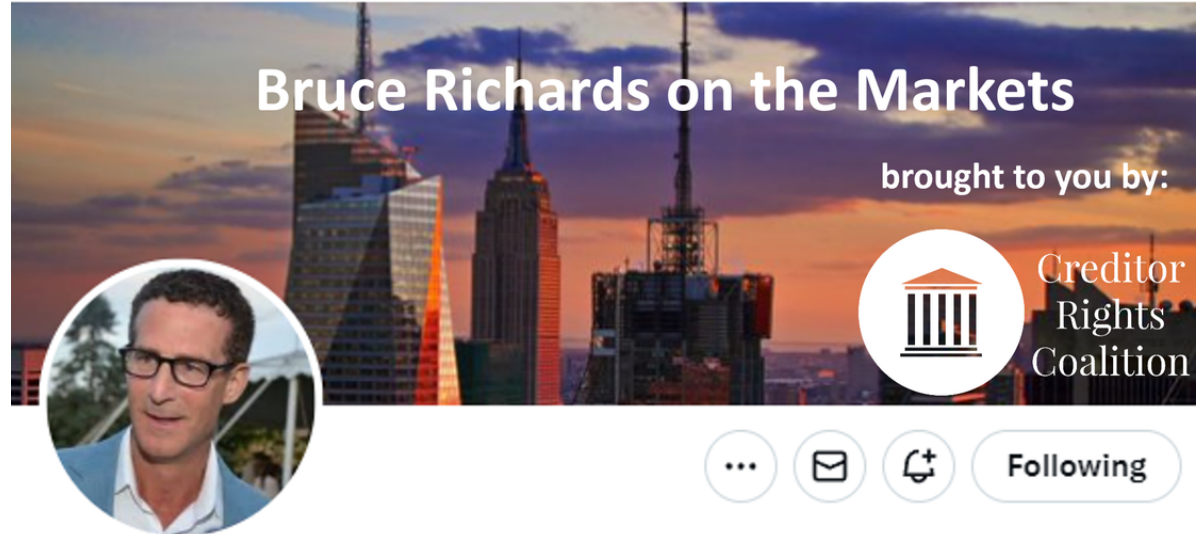


Source: Bloomberg

Bloomberg

Source: S&P Global, Prequin. Data as of Sept 30, 2023

# Bruce Richards on the Markets



**Bruce Richards** ✓

@Bruce\_Markets

Retail Sales Stall

Retail sales dropped by 0.8% in January, well below the consensus (-0.2%). Net revisions from the prior two months were -0.5%, despite the +0.7% uptick for food (restaurants, grocery). Retail Sales for in-store declined even sharper, -3%. While LVMH, Gucci, and Hermes and department stores such as Neiman Marcus are performing well while capturing the high-end wallet, successful online clothing retailers such as Temu, who gamifies shopping and gets the medal for biggest spend on Super Bowl Sunday ads (\$21 million), and Mytheresa are also capturing greater market share. In contrast, low-income consumers, are starting to tighten their belt given their inflation pinch and this is being felt by retailers who service this cohort. Under-capitalized/highly leveraged/sub-scale retailers are experiencing a more challenging time. For example, Express Inc. has retained law firm Kirkland & Ellis to consider how to restructure ~\$280 million of debt amid declining sales while its equity share price is down 98% from 2021 (price decline from 125 to 2.5).

Buyer Beware: When investing in distressed, my rule is to seek Good Company, Bad Balance Sheet opportunities since you can fix a balance sheet by restructuring, but it's too hard to fix a company that is going through structural decline. When a Good Company emerges from bankruptcy, it should not only be a going concern, but it should also be on a path of profitability and with strong operating margins. It has been my opinion, that highly levered apparel/household goods retailers perform poorly post-bankruptcy, that impairs the unsecured creditors, even when they re-cap the company. Conclusion, avoid low-end retailers who are in the process of/have filed for BK.

Company	Net Debt	Mkt Cap	TEV	LTV	Liquidity	Net Leverage	Debt Coverage	Debt Price
The Michaels Cos.	\$4,161	private	n/a	n/a	\$510	7.8x	1.1x	61
At Home Group	\$1,878	private	n/a	n/a	\$169	125.2x	nm	52
Weight Watchers	\$1,318	\$356	\$1,674	79%	\$352	9.6x	1.0x	59
Jo-Ann Stores	\$1,127	\$25	\$1,151	98%	\$100	14.9x	0.3x	7
Big Lots Inc.	\$486	\$104	\$590	82%	\$258	nm	nm	n/a
99 Cent Stores	\$432	private	n/a	n/a	\$65	nm	nm	35
Children's Place	\$395	\$177	\$572	69%	\$42	9.3x	0.2x	n/a
The RealReal	\$281	\$189	\$470	60%	\$171	nm	nm	35
Express Inc.	\$240	\$8	\$248	97%	\$56	nm	nm	n/a

Stressed Retailers' Watchlist: (Source: Marathon Asset Management)

To follow Bruce's thoughts on markets, investing, and more follow  
[@bruce\\_markets](https://twitter.com/bruce_markets)

# Introducing our 2024 Contributors

## Creditor Rights Coalition

*The leading voice representing all stakeholders with  
an interest in protecting creditor rights.*

## The Contributors Speak Up

*A recurring feature from the Creditor Rights Coalition.*



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Rachel Albanese



Philip Anker



Martin  
Bienenstock



Amy Caton



Josh Feltman



Justin Forlenza



Elliot Ganz



Marc Heimowitz



Sid Levinson



Jennifer Marines



Jim Millar



Bradford J.  
Sandler



Jennifer Selendy



Paul Silverstein



Clifford J. White III

[Read all of our Features Here](#)

# Featured Content: Contributors Speak Up

## Creditor Rights Coalition

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# Contributors Speak Up: SCOTUS takes on Purdue



Martin Bienenstock

PROSKAUER



Marshall Huebner

DAVIS POLK



Clifford J. White III

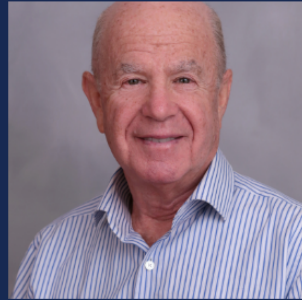
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# Special Feature: Where Are We In The Credit Cycle?



Professor Edward Altman

NYU STERN

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# CRC Weighs In: Proposed Federal Rule to Curb Judge Shopping

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# CRC Weighs In: Amicus Brief in Serta uptier appeal

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## Silver Sponsors



# Featured Event February 23

The must-attend event!

# RISING RATES & SHIFTING STRATEGIES

## IMPACT OF INFLATION ON THE DISTRESSED SPACE



### Upcoming Events

**ACFA: Liability  
Management  
Transactions Program**

March 14, 2024

[Learn More](#)

**ABF Journal: 15th  
Annual Philadelphia  
Restructuring Summit**

March 21, 2024

[Learn More](#)

**Sidley & Austin, Southern California Gould School of Law,  
and Lewis & Clark Law School: Financial Restructuring  
Roundtable**

April 4, 2024

Contact Samir Parikh for more information at [sparikh@lclark.edu](mailto:sparikh@lclark.edu)

**SAVE THE DATE: COMING SOON**  
**The 2024 Creditor Rights Coalition & LSTA Restructuring  
Symposium**  
June 27, 2024

Contact CRC for Sponsorship Opportunities at  
[info@creditorcoalition.org](mailto:info@creditorcoalition.org)

## Have Something to Share?

Email us at [info@creditorcoalition.org](mailto:info@creditorcoalition.org)