

THE AMERICAN LAWYER

An **ALM** Publication

americanlawyer.com

APRIL 2021

2021 DEALMAKERS OF THE YEAR



Scott Greenberg
Gibson, Dunn & Crutcher

THEY SAY THE BEST DEFENSE IS A GOOD OFFENSE. Scott Greenberg put that theory to the test in 2020, getting aggressive on behalf of an ad hoc group of lenders to Serta Simmons Bedding in a debt financing and exchange transaction that made waves in the capital marketplace and led to a court battle with an unhappy opponent.

When the pandemic put the mattress company in a bind, Greenberg and his clients were ready to step in. They had already been proactively eyeing Serta, and offered to serve as the capital support it needed in a pinch. But Greenberg's lender group wasn't the only party to the conversation: a team of lenders led by powerhouse Apollo Global Management was also seeking to get involved, offering a deal that would have followed in the footsteps of the recent J. Crew "trap door" approach by shifting Serta's intellectual property to a separate entity to finance a transaction that would have weakened all other lenders, including Greenberg's clients. So he went on the offensive.

Rather than let the Apollo group do a deal to his clients' detriment, he flipped the script, bringing in \$200 million of new financing and taking advantage of pro rata protection exemptions to exchange up to \$875 million of his clients' debt for more senior debt, subordinating all other lenders in the process—a novel approach wrought by careful study of the credit agreement. The Apollo group challenged the restructuring in New York state court, but an injunction was denied. A federal court granted the defendants' motion to dismiss.

"We just put the pieces of the puzzle together that were sitting in front of us to pull off a transaction that was good for us and the borrower and the sponsor," Greenberg says.

Just as lenders began adding in "J. Crew blocker" provisions to deals in an effort to avoid the trap that transaction exposed, Greenberg says some are now doing the same to stop his framework from catching on.

"It's a risk that I don't think most people that underwrite these credits have really thought through," Greenberg says, "and this brought it front and center to the marketplace."
—BEN SEAL