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AUTOMOTIVE HOUR
Bankruptcy and Debt Restructuring
Considerations for Automotive
and Mobility Lawyers

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Today's Presenters



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Associate, Boston

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Overview of Bankruptcy and Debt Restructuring

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Types of Restructurings (In Court vs. Out-of-Court Workouts)

- Out-of-court restructurings
 - Typically faster & less expensive
 - Require high level of consensus
 - Must abide by or renegotiate existing contractual obligations
 - Complexity of capital structure drives success



Out-of-Court Restructurings (continued)

- Challenges/Obstacles
 - Maturity/principal amount changes require 100%
 - Holdout issues to reach 95% plus consent
 - Complex capital structures
 - Secured & unsecured debt
 - Senior & Junior liens
 - Operational issues – e.g., long term problematic contracts
 - Major disputes/litigation
 - Public shareholders rights must not be impaired
 - Liquidity needs - lenders may prefer DIP lending over “bridge”

Chapter 11 Restructuring

- Provides process to implement restructuring
 - over the objection of holdouts
 - supermajority voting by class & cramdown
 - robust releases for key parties
 - court approved transaction and financing



“Free Fall” Bankruptcy

- Filing without any agreed to restructuring plan
- Usually results from sudden financial distress or neglect
- Longer & more expensive process
 - 12 to 18 months to emergence
 - Significant professional fee expense
 - Obtain DIP Financing
 - Negotiate with creditors regarding plan of reorganization
 - No clear path for business, employees and stakeholders until plan proposed

Pre-packs

- Plan negotiation & creditor votes solicited before chapter 11 filing.
- Short chapter 11 case
 - Typically 30 days
 - In certain situations can be shorter (even a few days)
 - Limited, if any, DIP financing for shorter case
 - Lower chapter 11 costs (often no official committee)
- Often paired with out-of-court restructuring effort
 - Coercive threat to holdouts
 - Offer better recoveries if done out-of-court

Pre-packs (continued)

- Limitations on Pre-packs
 - Most effective on financial debt – lenders & bondholders
 - Unimpairment of trade creditors
 - Less effective with material disputes
 - Intercreditor disputes regarding recoveries/value
 - Any litigation regarding lien or claim validity
 - Major contract rejection
- Disputes
 - Chapter 11 provides litigation and discovery rights
 - Holdouts litigation can delay and increase cost

Pre-negotiated Plans

- Restructuring is negotiated with key stakeholders before filing, but vote solicitation occurs during the bankruptcy case.
- Restructuring/Plan Support Agreement – “RSA” or “PSA”
 - Debtor and key stakeholders into an agreement to pursue confirmation of a plan of reorganization
 - Provides a path forward even if there are plan opponents
 - Sets forth milestones to discipline the process
- Used when pre-pack not ideal
 - Major contract rejections
 - Intercreditor disputes
 - Trade impairment

Contract Assumption/Rejection

- Bankruptcy permits debtors to assume or reject executory contracts
- Assumption – debtor must
 - cure existing defaults
 - provide adequate assurance of future performance
- Rejection – debtor can
 - terminate contract
 - non-debtor has an “unsecured rejection claim”
- Rejection threat used to renegotiate contract

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Distressed Financing and Bankruptcy

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Early Considerations and Steps



Holistically analyze your entire relationship with the debtor

- Contracts
- Outstanding obligations on both sides of relationship



Be proactive

- If the relationship is material, get involved in the process early
- Better to be “at the table” and part of the solution
- If the relationship is adversarial, prepare bankruptcy strategy



Assess the creditor landscape

- Who are your likely friends & foes

Contract Party Engagement

- Proactive engagement upon signs of contract party distress
- Even if payments are current, analyze your relevant executory contract to understand and evaluate possibility of rejection
 - Even if the subject contract is long term or has beneficial terms, a distressed party may consider threatening rejection in bankruptcy to renegotiate more favorable terms
- Renegotiation of terms outside of bankruptcy may help support a distressed contract party
- Will renegotiation be part of a more permanent solution and fulsome restructuring? Or is it kicking the can down the road?
- Consider involvement of third parties such as unions

SUMMARY

CLARK-CUTLER-MCDERMOTT COMPANY

**HEADLINE: "TRAPPED IN UNFAVORABLE GM CONTRACT,
CCM HALTS OPERATIONS, FILES BANKRUPTCY; GM
WARNS OF IMMINENT PLANT SHUTDOWN"**

DETAILS

- CCM attributed the filing to unprofitable contracts with General Motors which account for 80% of CCM's revenue and from which CCM borrowed more than 5M, resulting operating losses of more than \$30,000 per day.
- GM was unwilling to make concessions on this arrangement out of court
- CCM sought to reject the GM contracts and plans to sell the assets since the assets are more valuable without the GM contracts.
- GM sued CCM the day the interim accommodation between the parties expired and CCM shutdown its operations, alleging a "scheme to extort tens of millions of dollars from GM"

Troubled Suppliers: Preparation for, or Avoidance of, Bankruptcy

- Analysis of supplier's immediate and long term liquidity and cash flow needs
- Are there liabilities that the supplier can manage, shed or restructure? Can the ultimate goal be accomplished out of court, or is bankruptcy necessary (e.g., litigation, employee or tax claims)?
- Is additional financing available? Understand the existing debt documentation and corporate structure
 - Do the financing documents permit additional debt incurrence?
 - Are there unencumbered assets that may be taken as collateral? Consider preference risk
 - What consents are required and can they be obtained?
- Consideration of jurisdiction; local law may impact financing options and structures

Debtor-In-Possession Financing

- Debtor-in-Possession (DIP) financing benefits:
 - Provides the debtor with access to capital during the bankruptcy case
 - DIP financing is usually secured by a superpriority lien and has administrative expense claim, but may be junior or exclude certain encumbered assets
 - Provides the lender with inside view of the company and certain control of the case
 - DIP lender will require significant diligence to provide the financing
 - Control of the case provided through
 - Enhanced reporting; engagement of a restructuring officer
 - Milestones that must be met to effectuate a sale or restructuring; failure to meet the milestones results in an event of default
 - May be able to control acceptance/rejection of executory contracts

Debtor-In-Possession Financing (continued)

- DIP financing risks:

To the extent current secured lenders' liens are primed by the DIP, they must either consent or be provided adequate protection

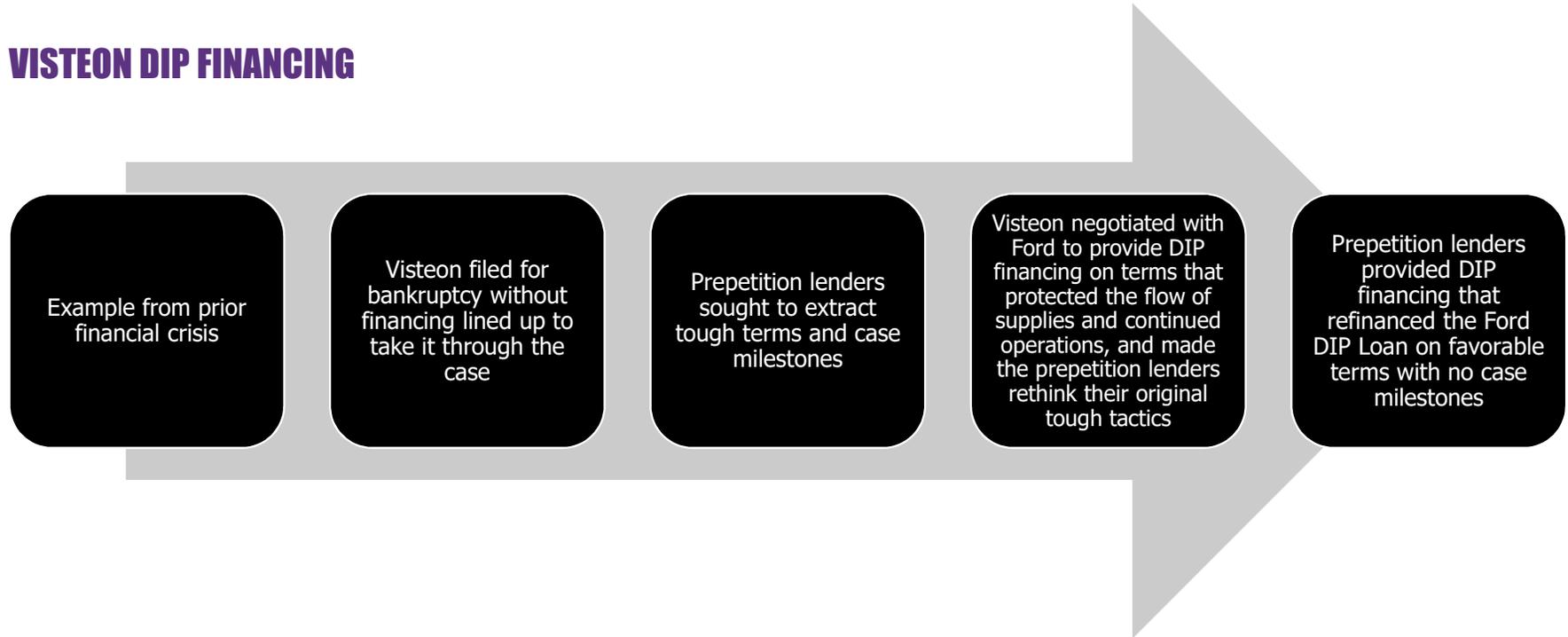
While the DIP may be senior, if the sale or the restructuring is not successful, the provider may have invested good money after bad

If a committee is appointed, prior transactions will be scrutinized for preference or fraudulent conveyance actions

- Alternative is allow another lender to provide the DIP and/or the utilization of cash collateral

Debtor-In-Possession Financing (continued)

VISTEON DIP FINANCING



SUMMARY

DURA AUTOMOTIVE CASE STUDY

IN FEBRUARY 2020, DURA DEBTORS SOUGHT AND OBTAINED APPROVAL TO ENTER INTO AN ACCOMMODATION AGREEMENT WITH NON-DEBTOR CUSTOMERS

- Customers agreed to accelerate payment terms by 28 days
- Modified certain contractual rights
- In exchange for additional covenants, reporting obligations and terms and conditions
- The accommodation agreement was provided in lieu of additional DIP financing

DETAILS

- Result: Unlocked approximately \$16M in near term liquidity for the debtors during the bankruptcy without additional leverage
- Sends a message of customer support and confidence

Acquiring Suppliers – Opportunistic Approach

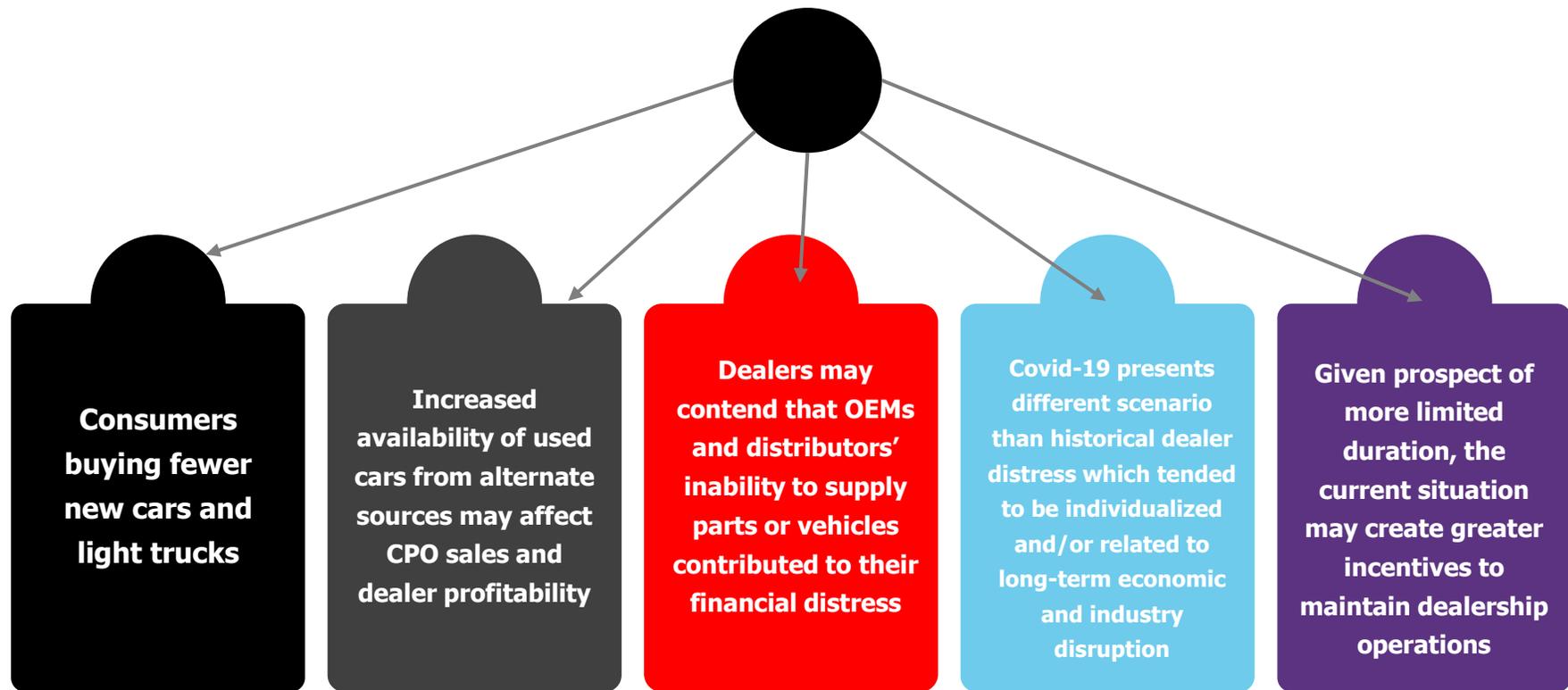
- Supplier's distress may present an investment opportunity
- Out-of-court sales – possible but can carry “cloud of bankruptcy risk”
- Section 363 Sales
 - Court approved sale after competitive process
 - Market to identify “stalking horse”
 - Followed by formal auction
 - Private sales rare, but may be more acceptable during pandemic
- Plan of reorganization
 - Can implement asset sales, but subject to confirmation requirements
 - Sponsor plan to purchase equity of reorganized debtor

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Distressed Dealers & Dealer Bankruptcies

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Covid-19's Impact on Dealers



Pre-Petition Considerations

- Monitor and identify troubled dealers
- Be aware of dealer agreement obligations
- Be mindful of state dealer laws and potential arguments about disparate treatment (by both the distressed entity and others)
- Possibilities for avoiding dealer bankruptcy
 - Support to distressed dealer to improve operations and sales and/or pursue a dealership transfer
 - Floor plan concessions from affiliated finance companies (or third party financing entities)
 - Any concessions/modifications must be made with a focus on state dealer law limitations
 - General restrictions on differentiating between dealers on certain terms (e.g., prices, incentives)

Dealer Bankruptcies – Key Considerations

Impact of automatic stay on dealer agreement

Assumption of dealer agreement

Risk of dealership sale without dealer agreement protections

Protective steps

How We Can Support You

- Our team handles the full spectrum of restructuring/workout scenarios and is prepared to provide strategic advice to our clients regarding:
 - Efficient restructuring/recapitalization strategies to minimize COVID-19 impact
 - Distress in our client’s business
 - Distress in our client’s counterparties (contractual or debt)
 - Guiding private equity sponsors
 - Opportunities for distressed asset acquisitions
 - Litigating insolvency actions

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Questions?

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Biography



Kristen V. Campana

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Kristen V. Campana represents a wide variety of direct and alternative lenders, particularly those involving private sources of capital, including private debt funds, hedge funds, specialty finance companies, business development companies, private equity investors, and issuers in domestic and cross-border financings across the capital structure in connection with acquisitions, leveraged buyouts, convertible debt, equity investments, letters of credit, and project financings.

Kristen has experience in bankruptcy reorganizations and liquidations, work-outs, and distressed debt purchases and sales, as well as second lien and mezzanine financings, and other subordinated debt financings. She represents debtors, debtor-in-possession lenders, pre-petition lenders, and unsecured creditors' committees, as well as other creditors in bankruptcy proceedings. She also advises clients on energy company and real estate restructurings, and provides general credit review analysis for lenders and potential debt purchasers.

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Kurt A. Mayr

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Kurt A. Mayr is the leader of the firm's bankruptcy and restructuring practice. Kurt represents creditors, debtors, acquirers, and other interested parties in transactions both out of court and under court supervision. A significant portion of his practice involves representing creditors in complex restructurings, including senior bank lenders, ad hoc noteholder groups, and official creditor committees. Kurt has represented creditor groups in ground-breaking tribal gaming workouts, as well as in the current restructuring of the debt obligations of the Commonwealth of Puerto Rico.

He has experience advising second lien investors on how to navigate the challenges of their intercreditor agreement to protect second lien rights and maximize recoveries. He regularly advises individual investment fund clients regarding restructuring/litigation strategies for distressed/special situation opportunities. Kurt also has successfully represented domestic and foreign debtors in highly contested and litigated restructuring proceedings.

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Amy L. Kyle

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Amy L. Kyle represents leading financial institutions in connection with a broad range of finance-related matters, with a particular focus on the transportation industry. She acts as lead agent's counsel in syndicated financings for companies that operate in all modes of transportation, lease transportation equipment, or engage in international and domestic shipping. Amy's experience also includes Agent and creditor group representations in debtor in possession and special situations financing arrangements, especially in the transportation and energy industries.

Amy's representation of agents, arrangers, and lenders in syndicated finance transactions spans a wide range of industries and types of transactions, from highly leveraged secured deals to high-grade credits and from transportation to technology, energy, and general industrial. Amy often represents agents and other creditors in workouts and restructurings, both in and out of court. Her experience extends to debtor-in-possession financing, exit financing, and sales under section 363 of the Bankruptcy Code as well as rescue financing and special situations lending. Recent examples include the bankruptcies of Tidewater Inc., Energy Futures Holdings, ATP Oil & Gas, TBS Shipping, Visteon, and Pacific Energy.

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Nathaniel P. Bruhn represents clients in complex commercial litigation matters, including fraudulent transfer, securities, and securities fraud disputes. He also advises clients on antitrust, competition, and trade regulation matters, particularly in the automotive industry. He has tried cases and worked on appeals across the country. He is active in pro bono matters and has been recognized for his work on behalf of asylum seekers.

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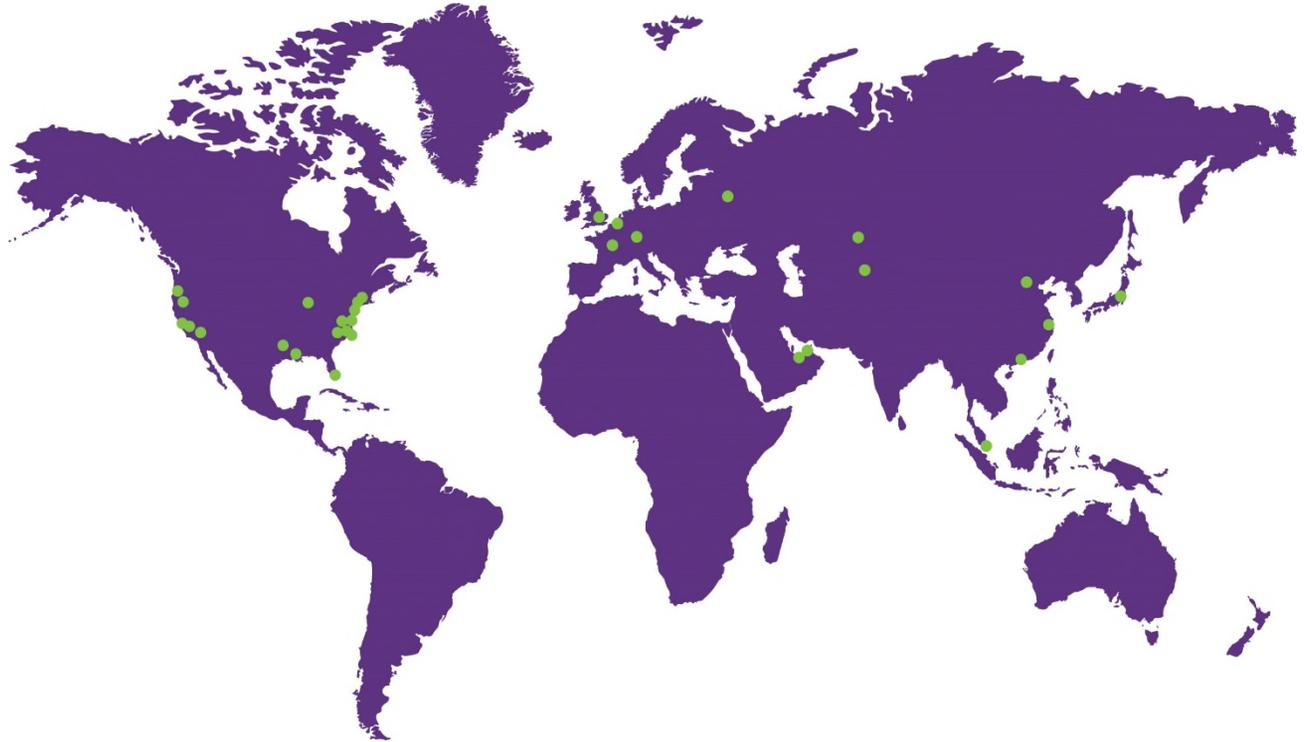
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