Featured Articles

Bankruptcy and Government Powers
By Jeffrey M. Sklarz, Green & Sklarz LLC, New Haven, Connecticut

This column is written for two purposes: first, as a shameless plug for you to join the Government Powers subcommittee, and, second, as a reminder of the extent that government action impacts the bankruptcy process. Of course, bankruptcy itself is a government power. As one of the enumerated powers of Congress under Article I § 8 cl. 4, "establish[ment]… of… uniform Laws on the subject of Bankruptcies through the United States," was viewed as an essential role for government at our Nation's founding. Since 1789, governmental involvement in bankruptcy has increased, from the railroad reorganizations and equity receiverships leading to the Bankruptcy Act of 1898, to the establishment of the Bankruptcy Court and U.S. Trustee's Program in 1978, and, most recently the unprecedented use of bankruptcy to save the auto industry during the Great Recession. Therefore, bankruptcy lawyers must understand and appreciate the difference between governmental actors and private parties-in-interest, and their respective approaches to addressing bankruptcy matters. Read more...

Legislative Updates
By Judith Greenstone Miller, Jaffe Raitt Heuer & Weiss, P.C., Southfield, Michigan; Salvatore A. Barbatano, Williams, Williams, Rattner & Plunkett, P.C., Birmingham, Michigan; My Chi To, Debevoise & Plimpton LLP, New York, New York

Update regarding the Furthering Asbestos Claim Transparency (FACT) Act of 2013 H.R. 982, S. 2319
Prepared by Lynn James Hinson, Mead, Egerton, Bloodworth, Capouano & Bozarth, P.A., Orlando, Florida

H.R. 982, the Furthering Asbestos Claim Transparency (FACT) Act of 2013, introduced in the House by Representative Blake Farenthold (R-TX) on March 6, 2013, and introduced in the Senate by Senator Jeff Flake (R-AZ) on May 12, 2014, would require public disclosure by trusts created under 11 U.S.C. §524(g) of quarterly reports containing detailed information regarding the receipt and disposition of claims for injuries based on exposure to asbestos. Read more...

Update regarding the Bank on Students Emergency Loan Refinancing Act S. 2292, H.R. 4582
Prepared by Paul S. Murphy, Butler, Snow, O'Mara, Stevens & Cannada, PLLC, Gulfport, Mississippi

On May 6, 2014, Sen. Elizabeth Warren (D-MA), along with twenty-seven (27) co-sponsors, introduced S. 2292, the Bank on Students Emergency Loan Refinancing Act, with the stated purpose of amending the Higher Education Act of 1965 to provide for the refinancing of certain Federal student loans and for other purposes. Also on May 6, 2014, Rep. John F. Tierney (D-MA), along with twenty-two (22) co-sponsors, introduced H.R. 4582, which Bill is identical to S.2292. If enacted, the Bills would amend the Higher Education Act of 1965 and the Internal Revenue Code of 1986, to create and fund a program through which eligible student borrowers could refinance their existing federal and private education loans at lower, fixed interest rates equal to those of the Bipartisan Student Loan Certainty Act passed by...
Update regarding the Bankruptcy Fairness and Employee Benefits Protection Act of 2014, S. 2418
Prepared by Henry C. Kevane, Pachulski Stang Ziehl & Jones LLP, San Francisco, California

Senate Bill 2418, titled the "Bankruptcy Fairness and Employee Benefits Protection Act of 2014," was introduced on June 3, 2014, by Senator John Rockefeller and co-sponsored by Senator Elizabeth Warren. The bill was immediately referred to the Committee on the Judiciary. No further action has since been taken. The bill makes various changes to the provisions of the Bankruptcy Code that address (a) the treatment of collective bargaining agreements and retiree benefits under, respectively, sections 1113 and 1114, (b) the priority of pre-petition unsecured claims for employee compensation and contributions to employee benefit plans under section 507, (c) compensation paid or payable to insiders of the debtor under sections 503 and 547, and (d) the sections of the Bankruptcy Code that are made applicable to municipal bankruptcy cases under section 901 of chapter 9. In addition, the proposed legislation would add a new section 1117 to the Bankruptcy Code dealing with a debtor's obligation to make minimum funding contributions to pension plans.

These legislative updates, along with prior updates and postings of recently proposed and enacted legislation prepared by the Legislation Subcommittee on the ABA Business Bankruptcy Committee, have also been posted to the ABA Business Committee webpage, under the heading "Legislative News."

News and Information

The Honorable Jean FitzSimon Receives the 2014 Jean Allard Glass Cutter Award

Congratulations to our own Judge Jean FitzSimon of the Eastern District of Pennsylvania, who received the highest award bestowed by the Business Law Section, the 2014 Jean Allard Glass Cutter Award, on April 11, 2014. The Glass Cutter Award is named for the first woman to chair the ABA Business Law Section and recognizes an exceptional female business lawyer who has made significant contributions to the legal profession and the section.

Judge FitzSimon possesses a diverse career background, with experience as in-house counsel, corporate CEO, private lawyer, Justice Department attorney and bankruptcy judge. Her longtime involvement with the ABA Business Law Section includes multiple leadership roles and much time spent encouraging and mentoring young female lawyers. Judge FitzSimon is a member of the council of the ABA Business Law Section and chair of the section’s Ad Hoc Committee on Bankruptcy Court Structure and Insolvency. She has also served in several subcommittee leadership positions for the Business Bankruptcy Committee. She was chair of the section’s Educational Programming Board from 2007-2010 and co-chair of the Corporate Compliance Committee from 2003-2006.

Webinars

The Business Bankruptcy Committee has presented multiple webinars available for viewing online. Below is a link to the full webinars and to the slide show presentations, including a link to the most recent webinar: That Fundamental Question: Just what exactly can the Bankruptcy Court adjudicate?—Can we consent to power but not jurisdiction? Bellingham (Executive Insurance v. Arkin), Stern v. Marshall and the next progeny, Wellcraft, presented by The Hon. Elizabeth S. Stong, U.S. Bankruptcy Judge, E.D N.Y.; G. Eric Brunstad, Jr.,
Dechert, LLP, Hartford, Connecticut; Professor Samuel L. Bufford, Pennsylvania State University Law School, University Park, Pennsylvania; Professor John A.E. Pottow, University of Michigan, Ann Arbor, Michigan; Craig Goldblatt, WilmerHale, Washington, D.C.

Business Bankruptcy Committee Webinars

Materials from the Business Bankruptcy Section 2014 Spring Meeting

At the Spring Meeting of the ABA Section of Business Law Business Bankruptcy Committee in Los Angeles, California, members of the Committee presented a number of informative and interesting programs. Below is a link to all of the materials provided at these programs. (Access to some of the articles requires your ABA password.)

Meeting Materials

Fall Meeting of the Business Bankruptcy Committee

Register now for the Business Bankruptcy Committee meeting at the National Conference of Bankruptcy Judges taking place October 8-11, 2014, in Chicago, Illinois.

Meeting Webpage

Coming Up at the Business Law Section Annual Meeting

Programs Sponsored by the Business Bankruptcy Committee

September 11, 10:30 AM - 12:30 PM
Program: Counseling The Closely Held Business In Financial Trouble - Where Do I Begin?
Sponsored by the LLCs, Partnerships and Unincorporated Entities Subcommittee of the Business Bankruptcy Committee
Chair: Janet E. Bostwick, Janet E. Bostwick, P.C., Boston, Massachusetts

September 12, 10:30 AM - 12:00 PM
Program: The Future of Claims Trading: What You Don't Know Can Hurt You and Your Client
Sponsored by the Intellectual Property Subcommittee of the Business Bankruptcy Committee
Chair: James L. Patton, Young Conaway Stargatt & Taylor, LLP, Wilmington, Delaware

Programs Co-Sponsored by the Business Bankruptcy Committee

September 11, 10:30 AM - 12:30 PM
Program: Piercing the Unincorporated Veil Level, East Tower
Sponsored by the LLCs, Partnerships and Unincorporated Entities Committee; Co-Sponsored by the Business and Corporate Litigation and Business Bankruptcy Committees

September 11, 3:00 PM - 4:30 PM
Program: Lions, Tigers and Bears, Oh My: Navigating Lender Liability in The Post-Financial Crisis Era
Sponsored by the Commercial Finance Committee; Co-Sponsored by the Business and Corporate Litigation and Business Bankruptcy Committees

September 12, 10:30 AM - 12:30 PM
Program: How Inside and Outside Corporate Counsel Can Work Together to Maximize the Value of Corporate Legal Services
Sponsored by the Corporate Counsel Committee; Co-Sponsored by the Antitrust Law, Audit Responses, Business and Corporate Litigation, Business Bankruptcy, Business Law Education, Career and Practice Development, Commercial Finance, Community Economic Development, Consumer Bankruptcy, Corporate Compliance, Corporate Documents and Process, Corporate Governance, and Corporate Subcommittees

September 12, 10:30 AM - 12:30 PM
**Program:** Securitization Fundamentals: Sales, Special Purpose Vehicles, Revolving Versus Amortizing Structures and Other Basics

Sponsored by the Securitization and Structured Finance; Co-Sponsored by the Business Bankruptcy Committee

September 12, 2:30 PM - 3:30 PM
**Program:** Secured Lending to Series of LLCs: Beware What You Do Not (and Cannot) Know

Sponsored by the Uniform Commercial Code Committee; Co-Sponsored by the Business Bankruptcy, Commercial Finance, and LLCs, Partnerships, and Unincorporated Entities Committees

September 13, 8:00 AM - 9:00 AM
**Program:** Governance Issues for Distressed Companies Task Force

Sponsored by the Corporate Governance Committee; Co-Sponsored by the Business Bankruptcy Committee

---

**Submit Articles**

The Business Bankruptcy Committee invites you to submit articles for possible publication in future issues. The articles do not need to be long or in-depth, and it is a great way to get involved in the Business Bankruptcy Committee. Articles can survey the law nationally or locally, discuss particular business bankruptcy issues, or examine a specific case. If you are interested in submitting an article, please contact Newsletter Editor-in-Chief Marvin Ruth at mruth@lrlaw.com or Editor Mariaelena Guitian at mguitian@gjb-law.com.

---

This message was sent to &*TO;.
Your e-mail address will only be used within the ABA. We do not sell or rent e-mail addresses.

Update your profile  Manage your email preferences  Unsubscribe  Privacy Policy  Contact Us

American Bar Association | 321 N Clark, Chicago, IL 60654-7598 | 800-285-2221 | 312-988-5522