COMING UP AT THE FALL MEETING
OCTOBER 8, 2014 ☑ OCTOBER 11, 2014
CHICAGO, ILLINOIS

PROGRAM: Pro Bono Service on a Board of a Not for Profit in Crisis/Fulfilling Your Not For Profit's Mission During Financial Distress. In memoriam of U.S. Bankruptcy Judge Nancy Dreher, District of Minnesota.
Wednesday, October 8, 2014, 2:00 - 4:00 PM

Sponsoring Subcommittees: Pro Bono Services, Abuses of Bankruptcy Process, Health & Non-Profit, Insurance, and Professional Ethics

Moderator:
Andrew Troop, Partner, Pillsbury Winthrop Shaw Pittman LLP, New York, NY

Speakers:
Deborah Gutfeld, Senior Counsel, Perkins Coie, Denver, CO
Martha E.M. Kopacz, Sr. Managing Dir., Phoenix Management Services, Boston, MA
Raymond T. Lyons, Counsel, Fox Rothschild LLP, Princeton, NJ
Parvathy Sree, RPLU, AIM, CIPM, First Nonprofit Group, an AM Trust Financial Company, Chicago, IL
Kenneth J. Young, Member, Buerger, Moseley & Carson, PLC, Franklin, TN

Not-for-profit organizations, including charities, are often under enormous financial pressure and frequently face numerous challenges in order to keep their doors open. This panel will discuss corporate governance issues faced by the board members of a distressed non-profit, what happens to non-profits in bankruptcy, director and officer insurance issues from the viewpoints of a D&O insurer, and the roles and perspectives of the financial advisor and attorney trying to assist the non-profit through its crisis, a bankruptcy trustee, and the judge presiding over a non-profit's bankruptcy case.

This program is the second annual in memoriam to Judge Nancy Dreher who served as a U.S. Bankruptcy Judge in the District of Minnesota for many years and who wrote and spoke on the importance of pro bono services

PROGRAM: (Almost) Everything You Wanted to Know About...Executory Contracts
Wednesday, October 8, 2014, 3:00 - 5:00 PM

Sponsoring Subcommittees: Membership, Executory Contracts and Claims & Priorities

Moderator:
Christopher Combest, Partner, Quarles & Brady LLP, Chicago, IL

Materials Coordinator: Jill C. Walters, Poyner Spruill LLP, Raleigh, NC

Speakers:
Hon. Carol A. Doyle, U.S. Bankruptcy Court, Northern District of Illinois, Chicago, IL
Ashley Champion, Judicial Law Clerk, Bankruptcy Judge Katarine M. Samson, Southern District of Mississippi
Andrea Coles-Bjerre, Assoc. Professor, University of Oregon School of Law, Portland, OR
Paul R. Hage, Partner, Jaffe Raitt Heuer & Weiss P.C., Southfield, MI
Lisa M. Schweitzer, Partner, Cleary Gottlieb Steen & Hamilton LLP, New York, NY

Virtually every bankruptcy requires parties to resolve competing rights and claims under "executory contracts," a term encompassing agreements as varied as supply contracts, service agreements, leases, licenses, options, and rights of first refusal. From diverse perspectives, the panel will thoroughly review the basic rules for identifying, treating, and disposing of such contracts in bankruptcy; the surprising ways in which contract rights can remain uncertain, even unenforceable, in bankruptcy, and practical strategies for protecting those rights. The panel will also probe more deeply into problems peculiarly associated with certain types of contracts, including intellectual property licenses, real estate leases, and contracts with governmental units.

**PROGRAM:** *Concurrent A Session - The Uniform Voidable Transactions Act*
Thursday, October 9, 2014 7:30 - 8:45 AM

**Sponsoring Subcommittee:** Avoiding Powers Subcommittee and the Consumer Bankruptcy Committee

**Moderator:**
Bruce Borrus, Shareholder, Riddell Williams P.S., Seattle, WA

**Speakers:**
Patricia A. Redmond, Shareholder, Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A., Miami, FL
Edwin E. Smith, Partner, Bingham McCutchen LLP, Boston, MA and New York, NY

This panel will discuss the proposed amendments to the Uniform Fraudulent Transfer Act.

**PROGRAM:** *Concurrent B Session - It's Not About the Money! (or Is It?): Garnering Support for Bankruptcy Sales Without Increasing the Purchase Price*
Thursday, October 9, 2014, 7:30 - 8:45 AM

**Sponsoring Subcommittee:** Use and Disposition of Property

**Moderators:**
Steven N. Cousins, Partner Armstrong Teasdale LLP, St. Louis, MO
Marc J. Carmel, Of Counsel, Paul Hastings LLP, Chicago, IL

**Speakers:**
Honorable Timothy A. Barnes, US Bankruptcy Court, Northern District of Illinois
Robert A. Klyman, Partner, Gibson Dunn & Crutcher, Los Angeles, CA
Adam C. Maerov, Partner, McMillan LLP, Calgary, Canada
David M. Schulte, Managing General Partner, Chilmark Partners, Chicago, IL
Suzanne S. Yoon, Managing Director, Transaction Development, Versa Capital Management, LLC, Chicago IL

This highly-entertaining and energized panel boasts experience in all aspects of bankruptcy purchases and sales-Bankruptcy Judge, Attorney, Financial Advisor, and Principal Investor. The panelists will share their real world experiences as they discuss and debate what purchasers can do to increase the likelihood of being the successful bidder for assets in bankruptcy sales and how to execute on a winning strategy, all without increasing the purchase price.

**PROGRAM:** *Concurrent C Session - Engagement Agreements with Individual Chapter 11 Debtors*
Thursday, October 9, 2014, 7:30 - 8:45 AM

**Sponsoring Subcommittees:** Individual Chapter 11 Debtors and Small Business

**Moderator:**
Harry Greenfield, Partner, Buckley King Cleveland, OH

**Speakers:**
Mariaelena Gayo-Guitian, Partner, Genovese, Joblove & Battista, P.A., Ft. Lauderdale, FL
Leonard C. Walczyk, Member, Wasserman, Jurista & Stolz, P.C., Millburn, NJ
The Small Business and the Individual Chapter 11 Debtor Subcommittees are co-sponsoring a program on representing individual debtors in Chapter 11 cases. This panel of attorneys with experience in representing debtors will discuss the debtor's duties as a debtor in possession and the issues this fiduciary position creates for the debtor and the debtor's counsel. The importance of engagement agreements that address these issues will be discussed, and the panel will provide drafting tips for such agreements.

**PROGRAM:** HEIDT AWARD and CHAPTER 11 LUNCHEON & CLE PROGRAM: *What Every Distressed Investor Should Ask When Venturing Offshore. Are Chapter 11 Skill Sets and Experience Alive and Well (and Relevant) in Europe?* Thursday, October 9, 2014, 1:00 - 3:15 PM

**Sponsoring Subcommittees:** Chapter 11

**Moderator:** Corinne Ball, Partner, Jones Day, New York, NY

**Speakers:**
- Honorable Shelley Chapman, US Bankruptcy Court, S. District of New York, NY
- Eckart Budelmann, Partner, Bryan Cave LLP, Hamburg, Germany
- Jay Goffman, Partner & Practice Leader, Global Restructuring, Skadden Arps
- New York, NY
- Simon Granger, Senior Managing Director, FTI Consulting, London, UK

U.S.-based investors are very comfortable with U.S. Bankruptcy Courts, Chapter 11 proceedings and restructuring professionals. How has this perspective impacted on the expectations and experiences of distressed investors when they venture offshore? What happens when principles fundamental to U.S. bankruptcy law, such as favoring debt over equity in insolvent situations, are not universally applied? This program will explore recent developments in offshore restructurings, including how the experience and mindset of U.S. investors and their advisors are playing a vital role in changing the face of distressed investing in Europe and elsewhere and the challenges that every U.S. investor should be aware of when investing outside of the U.S. so as not to be caught by surprise.

**PROGRAM:** *Take the First Exit! - Defenses That Can Win a Case Early* Thursday, October 9, 2014, 3:30 - 5:30 PM

**Sponsoring Subcommittees:** Litigation and Administration Courts

**Moderators:**
- Sandra A. Riemer, Partner, Phillips Nizer LLP, New York, NY
- John C. Weitnauer, Member, Alston & Bird LLP, Atlanta, GA

**Speakers:**
- Honorable Martin Glenn, US Bankruptcy Court, Southern District of NY
- Patrick Darby, Partner, Bradley Arant Boult Cummings LLP, Birmingham, AL
- Jonathan M. Landers, Partner, Scarola Malone & Zubatov LLP, New York, NY
- Catherine L. Steege, Partner, Jenner & Block LLP, Chicago, IL

The distinguished panel will discuss the strategic and tactical benefits that can be gained by an early focus on "procedural" and affirmative defenses that could be dispositive in an adversary proceeding, such as the "plausibility standard" enunciated in Bell Atlantic Corp. v. Twombly, standing, res judicata, estoppel and waiver.

**PROGRAM:** *Concurrent A Session - Is there Room in the Chapter 11 Ark for Trustees, Examiners, Receivers and CROs?* Friday, October 10, 2014, 7:30 - 8:45 AM

**Sponsoring Subcommittee:** Trustees and Examiners

**Moderator:**
- Rafael X. Zahralddin-Aravena, Shareholder and Director, Elliott Greenleaf, P.C., Wilmington, DE

**Speakers:**
- Katherine R. Catanese, Sr. Counsel, Foley and Lardner LLP, New York, NY
- Benjamin I. Finestone, Partner, Quinn Emanuel Urquhart & Sullivan, LLP, New York, NY
This panel will discuss the underlying common law surrounding receiverships (including federal receivers), case law and statutory authority relating to the appointment of trustees and examiners, and the use of crisis restructuring officers in chapter 11. The panel will focus on recent trends including cases resulting from the use of foreign subsidiaries to access the U.S. market through reverse mergers, cross border fiduciary duties, fraud cases, and cases related to gross mismanagement. Special attention will be paid to the practical limitations of using receivers, CROs, trustees and examiners.

**PROGRAM:** Concurrent B Session - Restaurant Bankruptcies - Should I Make Reservation Now?
Friday, October 10, 2014, 7:30 - 8:45 PM

**Sponsoring Subcommittees:** Claims & Priorities, Executory Contracts, Insurance and Small Business

**Moderator:**
Ryan T. Schultz, Partner, Fox, Swibel, Levin & Carroll LLP, Chicago, IL

**Speakers:**
Bobby Guy, Partner, Frost Brown, Nashville, TN
Phillip Martino, Partner, Quarles & Brady, Chicago, IL
Mario Ponce, Principal, Partners in Hospitality, Chicago, IL
Patricia J. Rynn, Partner, Rynn & Janowsky, Newport Beach, CA
Jennifer Sucher, Executive Counsel, Restructuring Bankruptcy, GE Capital, Chicago, IL

Industry reports project an increase in the number of restaurants filings, especially by casual dining restaurants. Restaurant bankruptcies raise a number of complex issues that are not found in a manufacturer case or in cases involving other service businesses. Our panelists will discuss:

1. What is cash collateral subject to the lien of the secured lender?
2. How do you deal with the franchise agreement, which may have very high cure costs?
3. Can the Bankruptcy Court authorize the transfer of the liquor license?
4. Why the broccoli supplier may be one of the case’s most important creditors; and
5. Why you especially don’t want coffee spilled on you when you are visiting the restaurant? (hint—the claim is probably uninsured).

The panelists will speak from a variety of views, including those of the secured creditor, the debtor, the chapter 11 trustee of a restaurant franchisor and the suppliers.

**PROGRAM:** Concurrent C Session - Discovery and Judicial/Legislative Developments in Mass Torts and Asbestos Trusts
Friday, October 10, 2014, 7:30 - 8:45 AM

**Sponsoring Subcommittee:** Rules, Legislation and Mass Tort and Environmental Claims

**Moderator:**
Hon. Judith K. Fitzgerald (Ret.), Professor of Law, Indiana Tech Law School, Fort Wayne, Indiana, Of Counsel Tucker Arensberg, P.C. Pittsburgh, PA

**Speakers:**
Leslie A. Davis, Counsel, Crowell & Moring LLP, Washington, DC
Charles H. Mullin, PhD, Partner, Bates White LLC, Washington, DC
Trevor Swett III, Member, Caplin & Drysdale, Chartered, Washington, DC

Asbestos trusts established pursuant to confirmed plans of reorganization currently hold in excess of $30 billion in assets. They resolve and process large numbers of asbestos personal injury tort claims. Asbestos claims filed with an asbestos trust, unlike claims filed in the tort system, are not publicly filed, and
there is an issue as to whether lack of transparency in the trust system has led to abuse of the trusts and of the tort system—as recently illustrated by the Garlock bankruptcy court decision on claim estimation. In Garlock it was found that claimants gave materially different work histories to trusts from which they recovered payments, on the one hand, and to Garlock, in connection with the bankruptcy, on the other—which the court found to show a "startling" "pattern of misrepresentation." 504 B.R 71, 86 (Bankr. W.D.N.C. 2014). The panel will focus on the need for trust discovery in asbestos bankruptcies, legislative proposals as to trust transparencies, and judicial and rule responses to the issue.

**PROGRAM:** *Herding Clients: Working with Multiple Secured Creditors*  
*Friday, October 10, 2014, 1:00 - 3:00 PM*

**Sponsoring Subcommittee:** Secured Creditors and Trust Indentures

**Moderator:**  
Susan M. Freeman, Partner, Lewis Roca Rothgerber LLP, Phoenix, AZ

**Speakers:**  
Bryant D. Barber, Partner, Lewis Roca Rothgerber LLP, Phoenix, AZ  
Jeanne P. Darcey, Partner, Sullivan & Worcester, Boston, MA  
Jennifer C. Hagle, Partner, Sidley Austin LLP, Los Angeles, CA  
William P. Smith, Partner, McDermott Will & Emery LLP, Chicago, IL

Panelists regularly representing indenture trustees, hedge funds and financial institutions will discuss issues arising in restructurings and Chapter 11 cases when secured creditor clients have constituent groups, including communications with participants and beneficiaries, driving consensus on interim and exit strategies, obtaining direction from majorities and meeting rights of minorities, funding bridge or DIP financing, decision-making on credit bidding, and plan voting logistics.

**PROGRAM:** *Current Developments*  
*Friday, October 10, 2014, 3:15 - 4:45 PM*

**Sponsoring Subcommittee:** Current Developments Task Force

**Moderator:**  
Martin J. Bienenstock, Partner, Proskauer Rose, LLP

**Speakers:**  
Michael R. Enright, Partner, Robinson & Cole LLP, Hartford, CT  
Jennifer R. Hoover, Partner, Benesch, Friedlander, Coplan & Aronoff LLP, Wilmington, DE  
Robert B. Millner, Partner, Dentons, Chicago, IL

This popular panel, led by Martin Bienenstock, will discuss current developments in the areas of claims, exemptions, priorities and Chapter 11.

**Legislative Updates**

**Update regarding the Puerto Rico Chapter 9 Uniformity Act of 2014, H.R. 5305**  
*Prepared by Adria Gulizia, Debevoise & Plimpton LLP, New York, New York*

Representative Pedro R. Pierluisi (D-PR, At-Large) introduced the Puerto Rico Chapter 9 Uniformity Act of 2014 in the House on July 31, 2014, which would permit Puerto Rico to be treated as a state for purposes of municipal bankruptcies governed by chapter 9. No co-sponsors have been announced.

To view the full update, please click [here](http://apps.americanbar.org/buslaw/committees/CL16000pub/newsletter/201410/).
2014, which would provide protection to employees and retirees in municipal bankruptcies in three ways: (1) raising the bar on the eligibility requirements in § 109(c); (2) expediting appellate review; and (3) creating new confirmation conditions applicable to plans which modify the rights of employees or retirees. H.R. 5133 was co-sponsored by Representatives Henry C. Johnson (D-GA), Sheila Jackson Lee (D-TX) and Steve Cohen (D-TN).

To view the full update, please click here.

Submit Article for the Business Bankruptcy Newsletter

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 Co-Editor-in-Chief Brett D. Fallon at bfallon@morrisjames.com or Co-Editor-in-Chief Mariaelena Gayo-Guitian at mguitian@gjb-law.com

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Puerto Rico Chapter 9 Uniformity Act of 2014
H.R. 5305

Representative Pedro R. Pierluisi (D-PR, At-Large) introduced the Puerto Rico Chapter 9 Uniformity Act of 2014 in the House on July 31, 2014, which would permit Puerto Rico to be treated as a state for purposes of municipal bankruptcies governed by chapter 9. No co-sponsors have been announced.

The Bill would replace the current definition of “State” set forth in 11 U.S.C. §101(52) by the following: “The term ‘State’ includes Puerto Rico and, except for the purpose of defining who may be a debtor under chapter 9 of this title, includes the District of Columbia.” The current definition excludes Puerto Rico, in addition to the District of Columbia, from the definition of “State” for chapter 9 purposes.

The amendment made by the Bill would take effect on the date of enactment.

Upon introduction in the House, the Bill was referred to the House Committee on the Judiciary. No further action has been reported.
American Bar Association
Business Law Section
Business Bankruptcy Committee
Patricia A. Redmond, Chair

August 7, 2014

Legislative Update

Judith Greenstone Miller
Jaffe, Raitt, Heuer & Weiss, P.C.
Chair, Legislation Subcommittee

Salvatore A. Barbatano
Williams, Williams, Rattner & Plunkett, P.C.
Vice Chair, Legislation Subcommittee

My Chi To
Debevoise & Plimpton LLP
Vice Chair, Legislation Subcommittee

Gary Klausner
Levene, Neale, Bender, Yoo & Brill L.L.P.
Contributing Editor

Protecting Employees and Retirees in Municipal Bankruptcies Act of 2014
H.R. 5133

Representative John Conyers, Jr. (D-MI) introduced the Protecting Employees and Retirees in Municipal Bankruptcy Act of 2014 in the House on July 17, 2014, which would provide protection to employees and retirees in municipal bankruptcies in three ways: (1) raising the bar on the eligibility requirements in § 109(c); (2) expediting appellate review; and (3) creating new confirmation conditions applicable to plans which modify the rights of employees or retirees. H.R. 5133 was co-sponsored by Representatives Henry C. Johnson (D-GA), Sheila Jackson Lee (D-TX) and Steve Cohen (D-TN).

The Bill would amend 11 U.S.C. § 109(c) in three ways. First, it would add a parenthetical regarding the “good faith” requirement for municipal debtors described in subsection (5) (B), inserting the words “(but with respect to creditors who are employees or retirees of such entity, the term ‘good faith’ shall have the same meaning as such term has in the National Labor Relations Act).” Additionally, the debtor’s ability to establish eligibility because it “is unable to negotiate with creditors because negotiation is impractical” would be changed so that the word “impossible” would be substituted for
“impractical.” Finally, a new subsection (c) (2) would be added which would require that the debtor meet the eligibility requirements set forth in subsection (c) (5) by “clear and convincing evidence.” These last two changes would not be limited to cases driven by labor - employment issues.

The Bill also proposes to make changes to the rules for appellate review. It would strike from § 921(e) language that appears to preclude any appellate court from staying the bankruptcy court’s order for relief pending appeal. Section 158(d) of Title 28 would be amended to provide for a direct appeal to the court of appeals from an order finding a debtor eligible under § 109(c) and to provide that such an appeal should be expedited and that the bankruptcy court’s ruling should be reviewed and heard de novo on the merits.

Finally, the Bill would increase plan protection for employees and retirees. Section 943(b), which provides conditions for confirming a chapter 9 plan, separate from the incorporation of provisions from chapter 11, would be modified to provide special protection for employees protected by a collective bargaining agreement and for retirees whose benefits (including any accrued pension, retiree health, or other retirement benefit) would be modified under the plan. New section 7 would require that the “authorized representative” of such employees or retirees must “accept” the plan, i.e., the authorized representative would have veto power. In the case of employees who are members of a union and for whom there is a collective bargaining agreement, the authorized representative would be the union that is the signatory to the collective bargaining agreement, except that if a different union is now representing the bargaining unit, the new union would be considered the authorized representative. In the event that there were no collective bargaining agreement and/or the court determines that the union should not be the authorized representative, the amendment would give the court the authority to appoint an authorized representative and permits the appointment of committees to protect the interests of retirees if retirement benefits are modified.

The Bill would take effect on the date of enactment.

Upon introduction in the House, the Bill was referred to the House Committee on the Judiciary. No further action has been reported.