Committee Newsletter | Spring 2016

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An 8-member U.S. Supreme Court could provide clarification on the scope of “actual fraud” for purposes of 11 U.S.C. §523(a)(2)….or it could deadlock or punt the issue.

NEWS AND ANNOUNCEMENTS >>
Did you Attend the ABA Spring Conference in St. Louis? What are you Most Looking Forward to in San Francisco?

The Arch is a familiar site in St. Louis, but there is so much more to the city and so much more to the conference than the outstanding networking opportunities. What did you find most helpful? What do you want from our committee at the ABA Annual conference and future conferences? Start a dialogue and let us know!

New Podcast Available on the Committee Website

If you weren’t able to listen in to the February committee discussion titled “Bankruptcy in 2016: New Forms, New Case Law?”, please get to the committee website (http://www.americanbar.org/groups/young_lawyers/committees/bankruptcy.html) and listen at your convenience.
ARTICLES

Briefing Your Case: A View from Bankruptcy Chambers

By: Jessica Uhlenkamp

Writing is extremely important in the legal practice. Most of us are trained in the art of legal writing from the first day that we walk into law school. When we arrive in practice, however, many of the rules that were beaten into us in law school are instantly tossed aside.

This is partially because we need to meet deadlines, partner demands, and an array of other pressing burdens. While in-firm communication has quite a bit of leeway, many judges are not as sympathetic to the many strains on our time that led to poorly written briefs or arguments. In my experience, however, it may be the law clerks that are more of a concern.

My Experience as a Bankruptcy Judicial Clerk

I spent last year clerking for a fantastic judge in the Bankruptcy Court for the Northern District of Iowa. Chief Judge Collins was a prior litigator, so he frequently told me that he understood that lawyers often do not have time to create legal works of art in many situations.

As an inexperienced judicial law clerk, I simply did not understand this concept. In my mind, errors like typos, incorrect citations, or long, jumbled sentences were simply unacceptable. In fact, I remember having to correct all of the citation errors in one of the briefs that I first reviewed before I could even read it for content. The errors just glared at me, and I couldn’t focus on anything.

Unfortunately for those attorneys, I was the first person to look at their brief, and I had a considerable amount of say in how I thought the judgment should be rendered. Of course, Judge Collins made the ultimate decision. Nonetheless, my experience allows me to give a little bit of advice for young attorneys.

1. Consider Your Audience.

Think about who is “behind the curtain” when you file anything. There is a real possibility that your judge has an inexperienced clerk that is scrutinizing everything handed to him or her. It is also very possible that this person has little to no bankruptcy background. Law clerks usually start in the fall, so keep that in mind as well. Take great care to spell out legal concepts, even if you think it is common knowledge in the bankruptcy world. This may take a few extra sentences, but I guarantee the law clerk will thank you for it.
2. **Double Check your Citations (Because They Will).**

For a newbie, checking your citations is fun and interesting. I enjoyed looking up the cases that the parties cited, and frowned upon statements that did not have citations. It also really irritated me when citations were blatantly wrong—such as wrong numbers or wrong case names. Of course, it is far worse to cite a case that does not say what you just told me it said. The judge may not have time to look through each case citation, but the law clerk might.

3. **Read like a Thief.**

Chief Judge Collins often told me that you should “read like a thief.” If you like a certain style of writing, use it as your own and develop it in a way that fits you. Use this advice to cater your writing to a particular judge. If you are writing for a new judge, take half an hour and pull up a few of their most recent opinions. How do they present information? You can bet that however they write is how they want information presented to them.

*Jessica Uhlenkamp is an associate at the Heidman Law Firm in Sioux City, Iowa. She now practices in the areas of workers’ compensation, bankruptcy, and general litigation.*

The U.S. Supreme Court hears arguments on *Husky International Electronics, Inc. v. Ritz*: Will the Court provide guidance on “actual fraud”?

By: Ryan Blay

March 1st was a significant date for bankruptcy practitioners and analysts. The US Supreme Court heard oral arguments in *Husky International Electronics, Inc. v. Ritz*, a case that may do little to help the petitioner in its non-dischargeability action but could provide guidance to courts on the definition of “actual fraud” for future adversaries.

As described more in detail in the YLD Bankruptcy Committee podcast, now available on the committee website, the case turned on the connection between the respondent, the debtor in the action, and a company the respondent controlled, which was the recipient of the initial loan from Husky.

If Husky prevails, the Court will hold that actual fraud encompasses more than false pretenses and misrepresentation, providing a broader list of actions that could result in adversary actions. However, Husky would still have to prevail using Texas state law on fraud upon remand, so it is possible the petitioner could obtain its relief from the Supreme Court and still end up unable to prevail on its claim at the trial level.

The arguments included a discussion on the Congressional intent in enacting the statute adding “actual fraud” to the list of non-dischargeable conduct in Section 523, and a Court that will have two rational interpretations of the Code as it stands. On the one hand, the Court would arguably render the rest of Section 523(a)(2) redundant or unnecessary by ruling for Husky. On
the other hand, the Court could neutralize “actual fraud” in the statute via a ruling for Ritz.

The Court will issue its decision in June, so stay tuned for further discussion in a future newsletter or committee conversation. The court’s decision, and the need for a majority in an 8-justice court could lead to some needed clarity in the Code or a limited, muddled decision that may not resolve the issue for future litigants.

Ryan Blay is an associate with Krekeler Strother, S.C., in Madison, Wisconsin, and is co-chair of the ABA YLD’s Bankruptcy Committee.

NEWS AND ANNOUNCEMENTS

Some of our best ideas are inspired (ok, stolen as well) from programming at ABA conferences. If you attend and see a good idea to develop, please contact us and volunteer to contribute!

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<tr>
<th>Upcoming Deadlines</th>
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<tbody>
<tr>
<td>Send 4Q listserv communication by 6/1/16</td>
<td>4Q Reports Due 6/30/16</td>
</tr>
<tr>
<td>4Q Reports Due 6/30/16</td>
<td>4Q Newsletter and 4Q Web Site Update Due 7/15/16</td>
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<tr>
<td>4Q Newsletter and 4Q Web Site Update Due 7/15/16</td>
<td>Teleconference 2 should be completed by 7/15/16; in-person event 2 should be completed by 8/1/16</td>
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Thank you for reading and for your contributions!

YLD NEWS AND ANNOUNCEMENTS

Affiliate Information:

Please see the affiliate-related information below. Be sure to pass it on to your own affiliates! A personal message is the best way to engage affiliates in the ABA YLD. This email contains details about:

- The 2016 Affiliate Leadership Training
- The ABA YLD 2016 Spring Conference in St. Louis and Affiliate Stipends to Attend
- The Spring 2016 Affiliate Showcase
- The ABA YLD Annual Awards of Achievement for outstanding young lawyer organizations and programs
- The ABA YLD Scholars Program

2016 Affiliate Leadership Training

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Each Spring, the ABA YLD hosts a collaborative training session for current and incoming bar leaders. This year’s will be held from 12:00 p.m. to 2:00 p.m. on Thursday, May 5, 2016, as part of the 2016 Spring Conference in St. Louis. The program will include speakers, roundtable discussion, and topics of interest to young lawyer leaders, including encouraging accountability, getting the most out of finances and sponsorship, and succession planning. Please contact Jenna Overmann (jovermann@dofamilylaw.com) and Alia Graham (alia.graham@americanbar.org) if you plan to attend.

ABA YLD 2016 Spring Conference

The 2016 Spring Conference will be held May 5-7, 2016 in St. Louis, MO. Don’t miss out on this chance to network with other young lawyers, gather CLE credits, and hear from well-known speakers. It’s important that we have a wide range of voices, experiences, and opinions at the meeting where young lawyers come to share ideas. We hope can be part of that discussion.

The ABA YLD provides limited number of scholarships for affiliate leaders to attend its Spring Conference. We have $200 scholarships available for up to three members of an affiliate—four if the fourth member is diverse or a government, solo/small practice, or public sector attorney. Young lawyers who received a scholarship to attend the Fall Conference in Little Rock are not eligible. Applications (just an e-mail expressing interest) must be sent to me (logan.murphy@hwhlaw.com) no later than 7 days before the Conference.

The ABA YLD also provides one full scholarship (up to $570) for attendance by a leader from a New or Formerly Inactive Affiliate. Please contact me (logan.murphy@hwhlaw.com) if you believe you qualify.

2016 Spring Affiliate Showcase

The 2016 Spring Affiliate Showcase will take place at the Spring Conference on Saturday May 7, 2016, from 8:30 a.m. to 9:30 a.m. (with breakfast included). This is a great opportunity to showcase your affiliate and preview programs from other affiliates that you can apply back home. Our format in the Fall was really well received, so we’re going to do it again: A TEDx format where each affiliate is given 90 seconds to present on any topic they like (the affiliate, a particular project, a series of projects, etc.) using 1-3 slides. If you would like to see sample slides, I can send you the full set from Fall.

If you or your affiliate is interested in participating, please send me (logan.murphy@hwhlaw.com) an email no later than 7 days before the Conference.

Awards of Achievement

The ABA YLD Awards of Achievement program is up and running! Applications are available now and information can be found here. This program is an opportunity for young lawyer organizations to submit their best projects for evaluation and recognition by a jury of their peers. Categories for awards include (1) Public Service Projects; (2) Bar Service Projects; (3) Diversity Projects; (4) Comprehensive Programming; and (5) Outstanding Newsletter.

Information about the winners will be disseminated widely and the winners will be recognized during
the YLD Assembly at the ABA Annual Meeting in San Francisco! The deadline to submit your application is **Wednesday, June 15, 2016**. Please send any questions to me (logan.murphy@hwhlaw.com) and Tara Blasingame (tara.blasingame@hwhlaw.com).

**ABA YLD Scholars Program**

The YLD Scholarship Program is designed to encourage the participation of minority, solo/small firm, government, public sector, and military service attorneys in the ABA Young Lawyers Division. The program consists of funding to attend the ABA YLD Fall Conference, the ABA Midyear Meeting, and the ABA YLD Spring Conference, as well as appointment to and active participation in one of the YLD Boards or Teams. Information is [here](#), and the application is [here](#). Please contact the ABA YLD Diversity Director, Collin Cooper ([l.collincooper@gmail.com](mailto:l.collincooper@gmail.com)) with any questions.

**Social Media Team Update**

Our number one goal this year is to increase the amount of YLD-related, member-driven content across social platforms. The only way to do that is to have leaders and team members submit posts. You can do this quickly and easily by using the link on the [ABA YLD Leadership Portal](#), and if you need any help on how to submit content, or what kind of content to post, you can always reach out to Heather Riggs ([heather.riggs@melyourmind.com](mailto:heather.riggs@melyourmind.com)).