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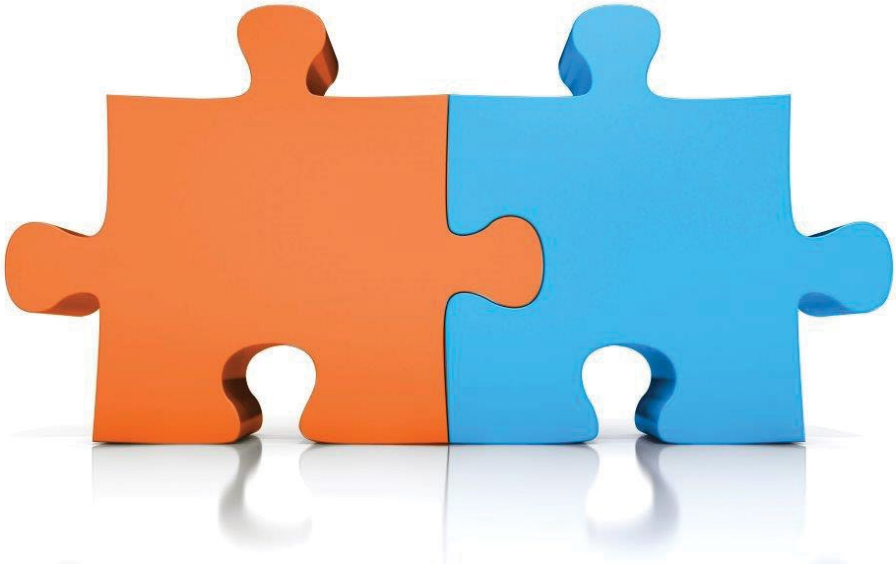

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Time marches on

By Kelly Hughes Iverson • President

"To every thing there is a season, and a time to every purpose under the heaven." Whether one draws inspiration from Ecclesiastes or from Pete Seeger and the Byrds (or elsewhere entirely), the sentiment is universally accepted, and platitudes abound. Nothing is permanent except change, and this too shall pass. Tempus fugit, time marches on, and time and tide wait for no man. And on Broadway, five hundred twenty-five thousand six hundred minutes; how does one measure a year? All of these familiar refrains are brought to mind as the end of the Bar year approaches.

Soon a new bar president will take the helm, full of excitement and energy as new plans and fresh ideas grace the office. The Association is fortunate to have Judge Dana Middleton as its next president, and we look forward to the coming year under her leadership. In the meantime, I am pleased to report that the state of the Association is strong. While many bar associations elsewhere are struggling as membership rolls are receding; our membership remains strong, thanks in part to the Association's high caliber of continuing legal education opportunities and the ready camaraderie of a diverse group of practitioners and jurists. Also critical to the Association's success is the ready commitment of members of the Bar to our system of justice and to the institutions that support it. Our Association has striven, through good works and education, to promote the independence of the judiciary and to encourage respect for the judicial branch of government in all walks of life. To name only a few: our Historical Committee hosted well-attended seminars on the federal and state constitutions. Our YLD reached out to introduce City schoolchildren to mock trials. Courting Arts again hosted a reception for its high school finalists inside the courthouse. All of these incremental steps support a common goal: to secure the place of the judical branch as the anchor of impartiality and fairness in our system of checks and balances.

When I began my tenure as president of this vibrant organization, I wanted the year to reflect the Association's mission to serve its members, providing educational, mentoring and social interactions that will help us as lawyers to do our jobs better, and in so doing, to better serve our clients. The theme of this edition of the Barrister, "Bankruptcy Law for the Non-Bankruptcy Lawyer," embodies that principle. Fresh from law school and the bar exam, we probably have the widest breadth of knowledge of the law we ever will have. Over time, we tend to specialize, to dive deeper into the matters presented by our clients, and to develop expertise in more narrow areas of the law. All of this is to the good, but our clients' problems often do not respect the boundaries of the expertise we have developed, and those pesky collateral issues keep coming up in areas of law outside our comfort zone. And so it makes sense to avail ourselves of the BABC's myriad CLE offerings, including the Baltimore Barrister's primer on bankruptcy law for the non-bankruptcy lawyer.

I am grateful to the members of the Bar Association of Baltimore City for allowing me to serve as your president this past year. I have been honored to work with the dedicated, enthusiastic, and knowledgeable professionals who have volunteered their time as officers, Executive Council members, and committee members, and it is a pleasure to work with our professional staff who make everything look easy. I urge the entire Baltimore legal community to continue to take advantage of all that BABC membership offers, and enjoy this edition of the Baltimore Barrister.

Young Lawyers' Division Report

By Divya Potdar • Chair

Thank You for a Magnificent Year!

This is my last article as the Chair of the BABC Young Lawyers' Division, a position I have worked towards for six years. It is a bitter-sweet feeling as I prepare to pass on the baton at the end of this month. Although I was running around Baltimore like a mad woman from one meeting to the next and one committee event to the next, I have enjoyed bringing to our membership, some of the most meaningful, well organized, and thoughtful events.

Over my seven years of involvement in the YLD, I have found that the YLD continues to plan and execute more and more events every year. That growth culminated with us having more events than ever before this bar year, but I may be biased. I am proud to report the YLD continued to successfully organize the traditional events such as the Breakfasts with the Bench, the networking happy hours, the fall mock trial with Baltimore City public school students, and the annual Holiday Party for Children Living in Shelters at the Maryland Science Center.

Many of the YLD Committees came up with novel programming and event ideas and brought them to life over the year. I was very excited to have enthusiastic leaders for the Health & Wellness Committee who organized free (or very inexpensive) active yet enjoyable fitness events throughout the year. We started the year off with 'Circuit Court to Circuit Training,' danced the holiday calories away with a Zumba class, did a spin class along with a specially curated Black History Month playlist, and ended the year with a yoga class. These types of low-cost fitness events, were a first for the BABC and I hope the committee continues its endeavor to encourage an active lawyer lifestyle.

Young Lawyers' Division

Our CLE Committee organized a first-ever after hours spin off of the traditional Breakfast with the Bench morning lecture series featuring a Baltimore judge. 'Practice Tips on Tap' was an evening educational discussion featuring a District Court judge in an informal setting where the information and beer taps flowed freely. We also organized a financial literacy event specifically focused on issues relevant to young lawyers tackling many financial firsts at this stage in their lives. We continued with the 'How to Survive' lecture series and hosted a packed house at our District Court Torts session featuring two judges and a medical provider.

The YLD Public Service Committee continued, as always, to outshine every other such committee in the state. In ad-

dition to the annual Holiday Party where 150 children living in homeless shelters are transported to a holiday party with Santa, a magician, face painters, arts & crafts, a therapy dog, a hot meal, warm woolen knit hats, and other gifts, the Committee organized a charitable event every month. We prepared and served dinner at Johns Hopkins Believe in Tomorrow Children's House and served dinner at Our Daily Bread. The Committee organized volunteers to help at various local non-profits such as the Teacher Supply Swap, The Book Thing, and the Maryland SPCA. The Committee also helped collect gently used professional clothing for Dress for Success and Sharp Dressed Man, and volunteered at the Harambe Center's Fashion Show to teach Baltimore City public school students about the importance of dressing professionally.

Our Public Education Committee continued with the annual mock trial program and competition between Highlandtown Elementary Middle School and Francis Scott Key Elementary Middle School. The Committee also matched up attorney volunteers with approximately 30 classrooms throughout Baltimore City schools to give a lecture on Law Day. This year's Law Day theme was "Free Speech, Free Press, Free Society." So on May 1, the Committee took students from Francis Scott Key and MERVO High School to Morgan State University to see and experience the Civil Rights era 'Sit-In' exhibit. The students also heard from University of Maryland Law professor Larry Gibson and Khalilah Harris, Executive Producer at Real News Network.

The YLD Awards Committee submitted names of deserving young lawyers for various local awards throughout the year. We were fortunate enough to have several of our Council members receive awards from The Daily Record in addition to our own three YLD Awards given at the 4th Annual Spring Social & Awards Reception. Our Membership Committee strived all year to organize free, fun, and engaging monthly events at popular bars around town and encourage young lawyers to join the BABC. The Committee similarly worked with the two local law schools and the MSBA Young Lawyers to organize networking events. The YLD Mentoring Program matched up approximately 70 mentors and mentees this year. Additionally, the Mentoring Committee also organized two distinct events encouraging a natural connection between seasoned lawyers and younger lawyers.

I would be remiss if I did not thank BABC Executive Director Kathy Sanzone, Executive Assistant, Patty DeGuilmi, and Administrative Assistant, Sabina Mohan for all their support this year. This terrific trio is behind every single program that we bring to our members. Whether it's drafting and emailing event flyers or coordinating logistics with courthouses and other venues, the YLD would not be able to organize as many events as it does without their 24/7 support.

It has been such an exciting and memorable year for me. I am grateful to the entire YLD Council, the vendors who sponsor our events, the venues who work with our limited budget, and the members who come out to support our events. The BABC and YLD have a remarkable history and I look forward to staying involved for a long and prosperous future.

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Building and Maintaining a Successful Solo or Small Firm Practice

By: Darren Kadish

Many people choose to enter the solo/small firm world for a variety of reasons. Solo/Small firm lawyers often trade the stability of a weekly guaranteed paycheck for a myriad of reasons. This article will try to briefly explore some of the best ways to be successful at this venture.

First of all, keep in mind that "success" means different things to different people. Identify your personal goals for going solo or small firm. Is your goal to spend more time with your family? Is your goal to transition to a different practice area? Are you looking to work from home, or do you desire to be your own boss? Are you looking for a more collegial environment that a small firm offers? The first real step is knowing what you want. Only then can you move towards your goal.

Step 1: Have a plan, if possible. Having a plan is not always possible, because let's face it, the move to solo/small firm life is often dictated by outside factors. But once you are there, you should definitely develop a plan, even if it's just a checklist of milestones. If your move is without the ability to do a lot of advanced planning, that's ok. A lot of successful folks have been in your shoes. Make a plan as soon as possible.

Step 2: Identify your practice areas. This may seem like a no brainer, but the truth is many lawyers transition to solo or small firm life because they want to do something else. A lawyer I know transitioned from House Counsel for a major insurer to Plaintiff's counsel, to solo practitioner. While he started out doing personal injury work, his real interest lay in immigration law. Because of his language skills in Spanish and Portuguese, he was able to get the word out to his Spanish speaking personal injury clientele that he was doing immigration work.

Continued on pg 11

Step 3: Get up to speed. If you are changing practice areas, or no longer have a large firm with a lot of support (both legal from experienced firm-mates, and clerical from a large support staff) it is important to do 2 things to get up to speed: 1) If you are changing areas of the law, take seminars, CLEs, review recent cases, etc. There is no substitute for a solid legal grounding. Along with this, join a list serve or organization of lawyers in your practice area. There is simply no substitute for being able to ask a group of lawyers who do what you do a question, especially when you are new to this area of law. 2) Make sure you are technologically proficient, or hire a staff member who is. The corollary to this rule is buy the latest technology you can afford. Technology is changing ever faster, and with the advent of MDEC (Maryland Electronic Courts) you need several reliable pieces of equipment: a good computer and monitor, a scanner and a backup system. Hard drives fail. Invariably, they all do. There is no agony worse than coming into work and finding that your computer crashed, and you lost all you files. Backup, Backup, Backup!

As an addition to Step 3, join your local Bar Association. There is no greater resource. Many Bar Associations have lawyer referral services, which can be a tremendous way to get clients. Bar Associations also offer CLE, which lets you both learn and network at the same time (see below about networking). The Bar Association of Baltimore City has many CLEs on a monthly basis, and most include a free lunch if you are a member! It's also a chance to get to know lawyers who may be opposing counsel on a future case, and to meet judges who may preside over your next case.

Step 4: Network. Not just with other lawyers. With everyone you know. Let them know what you do. The corollary to this rule is always have cards on you. This is perhaps the most important of all the steps, because clients are the lifeblood of law firms. You never know who may need your services. For example, last summer I met a gentleman at a park near my house where there are a number of electric car chargers. We were admiring some of the cars, and had a lengthy discussion about electric cars. I gave him a card, told him what I did, and advised he could call if he ever needed anything. And sure enough, over six months later he called my office, asked if I remembered him, and advised he had a case that was in my practice area.

However, attorney networking can be a crucial part of any practice. You will find that you get calls from people who are looking for legal assistance in areas that are not your areas. Networking through the Bar Association can let you build a Rolodex of people who can help, and ideally, will also result in referrals to you in your practice area. It's always a good idea to call or send a thank you note after you get a referral, to show your appreciation to the referrer. There is also a good amount of conflict work available. Let folks know if they have a conflict, you are happy to help out, and send the client back for any future matters.

Of course, networking is not restricted to strangers and other lawyers. Talk to family and friends. Let them know about your new endeavor, and pass along a few cards. Friends and family can be a great referral source. Social networking groups can be an excellent opportunity also to grow your practice. I was the only lawyer in a particular social group on Meetup. I was doing activities I enjoyed, and at the same time meeting people and helping grow my practice. Even though I have not been active for years, I still get referrals from that source.

Lastly on the topic of building a practice, keep in mind that lawyers are in the client satisfaction business. Our small firm does not advertise, nor do we any longer actively seek conflict work (although we accept it when referred). Instead, we have a stable base of referrals from satisfied clients. One cannot stress enough that a satisfied client will do more to help build your practice than anything else. Because the clients become your best promoters. They will tell all their friends what a great job you did. It's both emotionally satisfying, and it generates business.

There are, of course, some other considerations you need to keep in mind when trying to build and maintain a law firm. First and foremost, malpractice coverage is essential. I don't think I need to say much more on this. Second, your reputation is the most important thing you have. Keeping your word and having everyone know you can be trusted is more valuable than gold. If you have a bad reputation, judges and lawyers will know, and certainly no one in the profession is going to send you work.

Bankruptcy Basics: What Every Lawyer Should Know

*By Joyce A. Kuhns**

The United States Bankruptcy Code[1] governs bankruptcy cases throughout the United States. Its impact cannot be overstated, having critically influenced outcomes for global companies, the Mom and Pop shop down the street, and your next-door neighbor. Its purpose is twofold: providing the honest debtor with a "fresh start" while ensuring "fair" treatment to creditors. This article will cover the key players, terminology, and processes in the three most prevalent types of bankruptcy proceedings: chapter 7 (liquidation); chapter 11 (reorganization); and chapter 13 (debt adjustment for individuals with regular income).

Key Concepts

A separate bankruptcy court with its own rules presides over bankruptcy cases.[2] On the filing of a petition, a bankruptcy case commences[3] and the debtor's legal and equitable interests in property become part of the bankruptcy "**estate**."[4] A statutory injunction known as the "**automatic stay**"[5] immediately goes into effect on filing, barring creditors from pursuing actions against the debtor and estate property based on pre-filing claims. Within a prescribed time, a debtor is required to file a Statement of Financial Affairs ("SOFA") about the state of the debtor's finances and recent financial transactions and Schedules of Assets and Liabilities ("Schedules"), under penalties of perjury.[6] An individual debtor who meets the two-year residency requirement may use applicable Maryland exceptions to "exempt out" certain assets from the estate.[7] To be eligible to file for bankruptcy protection, the individual debtor must receive a credit counseling briefing and certification from an approved nonprofit budget and credit counseling agency within six months of the filing date.[8] The debtor is required to attend a meeting of creditors and answer questions about its financial affairs and scheduled assets and liabilities.[9]

Chapter 7 Liquidation

Chapter 7 is the most common bankruptcy proceeding. Its purpose is to liquidate a debtor's non-exempt assets to satisfy its creditors. The liquidation of non-exempt assets is administered by a chapter 7 trustee, typically appointed by the Office of the United States Trustee ("U.S. Trustee"), the part of the Department of Justice charged with administrating bankruptcy proceedings.[10] The chapter 7 trustee's responsibilities include investigating the debtor's financial affairs, collecting available non-exempt property and reducing it to money, making distributions to creditors from any available assets under a complex set of Bankruptcy Code priorities,[11] and closing the case.[12]

The bankruptcy "**discharge**" provides the chapter 7 individual debtor its "fresh start", free of discharged debt. It is essentially a permanent injunction protecting the debtor against creditors pursuing debts scheduled in the case that are subject to the discharge. Once the time for objecting to discharge has passed and any related objections are resolved, and the debtor has otherwise fulfilled its chapter 7 obligations, the individual debtor may be granted a discharge by the bankruptcy court.[13] There are a number of noteworthy exceptions to discharge.[14] Among them are income taxes for which a return is last due within three years of the filing date as well as taxes required to be collected by the debtor and for which a debtor may be personally liable, such as payroll withholding and sales taxes. Student loans made or insured by the government are also generally non-dischargeable, absent proof of undue hardship. Likewise, criminal restitution awards and fines owed to a government unit are excepted from the discharge.[15]

Currently, a "means test" is imposed to determine an individual's eligibility for chapter 7. The "means" test ascertains whether an individual's debts are primarily consumer and the debtor has sufficient income, after deducting allowable expenses, to pay some portion of the debt through a chapter 13 plan (discussed below) as opposed to having the debt discharged in chapter 7. A bankruptcy court must dismiss the case or convert the case to a chapter 13 case if the individual debtor is unable to satisfy the "means" test.[16]

Business entities may also seek relief under chapter 7 and turn over their assets to a chapter 7 trustee for liquidation and distribution. However, there is no discharge granted to a business entity under chapter 7. The entity simply dissolves, having surrendered its assets to a trustee and ceased operations.

Continued on pg 13

(Endnotes)

* Joyce A. Kuhns is a principal at Offit Kurman, P.A. in its Baltimore office. Her primary practice areas are business restructuring and refinancing and bankruptcy and commercial litigation. She has represented debtors, creditors, trustees, and regulators. Ms. Kuhns is a co-founder and past co-chair of the Greater Maryland Chapter of IWIRC (the International Women's Insolvency & Restructuring Confederation) and a current board member.

[1] The United States Bankruptcy Code is codified at Title 11 of the United States Code.

[2] In each federal judicial district, the bankruptcy court constitutes a unit of the district court. *See* 28 U.S.C. §151.

Chapter 11 Reorganization

Chapter 11's primary purpose is to adjust the obligations of a business entity's creditors and equity holders and preserve it as a going concern through a court-approved plan. Although intended as a reorganization vehicle, chapter 11 also creates a forum for a businesses' orderly partial or total liquidation. Individual debtors who do not qualify for chapter 7, or 13 because their debts exceed certain limits, may also file under chapter 11, which has no statutory thresholds.[17]

Absent fraud or mismanagement, a debtor operates as a "**debtor-in-possession**"[18] in management and control of its assets and business. Generally, a debtor may engage in day-to-day transactions in the ordinary course of its business although advance notice, hearing and court approval are required for actions outside the ordinary course, such as borrowing money or selling substantially all of its assets.[19]

In addition to the debtor, other key Chapter 11 players are the secured lenders (granted special protections for use of their collateral in the case) and statutory committees appointed by the U.S. Trustee to represent key constituents in the case such as general unsecured creditors or equity holders.

A debtor may propose a plan at any time but has the exclusive right to do so within the first 120 days of the case, which period may be extended by the bankruptcy court up to an 18-month20 maximum. Once the exclusive period expires, any party in interest may propose a plan.[21] The Bankruptcy Code sets out plan requirements, including: (i) placing similarly-situated debt or equity holders in separate classes; (ii) identifying impaired classes; (iii) providing the same treatment to every class member; and (iv) providing adequate means for plan implementation, including the unique ability to swap debt for equity without invoking typical securities procedures.[22]

Adversely affected or "**impaired**"[23] parties may vote on the plan.[24] Once approved by the bankruptcy court as providing "**adequate information**" to enable an "informal judgment" whether to vote in a plan's favor,[25] a disclosure statement is disseminated with a ballot to those eligible to vote.[26] Bankruptcy voting rules are complex and will not be discussed here. Voting is by class.[27]

The bankruptcy court must independently decide whether all elements of section 1129 of the Bankruptcy Code have been met to approve the plan.[28] Once confirmed, a chapter 11 plan binds the debtor, all creditors (whether or not they voted), and certain other enumer-

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[3] *See* Fed. R. Bankr. Proc. 1002(a).
[4] *See* 11 U.S.C. § 541.
[5] *See* 11 U.S.C. § 362.
[6] *See* Fed. R. Bankr. Proc. 1007.
[7] When Congress created the federal exemptions under 11 U.S.C. § 522, it permitted states to create their own exemption laws. Maryland has "opted-out" of the Federal exemptions; therefore, only the exemptions codified at MD. CODE ANN., CTS. & JUD. PROC. § 11-504 apply in Maryland bankruptcy cases.
[8] 11 U.S.C. §§ 109(h)(1) and 111(a).
[9] *See* 11 U.S.C. § 341.
[10] *See* 28 U.S.C. § 586 and 11 U.S.C. § 101, *et seq*.
[11] *See* 11 U.S.C. § 726.
[12] *See* 11 U.S.C. § 704.
[13] *See generally* 11 U.S.C. § 727 (chapter 7 individual discharge); 11 U.S.C. § 524 (effect of discharge).
[14] *See* 11 U.S.C. § 523 (listing exceptions to discharge).
[15] *Id.*; *See Kelly v. Robinson*; 479 U.S. 36 (1986) (discussing historical precedent).
[16] *See* 11 U.S.C. § 707 and Official 122A Forms for calculating "means test".
[17] 11 U.S.C. § 109, entitled "Who may be a debtor," sets out eligibility exclusions under various chapters.
[18] *See* 11 U.S.C. § 1104 ("Appointment of trustee or examiner") and 11 U.S.C. § 1107 ("Rights, powers and duties of debtor in possession").
[19] *See generally* 11 U.S.C. §§ 363; 364.
[20] *See generally* 11 U.S.C. § 1121.
[21] *See* 11 U.S.C. § 1121(c).
[22] *See* 11 U.S.C. § 1123.
[23] *See* 11 U.S.C. § 1124 (defining "impaired").
[24] *See generally* 11 U.S.C. § 1126.
[25] *See* 11 U.S.C. § 1125 (defining "adequate information").
[26] *See generally* Fed. R. Bankr. Proc. 3018.
[27] *See* 11 U.S.C. § 1126.
[28] *See* 11 U.S.C. § 1129.

ated parties to its terms.[29] On the plan's effective date, estate property revests in the debtor and the automatic stay terminates, unless the plan provides otherwise.[30] A chapter 11 plan generally discharges the debtor's debt through the confirmation date, acting as a permanent injunction against any party collecting a debt outside the plan's terms and conditions.[31]

Chapter 13 Debt Adjustment for Individuals with Regular Income

Chapter 13 allows eligible individuals with regular income to repay a portion or substantially all of their debts, through future installments, through a 3 to 5-year "**Chapter 13 plan**"[32] under bankruptcy court supervision. A chapter 13 trustee is appointed by the U.S. Trustee to investigate the financial affairs of the debtor, ensure the debtor makes timely payments and distribute monthly payments the trustee receives under the plan to creditors. Only a debtor may propose a plan.[33]

Unlike chapter 7, a chapter 13 debtor is not required to turn over non-exempt assets to the trustee but may retain possession and control of debtor property so long as the debtor makes certain payments on secured debt (*e.g.*, installment payments on vehicle loans) pending confirmation and honors plan obligations, post-confirmation. If a chapter 13 debtor has defaulted on mortgage payments before the filing date, the debtor may seek to modify the repayment schedule and "cure" its arrearages overtime, a significant Chapter 13 benefit.[34]

A more streamlined proceeding than chapter 11, chapter 13 does not require disclosure statement or creditor vote for plan approval. So long as the chapter 13 plan complies with chapter 13 confirmation requirements, the bankruptcy court must confirm it.[35] A confirmed chapter 13 plan binds the debtor and each of its creditors to its terms.[36] Unlike in chapter 7 or 11, the debtor is not discharged and the automatic stay is not terminated as to the debtor until all plan payments are made or the case is dismissed.[37] If plan payments are missed after confirmation, the trustee may ask the court to dismiss the case, convert the case to chapter 7, or modify the plan.[38]

Conclusion

The Bankruptcy Code provides a unique vehicle for debtors to attain a fresh start unburdened by past debt and a challenge for creditors to maximize recovery. Inherent tensions between the chapters inevitably exist, with debtors pursuing a quick exit with the broadest discharge and creditors seeking the biggest recovery. Knowing the bankruptcy essentials should help a non-bankruptcy lawyer decide next steps, including whether to consult with a bankruptcy professional.

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[29] *See* 11 U.S.C. § 1141.
[30] *Id.*
[31] *Id.* Note that a confirmed Chapter 11 does not effect a discharge if it provides for liquidation of all or substantially all of the property of the estate or the debtor ceases to operate after plan consummation.
[32] *See* 11 U.S.C. § 1322 ("Contents of plan").
[33] *See* 11 U.S.C. § 1321.
[34] *See* 11 U.S.C. § 1322.
[35] *See* 11 U.S.C. § 1325.
[36] *See* 11 U.S.C. § 1327.
[37] *See* 11 U.S.C. § 1328.
[38] *See* 11 U.S.C. § 1329.

BABC Hospitality Suite
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Hard Stop: An Overview of the Automatic Stay for Non-Bankruptcy Practitioners

By Lisa Yonka Stevens[*]

One of the key protections afforded to a debtor under the Bankruptcy Code is the automatic stay under 11 U.S.C. § 362. The automatic stay acts to enjoin most actions taken by creditors against the debtor or property of the debtor's bankruptcy estate for debts incurred prior to the bankruptcy filing. The stay applies in any bankruptcy, regardless of the chapter and whether the bankruptcy is voluntarily or involuntarily filed. The stay is effective immediately upon the filing of a bankruptcy petition without the need for any court order and applies whether creditors have notice of the bankruptcy petition or not. Violations of the automatic stay have serious consequences for a creditor, including the imposition of contempt sanctions for knowing and willful violations.

The legislative history of the statute makes clear that the stay is intended to give the debtor some breathing room from creditors and permits the debtor to attempt a repayment or reorganization plan or simply to be relieved of the financial pressures that drove the debtor into bankruptcy.[1] The automatic stay "stops the chaos surrounding the financially distressed individual or business and provides [that] debtor with a 'breathing spell' from the harassing actions of creditors."[2] It also "serves the interests of creditors by preventing 'dismemberment' of the debtor's assets before the debtor can formulate a repayment plan or, in liquidation cases, the court can oversee equitable distribution of the debtor's assets."[3]

Scope of the Automatic Stay

Section 362(a) of the Bankruptcy Code contains a broad list of actions that are stayed by the filing of a bankruptcy petition. A brief examination of this list will make clear that the prohibited actions include those that tend to be of most concern to creditors. It stays collection actions, foreclosures, terminating contracts on account of prepetition defaults, and almost all judicial proceedings against the debtor and the debtor's property.[4] More specifically, acts that are covered by the automatic stay are:

- Judicial proceedings brought against a debtor for claims that were or could have been brought prior to the commencement of the bankruptcy case;[5]
- Enforcement of judgments against the debtor or against property of the debtor's estate that were obtained prior to the filing of the bankruptcy case;[6]
- Acts to obtain possession of property of the estate or to exercise control over property of the bankruptcy estate;[7] and
- Acts to create, perfect or enforce liens encumbering property of the estate.[8]

However, certain acts are not enjoined by the automatic stay. Principally, they are:

- Criminal prosecutions;[9]

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(Endnotes)

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[1] House Report No. 95-595, 95th Cong., Sess. 340-2 (1977); Senate Report No. 95-989, 95th Cong., 2d Sess. 49-51 (1978).

[2] *In re Wood,* 590 B.R. 120 (Bankr. D. Md. 2018) (internal quotations and citations omitted).

[3] *Id.* (internal quotations and citation omitted).

[4] § 362(a).

[5] § 362(a)(1). Typically, a debtor who is a defendant in pre-petition litigation will provide written notice to the court and other parties that the action is stayed shortly after it files its bankruptcy petition.

[6] § 362(a)(2).

[7] § 362(a)(3).

[8] § 362(a)(4).

[9] § 362(b)(1).

- Actions to determine alimony and child support, and paternity actions;[10]
- The exercise of governmental, police and regulatory powers;[11] and
- Determination and assessment of taxes.[12]

Generally, the automatic stay only applies to the debtor and not to actions against subsidiaries, affiliates, shareholders, directors, guarantors, or other non-debtor parties liable for the debts of the debtor. The stay also is inapplicable to non-bankruptcy co-defendants. However, under certain limited circumstances, a debtor can seek to have the stay extended to certain third parties.

Another limitation on the scope of the automatic stay is that it only applies to prepetition acts. Actions on a claim against a debtor that arise after the commencement of the case are not stayed, provided that any enforcement of a claim does not act against property of the bankruptcy estate.

Duration of the Automatic Stay

The automatic stay remains in effect against property of the estate until such property is no longer property of the estate.[13] This occurs either because the property is claimed as exempt by the debtor, sold or abandoned by the bankruptcy estate, or because a plan of reorganization has been confirmed.

The automatic stay lasts until a bankruptcy case is closed or dismissed or, in the case of an individual, until a discharge is granted or denied.[14] If a discharge is granted, the stay is replaced by the discharge injunction, which permanently stays actions on discharged debts.

In the case of serial bankruptcy filings, the automatic stay will only last thirty days if a debtor had a prior bankruptcy within the year before the current filing.[15] In the case of a debtor who had two or more prior filings during the one-year period, there is no stay in effect upon filing.[16] In both situations, the debtor can affirmatively seek to extend the stay; however, the debtor must overcome the presumption that the bankruptcy was filed in bad faith.[17] Out of an abundance of caution, one dealing with a serial filer should confirm that the stay has been terminated before taking any action. In certain limited situations, the stay may be lifted with respect to collection actions taken against the debtor and property of the debtor but not as to efforts taken against property of the estate.[18]

Relief from the Automatic Stay

If a creditor that is subject to the automatic stay wants to proceed with its rights

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[10] § 362(b)(2).
[11] *See e.g.* § 362(b)(4), (8), (12), (13), (15), (16), (25) and (28).
[12] *See e.g.* § 362(b)(9), (18) and (26).
[13] § 362(c)(1).
[14] § 362(c)(2).
[15] § 362(c)(3).
[16] § 362(c)(4).
[17] § 362(c)(3)(C) and (4)(D).
[18] *See Wood*, 590 B.R. at 124-26.
[19] § 362(d).

against the debtor or property of the estate, it can seek permission from the court by filing a motion asking for relief from the automatic stay.[19] Section 362(d) sets forth the grounds for relief from the automatic stay. The court may terminate, annul, modify, or condition the stay "for cause, including the lack of adequate protection of an interest in property"[20] or grant relief from the stay against property "if the debtor does not have equity in such property; and such property is not necessary to an effective reorganization."[21]

Creditors often attempt to contract for stay relief through provisions in prepetition contracts that waive or alter the automatic stay.[22] "Although Maryland, like many states, encourages freedom of contract in the business entity context, courts have refused to enforce contractual provisions that thwart important federal law policies." Thus, prepetition contractual waivers of the automatic stay generally are disfavored and invalidated by courts in bankruptcy cases.[23]

Violation of the Automatic Stay

Acts taken in violation of the automatic stay are void ab initio and therefore without effect.[24] Because the stay is imposed automatically, and often without notice, a creditor need not knowingly and intentionally intend to violate the automatic stay to be liable for damages for a "willful" stay violation. It is enough that a creditor commits an intentional act with knowledge of the existence of the stay, without necessarily knowing a stay's applicability to the act in question.[25] A party injured by any willful violation of the stay shall recover actual damages, including costs and attorneys' fees, and in appropriate circumstances may recover punitive damages.[26] Punitive damages for violation of the automatic stay are appropriate only when the violator has engaged in egregious, intentional misconduct. Once a creditor has notice of the bankruptcy case, the creditor has an affirmative duty to refrain from violating the stay.

Key Takeaways

The automatic stay of Section 362(a) of the Bankruptcy Code is one of the most critical protections provided to a debtor in a bankruptcy case. Given its core function in the bankruptcy process, courts typically scrutinize arguments concerning the scope of the stay, requests for relief from stay and alleged violations of the stay. As such, parties and their counsel who are confronted by the imposition of the automatic stay in a bankruptcy proceeding should proceed with caution.

[20] § 362(d)(1).
[21] § 362(d)(2).
[22] *In re Siegal,* 591 B.R. 609, 621 (Bankr. D. Md. 2018).
[23] *Id.*
[24] *In re McCrimmon,* 536 B.R. 374 (Bankr. D. Md. 2015); *In re Miller,* 10 B.R. 778 (Bankr. Md. 1988).
[25] *In re Mountaineer Coal Co.,* Inc., 247 B.R. 633 (Bankr. W.V. 2000).
[26] § 362(k)(1).

I May Be Sued for a What?! An Introduction to Preference Actions in Bankruptcy.

*Kristen S. Eustis**

Avoidance actions in bankruptcy cases include federal and state law fraudulent transfer claims and preference actions.[1] These tools permit a bankruptcy trustee (or debtor-in-possession) to avoid and recover certain payments or transfers made by a debtor to a creditor prior to the filing of a bankruptcy petition that would provide the creditor with an advantage in the bankruptcy case vis-a-vis other creditors. Said another way, these powerful tools allow a trustee to attempt to level the playing field, promoting the equality of distribution among a debtor's creditors.

Introduction

Most companies that provide unsecured credit to their customers are likely to encounter a preference demand and/or lawsuit at some point. More often than not, prior to being formally sued, a trustee will send demand to the company to repay amounts it received from the debtor/customer in the 90 days prior to the bankruptcy filing. If no response is received to the demand, a lawsuit, called an adversary proceeding, will likely be filed against the creditor in the bankruptcy court.

To many, preference demands often come as a surprise and seem both unreasonable and unfair —as there is generally no dispute that the debtor owed the debt to the creditor and the creditor earned the payment it received from the debtor. This is especially so because many trade creditors are still owed money by the debtor. By way of example, WashCap Construction is a general contractor who has subcontracted with TileCo to install tile in the homes in which WashCap constructs. TileCo installs the tile and invoices WashCap for the work performed. WashCap pays the $50,000 invoice and within 90 days of doing so, files for Chapter 7 bankruptcy. TileCo receives a letter from the Chapter 7 Trustee demanding immediate repayment of the $50,000 as a preference.

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An introduction to preference actions in bankruptcy. (cont.)

Elements of a Preference

Preferences are governed by section 547 of the Bankruptcy Code.[2] The trustee/plaintiff has the initial burden to prove the statutory elements of a preference.[3] Once the prima facie case is established, the burden shifts to the creditor to prove its defense, if any.[4] The statutory elements of a preference are summarized as follows:

(i) a transfer;

As a general matter, the term "transfer" is broadly defined under the Bankruptcy Code.[5] For preference purposes, transfers include money payments as well as non-monetary payments such as granting creditors security interests in the debtor's assets or the perfection of a security interest.[6]

(ii) of an interest of the debt in property;

This phrase is not defined in the Bankruptcy Code but has been found to be synonymous with "property of the estate".[7] This term also permits a trustee to recover transfers of less than complete property. If the trustee is successful in her preference action, Section 550(a) of the Bankruptcy Code authorizes her to recover either the transferred "property" or its value.[8]

(iii) made to or for the benefit of a creditor;

Creditor is another term that is broadly defined by the Bankruptcy Code as an entity with a claim against the debtor that arose on or before the filing of the petition.[9]

(iv) made for or on account of an antecedent debt;

The trustee must also show that the debtor's transfer relates to a pre-existing debt that was incurred prior to the transfer in order for it to be preferential.[10]

(v) made while the debtor was insolvent;

For purposes of preference actions, the debtor is presumed to have been insolvent on and during the 90 day period preceding the filing of the bankruptcy petition.[11] Evidence may be presented by a defendant to rebut this presumption. The question of insolvency is one of fact and is generally based on a balance sheet assessment as to whether liabilities exceed the debtor's assets.[12]

(vi) made within 90 days or one year, in the case of an insider; and

The trustee must show that the transfer occurred within 90 days of the petition date or one year of the petition date if the creditor is an insider.[13]

(vii) resulted in the creditor receiving a greater distribution than it otherwise would have in a hypothetical chapter 7 distribution.

This final element, the "liquidation test", tests whether the creditor actually received preferential treatment or a benefit from the transfer. The issue is whether the transfer enables the creditor to receive more than the creditor would receive if the case were a case under chapter 7, the transfer had not been made, and such creditor had received payment of such debt to the extent provided under the Bankruptcy Code.[14] This requires hypothesizing about the values of the debtor's assets and the amount that would be realized in a chapter 7 case if those assets were liquidated.

In proving its *prima facie* case, a trustee must establish the elements by a preponderance of the evidence.[15] If the trustee fails to prove any one of the five elements, the preference claim fails. If all five elements are established, creditors have certain statutory defenses available that may reduce or eliminate entirely their preference exposure.

Common Defenses

A few of the common statutory defenses to preference actions include the following:

(i) Ordinary Course of Business. Establishing that a transfer was made in the ordinary course of business may sound straight forward but it is actually very difficult to do. This defense is very fact intensive and oftentimes requires expert testimony. In order to establish this defense, a creditor must show that (i) the debt was incurred in the ordinary course of business between the debtor and creditors; (ii) the payment was made in the

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(Endnotes)

[1] A fraudulent transfer claim is based on state or federal law (11 U.S.C. §548). These claims are based on the debtor not receiving reasonably equivalent value in return or a transfer being made with the actual intent to hinder, delay or defraud creditors.

[2] Section 547(b) provides that the trustee may avoid transfers of the debtor's interest in property:
(1) to or for the benefit of a creditor;
(2) for or on account of an antecedent debt owed by the debtor before such transfer was made;
(3) made while the debtor was insolvent;
(4) made—
(A) on or within 90 days before the date of the filing of the petition; or
(B) between ninety days and one year before the date of the filing of the petition, if such creditor at the time of such transfer was an insider; and
(5) that enables such creditor to receive more than such creditor would receive if—
(A) the case were a case under chapter 7 of this title;
(B) the transfer had not been made; and
(C) such creditor received payment of such debt to the extent provided by the provisions of this title.
11 U.S.C. §547(b) (2019).

[3] Id. at §547(g).

[4] Id.

[5] Id. at §101(54)

[6] Id.

[7] The Supreme Court in Begier v. IRS, 496 U.S. 53 (1990) held that "property of the debtor" must be "that property that would have been part of the estate had it not been transferred before the commencement of the bankruptcy proceedings."

[8] 11 U.S.C. §550.

An introduction to preference actions in bankruptcy. (cont.)

ordinary course of the business of the debtor and creditor; and (iii) the payment was made according to ordinary business terms used in the industry in which the debtor and creditor operate.[16]

(ii) Contemporaneous Exchange for New Value. This defense allows a creditor to reduce liability if it can show that 1) the parties intended the transfer to be a contemporaneous exchange; 2) the exchange was actually contemporaneous; and 3) the exchange was for new value, such as: money, goods, services; or new credit.[17] The basic understanding that underlies this defense is that if new value is given in exchange for the payment, the debtor's estate is not being diminished (i.e. COD transactions). This defense also encourages creditors to continue to do business with companies, obviating any need for seeking bankruptcy protection in the first place.

(iii) Subsequent New Value. This defense also encourages creditors to continue doing business with distressed companies. Creditors that continue providing inventory to the debtor or that otherwise extend additional credit after receiving a preferential transfer are entitled to a credit for the new value or credit extended to the debtor.[18] This rewards creditors who continue to do business with the debtors during the 90-day preference period.

Conclusion

The underlying policy behind preferences is to avoid favoritism and to prevent the debtor from preferring one creditor over another. This leads to the seemingly unfair claw back of payments by debtors on legitimate debts. It is important if you or your company receive a demand letter from a trustee or are served with a complaint (which can be served by mail under the Federal Rules of Bankruptcy Procedure) that you consult with an attorney who has experience with avoidance actions to assess the strength of the trustee's claims and the applicability of any defenses. It is also important to provide your attorney and the trustee with records to support your applicable defenses—invoices and payment records. Most avoidance actions are settled at a discount prior to a complaint ever being filed.

[9] Id at §101(10).
[10] Id. at §547(b).
[11] Id. at §547(f).
[12] David B. Wheeler, ABI Preference Handbook 8 (American Bankruptcy Institute 2d edition 2008).
[13] Id. at §547(b)(4).
[14] Id. at §547(b)(5).
[15] This standard generally requires a trustee to prove that it is "more likely than not" the five elements of a preference exist.
[16] Id. at §547(c)(2).
[17] Id. at §547(c)(1).
[18] Id. at §547(c)(4).

Collections, Interrupted

By: Lisa Bittle Tancredi*

There are few things more frustrating than bankruptcy getting in the way of collecting money. The last thing that a creditor wants, in that situation, is to then find itself in trouble for something that it did (or did not do), once it learned about the filing. The automatic stay stops (with a laundry list of exceptions that we will ignore here) all action against a debtor or a debtor's property for the purpose of collecting a prepetition debt. The rule seems simple, but tricky questions can arise when a bankruptcy interrupts collection activities that are in progress, or that are completely passive. This article will examine how courts have treated three frequently-encountered collection mechanisms that can be interrupted by bankruptcy: automatic payments, garnishment proceedings, and presentment of checks.

Automatic Payments

Automatic payments are convenient for merchants and service providers, as well as for their customers. They are commonly used to pay mortgages, car payments and other installment loans. By setting up regular automatic bank account withdrawals or regular charges to designated credit cards, customers are freed from having to remember to make their payments, and creditors have some assurance of receiving payments timely.

What effect does a customer's bankruptcy filing have on this setup? The automatic stay prohibits "acts" to obtain possession of the debtor's property and "acts" against the debtor to collect on a pre-petition debt. 11 U.S.C. §362(a). By passively accepting payment, is the creditor committing an "act" in violation of the automatic stay? Unfortunately for creditors, courts have held that the acceptance and of automatic payments is indeed a violation of the automatic stay.[1]

The next logical question concerns ongoing payments. Who is obligated to terminate the automatic payment stream – the debtor

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(Endnotes)

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[1] *In re O'Neal,* 165 B.R. 859, 862 (Bankr. M.D. Tenn. 1994)(receipt of payment violated the automatic stay); In re Brooks, 132 B.R. 29, 30 (Bankr. W.D.

Collections, Interrupted (cont.)

or the creditor? Bankruptcy courts, taking a paternalistic view towards unsophisticated consumers, have held that it is the creditor's obligation to take action to stop the automatic payments.[2]

Garnishment Proceedings

Sometimes a bankruptcy case is filed after a garnishment proceeding is commenced, but before judgment is entered, or before funds are turned over to the garnishor. Frequently, the court in which the garnishment proceedings are pending will stay the proceedings *sua sponte.* However, sometimes not. The obligations of the creditor/garnishor in this situation vary from court to court. Some courts have held that the creditor/garnishor must stay or even dismiss the garnishment proceedings upon learning about the bankruptcy.[3] The creditor/garnishor should consult counsel immediately to determine its best course of action in the jurisdiction in which a particular garnishment case is pending.

Upon receipt of a garnishment complaint, the garnishee (typically a bank or employer) will usually freeze the debtor's funds pending a decision in the garnishment proceedings. What happens when the bankruptcy case is filed after the funds are frozen but before a judgment of garnishment has been entered? Again, it depends. Some courts have held that the creditor must take action to free the funds in order to comply with the injunction of the automatic stay; others have held that there is no affirmative obligation to free the funds.[4] This is another instance where a garnishing creditor should seek guidance from counsel. For example, the garnishor may wish to seek an order from the bankruptcy court to prevent the dissipation of frozen funds.

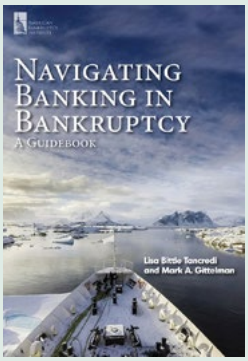
Sometimes funds are received by the garnishing creditor without knowledge that the debtor has filed a bankruptcy case. Is the creditor obligated to return them? It has been held that failure to return the funds immediately is a violation of the automatic stay.[5] Again, however, a creditor would be wise to consult counsel because it has also been held that the funds need not be returned, depending upon the circumstances.[6]

Checks

Every year, millions of checks are made by debtors before bankruptcy and presented for payment after bankruptcy. Can a prepetition check be presented to a bank for payment without violating the automatic stay? The answer is a very unhelpful "maybe." There is an exception to the automatic stay for "the presentment of a negotiable instrument and the giving of notice of and protesting dishonor of such an instrument."[7] Notably, this exception does not depend on whether the parties have knowledge of the bankruptcy. However, another section of the Bankruptcy Code provides that if a creditor has knowledge of the automatic stay and holds property of the debtor (such as a check), then the creditor is obligated to turn it back over to the bankruptcy estate, which would suggest that the check should be turned over to the debtor instead of presented to the bank.[8]

Assuming that the check is negotiated, is retention of the funds a violation of the automatic stay? Surprisingly, a number of courts have held that retention of the funds in these circumstances does not violate the automatic stay.[9] That said, this is yet another circumstance in which a party would be well-advised to consult with counsel; even though the retention may not violate the automatic stay, the debtor can bring suit to recover the funds under 11 U.S.C. § 549(a).[10]

Additional Resource



The intersection of collections and bankruptcy raises thorny issues like the ones discussed in this article because legal theory is not neatly applicable to real-life practices and banking systems. These sorts of problems inspired the author to research and co-author a book on the subject, *Navigating Banking in Bankruptcy: A Guidebook*, now available at www.abiworld.org and on Amazon.[11]

Mo. 1991) (application of the payment violated the automatic stay).

[2] *In re Longoria,* 400 B.R. 543, 554 (Bankr. W.D. Tex. 2009); In re Walker, 180 B.R. 834, 844 (Bankr. W.D. La. 1995).

[3] *See, e.g., In re Banks,* 577 B.R. 659, 665 (Bankr. E.D. Va 2017)(creditor violated the automatic stay by filing to dismiss the garnishment); *Skillforce Inc. v. Haver,* 509 B.R. 523, 530 (discussing various cases).

[4] *Compare In re Bailey,* 428 B.R. 694, 698 (Bankr. N.D. W.Va. 2010) (failure to take affirmative action to restore garnished wages was a violation of the automatic stay) with In re Kuzniewski, 508 B.R. 678, 690 (Bankr. N.D. Ill. 2014) (no obligation to release funds).

[5] *In re Banks,* 577 B.R. 659, 667 (Bankr. E.D. Va. 2017).

[6] *In re Saults,* 293 B.R. 739, 750 (Bankr. E.D. Tenn. 2002) (garnishor not required to release funds because it had a lien on the funds that had not been avoided).

[7] 11 U.S.C. § 362(d)(11) (safe harbor for banks giving notice of dishonor).

[8] 11 U.S.C. § 542(a).

[9] *See In re Meadows,* 396 B.R. 485 (6th Cir. B.A.P. 2008) (reciting cases for the proposition that retention of funds post-petition from a pre-petition check falls within 11 U.S.C. § 362(d)(11)and does not violate the automatic stay).

[10] *Id.* at 496-97.

[11] Lisa Bittle Tancredi and Mark A. Gittelman, *Navigating Banking in Bankruptcy: A Guidebook* (American Bankruptcy Institute 2018). To order from the American Bankruptcy Institute, go to https://store.abi.org/navigating-banking-in-bankruptcy-a-guidebook.html.

Executory Contracts and Unexpired Leases

*by Catherine Allen and Laura Bouyea**

Executory contracts and unexpired leases are given special treatment under Section 365 of the Bankruptcy Code. The term "executory contract" is not defined in the Bankruptcy Code, but the widely accepted "Countryman" definition states that an executory contract is "a contract under which the obligation of both the [debtor] and the other party to the contract are so far unperformed that the failure of either to complete performance would constitute a material breach excusing the performance of the other."[1] In other words, an executory contract is a contract where both parties have ongoing, substantial obligations to perform.

Examples

Examples of executory contracts include contracts for sales of goods where the goods have not yet been delivered, licenses to intellectual property, and development contracts. Examples of leases include real estate leases, car leases, and equipment leases. Examples of contracts that are not executory contracts include real property loans and car loans. Courts are careful to only apply Section 365 to "true leases" and not to disguised financings.[2]

Options: Assume or Reject

When the debtor is a party to an executory contract or lease, the trustee (or debtor-in-possession) has two options: (1) the trustee may "assume" the contract, or 2) the trustee may "reject" the contract. Assumption of the contract means that the trustee intends to continue to perform under the contract, post-bankruptcy. Rejection of the contract means that the trustee will not continue to perform under the contract. It can be nearly impossible to successfully challenge assumption or rejection of an executory contract because the legal standard regarding the decision to assume or reject is the trustee's business judgment.[3]

Deadline to Assume

In a Chapter 7 case, an executory contract or lease must be assumed within 60 days.[4] In a Chapter 11 case, an executory contract or lease must be assumed prior to plan confirmation and is often contained in the plan of reorganization.[5] Non-residential real property leases, however, must be assumed within 120 days of the petition date, and the debtor-in-possession may be given an additional 90 days to assume "for cause."[6] Examples of cause for such an extension include whether the lease is the debtor's primary asset, whether the lessor is continuing to receive rent, and whether the case is complex, with a large number of leases, etc.[7] The non-debtor party to the contract or lease must continue to perform its obligations pending the assumption or rejection of the contract or lease.

Assumption Requirements

To assume the executory contract or lease, the trustee must (1) cure any existing defaults or provide adequate assurance of the trustee's intention to promptly cure defaults; (2) compensate the non-debtor party for any pecuniary losses suffered as a result of any defaults; and (3) provide "adequate assurance of future performance."[8] "Adequate assurance of future performance" can take a variety of forms, but means that the trustee must demonstrate the ability to perform the debtor's obligations under the executory contract or lease. The most common form of adequate assurance of future performance is evidence that the debtor will have the financial ability to perform its obligations under the executory contract or lease on an on-going basis, post-assumption.

Rejection

If the trustee decides to reject an executory contract or lease, the non-debtor party is entitled to rejection damages. Except for real property leases, which are addressed below, rejection will give the non-debtor party a general unsecured claim[9] through the date of rejection. The date of rejection may be the date that the court approves rejection, or it may be an earlier or later date, depending on the particular circumstances. The amount of the rejection damages is determined under applicable state law. That is, the claim amount for rejection is the amount that would be owed in a state-law breach of contract case. A claim for contract rejection arises after the bankruptcy is filed (i.e., during the bankruptcy case), and is in addition to any claim for amounts owed as of the date that the debtor filed bankruptcy (a so-called prepetition claim).

Lease rejection damages, however, are subject to a cap pursuant to Bankruptcy Code Section 502(b). Under 502(b)(6), the landlord is not entitled to the full amount of rent for the remaining term of the lease. Instead, such damages are capped to the greater of (1) one year's rent or (2) fifteen percent of the rent due under the lease, not to exceed three years' rent.

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(Endnotes)

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[1] Countryman, Executory Contracts in Bankruptcy: Part I, 57 Minn. L. Rev. 439, 460 (1973).

[2] Ford Motor Co. v. Lasting Impressions Landscape Contractors, Inc. (In re Lasting Impressions Landscape Contractors, Inc.), 579 B.R. 43 (Bankr. D. Md. 2017).

Executory Contracts and Unexpired Leases (cont.)

Assumption and Assignment

A trustee may decide to assume and assign the lease to a third party. To assign the contract or lease, the trustee must first assume it (and satisfy all assumption requirements) and must provide adequate assurance of future performance by the assignee.[10] The trustee may assign the contract or lease even if the contract, lease, or applicable law contain provisions that purport to condition, restrict, or prohibit assignment.[11]

Shopping center landlords have been given special protections. If a debtor-tenant seeks to assume and assign a shopping center lease, adequate assurance of future performance for such assignment includes assurance: (1) that the financial condition of the proposed assignee and any guarantors are equivalent to those of the debtor at the time the debtor entered the lease; (2) that any percentage rent will not substantially decrease; (3) that the assignment is subject to all provisions of the lease, "including, but not limited to, provisions such as a radius, location, use, or exclusivity provision, and will not breach any such provision contained in any other lease, financing agreement, or master agreement relating to such shopping center;"[12] and (4) that the proposed assignment will not disrupt the tenant mix.[13]

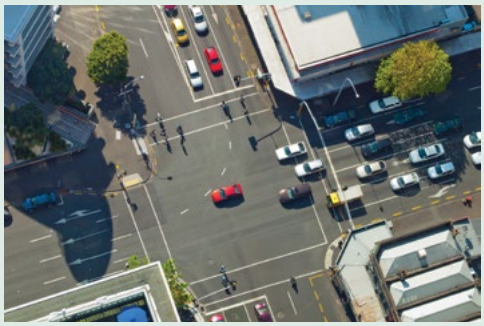
Conclusion

The debtor's ability, pursuant to Section 365, to assume (and potentially assign) valuable executory contracts and leases, and to reject problematic executory contracts and leases, is one of the most notable tools afforded debtors by the Bankruptcy Code. A debtor's strategic use of these powers can have a major impact on its case but it is critical that one be mindful of the many nuances of applying Section 365 of the Bankruptcy Code.

[3] Cor 5 Route Co. v. Penn Traffic Co. (In re Penn Traffic Co.), 524 F.3d 373, 383 (2d Cir. 2008).
[4] 11 U.S.C. § 365(d)(1).
[5] 11 U.S.C. § 365(d)(2).
[6] 11 U.S.C. § 365(d)(4).
[7] South Street Seaport Ltd. P'ship v. Burger Boys, Inc. (In re Burger Boys, Inc.), 94 F. 3d 755, 761 (2d 1996).
[8] 11 U.S.C. § 365.
[9] If the non-debtor party is holding security, such as a security deposit, the non-debtor party will hold a secured claim up to the value of that security.
[10] 11 U.S.C. § 365(f)(2).
[11] 11 U.S.C. § 365(f)(1).
[12] 11 U.S.C. § 365(b)(3)(C).
[13] The debtor must provide the same assurances in connection with the assumption of a shopping center lease. 11 U.S.C. § 365(b).

The Intersection of Family & Financial Conflict

*By: Tiffany S. Franc**



One of the greatest benefits of a bankruptcy filing is the protection a debtor receives from the "automatic stay." There are, however, exclusions from the automatic stay for certain domestic matters. These exclusions include paternity (§362(b)(2)(A)(i))[1], establishment or modification of a domestic support obligation ("DSO")[2] (§362(b)(2)(A)(ii)), custody or visitation proceedings (§362(b)(2)(A)(iii)), the dissolution of marriage (§362(b)(2)(A)(iv)), litigation concerning domestic violence (§362(b)(2)(A)(v)) and collection of a DSO (§362(b)(2)(B) and (C)).

However, working within the confines of these exceptions, practitioners must still be cautious. For instance, the DSO exceptions of §362(b)(2)(B) and (C) only applies to instances of withholding and collecting upon non-estate property. Before proceeding with a DSO matter in state court, the domestic practitioner must then be well versed in the definition of estate property, and how the definition differs between the various chapters of bankruptcy.[3]

The next minefield for the domestic practitioner is §362(b)(2)(A)(iv). While it provides for the dissolution of marriage as an exception to the automatic stay, there are several other elements related to marriage dissolution that are not excepted from the automatic stay. Marital property valuation and division, and enforcement of pre-petition property settlements, are not carved out exceptions to the automatic stay and therefore should not be pursued during a bankruptcy case without relief from the bankruptcy

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(Endnotes)

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[1] All statutory references are as to Title 11 of the United States Code, unless otherwise specified.
[2] Domestic support obligation (DSO) in bankruptcy is defined in §101 (14A) as a debt that, among other things, "accrues before, on or after" a bankruptcy filing, that is "owed to a spouse, former spouse, child or parent/guardian

The Intersection of Family & Financial Conflict (cont.)

court. Not only can the resolution of these matters not be pursued, but courts have interpreted the bankruptcy code such that discovery on these issues cannot be propounded during the pendency of a bankruptcy either.[4]

Another nuance of the automatic stay is the "co-debtor stay" provided in Chapter 13 cases (but not in Chapter 7 cases) under §1301.[5] A critical limitation to the co-debtor stay is its applicability to "consumer debts" only, as defined in §101(8). This is however an important protection for co-obligors and a consideration for domestic practitioners when contemplating a bankruptcy filing for a couple pre-divorce.

When questions exist about whether the automatic stay is in place or not, a creditor should exercise its right to request relief from the automatic stay from the bankruptcy court. Relief is requested via motion, with a notice period to all interested parties.[6] A key consideration in whether a bankruptcy court will grant relief from the automatic stay is whether the debt in question is dischargeable or not.

The other sought-after benefit of a bankruptcy filing is the discharge. Much like the automatic stay, the discharge provisions of the bankruptcy code present an intricate web for the domestic practitioner to untangle. Most importantly, the discharge granted under Chapter 13 is not the same as the one granted in a Chapter 7. In particular, non-support divorce-related obligations are treated differently by each discharge. Therefore, one must review the pertinent discharge provisions for both, found at §1328(a)(2) and §727(b), to determine whether non-support divorce-related obligations are dischargeable in a particular bankruptcy case.

To simplify, there are three key points for a family law attorney to remember. First, a DSO is never dischargeable. This includes pre-petition arrears, a debtor's current obligation and their future obligation. Second, a chapter 7 discharge does not discharge either a DSO or a non-support related debt incurred in a divorce decree, separation agreement or property settlement agreement. Third, a chapter 13 discharge does not discharge a DSO, but can discharge a non-support related debt incurred in a divorce decree, separation agreement or property settlement agreement.

However, like everything else in bankruptcy, it's rarely that cut and dry. Since the bankruptcy code defines a DSO as a debt "in the nature of support," the debt does not have to be expressly designated as support (i.e. the traditional child support and alimony designations a family law practitioner uses), but merely needs to be "in the nature of" support. This leaves the matter up to interpretation by the court. In the Fourth Circuit, the test for determining whether something is "in the nature of" support revolves around the parties' intent at the time the debt was incurred.[7]

Filing Bankruptcy Pre-Divorce

There are several reasons a couple may want to jointly file a bankruptcy petition pre-divorce. The first and most simple benefit to filing pre-divorce is the ability to file a joint case. This allows for the couple to share the cost of only one filing fee and potentially, one attorney's fee.[8] By discharging individual and marital debt pre-divorce, the issue of assigning debt to one spouse or another in a separation agreement or divorce decree could be eliminated. This not only saves on negotiation time and in turn divorce attorney's fees, but likely contention and animus between the parties. Once a divorce is final, the ability to file a joint bankruptcy case is lost.

Another consideration for filing bankruptcy pre-divorce is whether one or both debtors could qualify, particularly for Chapter 7, post-divorce. There are strict income limitations for a debtor seeking to qualify for Chapter 7 bankruptcy relief imposed by the "means test."[9] Instances where one spouse makes a proportionately higher income than the other, the chances of the income-earning spouse qualifying for Chapter 7 post-divorce are much lower than pre-divorce. If the spouses can tolerate one another for approximately 90 days to complete a Chapter 7, they could be in a much better position to dissolve their marriage upon completion of the bankruptcy.

Couples should also contemplate the benefit of preserving marital assets through the filing of a bankruptcy prior to divorce. Chap-

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of a child" of the debtor, that is in the "nature of alimony, maintenance or support" and established by "separation agreement, divorce decree, property settlement agreement" or court order.

[3] For example, a debtor's ongoing wages are not property of the estate in Chapter 7, but they are property of the estate in Chapter 13. *See* §1306(a)(2).

[4] *Klass v. Klass,* 377 Md. 13 (2003).

[5] §1301(a) provides: "Except as provided in subsections (b) and (c) of this section, after the order for relief under this chapter, a creditor may not act, or commence or continue any civil action, to collect all or any part of a consumer debt of the debtor from any individual that is liable on such debt with the debtor, or that secured such debt, unless -

(1) such individual became liable on or secured such debt in the ordinary course of such individual's business; or

(2) the case is closed, dismissed, or converted to a case under chapter 7 or 11 of this title.

[6] Practitioners should be aware of the Local Bankruptcy Rules for the court in which they are pursuing their rights. The Local Rules of a jurisdiction usually impose additional pleading standards upon litigants. The United States Bankruptcy Court for the District of Maryland's Local Bankruptcy Rules can be found online at: www.mdb.uscourts.gov.

[7] *Matter of Long,* 794 F.2d 928 (4th Cir. 1986).

[8] There are ethical pitfalls one should be cognizant of when representing soon-to-be-former spouses who may have different goals and interests in a bankruptcy case.

The Intersection of Family & Financial Conflict (cont.)

ter 7 is the "liquidation" chapter and any property valued above and beyond the limitations of a debtor's exemptions, is subject to liquidation by a trustee for the benefit of creditors. Section 522 provides for the exemption of assets within monetary limits. The only unlimited exemption is for property held tenants by the entireties ("TbyE"). However, the bankruptcy code allows each state to "opt out" of these federal exemptions under §522 and to impose their own state exemptions. Therefore, it is important to understand the property exemption scheme of the state in which the case is filed.

In Maryland, bankruptcy exemptions are governed by Md. Code Ann. Cts. & Jud. Proc. §11-504. While Maryland does not have a statutory TbyE exemption parallel to § 522(b)(2)(B), the case of *Sumy v. Schlossberg*[10] provides for such an exemption to the extent of non-joint debts. In the event a divorcing couple has equity in marital property, exercising their TbyE exemptions prior to divorce, to preserve that property could be in their best interest, assuming that there is not equivalent joint debt entitled to reach the joint equity. When preserving marital assets that will later be subject to division via divorce or property settlement, bankruptcy debtors and domestic counsel should be properly advised by an experienced bankruptcy practitioner as to the ramifications of §541(a)(5)[11] and the reporting requirements it imposes.

Filing Bankruptcy Pending Divorce

In more instances than not, individuals suffering a family crisis such as separation and divorce, will likely not be able to a joint bankruptcy case, either because of personal feelings or conflicting interests. In this instance there are a few practice points of which the domestic practitioner should be aware.

When a client is filing bankruptcy the #1 point for any practitioner to remember is that all documents are filed in the bankruptcy case under the penalty of perjury. Assets should not be forgotten, income should not be minimized, and expenses should not be inflated. Bankruptcy schedules should match the filings that have been made in the domestic case as closely as possible, assuming circumstances have not changed. Failure to scrutinize these documents side-by-side to ensure accuracy, transparency and consistency, can lead to devastating consequences.[12]

Next, in the spirit of transparency and accuracy, bankruptcy counsel should consult with domestic counsel as to whether a debtor's spouse should be listed as a creditor in the bankruptcy schedules. This ensures that the spouse receives notice of the filing and all pertinent deadlines, providing them the opportunity to file a claim, bring a dischargeability action or object to a Chapter 13 plan. While it may sound like more headache than its worth to bring the domestic animus into the bankruptcy arena, if the spouse does not have notice and attempts to bring an untimely action later, the burden could fall on the debtor to prove the lack of notice was not purposeful and malicious. Attempting to untangle these matters months or years down the road usually presents more headache for everyone than necessary.

"An awareness of bankruptcy concepts and terminology cannot be ignored by the domestic practitioner."

It is also important to understand the implications of any current property settlement or marital separation agreement. As more fully discussed herein, DSO's are held to a high standard and are never discharged. The payment of a DSO is also required for a debtor to remain in a bankruptcy reorganization, failure to stay current on a DSO post-petition can result in dismissal or conversion of the case.[13]

Lastly, spouses should be advised of the bankruptcy implications of "hold harmless" provisions found in many separation and property settlement agreements. These provisions create a contract and obligations between the parties, but they do not translate to an obligation or modified contract between the parties and the creditor. As such, if one spouse files for bankruptcy protection, and the non-bankruptcy spouse agreed to indemnify the debtor spouse for a debt, the creditor could still file a claim in the debtor spouse's case and be paid from that estate. This is when a pre-divorce petition for bankruptcy can be helpful. Alternatively, drafting considerations should be made, such as strict deadlines for the debt to be paid by the assignee spouse, or providing for indemnification as an element of support for the assignor spouse, within the agreement.

There is commonly an intersection between the family breakdown and an economic crisis within a household. Having experienced bankruptcy counsel is imperative for wading through the murky waters of a bankruptcy filing as either a debtor or a creditor. However, an awareness of bankruptcy concepts and terminology cannot be ignored by the domestic practitioner.

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[9] *See* §707(b)(2).

[10] 777 F.2d 921 (4th Cir. 1985).

[11] **(a)**The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

(5) Any interest in property that would have been property of the estate if such interest had been an interest of the debtor on the date of the filing of the petition, and that the debtor acquires or becomes entitled to acquire within 180 days after such date—

(B) as a result of a property settlement agreement with the debtor's spouse, or of an interlocutory or final divorce decree; or

[12] Consequences include revocation or withholding of discharge pursuant to §727, and a criminal referral to the United States Attorney. *See* 18 U.S.C. §§152 to 157.

[13] *See* §1307(c)(11); §1112(b)(4)(P).

Leasing & Bankruptcy 101

By: Jodie E. Buchman and Avery B. Strachan*

The rules of bankruptcy are complex and foreign to even the most sophisticated landlords. Knowing your rights as a landlord and understanding the basics of bankruptcy is the first step toward protecting yourself (i.e. collecting rent, keeping your space occupied) and minimizing your potential loss when your tenant files for bankruptcy. We'll review the bankruptcy types that commercial and residential tenants usually file. Commercial tenants that lease non-residential real property typically file for bankruptcy under Chapter 7 (liquidation) or Chapter 11 (reorganization) of the United States Bankruptcy Code[1] (the "Bankruptcy Code") while residential tenants typically file for bankruptcy under Chapter 7 (liquidation) or Chapter 13 (individual reorganization/debt adjustment) of the Bankruptcy Code.[2]

Regardless of the types of bankruptcy and tenant, upon the filing of the tenant's bankruptcy proceeding, an automatic stay is imposed halting all collection activity against the tenant.[3] The automatic stay will stay or restrain the landlord from taking action against the tenant, the tenant's property and property of the tenant's bankruptcy estate to collect or enforce its rights under Section 362 of the Bankruptcy Code.[4] This automatic stay prohibits beginning or continuing law suits, collection calls, repossessions and garnishments.[5]

There are exceptions to the automatic stay. Exceptions include:

- the situation where the landlord takes action against a tenant under a non-residential property lease that has terminated by the expiration of the term of the lease before or during the bankruptcy case to obtain possession of the premises;[6]
- an exception to protect landlords from tenants that file for bankruptcy after entry of a judgment for possession but before the conclusion of eviction or unlawful detainer proceedings.[7]

The automatic stay remains in place until the tenant receives a discharge, or the property is no longer property of the tenant's bankruptcy estate, or a bankruptcy court lifts or imposes conditions on the automatic stay at the request of a creditor.[8] Relief from the auto-

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(Endnotes)

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[1] The United States Bankruptcy Code is codified at Title 11 of the United States Code.

[2] 11 U.S.C Ch. 7; 11 U.S.C. Ch. 11; 11 U.S.C. Ch. 13.

[3] 11 U.S.C. § 362.

[4] 11 U.S.C. § 362.

[5] 11 U.S.C. § 362.

[6] 11 U.S.C. § 362(b)(10).

[7] 11 U.S.C. § 362(b)(22).

[8] *See* U.S.C. § 362(c).

Leasing & Bankruptcy 101 (cont.)

matic stay may be warranted where the landlord can show it lacks adequate protection of its interest in the leased premises or that the tenant does not have equity in the premises and that the premises are not necessary to the tenant's bankruptcy reorganization.[9]

Post-bankruptcy obligations

The tenant has obligations to the landlord after the bankruptcy is filed.[10] The tenant (or trustee, as applicable) is required to pay the landlord rent under the terms of the lease commencing from the date the bankruptcy is filed until the tenant (or trustee, as applicable) decides whether to assume (i.e. accept) the lease or reject the lease.[11] There are different timeframes governing assumption and rejection which depend on the types of bankruptcy (Chapter 7, 11 or 13) and property (residential or non-residential).[12] If the lease is assumed, the tenant must pay all back rent owed including amounts from before the bankruptcy was filed.[13] If the lease is rejected, the tenant is not required to pay the landlord any back rent from before the bankruptcy was filed.[14] Instead, the landlord will have a claim against the tenant which is discussed in more detail below.[15]

Commercial tenancies and Chapter 7

Commercial tenants seeking to close shop and liquidate may file for bankruptcy under Chapter 7 of the Bankruptcy Code.[16] In a Chapter 7 bankruptcy case, a Chapter 7 trustee is appointed to administer the tenant's assets.[17] The leased premises in these cases are almost always non-residential real property. In this instance, an unexpired lease is deemed rejected and the trustee is required to surrender the premises to the landlord if the trustee does not formally assume or reject the lease by the date which is 120 days after the voluntary bankruptcy was filed.[18] The 120 day deadline may be extended for an additional 90 days if the tenant files a motion with the Bankruptcy Court (before the end of the 120 day period) demonstrating cause to extend the deadline an additional 90 days which is subsequently granted by the Bankruptcy Court.[19] Thereafter, the deadline can only be extended with the consent of the landlord.[20]

Since the tenant is liquidating, it is extremely unlikely that the trustee will assume the lease. Landlords are, for the most part, unsecured creditors; meaning that landlords do not have security interests in any of their tenant's assets.[21] A landlord in a Chapter 7 bankruptcy must file a proof of claim. This is a document that describes the nature and amount of the landlord's claim against the tenant as of the date the bankruptcy was filed.[22] In a Chapter 7 tenant bankruptcy, the landlord along with all other unsecured creditors may eventually be paid (on the amount owed by the tenant up to the date the bankruptcy was filed) to the extent funds are available, a pro rata share of the proceeds from the tenant's assets that are liquidated.[23] There are many instances, however, where there are no assets available for liquidation. In those situations no distributions are made to unsecured creditors.

Residential tenancies and Chapters 7

Much like the tenant under a lease for non-residential property who files for bankruptcy under Chapter 7, a tenant under a lease for residential property filing under Chapter 7 relinquishes all assets to the trustee[24], and the Chapter 7 trustee decides whether to assume (i.e. accept) the lease or reject the lease.[25] The trustee must assume the lease within 60 days after the date of the filing of the voluntary bankruptcy or the lease is deemed rejected.[26] If the lease is assumed, the trustee must cure any defaults, including those that arose before the bankruptcy was filed.[27]

Residential tenancies and Chapter 13

In a Chapter 7 case, the trustee determines whether to accept or reject the lease. A tenant leasing residential property who files for

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[9] 11 U.S.C. § 362(d).
[10] *See, e.g.,* 11 U.S.C. § 502(b)(6)(B); 503(b)(1)(A).
[11] *See* 11 U.S.C. § 365(d)(3).
[12] *See generally* 11 U.S.C. § 365.
[13] 11 U.S.C. § 365(b)(1)(A).
[14] 11 U.S.C. § 365(p)(1).
[15] 11 U.S.C. § 502(b)(6)(A).
[16] *See* 11 U.S.C. § 727.
[17] *See* 11 U.S.C. §§ 362(a); 1104; 1163.
[18] *See* 11 U.S.C. § 365(d)(4).
[19] 11 U.S.C. § 365(d)(4)(A)(i); 365(d)(4)(B)(i).
[20] 11 U.S.C. § 365(d)(4)(B(ii).
[21] 11 U.S.C. § 502(b)(6)(B).
[22] 11 U.S.C. § 501.
[23] *See* 11 U.S.C. § 726.
[24] 11 U.S.C. § 704(a)(1).
[25] See 11 U.S.C. § 365(d)(1).
[26] 11 U.S.C. § 365(d)(1).
[27] *See generally* 11 U.S.C. § 365.

Leasing & Bankruptcy 101 (cont.)

bankruptcy under Chapter 13 may choose to accept or reject the lease.[28] A Chapter 13 tenant who leases residential property must typically decide whether to accept or reject the lease prior to the date the Chapter 13 plan is confirmed (i.e. approved).[29] Finally, if the lease is accepted, the tenant must cure defaults under the lease, typically within six months.[30]

Commercial tenancies and Chapter 11

A business seeking to maintain control and restructure its business may file for bankruptcy under Chapter 11 of the Bankruptcy Code.[31] In the case of a Chapter 11 filing, unsecured creditors, such as landlords, are typically paid more than they would be in a Chapter 7 liquidation proceeding.[32] In a Chapter 11 bankruptcy, it is also recommended that the landlord file a proof of claim setting forth the nature and amount of its claim as of the date the bankruptcy was filed.[33] If the landlord's claim is for damages resulting from the termination of a lease, the landlord's damages are capped based on a formula set forth in Section 502(6) of the Bankruptcy Code. In a Chapter 11 bankruptcy, as opposed to a Chapter 7 case, the tenant stays in control of its assets including the leased premises. The tenant is required to make rent payments (and perform all of its obligations under the lease) after the date the bankruptcy was filed until such time as the tenant decides whether to assume or reject the lease.[34]

The deadline to assume or reject a lease is set forth in Section 365(d) of the Bankruptcy Code and depends on whether the real property is residential or non-residential.[35] If the property is residential, the tenant may assume or reject the lease at any time prior to confirmation on its reorganization plan except, however, the Bankruptcy Court, upon request, may require the tenant to assume or reject the lease within a specified time.[36] If the property is non-residential, the lease is deemed rejected if the tenant does not assume or reject the lease by the earlier of (a) 120 days after the tenant filed for voluntary bankruptcy or (b) the date that the reorganization plan is confirmed, whichever occurs earlier.[37] This deadline may be extended for 90 days for cause so long as the request is made before the deadline expires.[38] If the extension is granted, further extensions of the deadline can only be granted upon prior written consent of the landlord.[39]

If the lease is assumed, the tenant will have to cure the lease and make all payments required to bring the lease current.[40] If the lease is rejected, it will be deemed a breach of contract and the landlord will endeavor to collect a portion of its claim by virtue of its proof of claim along with a rejection damages proof of claim.[41] The distribution of the claim will occur after the tenant's Chapter 11 plan is confirmed by the Bankruptcy Court.[42] The Chapter 11 plan will include the proposed treatment of unsecured creditors such as the landlord.[43]

Now that you know your basic rights, the question becomes what can you do, as a landlord, to protect yourself from a substantial loss if your tenant files for bankruptcy. Credit checks, references and requests for sworn financial statements from the tenant before executing a commercial lease with a tenant are important landlord safeguards. The landlord can also require a commercial tenant to provide to the landlord monthly or quarterly financial reports during the duration of the lease to stay apprised of the tenant's financial condition. The landlord can further require the tenant to post a large security deposit. While a security deposit is generally an asset of the tenant's bankruptcy estate[44], in cases involving commercial leases courts have permitted landlords to retain the security deposits to the extent of their allowable claims.[45] Requiring a guarantor or guarantors of a commercial lease is another way to protect yourself if your tenant files for bankruptcy.

Understanding your basic rights will assist you to minimize your potential loss when your tenant files for bankruptcy. When you receive notice that your tenant filed for bankruptcy, it is critical to calendar all pertinent deadlines especially the deadline to file a proof of claim. The assistance of counsel to navigate the myriad of legal and procedural issues is particularly advantageous to ensure that your rights are protected to the full extent of the Bankruptcy Code.

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[28] 11 U.S.C. § 365(d)(2).
[29] 11 U.S.C. § 365(d)(2).
[30] *See* 11 U.S.C.A. § 365(d)(4)(A)(i).
[31] *See* 11 U.S.C. Ch. 11; see also 11 U.S.C.A. § 1121.
[32] *See generally* 11 U.S.C.A. § 1126; see also 11 U.S.C.A. § 726; *Czyzewski v. Jevic Holding Corp.,* 137 S. Ct. 973 (2017).
[33] 11 U.S.C. § 501.
[34] 11 U.S.C. § 365(d)(3).
[35] 11 U.S.C. § 365(d)(3).
[36] 11 U.S.C. § 365(d)(2).
[37] 11 U.S.C. § 365(d)(4)(A)(i)-(ii).
[38] 11 U.S.C. § 365(d)(4)(B)(i).
[39] 11 U.S.C. § 365(d)(4)(B)(ii).
[40] 11 U.S.C. § 365(b)(1)(A).
[41] 11 U.S.C. § 501.
[42] 11 U.S.C. § 1143.
[43] 11 U.S.C. § 1129.
[44] 11 U.S.C. § 541(a).
[45] *See, e.g., Oldden v. Tonto Realty Group,* 143 F.2d 916 (2nd Cir. 1944); *but see Admanco, Inc. v. 700 Stanton Drive, LLC,* 786 N.W.2d 759 (2010) (holding that commercial tenant's cash security deposit was part of the estate in insolvency proceeding).

Red Flags Associated with Personal Bankruptcy Disclosures

*By: Marylee Robinson, Jovi Bohan, and Angela Shortall**

Accounting professionals, financial advisors, and consultants provide many services to Debtors, Creditors, the U.S. Trustee, attorneys, and numerous other stakeholders in bankruptcy cases. With a combined experience of nearly 50 years serving the bankruptcy community, we have gained many insights and this article serves to outline a handful of red flags associated with problem disclosures in personal bankruptcies. These red flags can be an indication of a mistake, an oversight, or be more nefarious in nature (i.e. due to an intent to defraud or mislead). Attorneys who find themselves in situations where these red flags are present should be mindful of potential problems or worse, fraud in the filing of a personal bankruptcy or subsequent disclosures.

Attorneys representing clients with personal bankruptcy filings should be aware that they must certify that they have no knowledge that the information contained in the filing is incorrect following an inquiry of their client.[1] As such, it is critical attorneys ask the hard questions and press for full disclosure from the client while preparing the bankruptcy petition. This upfront work can prevent some of the red flags described below from surfacing in a bankruptcy filing. Further, there are ramifications that both the attorney and the client should be aware of for failure to adequately, properly, and timely disclose required information. The Debtor signs the petition and schedules under penalty of perjury. The penalties can range from the inconvenience of additional requests for information by the Chapter 7 Trustee, to an order from the Bankruptcy Court compelling the Debtor to cooperate fully, a denial of discharge, or even federal criminal charges if fraud is detected. As such, disclosures should not be taken lightly.

Disclosures include all documents filed with or after the filing of the petition or any information provided during the 341 meeting or to the U.S. Trustee or Chapter 7 Trustee. Documents needed at the time of the filing often include bank, investment and retirement statements, pay stubs, tax returns, schedules of real and personal property, asset valuations, debt statements, a credit report, personal identification, and verification of social security number. After filing, the Chapter 7 Trustee is required by statute to gather at least pay stubs for the 60 days prior to filing and the filer's most recently filed tax return. These documents are due to the Chapter 7 Trustee at least 7 days before the 341 meeting, which the filer is required to attend. During the 341 meeting, the Chapter 7 Trustee may request additional information in order to verify the information in the petition is accurate. These documents can be very helpful in identifying red flags. Attorneys representing Debtors in bankruptcy should consider requiring these documents prior to the filing to ensure accurate disclosures.

Red Flag #1: Asset and Liability Mismatches

A filer must disclose all assets and liabilities as of the filing date. A review of the filing schedules can sometimes identify potential mismatches of assets and liabilities. For instance, the filer may disclose he or she has a mortgage liability but fails to identify the house or property associated with that mortgage as an asset or a filer may disclose a high jewelry story debt, but no jewelry is listed as an asset. Similarly, a filer may identify vehicle expense, but no vehicle as an asset. Consider, however, that even if the filer does not have his or her name on the title of a vehicle, if he or she is making the payments on that car, he or she may have beneficial ownership of that car. In that instance, disclosure would be appropriate.

Red Flag #2: Income and Asset Mismatches

Individual filers are required to disclose their income in two locations, the "Means Test", which looks at the filers past income, and Schedule I which discloses the current income. It is not uncommon for these schedules to differ. Regardless, filers disclosing a high income or a high income over time, but few assets, begs the question what happened to all that money? This could also be evident if the filer has a high credit card debt regardless of income, but also lists few assets. What did the filer get for all that credit card debt? Finally, in a tale from the field, a filer who

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(Endnotes)

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[1] Voluntary Petition for Individuals Filing for Bankruptcy.

Red Flags (cont.)

owned a very expensive house identified very little personal property. It's a bit illogical that one would own a large house but have virtually no furniture in that house, so the Chapter 7 Trustee requested an inspection of the house and found numerous undisclosed assets, including furniture, jewelry, and sports memorabilia. Filers are required to disclose all assets, not just the ones they think are of value or the ones they are willing to part with. There is no such thing as "not putting an asset into the bankruptcy." Everything is "in."

Red Flag #3: Concealed Transfer of Ownership in an Asset or Business

One of the easiest ways to uncover undisclosed assets in a bankruptcy filing is through information provided by a creditor, ex-spouse or significant other, or former business partners. You might say those with an ax to grind come out of the woodwork in these situations. These individuals can be quite helpful in uncovering all kinds of information.

The Bankruptcy Code allows the recovery of a "fraudulent conveyance" of an asset or ownership interest in the one year prior to filing and Maryland state law expands that period to three years.[2] Further, the Bankruptcy Code can disallow payments made preferentially to one creditor over another creditor ("preferences") within 90 days of the filing. This period is expanded to the one year prior to filing for payments made to insiders.[3] These are areas to consider, particularly as it relates to transfer of ownership of an asset before the filing.[4]

An example of ownership transfer that is often found in personal filings involves the transfer of ownership from one spouse to both spouses as tenants by the entirety. In Maryland, tenancy by the entirety protects the home from creditors who have debts with only one of the spouses. However, if this transfer occurred within three years of the filing the transfer can be unwound meaning this asset could be made available to pay creditors. Simple questions about where the filer lives, who owns the house, and who is paying the mortgage may uncover potential issues as it relates to real property that should be part of the bankruptcy.

For business debtors, the concept of preferential transfers is often a large issue. The Trustee will typically require historical tax returns, financial statements, bank statements and cancelled checks along with invoices or other documents supporting disbursements. Cash-based businesses will often result in special scrutiny for potential fraud, but also for the fact that under-reported receipts could serve to hide the true value of the business. This may also be a consideration for individual filers that own a business. Some red flags that should be of concern with business entities would include (1) the failure to maintain corporate formalities between affiliated entities which would suggest that they were actually operating as one enterprise or (2) the start-up of a new entity with a substantially similar business model which could suggest that the second enterprise could be treated as a successor for the purposes of a successor liability action, or simply the recipient of a fraudulent conveyance in terms of business assets or intellectual property of the debtor.

Red Flag #4: Other Hidden Assets

In addition to the asset disclosure issues discussed above, there are several other types of assets that are often undisclosed. These include safe deposit boxes and the items contained therein, pending litigation such as class actions or personal injury matters, and cryptocurrency. Although it is usually possible to exempt a personal injury matter from administration by the Trustee, failure to disclose the asset, and assert the proper exemption, may foreclose this right. In recent years we have also seen a trend of filers not maintaining personal bank accounts and instead relying on pre-paid debit cards to save and spend in lieu of using cash or checks. Assets like these may not seem to meet the traditional definition of asset, but they are assets and attorneys and other professionals should be asking the right questions to prompt their disclosure.

Red Flag #5: Failure to Disclose All Sources of Income

Income disclosure can be an area ripe for manipulation. Does the filer work in or own a business that is cash intensive? Is he or she disclosing all of the cash taken home? Secondary income sources should not be overlooked. If the filer has a day job (W-2 income) and a side job (photography or landscaping for instance) on the weekends, the income from both jobs should be disclosed.

As discussed briefly above, individual filers are also required to file a "Means Test." The means test helps determine if it appropriate for the filer to be a Chapter 7 Debtor or if they could support a repayment plan in a Chapter 13 bankruptcy. It is designed to limit Chapter 7 filers to those that truly do not have the wherewithal to pay their debts.

Our advice for attorneys advising filers is be mindful of these red flags to protect yourself and your client. A little due diligence and upfront discussion can go a long way in avoiding inadequate disclosures.

[2] 11 U.S.C. Section 548; MD. CODE ANN CTS. & JUD. PROC. §15-101et seq.
[3] 11 U.S.C. Section 547; MD. CODE ANN CTS. & JUD. PROC. §15-101 et seq.
[4] The terms fraudulent and preferential do not indicate intent and should not be construed to be pejorative.

Top 5 Commercial Bankruptcy Issues For Trade Creditors

By Catherine K. Hopkin

This year, one of my more unusual but very thoughtful holiday gifts from my husband was a porcelain recreation of the Marshalsea Debtor's Prison, where Charles Dicken's father was sent in the 1820's when he couldn't pay a debt of £40. After receiving an inheritance about a year later, John Dickens paid off his debt and was released. In today's world, consumer and commercial bankruptcies are nothing like the simple times of Dickens' day, but involve some of the most complex and comprehensive areas of law that exist in our current legal system. At some point, most attorneys will find themselves talking to a client that is somehow involved in a bankruptcy proceeding. Even the most seasoned clients (and their counsel) know that the bankruptcy process is highly case-specific and outcomes of any particular case can be difficult or impossible to predict without guidance of legal counsel. There are, however, a few key issues that come into play in almost every bankruptcy proceeding.

This article is intended to provide non-bankruptcy counselors and their trade-creditor clients with a quick reference guide to key points in most commercial bankruptcy cases. Even if you do not intend to enter your appearance or formally represent your trade creditor in a bankruptcy proceeding, knowing these issues will enable you to quickly issue-spot for your creditor clients, which is critical in a bankruptcy world that tends to move quickly. Some topics are treated further in other articles in this issue, so please review those issues if you desire further information about a particular item.

1. Automatic Stay

The first thing to do when learning of a bankruptcy filing is to immediately inform your client that it cannot take any action against either the debtor or its property.[1] This is one of the most important and significant aspects of the bankruptcy code, because it gives the debtor time and space to gather its senses and address its affairs without the interference of outside parties. The automatic stay arises immediately upon the filing of the case, down to the very second of the case filing. This stay remains in place for most commercial cases until at least when the debtor confirms its plan of reorganization (or liquidation), which can take months or even years.

Creditors who violate the automatic stay subject themselves to actual damages, and in some cases, punitive damages if the violations are considered willful.

There is a long list of exceptions to the automatic stay in commercial cases. Some common examples include; IRS's ability to determine tax liability or assessments of the debtor; certain aspects of SWAP, commodities, futures, and other securities contracts; or an action to enforce a lien on property if the creditor obtained relief from the bankruptcy court within 2 years prior, unless the debtor can show a reason why the stay should arise.[2]

2. Claims Against the Bankruptcy Estate

Regardless of whether a debtor is proceeding under chapter 7 or chapter 11, claims must be scheduled by the debtor and identified as unliquidated, disputed, or contingent if the debtor asserts that a particular claim should be identified as such. In all chapter 11 cases, and chapter 7 cases where assets exist to pay creditors, creditors are also permitted to file their own claims against the debtor's estate[3].

When the debtor submits its schedules, the scheduled claim will be the value given to the creditor's claim in the case, unless the creditor timely files its own proof of claim. Creditors will receive a notice from the bankruptcy court that provides the deadlines for timely filing a proof of claim. Creditors should also check the debtor's schedules to see if the claim is marked as contingent, liquidated, or disputed. Claims are not filed in chapter 7 cases where no assets exist to pay creditors.

If a creditor files a proof of claim, then the filed proof of claim will supersede the debtor's scheduled claim. The debtor then has an opportunity to object to the filed proof of claim, and if there is no settlement as to claim amount, then the bankruptcy court will hold a hearing to determine whether to sustain or overrule the objection

Continued on pg 33

(Endnotes)

[1] 11 U.S.C. §362(a).

[2] 11 U.S.C. §362(b).

[3] If the chapter 7 is a "no asset case" as mentioned in paragraph 1, then a filed claim will serve no purpose because no distributions will be made; however, just as there is no advantage, there is no penalty for filing a claim in a no-asset case.

Top 5 Commercial Bankruptcy Issues (cont.)

to the claim. Often these hearings are akin to trials, and the bankruptcy rules give both sides the opportunity to conduct discovery, provide expert testimony reports, and otherwise provide the full array of tools that the attorney would have at trial.

In the beginning of the case, every debtor must attend and give testimony at a meeting of creditors, which is often referred to as the "341 Meeting.[4]" This is an excellent opportunity for creditors to obtain information from the debtor, under oath, with respect to particulars of the creditor's claim, without having to obtain special court permission to conduct discovery of the debtor. These 341 Meetings are noticed by the court in an official bankruptcy court notice that will be sent to all creditors listed on the debtor's schedules.

One important thing to note for your clients is that any creditor who provides goods or services after a chapter 11 bankruptcy case has commenced may be entitled to special priority when it comes time to pay claims. This is because these types of claims will be considered to have "administrative priority" status so long as the creditor can show that the goods or services provided were "actual, necessary costs and expenses of preserving the estate."[5] If the debtor objects to the expenses qualifying as administrative priority claims, then the creditor bears the burden of proving to the bankruptcy court that they were actual and necessary. Once a claim obtains administrative priority status, it must be paid before any other general claims against the debtor that are not secured or otherwise entitled to priority. The bankruptcy code has a complex list of priority of claims, so you should consult with a bankruptcy attorney to determine if there are other claims that have priority over your client's administrative priority claim, but it is nevertheless an important protection granted to creditors who seek to do business with bankruptcy debtors.

3. Preference Actions

There is only one thing worse for a client who finds itself dealing with claims against or contracts with a bankruptcy debtor, and that is when the client is facing a preference payment demand or complaint by the debtor.

One very powerful tool for bankruptcy debtors, which is available in both chapter 7 and chapter 11 proceedings, is the ability to claw-back certain payments made to creditors before the bankruptcy case was filed. This tool exists due to the existence of a very important general bankruptcy concept: that all creditors who are similarly-situated be treated equally. If a debtor made catch-up payments to a particular creditor before the bankruptcy case, then the creditor is required to disgorge those payments back to the debtor's bankruptcy estate so that all creditors can theoretically benefit from the use of the funds.[6]

For non-insider creditors, the look-back period for these preference actions is 90 days before the date of the bankruptcy case filing; for insiders, it is one year. This can be crippling to a creditor who finally receives payment on its outstanding receivables owed by a debtor, only to turn around and pay back to the debtor all of the payments received, plus legal expenses to boot. Luckily for creditors who have competent bankruptcy counsel, the creditor can identify whether one or multiple defenses are available. The defenses are various, and the more typical defenses include: the "ordinary course" defense, which allows the creditor to prove the payment was made either in the ordinary course of the relationship between creditor and debtor, the ordinary course in the applicable industry, or both; an argument that the creditor did not receive more than it would have if the debtor liquidated; the existence of a contemporaneous exchange for value (i.e., the creditor advanced new value in exchange for the catch-up payment); or proving that the payment was not on account of an antecedent debt (meaning that the payment did not go to pay an old receivable).

If your client was paid within 90 days of a bankruptcy case being filed by one of its customers, the client needs to be made aware of the potential for a preference action and should determine whether any of the defenses apply in the event of a preference action by the debtor.

4. Contracts Can Be Rejected or Cured and Assumed (and Maybe Assigned)

In the bankruptcy world, contracts are divided into two types – executory and non-executory. Contracts that are deemed to be "executory" get special status and special treatment. Executory contracts are ones in which performance (other than simply paying money) is still due by both parties to the contract. If your client is a party to an executory contract entered into with the debtor, then it is imperative that your client understand exactly what the debtor can and cannot do with respect to the contract.

As a general rule, debtors have the absolute right to either reject, or assume an executory contract. For most executory contracts, the debtor can assume or reject contracts any time up until its chapter

Continued on pg 34

[4] The term is derived from the meeting requirements set forth in 11 U.S.C. §341.

[5] 11 U.S.C. §503(b)(1).

[6] 11 U.S.C. §547.

Top 5 Commercial Bankruptcy Issues (cont.)

11 plan is confirmed. If the debtor assumes the contract, it can also assign the contract unless applicable federal or state law otherwise prevents assignment (special performance, for example, may prevent assignability). This is true even if the contract says that it cannot be assigned. If the debtor wants to assume a contract (regardless of whether it also assigns it or not), then the debtor must cure all defaults (except certain defaults relating to real property). Thus, the debtor must make the other party to its contract whole if it wants to assume and/or assign the contract.

If the contract is rejected, then generally the damages are calculated as if the rejection occurred immediately prior to the bankruptcy filing, for purposes of the creditor's calculation of its claim against the debtor.

If the contract is a commercial lease, then navigating the client's options and rights is extremely complex. This is most evident when the debtor is a tenant who wishes to terminate or assign its lease, or a landlord who wishes to sell its property within the bankruptcy, in which case some fascinating but very tricky issues will arise. The basic things to keep in mind about leases are (1) if the landlord obtained a judgment awarding possession of the property before the bankruptcy case is filed, then the lease is terminated and is not an executory contract that the debtor can assume or reject; (2) generally the contract is deemed rejected unless the debtor assumes the lease within 120 days after the bankruptcy case is filed; (3) certain special rules apply in cases where the debtor seeks to assume leases of real property located in a shopping center; (4) damages calculations are different for lease rejections, and there are caps on what the landlord can recover against the debtor.

In chapter 7 cases, contracts are typically rejected unless the appointed chapter 7 trustee can assume and assign them for value. The trustee will assume any contracts within 60 days of the commencement of the chapter 7 case.

5. Involuntary Bankruptcies

Not all bankruptcy cases are filed by debtors; there is an opportunity for creditors (or even a single creditor) of the debtor to file an involuntary case against the debtor, without the debtor's consent.[7] This is an extraordinary remedy that should not be entered into lightly by any creditor, particularly because there have been some recent cases imposing financial liability on creditors that improperly commence involuntary cases. Perhaps this is why involuntary cases are usually reserved for situations where creditors suspect fraud or illegal activity on the part of the debtor.

After the case is filed by the creditors, with most involuntary proceedings being filed as chapter 7 liquidation cases, the debtor can continue operating its business as if the petition was not filed during the time it has to prepare a challenge to the bankruptcy filing. However, the automatic stay still prevents any party from taking any action against the debtor or its property.

Other important things for creditors and debtors alike to know is that the creditor(s) should conduct proper diligence to obtain an understanding of the debtor's financial condition and universe of creditors and claims against it, and to confirm that the debtor is not paying debts that are not subject to bona fide disputes. Creditors may even be required to post a bond in the event that the debtor prevails in challenging the involuntary petition. Additionally, the number of creditors who have to join in the involuntary filing depends on the number of creditors of the debtor, and the amount of outstanding debt. In some cases, only one creditor is needed to file an involuntary case; in other cases, at least three creditors are required. Petitioning creditors also must possess unsecured claims; that is, claims that are not secured by collateral.

The alleged debtor can file an answer to the involuntary proceeding and try to challenge its validity, or it can consent to entry of an order for relief (which permits the bankruptcy proceeding to move forward). If an order for entry of relief is entered, the debtor may also move to convert the case from chapter 7 to chapter 11, often as a matter of right.

Conclusion

It is helpful for creditors to have a working understanding of basic bankruptcy concepts so that they can reach out to appropriate counsel when appropriate. Similarly, all legal practitioners should be able to issue spot basic bankruptcy concepts and direct their clients appropriately. And if you or your client finds itself involved in a bankruptcy proceeding, it may be helpful to remember a wise adage of Charles Dickens: "credit is a system whereby a person who cannot pay gets another person who cannot pay to guarantee that he can pay."

[7] 11 U.S.C. §303.

YLD Volunteer Event at The Book Thing

February 18

Thanks to all who came out on Sunday, February 18 to volunteer for the YLD's Public Service Committee's volunteer event at the Book Thing.

YLD Public Service Committee Volunteers at the SPCA

March 23

YLD Happy Hour & Networking Event at Phillips Seafood Restaurant

February 28

Yet another fantastic happy hour and networking event hosted by the YLD's Membership Committee.

Spaghetti Opera Night

March 28

A wonderful evening at Chiapparelli's to benefit the Baltimore Bar Foundation.
Thanks so much to our amazing artists, guests, and generous sponsors!!

Greenmount Cemetery Tour

March 30

What a beautiful day to learn about famous women in history. Special thanks to Wayne Schaumburg for being our tour guide again this year and to Elva Tillman, our Historical Committee Chair, for organizing this special tour.


MARY ELIZABETH
GARRETT
BORN MARCH 5 1854
DIED APRIL 3 1915
A WOMAN OF QUIET
REALIZED ENTHUSIASMS
SHE SERVED HER DAY AND
GENERATION WELL AND WILL
BE LONG REMEMBERED BY
THOSE FOR WHOM SHE
LABOURED

Law Day for Seniors

April 13

Congratulations to the staff of Senior Legal Services for hosting the largest, most well attended Law Day for Seniors in the history of this program. Over 400 Baltimore senior residents and their caregivers were educated about important legal issues that affect their daily lives. Thank you to our guest speaker, Attorney General Brian Frosh, and all the program speakers, vendors, and volunteers.


Law Day
2019
Saturday, April 13, 2019
8:00a.m. - 2:30p.m.
New Psalmist Baptist Church
6020 Marian Drive
Baltimore, MD 21215
Senior Legal Services


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FOR BALTIMORE CITY


CONSUMER
PROTECTION DIVISION

Annual Multi-Jurisdictional Family Law Judges Panel & Dinner

April 17

The Annual Multi-Jurisdictional Family Law Judges Panel & Dinner was attended by over 100 attorneys at the Woodholme Country Club. This year's topic was "The High Conflict Case." Special thanks to our panel: The Honorable Kendra Y. Ausby, Circuit Court for Baltimore City; The Honorable Angela M. Eaves, Circuit Court for Harford County; The Honorable Fred S. Hecker, Circuit Court for Carroll County; The Honorable Ruth Ann Jakubowski, Circuit Court for Baltimore County; and The Honorable Mary M. Kramer, Circuit Court for Howard County.


Multi-Jurisdictional
Annual Family Law
Dinner

YLD Public Service Committee Suit Drive

April 10

The Baltimore Bar Foundation
Annual Golf Outing

Come Join the Fun!

Monday, June 24, 2019
Country Club of Maryland

11:30 a.m.
Registration/Grill Lunch

1:00 p.m.
Shotgun Start
(Stroke Play Format)

Hole in One Prizes on all Par 3's
Sponsored by Gore Brothers Reporting & Videoconferencing

Team Prizes
Refreshments on the Course
Snacks and Gifts for Everyone!

5:30 p.m.
Open Bar and Dinner

For full details and registration,
visit our website at www.baltimorebar.org

Government and Public Interest Lawyers Annual Awards Reception

April 18

What a great evening at the Annual Government & Public Interest Lawyers Reception where Lauren Young, Director of Litigation for Disability Rights Maryland, was recognized as the 2019 Government & Public Interest Lawyer of the Year Award. Thank you to all who joined us. Special thanks to our guest speaker, The Honorable Brian E. Frosh, Attorney General of Maryland.

Lawyers Day of Service

April 28

Local Bars, Specialty Bars and the MSBA teamed up for the first annual Lawyers Day of Service! Lawyers from across the state were engaged in community service projects to give back to their local communities. This year, the Associations highlighted the issue of homelessness. On Sunday, April 28, 2019, the Bar Association of Baltimore City's volunteers served lunch at Our Daily Bread and prepared casseroles for future meals. Thanks to all who volunteered!!

Young Lawyers' Division Law Day Program

May 1

The YLD Public Education Committee hosted its annual Law Day Event at Morgan State University on May 1, 2019. The Law Day theme this year was "Free Speech, Free Press, Free Society." Approximately 40 students from Francis Scott Key Middle School and Mergenthaler Vocational-Technical High School attended the event, where they learned about the Civil Rights Exhibit on display at the Student Center at the University. The students heard from Mr. Pace McConkie and Dr. Simone Barrett of the Robert M. Bell Center for Civil Rights in Education; Dr. Khalilah Harris, executive producer at the Real News Network; and Mr. Larry Gibson, professor at the University of Maryland School of Law. Professor Gibson, who played a major role in the creation of the Exhibit, spoke to the students about the history of civil rights activism at Morgan State University and the power of students when they band together to be heard. The speakers' combined knowledge of law, history, journalism, education, and advocacy made for an incredibly informative and interesting event.

Meet the Judges of the Circuit and District Courts for Baltimore City

May 1


MEET THE JUDGES
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JUDGE

Young Lawyers' Division Spring Social and Awards Reception

May 15

The BABC's Young Lawyers' Division hosted its Spring Social and Awards Reception at the Sky Bar at the Lord Baltimore. Congratulations to the well deserved award recipients: Rising Star - Sarah Belardi; Public Service - Hannah Dawson; and Sustained Leadership - Eleanor Dayhoff-Brannigan. Special thanks to Awards Committee Co-Chairs James Robinson and Aaron DeGraffenreidt, and to Judge Dana Middleton who presented the awards.

Welcome New BABC Members!

Joined February – April 2019

Aaron A. Nichols, Esq. ..... Regular Member
Adrianna Vlacich, Esq. ..... Regular Member
Alexis Burrell Rohde, Esq. ..... Regular Member
Autumn Lee ..... Law Student
Catherine Keller Hopkin, Esq. ..... Regular Member
Chanan Brown ..... Law Student
Charlotte Ahearn, Esq. ..... Regular Member
Deborah King ..... Legal Affiliate Member *Reinstated 4/8/2019*
Douglas Carter Borg, Esq. ..... Regular Member
Ellis Zapas ..... Law Student
Emily B. Rosenberg, Esq. ..... Regular Member
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Zara Marissa Thomas ..... Law Student

The Bar Association of Baltimore City, Young Lawyers' Division and Baltimore Bar Foundation Upcoming Events

Mark Your Calendars!

- **May 30 –** BABC, YLD and Baltimore Bar Foundation Annual Meeting
- **May 31 –** Baltimore Bar Foundation Grant Application Deadline
- **June 24 –** Baltimore Bar Foundation Annual Golf Outing Fundraiser
- **September 26 –** Thursdays at the Museum of Baltimore Legal History
- **October 3 –** BABC Annual Crab Feast at Bo Brooks
- **October 24 –** Thursdays at the Museum of Baltimore Legal History
- **October 30 –** Museum of Baltimore Legal History Volunteer Recognition Lunch
- **November 12 –** Constitutional Law Seminar – Federal Constitution
- **November 21 –** Thursdays at the Museum of Baltimore Legal History
- **November 26 –** 25th Annual Past Presidents' Luncheon
- **December 7 –** New York City Bus Trip
- **December 10 –** YLD Annual Holiday Party for Children Living in Shelters

2020

- **January 13 –** Supreme Court Group Admission
- **January 29 –** Elaine Weiss author of "Path Ways to Leadership for Women"
- **February 18 –** Black History Month Program – "Race, Gender and the Law"
- **March 17 –** Women's History Month Program – "Path Ways to Leadership for Women"
- **March 28 –** Greenmount Cemetery Tour
- **April 7 –** Constitutional Law Seminer – Maryland Constitution
- **May (date TBA) –** Annual Memorial Services

For more information, visit www.baltimorebar.org, email info@baltimorebar.org, or call 410-539-5936.

Circuit Court for Baltimore City Assignment of Judges

Court	Assignment	Judge	CR / Chambers	Telephone
Admin	Judge At Large	Judge W. Michel Pierson, AJ	234E/208E	396-4916 & 4917
Part 1	Civil	Judge Jeannie J. Hong	236M/234M	396-5140 & 5141
Part 2	Criminal	Judge Melissa K. Copeland	464M/462M	396-5076 & 5077
Part 3	At Large	Judge W. Michel Pierson	234E/208E	396-4916 & 4917
Part 4	Juvenile	Judge Emanuel Brown, JICJ	A3401 (C-2)	443-263-2796
Part 5	Criminal	Judge Yvette M. Bryant	230E/252E	396-5102 & 5103
Part 6	Civil	Judge Gregory Sampson ***	417M/407M	396-5070 & 5071
Part 7	Civil	Judge Pamela J. White	428M/426M	396-5056 & 5057
Part 8	Domestic	Judge Dana M. Middleton	F-1/122E	396-5090 & 5091
Part 9	Criminal	Judge Wanda K. Heard, CJ	600M/642M	396-4918 & 4919
Part 10	Civil	Judge Jeffrey Geller	330E/330E	396-5008 & 5009
Part 11	Criminal	Judge Lynn Stewart Mays	228E/214E	396-5052 & 5053
Part 12	Criminal	Judge Charles J. Peters	404E/406E	396-5080 & 5081
Part 13	Civil	Judge Michael DiPietro	420M/424M	396-5060 & 5061
Part 14	Civil	Judge Althea M. Handy	523E/529E	396-5054 & 5055
Part 15	Criminal	Judge Christopher L. Panos	329E/329E	396-5062 & 5063
Part 16	Criminal	Judge Timothy Doory	400M/466M	396-5112 & 5113
Part 17	Civil	Judge Philip S. Jackson	636M/636M	396-5066 & 5067
Part 18	Juvenile	Judge Cynthia H. Jones	A3401 (C3)	396-5082 & 5083
Part 19	Civil	Judge Julie R. Rubin	509E/505E	396-5132 & 5133
Part 20	Criminal	Judge Marcus Z. Shar	203M/245M	396-5100 & 5101
Part 21	Criminal	Judge Yolanda Tanner	438M/436M	396-5074 & 5075
Part 22	Criminal	Judge Robert K. Taylor, Jr. ***	406M/408M	396-4020 & 4021
Part 23	Civil	Judge Audrey J. S. Carrion	225E/209E	396-5130 & 5131
Part 24	Domestic	Judge Kendra Y. Ausby, JICFD	F-2E/120E	396-4627 & 4631
Part 25	Juvenile	Judge Robert B. Kershaw	A3401(C1)	443-263-2793
Part 26	Civil	Judge Lawrence Fletcher-Hill, JICC	113M/103M	396-6826 & 6843
Part 27	Criminal	Judge Sylvester Cox	231M/217M	545-3766 & 3767
Part 28	Criminal	Judge Melissa M. Phinn, JICCr	540E/550E	545-6235 & 6236
Part 29	Criminal	Judge Karen C. Friedman ***	430E/432E	396-3836 & 3837
Part 30	Civil	Judge Shannon E. Avery	226M/228M	545-0115 & 0116
Part 31	Domestic	Judge Barry G. Williams	F-4/126E	545-3516 & 3517
Part 32	Criminal	Judge Jennifer B. Schiffer ***	434M/432M	545-0887 & 0888
Part 33	Civil	Judge Videtta A. Brown	201E/205E	410-361-9311 &9312
Part 34	Criminal	Judge Charles H. Dorsey ***	227E/241E	396-1118 & 1115
Part 35	Domestic	Judge John S. Nugent	F-3/124E	396-1180 & 1190
Part 99	Visiting Judges	Judge Paul E. Alpert	255E	396-8057 & 1119
Part 98	Visiting Judges	Judge Pamela North	450M	396-5857

*** Indicates temporary courtroom/chambers assignment.

CONTINUED ON NEXT PAGE

Court	Assignment	Judge	CR / Chambers	Telephone
Part 97	Visiting Judges	Judge Martin P. Welch	317M	6-8352
Part 96	Visiting Judges	Judge Dennis McHugh/Judge L. Daniels	JJC / Criminal/Civil	396-8057
Part 95	Visiting Judges	Judge John M. Glynn	237E	6-8057
Part 94	Visiting Judges	Judge Carol E. Smith/Judge Edward Hargadon	237E	6-8057
Part 93	Visiting Judges	Judge John Carroll Byrnes	237E	6-8057
Part 92	Visiting Judges	Judge John Addison Howard	253E	6-8057
Part 91	Visiting Judges	Judge M. Brooke Murdock	509M	6-8343
Part 90	Visiting Judges	Judge Ellen M. Heller	237E	6-8057
Part 89	Visiting Judges	Judge Thomas J. S. Waxter	247E	5-3490
Part 88	Visiting Judges	Judge Louis Becker	237E	6-8057
Part 87	Visiting Judges	Judge Gale Rasin	134M	6-8057
Part 86	Visiting Judges	Judge Teaette Price/Judge Marcella Holland	JJC / 255E	6-8057/5-6090
Part 85	Visiting Judges	Judge Paul Smith	264E	6-8057
Part 84	Visiting Judges	Judge David Young	317M	6-8350
Part 83	Visiting Judges	Judge Evelyn Omega Cannon	237E	6-8057
Part 82	Visiting Judges	Judge CliftonJ. Gordy/Judge Stephen Sfekas	237E / 247E	6-8057
Part 81	Visiting Judges	Judge Dennis Sweeney	237E	6-8057
Part 80	Visiting Judges	Judge John Miller	237E	6-8057

*** Indicates temporary courtroom/chambers assignment.

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