

States' Association of Bankruptcy Attorneys ("SABA") Bankruptcy from a Governmental Perspective

Virtual Seminar Agenda
All times are Eastern Time

Monday, Oct. 30	
11:45 a.m. – 12:00 p.m.	<p>Welcome and Introduction to the Hypothetical</p> <p>Karen Cordry, Bankruptcy Counsel, National Association of Attorneys General (NAAG)</p>
12:00 p.m. – 1:15 p.m.	<p>Claims/Property Of The Estate: When Do They/It Exist? How Do You Ensure They Are Recognized?</p> <p>What are claims and what is "property of the estate" ("POE") are flip sides of the same coin. Which actions are choate and known so they can/must be brought <i>against</i> a debtor; the other asks if <i>the debtor</i> has sufficient information and rights to be able to bring a property of the estate claim against a third party now.</p> <ul style="list-style-type: none"> • When do future/inchoate events create "claims" • Knowledge and notice issues for future/unknown claims as to both claim filing and plan discharge. How does prior BK filing affect this case as to:-- -- Clean-up actions? -- Illness-exposure liabilities whether manifested or not? <p>Moderator Karen Cordry, Bankruptcy Counsel, NAAG</p> <p>Panelists Judge Craig Goldblatt, Bankr. D. Delaware Sander L. Esserman, Stutzman, Bromberg, Esserman & Plifka, Counsel to UCC, Kidde-Fenwal, Inc. James Carr, Kelley, Drye & Warren, Counsel to Ad Hoc Committee of Governmental Claimants, Kidde-Fenwal, Inc. Gill Geldreich, Tennessee Attorney General's Office</p>

1:15 p.m. – 2:15 p.m.	<p>Subchapter V: The Good, Bad, and the Ugly</p> <p>Discussion of Subchapter V cases as one of the debtor’s options.</p> <ul style="list-style-type: none"> • How do they differ from standard Chapter 11s? • What are the tradeoffs for debtors and creditors? • How can creditors vet them? • What can they do to object to a debtor’s choice to file thereunder? • How do you keep up with their timetable? <p>Moderator Jason Binford, Ross, Smith & Binford, P.C.</p> <p>Panelists Judge Paul W. Bonapfel, Bankr. N.D. Georgia Judge Michelle Harner, Bankr. D. Maryland Brian Shaw, Cozen O’Connor Frances A. Smith, Ross, Smith & Binford P.C., Subchapter V Trustee</p>
2:15 p.m. – 2:25 p.m.	Break
2:25 p.m. – 3:35 p.m.	<p>What Kind of Case Will This Be? What Are the Debtor’s Options, and What Will That Choice Mean for Governments/Creditors?</p> <p>Comparing the standard Mass Tort Bankruptcy to MDL litigation</p> <ol style="list-style-type: none"> 1. How do they work and how efficient are they? How much have they paid out, what reserves do they have left for future claims? 2. Is a different consolidated structure possible? <p>Subchapter V:</p> <ol style="list-style-type: none"> 1. How would processing these claims differ from standard Chapter 11? 2. Why would a debtor want to file there if it can do so? 3. How does the Texas Two-Step figure into its options? <p>On the hypothetical facts:</p> <ol style="list-style-type: none"> 1. What gives the debtor the best chance to get what <i>it</i> wants? 2. Where should victims/society want it to file? 3. What options do they have to push back if the debtor chooses Subchapter V or an unwanted venue? <p>Moderator Karen Cordry, Bankruptcy Counsel, NAAG</p> <p>Panelists Judge Michael Kaplan, Bankr. D. New Jersey, (LTL) Sheila Birnbaum, Dechert, LLP – Debtor Counsel, Purdue Pharma</p>

	<p>Melanie Cyganowski, Otterbourg, P.C., Government Creditors, (LTL) Joseph R. Rice, MotleyRice, LLC, Injury Creditors (PFAS MDL)</p>
3:35 p.m. – 3:45 p.m.	Break
3:45 p.m. – 5:00 p.m.	<p>Starting the Case: Facing the First Day Orders Onslaught</p> <p>Assuming the debtor has chosen to file Chapter 11, the opening petition is usually accompanied by a barrage of motions.</p> <ul style="list-style-type: none"> • Which ones do governments need to analyze • When do you need to fight, when can you leave it to the US Trustee? • Which motions can have final orders immediately? • Which require interim orders? • Are there restrictions if this is a serial filing? • Would it make sense for some of these motions to be addressed generically in the Code/Rules? <p>Judge Nancy Lord, Bankr. E.D. New York Gabriela Zamfir Hensley, Kirkland and Ellis, Debtor’s Counsel Mark Silverschotz, Anderson Kill, Creditor’s Counsel Allison Carr, Penn. Attorney General’s Office, Government Counsel Joseph McMahon, Delaware, United States Trustee (UST)</p>
5:00 p.m. – 6:00 p.m.	<p>IT’S (ALMOST) HALLOWEEN: Show Us Your Costume</p> <p>Happy Hour Breakouts – Small groups with a SABA Board member; a chance to say hello, greet old friends, and meet new ones!</p>
Tuesday, Oct. 31	
12:00 p.m. – 1:30 p.m.	<p>Claims Part 2</p> <p>A. Practical Collection Issues: Before/During/After Bankruptcy</p> <ul style="list-style-type: none"> • Getting client divisions to refer cases sooner • Efficient and consistent manner to evaluate cases for referral • Where to spend your resources on collecting debts • Protecting your debt from bankruptcy to begin with • When to bring in your bankruptcy attorney • Use of outside counsel/collection agencies and interplay with bankruptcy <p>Florence Bonaccorso-Saenz, Louisiana Dept. of Revenue Heather Crockett, Asset Recovery, Bankruptcy Litigation Section, Indiana Attorney General’s Office Trish Lazich, Collections Enforcement Section, Ohio Attorney General’s Office</p>

1:30 p.m. – 2:30 p.m. *	<p>B. Economic Analysis and Reading the Financials – Using Them to Evaluate Issues in the Case. What Are Your Available Tools?</p> <p>Moderator Cory Steinmetz, Ohio Attorney General’s Office</p> <p>Panelists Robert Holdren, Ohio Attorney General’s Office, CPA, CISA Roy Robinson, Ohio Attorney General’s Office Matt Diaz, FTI Consulting</p>
2:30 p.m. – 2:45 p.m.	Break
2:45 p.m. – 3:45 p.m.	<p>Practical Issues Working with the Automatic/Discretionary Stay</p> <p>There are several exceptions for government actions, including Sec 362(b)(1), (4), and (9). But even if you’re sure you’re covered, how do you work with/ educate your clients, the bankruptcy courts, and the state courts as to what the government can (and can’t!) do so you minimize litigation? What are the best strategies to ensure you can keep enforcing your laws to the extent you <i>are</i> excepted from the stay? Defending against sanctions after Taggart.</p> <p>And, in this case, how does the stay apply in the context of the Texas Two-step? Can the non-filing company obtain benefits from the automatic stay while staying out of the case (or use Section 105 to obtain the same results)? How to counter such arguments.</p> <p>Moderator Kristin Radwanick, Ohio Attorney General’s Office</p> <p>Panelists Jay Befort, District Judge, State of Kansas Judge Liz Gunn, Bankr. D. District of Columbia Steve Sakamoto-Wengel, Maryland Attorney General’s Office</p>
3:45 p.m. – 4:00 p.m.	Break
4:00 p.m. – 5:00 p.m.	<p>Hot Topics</p> <p>-----</p> <p>Breakout 1 When Can Bankruptcy Preempt Government Regulation?</p> <p>The conflict between a regulator’s authority to impose duties and a debtor’s ability to reject contracts, abandon/ sell assets or spin off a</p>

new company that is not subject to existing injunctive restraints on debtor. Is Section 363 really a “get out of jail free” card? Revocation of licenses, effects of section 525. Debtor’s duty to obey the law versus needs of reorganization.

Moderator

Maureen Leary, New York Department of Public Service, Office of Hearings and Alternate Dispute Resolution

Panelists

Bernard Eskandari, California Attorney General’s Office

Judge Peter McKittrick, Bankr. D. Oregon

Breakout 2 | Tax Issues/Hot Topics/Discharge Exceptions? A potpourri of topics, including:

- 505 and authority to revisit audits
- Tax compliance and collection post-pandemic
- Subchapter V and taxes
- Chapter 12 and farming equipment sales generating taxes, priority or not?
- Officer responsibility statutes
- Educating Bankruptcy Trustee about state and local taxes with emphasis on pass throughs

Moderator:

Prof. Jack Williams, Georgia State College of Law.

Panelists:

Kristian Oldham, Florida Attorney General’s Office

Robert Lynch, Illinois Attorney General’s Office

Lynn Butler, Husch Blackwell, LP

Wednesday, Nov. 1

12:00 p.m. – 12:15 p.m.

Voting Session for SABA Officers

12:15 p.m. – 1:15 p.m.

Avoidance Actions

What is covered under the statute, what are the defenses, and how can you challenge the trustee’s decision to proceed? Conversely, when do you want to help the trustee?

Fred Rudzik, Florida Dept. of Revenue

Kristian Oldham, Florida Dept. of Revenue

<p>1:15 p.m. – 2:15 p.m.</p>	<p>Discharge Issues</p> <p>General discussion of discharge exceptions and this case. Filing discharge complaints; practicalities of presenting cases.</p> <p>Can you discharge claims unknown in the first bankruptcy?</p> <p>Assuming this debtor can stay in Sub V, what are the differences between the 1141(d)(6) discharge exceptions and 1192.; is a Sub S corporation subject to some, all, or no discharge exceptions?</p> <p>Can you sue the other Texas two-step entity or Smoothteck?</p> <p>What is the scope of court authority to enforce the discharge injunction on a class basis?</p> <p>Dina Yunker, Washington Attorney General’s Office Carolyn Wade, Oregon Attorney General’s Office Joan Smuda, Illinois Attorney General’s Office</p>
<p>2:15 p.m. – 2:30 p.m.</p>	<p>Break</p>
<p>2:30 p.m. – 3:30 p.m.</p>	<p>Working Together on the Mega-Cases</p> <p>Organizational Issues in the big Cases; including multistate/Federal cooperation; and common interest agreements. How to get along when states don’t agree internally? Dealing with inter-state disputes when you’re trying to “get to yes.” Mediation as an option.</p> <p>Heather Crockett, Indiana Attorney General’s Office Gill Geldreich, Tennessee Attorney General’s Office Max Brauer, Maryland Attorney General’s Office Matt Indrisano, U.S. DOJ</p>
<p>3:30 p.m. – 5:00 p.m.</p>	<p>Chapter 13 Case Handling</p> <p>An overview of the unique world of Chapter 13 cases and what governmental counsel need to think about when you get assigned to one. Eligibility limits and how they will likely change in the future. The effects of remote appearances and how they are changing the practice. Debtor’s responsibility for businesses they are operating. Child support obligations.</p> <p>Marvin Clements, Tennessee Attorney General’s Office AJ Swenson, New Mexico Attorney General’s Office</p>

Thursday, Nov. 2	
12:00 p.m. – 1:30 p.m.	<p>Chapter 11 Plan Preparation, Confirmation, and Objections; Third Party Releases</p> <p>Comparing/contrasting for standard Chapter 11 and Sub V case</p> <ul style="list-style-type: none"> • Drafting of disclosure statements and plans • Process and requirements for confirmation of plans • Objections, which ones can you file and which ones will succeed • Tactics and strategies for playing the bankruptcy end game, how does this differ in the two scenarios? <p>Third Party Releases? What is the current state of the law. What could/will the Supreme Court’s decision in Purdue mean for plans? What happens if it strikes the releases down? Will Congress act? What <i>should</i> the policy be on releases/dealing with mass torts and other similar complex litigation?</p> <p>Moderator Prof. Ralph Brubaker, Univ. of Illinois, College of Law</p> <p>Panelists Judge Craig Gargotta, Bankr. W.D Texas Alan Tenenbaum, U.S. DOJ, Nat’l Bankr. Coord., Envir. Enfor. Section Brian Edmunds, Maryland Attorney General’s Office William Harrington, New York, UST</p>
1:30 p.m. – 1:45 p.m.	Break
1:45 p.m. – 2:45 p.m.	<p>Thinking Ahead to Stay Ahead</p> <p>Having seen what can happen in a bankruptcy, what can you do ahead of time to better protect your case f a bankruptcy occurs..</p> <p>-----</p> <p>Breakout 1 Regulators: Anticipating Bankruptcy in Your Orders</p> <p>Planning for bankruptcy in preparing a case and drafting settlements/ judgments. Injunctive orders versus monetary judgments; obtaining financial assurances and insurance; violator registries, permit denials. Avoiding avoidance actions Can you update state laws/regulations to put you in a better position? What do you do if you foresee a Chapter 22 filing or a Texas Two-Step? Keeping Subchapter V criteria in mind.</p> <p>Moderator Margarita Padilla, California Attorney General’s Office (retired)</p>

	<p>Panelists Stephen Nagle, New York Attorney General’s Office Abigail Ryan, Sneed, Vince & Perry, P.C. Jeanne Cohn, U.S DO), Environmental Division</p> <p>-----</p> <p>Breakout 2 Tax Agencies: Yikes, My Taxpayer Just Filed; What Could/ Should I Have Done Before?</p> <p>Thinking your case out in advance; what are options on the filing date. Auditing/assessing rights during the case. Using Sections 521, 1112, 1308, and 959/960, and conversion/dismissal provisions to get returns filed and taxes paid. Getting liens, getting them filed, and making sure they’re enforceable so you can collect on what you know you’re owed.</p> <p>Moderator Lauren Michaels, Pennsylvania Attorney General’s Office</p> <p>Panelists Stephen Murphy, Massachusetts Dept. of Revenue Ari Kunofsky, U.S. DOJ, Tax Division</p>
<p>2:45 p.m. – 3:45 p.m.</p>	<p>Bankruptcy Appeals: Procedures and Tactics</p> <p>So, you don’t like the order that was just issued – what do you need to do and when do you need to do it? Bankruptcy appeals move quickly with many quirks; if you wait to figure out what to do until the court has ruled, you may be too late. This session will alert you to those complexities and how to cope, including topics such as how to avoid “equitable mootness,” which forum should you choose, standing to appeal, and when is an order final. Circuit conflicts and what’s heading to the Supreme Court this year?</p> <p>Sam Maizel, Denton’s Tania Moyron, Denton’s</p>
<p>3:45 p.m. – 4:00 p.m.</p>	<p>Break</p>
<p>4:00 p.m. – 5:00 p.m.</p>	<p>Ethics, Professional Responsibility, and AI: Can Computers Help You be Competent? (Or Just Let You Make Bigger Mistakes?)</p> <p>Is using AI an ethical issue? What tools are out there to help you manage your flood of data and how can you be sure you are finding cases you NEED to be in (but aren’t getting noticed on?) What are issues with the Bankruptcy Rule’s current noticing provisions, and can AI help you overcome those?</p>

	<p>Moderator Bill Pursell, Florida, Department of Revenue</p> <p>Panelists Joy Stubbs, Florida Dept. of Revenue Blake Rooney, Chief Information Officer, Husch Blackwell LLP Lynn Butler, Husch Blackwell LLP</p>
5:00 p.m. – 6:00 p.m.	<p>Conference Wrap Up</p> <ul style="list-style-type: none"> • Bankruptcy Trivia <p>Goodbyes to those who are retired, or will be leaving soon</p>
	<ul style="list-style-type: none"> •

For even more information:
Full-day session at Fordham Law School: “Mass Torts Evolve: The Intersection of Aggregate Litigation and Bankruptcy.” <https://vimeo.com/694126999>