



AMERICAN
BANKRUPTCY
INSTITUTE

Midwestern Bankruptcy Institute

Judicial Round-and-Round

Hon. Robert D. Berger

U.S. Bankruptcy Court (D. Kan.) | Kansas City

Hon. Dennis R. Dow

U.S. Bankruptcy Court (W.D. Mo.) | Kansas City

Hon. Brian T. Fenimore

U.S. Bankruptcy Court (W.D. Mo.) | Kansas City

Hon. Mitchell L. Herren

U.S. Bankruptcy Court (D. Kan.) | Wichita

Hon. Brian S. Kruse

U.S. Bankruptcy Court (D. Neb.) | Lincoln

Hon. Terrence L. Michael

U.S. Bankruptcy Court (N.D. Okla.) | Tulsa

Hon. Cynthia A. Norton

U.S. Bankruptcy Court (W.D. Mo.) | Kansas City

Hon. Bianca M. Rucker

U.S. Bankruptcy Court (W.D. & E.D. Ark.) | Fayetteville

Hon. Anita L. Shodeen

U.S. Bankruptcy Court (S.D. Iowa) | Des Moines

Hon. Dale L. Somers

U.S. Bankruptcy Court (D. Kan.) | Topeka

Hon. Kathy A. Surratt-States

U.S. Bankruptcy Court (E.D. Mo.) | St. Louis

BANKRUPTCY APPEALS – DISCUSSION TOPICS

- **IS IT A “FINAL” JUDGMENT, ORDER OR DECREE, 28 U.S.C. § 158(A)(1)?**
 - *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 712 (1996) (“ . . . ends the litigation on the merits and leaves nothing for the court to do but execute the judgment,” *Catlin v. United States*, 324 U.S. 229, 233 (1945)).
- **FINALITY IN BANKRUPTCY DIFFERS FROM CIVIL LITIGATION**
 - A bankruptcy proceeding typically involves an aggregation of individual discrete controversies. *See e.g., Ritzen Group Inc. v. Jackson Masonry LLC*, __ U.S. __, 140 S. Ct. 582 (2020) (Order denying (or granting) relief from the automatic stay constitutes a final order); *Bullard v. Blue Hills Bank*, 575 U.S. 496 (2015) (order denying confirmation of a Chapter 13 plan with leave to amend is not a final order, but order confirming is final).
- **NOTICE OF APPEAL**
 - General Rule: Filed within 14 days of entry of judgment, order or decree Rule 8002(a)(1)
 - Filed with the bankruptcy clerk Rule 8003(a)(1)
- **APPEALS GO TO THE BAP BY DEFAULT**
 - 28 U.S.C. § 158(c)(1); Rule 8003(d)
 - 3-judge panel comprised of bankruptcy judges in the Circuit
- **APPEALS GO TO THE DISTRICT COURT BY ELECTION**
 - 28 U.S.C. § 158(c)(1); Rule 8005(a)
 - District Court judge in the same District as the bankruptcy court
 - Appellant elects at the time of filing NOA, 28 U.S.C. § 158(c)(1)(A)
 - All other parties elect within 30 days of service of NOA, 28 U.S.C. § 158(c)(1)(B)
- **DIRECT APPEAL TO THE COURT OF APPEALS BY CERTIFICATION AND AUTHORIZATION BY COURT OF APPEALS**
 - 28 U.S.C. § 158(d)(2); Rule 8006
 - 3 permitted circumstances for direct review/certification, 28 U.S.C. § 158(d)(2)(A)
 - Joint certification by all appellants and all appellees, Rule 8006(c);
 - Court certification on own motion, Rule 8006(e);
 - Court certification on party request, Rule 8006(f)
- **BAP, DISTRICT COURT, OR COURT OF APPEALS? FACTORS TO CONSIDER**
- **MOTION FOR STAY PENDING APPEAL**
 - Where file: first in bankruptcy court, Rule 8007(a)(1)(A); then in court where appeal is pending, Rule 8007(b)
 - Four factors:
 - Likelihood that movant will prevail on merits of appeal;
 - Likelihood that movant will suffer irreparable injury unless stay is granted;
 - Whether granting stay will result in substantial harm to other parties to the appeal; and
 - Effect of granting stay upon the public interest.
See In re Lang, 414 F.3d 1191, 1201 (10th Cir. 2005); *In re Abengoa Bioenergy Biomass of Kansas, LLC*, No. 16-10446, Doc. 1395, 2018 WL 1613667, at *3 (Bankr. D. Kan. Mar. 29, 2018).
- **CONTINUATION OF PROCEEDINGS IN BANKRUPTCY CASE DURING APPEAL**
 - Rule 8007(e)

ABI Midwest Bankruptcy Institute, October 20, 2023 – Judicial Round-and-Round
 Hon. Mitchell L. Herren, United States Bankruptcy Judge (D.Kan.)

“RENT A LICENSE”

THE NEWEST TREND IN NATIONAL CONSUMER BANKRUPTCY PRACTICE

Chief Judge Terrence L. Michael, Northern District of Oklahoma

Over the years, we have seen a lot of less than savory developments in consumer bankruptcy practice: petition preparers giving unauthorized legal advice, factoring of fees resulting in debtors paying inflated costs for services, improper bifurcation of fees, attempts to limit the scope of representation to something less than needed for effective representation, and the list goes on. Recently, courts have seen yet another phenomenon: “national” law firms with lawyers from multiple states offering to represent debtors in Chapter 7 bankruptcy proceedings. As part of the marketing, the “national” firm (let’s call them the “Recovery Law Group”) promises to provide full and comprehensive representation, with a stable of attorneys ready, willing and able to come to the debtor’s aid. At least one of those attorneys has a license to practice in the state where debtor resides.

As you might expect, the truth falls far short of the puffery. While the debtors are charged a flat fee for bankruptcy services, the fee does not include such things as lien avoidances, reaffirmation agreements, providing documents requested by a Chapter 7 trustee, or any advice as to the dischargeability of taxes. None of this is disclosed to the bankruptcy judge presiding over the case. Moreover, the local attorney who is supposedly there for the debtor has little or no input into the case, nor do they provide much if any legal advice. All the work is done at the “home office,” most likely by a paralegal. Local counsel does little more than offer their law license as a tool to be used by others and is paid a rather paltry sum in exchange. In at least one instance, the lawyer listed on Recovery’s website has **never** filed a bankruptcy case. Moreover, to a lawyer with a hammer, all problems are apparently nails: almost all debtors are steered towards Chapter 7 relief.

Judge Michael will discuss his experience with these cases, explain the harms they cause, and lead a discussion of judicial perspectives on the practice.

In re Hill, 652 B.R. 212 (Bankr. S.D. Ala. 2023)

Issue:

Can post-petition personal injury claim settlement proceeds be applied to the plan at the confirmed percentage to unsecured creditors or at a higher percentage (i.e.- on top of debtor's confirmed plan payments)?

Facts:

Debtor was injured after filing bankruptcy and settled her postpetition personal injury claim. Debtor already used the personal property exemption available under Alabama law so cannot exempt any of the net settlement amount. The Trustee filed a motion to modify debtor's confirmed Chapter 13 plan and seeks to pay the settlements to unsecured creditors on top of what debtor is already paying under the confirmed plan.

Analysis:

Under §1306(a), the bankruptcy estate also generally includes property that debtor acquires after the filing so the nonexempt proceeds in this case are property of the estate.

Trustee argues denying modification will permit debtor to avoid devoting all of his disposable income for the applicable plan term. This argument confuses income and assets. Proceeds from a litigation claim are not income so §1325(b) disposable income test does not apply.

Section 1329(b)(1) states that §1325(a) applies to a proposed postconfirmation modification of a plan, including its liquidation test. Under §1325(a)(4), the postpetition personal injury claims would not be property of the estate if filed under Chapter 7 because it looks to the date of filing. Thus, the postpetition personal injury claim is not included in a liquidation analysis. Property acquired after the petition is not relevant to application of the liquidation test under either §541(a) or §348(f) in accordance with *In re Taylor*, 631 B.R. 346 (Bankr. D. Kan. 2021) (excluding postpetition settlement proceeds from liquidation analysis per

§348(f) and denying trustee’s motion to modify and pay proceeds to unsecured creditors).

The 11th Circuit applies an “ability-to-pay” standard to proposed plan modifications based on postpetition assets and holds that postpetition assets like the settlement proceeds must be paid into a Chapter 13 case even though would not be included in bankruptcy estate in Chapter 7. This ensures the money does not “get away” if debtor does not complete the plan. *In re Waldron*, 536 F.3d 1239 (11th Cir. 2008).

This leaves the question of whether the proceeds should be applied at the confirmed percentages or on top of the debtor’s confirmed plan payments to increase the percentage paid to creditors. A bankruptcy court has discretion to modify a plan per §1329 if a legitimate reason and courts have concluded that a windfall often provides that basis. Here, the court found that there is no reason to modify and increase the percentage to creditors because compensatory damages for a postpetition personal injury claim resulting from an unfortunate event not anticipated by debtor at time of filing do not constitute “substantially improved

financial condition” or “unanticipated gain” that increases debtor’s ability to pay creditors under *Waldron*.

The non-estate asset, i.e.- the ability to live injury-free- was necessarily converted into a settlement amount should not turn that non-estate asset into an asset which must now be paid to prepetition creditors. It is distinguishable from lottery winnings or inheritances because the injured debtor has given consideration in the form of his injury. It may be a different outcome if debtor received an outsized award but receiving only a portion of what is supposed to represent compensation for an injury is not a windfall.

Trustee’s argument that debtor can dismiss or convert to Chapter 7 is not viable because these options would cause most debtors to lose the homes and vehicles they filed chapter 13 to protect.

The court further determined modification was not required because the debtor did not have an “increased ability to pay”; did not experience “substantially improved financial conditions;” and did not accrue a “windfall” that would justify modifying the plan to pay

creditors the settlement on top of the confirmed plan payments. Also, all of the settlement proceeds are being paid into the case at the confirmed percentages so debtor will not receive any settlement funds unless the plans are paid in full on the confirmed terms so the creditors are protected.

Holding:

Trustee's motion to modify denied.

EQUITABLE POWERS OF THE BANKRUPTCY COURT

- **Background**

Third Party Releases – Where do we Stand? Brett M. Amron and Ethan Katz
2022 no. 4 Norton Bankr. L. Adviser “

- **11 U.S.C. 105(a) Power of Court**

The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.

Law v. Siegel, 571 U.S. 415, 134 S.Ct. 1188 (2014)

- **11 U.S.C. 1141(d)(3) Effect of Confirmation**

The confirmation of a plan does not discharge a debtor if –

- (A) the plan provides for the liquidation of all or substantially all of the property of the estate;
- (B) the debtor does not engage in business after consummation of the plan; and
- (C) The debtor would be denied a discharge under section 727(a) of this title if the case were a case under chapter 7 of this title.

- **11 U.S.C. 524(g) Effect of Discharge**

- **Courts of Equity**

A court that (1) has jurisdiction in equity, (2) administers and decides controversies in accordance with the rules, principles, and precedents of equity, and (3) follows the forms and procedures of chancery. Cf. *court of law*. Black’s Law Dictionary

A court of equity is a court which can apply equitable remedies to disputes. These courts operate within the legal system, but rather than focusing on the application of law, they look at cases and determine outcomes based on fairness. Also known as chancery courts, they can be found in many regions of the world. In some areas, they operate entirely separately from courts of law, and in others, a court of law is empowered to handle both legal and equitable remedies.

<https://www.mylawquestions.com/what-is-a-court-of-equity.htm> (last visited on 10/1/2023).

- **Equitable Relief**

The remedy resulting from a claim of estoppel. Equitable relief is distinguished from remedies for legal actions in that, instead of seeking merely monetary damages, the plaintiff is seeking that the court compels the defendant to perform a certain act or

refrain from a certain act. Common types of equitable relief are injunctions, specific performance, or vacatur.

https://www.law.cornell.edu/wex/equitable_relief (last visited on 10/1/2023)

- **Harrington v. Purdue Pharma, LP 2023 WL 5116031**

The parties is (*sic*) directed to brief and argue the following question: Whether the Bankruptcy Code authorizes a court to approve, as part of a plan of reorganization under Chapter 11 of the Bankruptcy Code, a release that extinguishes claims held by nondebtors against nondebtor third parties, without the claimants' consent. The Clerk is directed to establish a briefing schedule that will allow the case to be argued in the December 2023 argument session. The stay shall terminate upon the sending down of the judgment of this Court.

Discussion:

1. How does the restriction announced in *Law v. Siegel* effect the application and concept of “equity” in bankruptcy courts
2. Are third party releases only appropriate in mass tort cases
3. What about smaller reorganization cases
4. How does “consent” and due process work in the context of third party releases or a broader application of 11 U.S.C. 105(a)
5. Are applications different, or should it be, between for profit vs. non-profit or publicly traded vs. privately owned businesses
6. Fixing the issue: legislative or Courts
7. Any predictions on SCOTUS review of Purdue Pharma, LP

MIDWESTERN BANKRUPTCY INSTITUTE
Judicial Round and Round—October 20, 2023
Post-Petition Appreciation—Hon. Brian T. Fenimore

Relevant Scenarios:

- Chapter 13: Sell property after confirmation but before plan completion
- 13 to 7 Conversion: Sell property before conversion, still hold proceeds
- 13 to 7 Conversion: Still own property at time of conversion

Key Code Sections:

- § 541 – Property of the Estate (Generally)
- § 1306 – Property of the Estate (Chapter 13)
- § 1327 – Effect of Confirmation (Property Vests in Debtor)
- § 348(f) – Effect of Conversion (from Chapter 13)

Some Important Recent Cases

Chapter 13 Case

In re Marsh, 647 B.R. 725 (Bankr. W.D. Mo. 2023) (proceeds from sale of home post-confirmation are property of the chapter 13 estate) (citing other cases)

In re Elassal, No. 21-42801, 2023 WL 5537061 (Bankr. E.D. Mich. Aug. 28, 2023) (proceeds from sale of home post-confirmation are not property of the chapter 13 estate because proceeds cannot be “untethered” vested real property)

Chapter 13 Converts to Chapter 7

Rodriguez v. Barrera (In re Barrera), 22 F.4th 1217 (10th Cir. 2022) (property of chapter 7 estate did not include proceeds from post-confirmation, pre-conversion sale of home)

Castleman v. Burman (In re Castleman), 75 F.4th 1052 (9th Cir. 2023) (property of chapter 7 estate includes debtor’s home, with its appreciated value, when owned on original chapter 13 petition date and still owned on conversion date)

In re Cofer, 625 B.R. 194 (Bankr. D. Idaho 2021) (property of chapter 7 estate includes debtor’s home, with its original petition date value, when owned on original petition date and still owned on conversion date) [abrogated by *Castleman*]

Goetz v. Weber (In re Goetz), 651 B.R. 292 (B.A.P. 8th Cir. 2023) (property of chapter 7 estate includes debtor’s home, with its appreciated value, when owned on original chapter 13 petition date and still owned on conversion date) (on appeal to 8th Circuit)

Opinion Summaries – Chapter 11 Bad Faith Filings

Chief Judge Dale L. Somers

Debtor LTL Management, LLC (“LTL”) is a subsidiary company of Johnson & Johnson (“J&J”), formed under Texas state law¹ to assume responsibility for all claims alleging that J&J’s talc-containing products caused ovarian cancer and mesothelioma. LTL assumed responsibility for all the talc-related liabilities and J&J agreed to provide certain bankruptcy-related funding for the LLC.

LTL filed an initial Chapter 11 petition in 2021. The bankruptcy court denied motions to dismiss the initial Chapter 11 case for cause under 11 U.S.C. § 1112(b) based on lack of good faith, reasoning a valid reorganizational purpose existed for the filing, LTL was an entity in distress, and LTL did not file its Chapter 11 to secure an unfair tactical advantage. 637 B.R. 396 (Bankr. D.N.J. Feb. 25, 2022).

On appeal, the Third Circuit reversed and remanded for the bankruptcy court to dismiss the 2021 Chapter 11 case. *In re LTL Mgmt., LLC*, 58 F.4th 738 (3d Cir. Jan. 30, 2023), as amended by 64 F.4th 84 (3d Cir. Mar. 31, 2023). The Third Circuit concluded LTL had not met its burden to establish good faith. The Third Circuit requires a showing that the Chapter 11 petition serves a valid bankruptcy purpose and the petition is not filed merely to obtain a tactical advantage, and concluded that a debtor must suffer financial distress to show that its Chapter 11 petition serves a valid bankruptcy purpose. The Third Circuit did not require insolvency, but rather asked “whether the debtor faces the kinds of problems that justify Chapter 11 relief,” considering “all relevant facts in light of the purposes of the Code.” The financial distress must be “immediate enough to justify a filing.” The Third Circuit addressed the financial condition of only LTL, and concluded it was not in financial distress because at filing it was solvent and had access to cash to meet its liabilities through its funding backstop from J&J.

A mere two hours after the bankruptcy court on remand dismissed the initial Chapter 11 filing, LTL filed its second Chapter 11 case, proposing substantial settlements and plan support agreements with certain talc-related claimants. Other talc claimants again sought dismissal for cause under 11 U.S.C. § 1112(b) based on a lack of good faith. The bankruptcy court applied the Third Circuit’s decision from the appeal of the first case and concluded the second Chapter 11 case had to be dismissed. The bankruptcy court reasoned there was no certain or immediate

¹ This maneuver has been colloquially called “the Texas two-step,” or the “new debtor syndrome,” “where property that is the subject of litigation is transferred to a new entity and the new entity files for relief under Chapter 11 for the purpose of defeating the creditor’s state law remedies.” *In re Reg’l Evangelical All. of Churches, Inc.*, 592 B.R. 375, 384 (Bankr. D. Kan. 2018).

financial distress for LTL: it had assets on hand, and was contractually entitled to a finding backstop from J&J. *In re LTL Mgmt., LLC*, 652 B.R. 433 (Bankr. D.N.J. July 28, 2023).

See also *In re Bestwall LLC*, 71 F.4th 168 (4th Cir. June 20, 2023), upholding a bankruptcy court-issued preliminary injunction prohibiting asbestos-related actions against Georgia-Pacific, a non-debtor predecessor of the debtor who was formed in a Texas divisional merger similar to LTL. This case was not in front of the Fourth Circuit on appeal of a motion to dismiss, but the Fourth Circuit addressed the *LTL Mgmt., LLC* case and noted it has a different standard than the Third Circuit for assessing dismissal of a bankruptcy petition for lack of good faith: “the complaining party must show both subjective bad faith and the objective futility of any possible reorganization.” *Id.* at 182 (internal quotation omitted).

In the Fifth Circuit, cause for dismissal under § 1112(b) includes lack of good faith, and courts are directed to look at a “conglomerate of factors,” with an “evaluation of the debtor’s financial condition, motives, and the local financial realities.” *In re Little Creek Dev. Co.*, 779 F.2d 1068, 1072 (5th Cir. 1986). Applying this standard, the bankruptcy court in *In re Nat’l Rifle Assoc. of Am.*, 628 B.R. 262 (Bankr. N.D. Tex. May 11, 2021), concluded that filing a Chapter 11 case to obtain a litigation advantage and avoid the applicable New York regulator scheme was a lack of good faith. (The debtor filed a bankruptcy petition in Texas to stay a New York enforcement action against it.)

The **Eighth Circuit** permits dismissal of a Chapter 11 case under § 1112(b) for lack of good faith, *In re Cedar Shore Resort, Inc.*, 235 F.3d 375, 381 (8th Cir. 2000) (“a Chapter 11 petition may be dismissed for bad faith alone where the circumstances warrant”), and uses a multi-factor test, *In re Kerr*, 908 F.2d 400, 404 (8th Cir. 1990) (“Determining bad faith, however, requires a difficult distinction between permissible and impermissible motives. Debtors often wish to shelter whatever assets they can from their creditors, and the Bankruptcy Code permits them to do so. We therefore must require a pattern of concealment, evasion, and direct violations of the Code or court order which clearly establishes an improper motive before allowing dismissals for bad faith.”).

In the **Tenth Circuit**, bankruptcy courts apply a totality of the circumstances, fact-based inquiry, and recognize that a Chapter 11 case may be dismissed under § 1112(b) for lack of good faith, *E.g., In re Reg’l Evangelical All. of Churches, Inc.*, 592 B.R. 375, 384 (Bankr. D. Kan. 2018) (Somers, J.), although there is no Tenth Circuit precedent directly on point.

MIDWESTERN BANKRUPTCY INSTITUTE
Judicial Round and Round—October 20, 2023
Practical Witness Examination Skills—Hon. Brian S. Kruse

Discussion points:

- Laying a proper foundation
- Conducting an effective direct examination with non-leading questions
- Techniques for listening to witness answers and asking follow-up questions
- How and when to object

DETERMINING OWNERSHIP OF AND VALUING DIGITAL ASSETS

I. Digital Assets

A. One definition is “[p]roperty that can be stored on a server, computer, or other electronic device, (digital representations of value that are recorded on a cryptographically secured distributed ledger or any similar technology).

Key Issue 8J: Digital Assets, 20XX WL 11691035.

B. Emerged and Emerging Digital Assets

- Social Media Accounts, i.e., YouTube, Instagram, X (fka Twitter), TikTok
- Smart contracts
- Digital Tokens and Non-fungible Tokens (NFTs)
- Cryptocurrency
- Domain Names/Web Addresses

II. Determining Ownership

A. *In re Vital Pharm.*, 652 B.R. 392 (Bankr. S.D. Fla. 2023) (setting out a test and factors to determine owner of social media accounts).

B. *In re CTLLI, LLC*, 528 B.R. 359 (Bankr. S.D. Tex. 2015) (determining Facebook and Twitter account belonged to reorganized corporate debtor instead of being the personal property of a former owner).

III. Property of the Estate Basics Still Apply

A. “Property of the estate,” with enumerated exceptions, includes “all legal or equitable interests of the debtor in property as of the commencement of the case.” 11 U.S.C. § 541. “Section 541 is read broadly and is interpreted to include all kinds of property, including tangible or intangible property [and] causes of action...” *In re CTLLI, LLC*, 528 B.R. 359, 365 (Bankr. S.D. Tex. 2015) citing *In re Equinox Oil Co., Inc.*, 300 F.3d 614, 618 (5th Cir. 2002). “For specific determinations of what constitutes property, bankruptcy courts look to the underlying state law.” *Id.* citing *Butner v. United States*, 440 U.S. 48, 54 (1979).

B. Is it “Estate Property vs. Related to Estate Property.” Jaden Banks, *A Password by Any Other Name ... Remains A Digital Asset*, Am. Bankr. Inst. J., February 2023, at 18.

IV. Valuation

- A. Methods: willing buyer, online auction, expert testimony, online calculators
- B. Consider risks of fluctuation

Zealous Advocacy

Judicial Roundtable Discussion Outline

Midwestern Bankruptcy Institute

Oct. 20, 2023

By Cynthia A. Norton

1. Do lawyers have an ethical duty to be a zealous advocate?
2. If there is such duty, what does that duty mean to you as a lawyer?
3. Do you think any duty to be a zealous advocate is different for bankruptcy lawyers as compared to other lawyers?
4. If so, why or why not?
5. Do you have examples from your practice of having to deal with an overly zealous lawyer? How did you deal with it?
6. What about the opposite – dealing with lawyers with a lack of zeal?
7. What are some practice pointers or strategies for dealing with overly (and underly) zealous opposing lawyers?

Faculty

Hon. Robert D. Berger is a U.S. Bankruptcy Judge for the District of Kansas in Kansas City, appointed on Oct. 16, 2003, and reappointed on Oct. 16, 2017. Prior to his appointment, Judge Berger practiced law as a bankruptcy and insolvency specialist representing debtors and creditors, and was among the first group of attorneys in Kansas and Missouri to be certified by the American Board of Certification in both consumer and business bankruptcy law. Judge Berger is a member of ABI and the National Conference of Bankruptcy Judges, and a founding member of the Kansas Chapter of the Federal Bar Association. He also is a chapter author for *Collier on Bankruptcy*, *Collier Bankruptcy Practice Guide*, *Kansas Bankruptcy Handbook* and *Practitioner's Guide to Kansas Family Law*. Judge Berger is a frequent lecturer and he has authored articles for various publications, including *The Washburn Law Journal*, the *ABI Journal* and the *Journal of the Kansas Bar Association*. He received his B.A. in history and political science from the University of Kansas in 1983 and his J.D. from Washburn University School of Law in 1986.

Hon. Dennis R. Dow is a U.S. Bankruptcy Judge for the Western District of Missouri in Kansas City, appointed on Nov. 10, 2003, by the Eighth Circuit Court of Appeals. Prior to taking the bench, he was a partner with the firm of Shook, Hardy & Bacon LLP, where he represented trustees in chapter 7 cases involving significant assets, individual and corporate debtors in proceedings under chapters 7 and 11, and secured, unsecured and priority creditors and lessors in chapter 7, 11, 12 and 13 cases, and had been listed in *The Best Lawyers in America* in the area of bankruptcy law every year since 1995. He also tried numerous adversary proceedings and contested matters, including preference actions, objections to discharge, dischargeability complaints and objections to confirmation of chapter 11 plans. Judge Dow is a member of ABI, the Missouri Bar and the Kansas City Metropolitan Bar Association. He is a Fellow of the American College of Bankruptcy, inducted in March 2013, and was selected in November 2014 to become a conferee of the National Bankruptcy Conference. He also is a member of the National Conference of Bankruptcy Judges. Judge Dow is Chief Judge of the Bankruptcy Appellate Panel. He also served a term as chair of the Judicial Conference Advisory Committee on Bankruptcy Rules. Judge Dow has authored and co-authored several articles, including "ERISA-Related Claims in Bankruptcy," *Journal of Bankruptcy Law and Practice*, Vol. 3, No. 1 (Nov/Dec 1993), "Rent to Own Agreements in Bankruptcy: Sales or Leases?," *ABI Law Review*, Vol. 2, No. 1 (Spring 1994), and "Gramm-Leach-Bliley and the Bankruptcy/Collection Attorney," *Norton Bankruptcy Law Advisor* (Feb 2002). He received his B.A. with honors from the University of Wyoming and his J.D. from Washburn University School of Law, where he was notes editor of the *Washburn Law Journal*.

Hon. Brian T. Fenimore is a U.S. Bankruptcy Judge for the Western District of Missouri in Kansas City, appointed on Aug. 31, 2017. Previously, he was a partner in the Kansas City, Mo., office of Lathrop & Gage LLP for more than 25 years and co-chaired its Banking & Creditors' Rights practice area, representing debtors, creditors and many other parties in interest. He also represented borrowers and lenders in problem loan matters, including loan enforcement, guarantor liability, workouts, reorganizations and bankruptcies throughout the U.S. Judge Fenimore is admitted to practice in Kansas and Missouri, and before the U.S. Bankruptcy Courts for the Eastern and Western Districts of Missouri and the District of Kansas, as well as the U.S. District Courts for the District of Kansas and the Eastern and Western

Districts of Missouri. He is AV-rated by Martindale-Hubbell and has been listed in *The Best Lawyers in America* every year since 2003, among other listings. He is also a frequent speaker and ABI member. Judge Fenimore received his B.S. *magna cum laude* in 1988 in agricultural economics from the University of Missouri-Columbia and his J.D. in 1990 from the University of Michigan Law School, after which he clerked for Hon. Arthur B. Federman.

Hon. Mitchell L. Herren is a U.S. Bankruptcy Judge for the District of Kansas in Wichita, appointed in July 2020. His 33 years prior to the bench included practice with a litigation firm in Kansas City, serving as in-house litigation counsel for a large energy company, then returning to private practice for 18 years with a Wichita-based firm, where he served for seven years as managing member and represented clients ranging from individuals to large companies, with a focus on commercial litigation. Judge Herren is a Fellow of the Litigation Counsel of America and the American Bar Foundation. He received his J.D. from the University of Missouri at Kansas City School of Law.

Hon. Brian S. Kruse is a U.S. Bankruptcy Judge for the District of Nebraska in Lincoln, appointed on March 17, 2020. Before joining the bankruptcy court, he practiced law for 20 years at Rembolt Ludtke LLP in Lincoln and was managing partner from 2013-19. Judge Kruse is a member of the Nebraska State Bar Association and the Nebraska State Bar Foundation. He received his B.S. in 1995 from the University of Nebraska–Lincoln College of Business Administration and his J.D. with high distinction in 2000 from the University of Nebraska College of Law, where he was admitted to the Order of the Coif and served as editor-in-chief of the *Nebraska Law Review*.

Hon. Terrence L. Michael is Chief Judge for the U.S. Bankruptcy Court for the Northern District of Oklahoma in Tulsa and a member of the Bankruptcy Appellate Panel of the Tenth Circuit. He has authored more than 170 published opinions, as well as articles in the *Tulsa Law Review*, *Texas Tech Law Review* and *Creighton Law Review*. Upon graduation from law school, Judge Michael joined the firm of Baird, Holm, McEachen, Pedersen, Hamann & Strasheim in Omaha, Neb., where he was a member of the firm’s bankruptcy and creditors’ rights practice group. His practice included all types of bankruptcy matters and general civil litigation. While at Baird, Holm, Judge Michael chaired the Bankruptcy Section of the Nebraska State Bar Association and was a member of the local rules committee responsible for drafting local rules in chapter 12 cases. He also authored and presented numerous papers at various continuing legal education seminars. Judge Michael has taught courses for the American Banker’s Association School of Agri-Finance and Metro Technical Community College. On June 9, 1997, he began his career as a bankruptcy judge, and on June 7, 2000, he was appointed to the Bankruptcy Appellate Panel of the Tenth Circuit, a position he still holds. As a member of the BAP, Judge Michael chaired the committee charged with revising the local rules of that court. He has authored more than 170 opinions, is an associate editor of the *American Bankruptcy Law Journal* and an adjunct professor of law at the University of Tulsa, and has served as a speaker at various seminars presented by the Federal Judicial Center, the Eighth Circuit Judicial Conference, the Tenth Circuit Judicial Conference, ABI, the Nebraska State Bar Association, the Oklahoma Bar Association, the Tulsa County Bar Association, the West Texas Bar Association and the Southwest Regional Turnaround Management Association. Judge Michael is a member of the National Conference of Bankruptcy Judges, having served on various committees and the Board of Governors. He received the President’s Award for Distinguished Service to the Conference in 2018. Judge Michael is an emeritus member of the Council Oak/Johnson-Sontag American Inn of Court, which awarded him the

John A. Athens Leadership Award in 2004, and the Nebraska State Bar Association. He was part of a multi-state select choir, which sang in Carnegie Hall in 1999, and recorded his first studio album in collaboration with Oklahoma Music Hall of Fame member and Grammy winner David Teegarden in 2018. Judge Michael received his B.A. *magna cum laude* in history from Doane College in 1980 and his J.D. from the University of Southern California's Gould School of Law in 1983.

Hon. Cynthia A. Norton is a U.S. Bankruptcy Judge for the Western District of Missouri in Kansas City. Prior to her appointment on Feb. 1, 2013, she was a founding partner of Grimes & Rebein, LC in Lenexa, Kan., where she focused on consumer and business bankruptcy, creditors' rights, commercial workouts and related fields. She also clerked for Hon. John E. Rees of the Kansas Court of Appeals and Hon. James A. Pusateri of the U.S. Bankruptcy Court in Topeka, Kan., and was previously an associate with Stinson, Mag & Fizzell, an associate and then partner with Lewis, Rice & Fingers, and Of Counsel with Levy & Craig, and established her own law firm in 1995. She has published an annual column reviewing Eighth Circuit bankruptcy cases of interest for *Norton's Bankruptcy Law Advisor* and has authored numerous articles, book chapters and seminar papers on bankruptcy-related topics, is a Fellow in the American College of Bankruptcy and a member of various bankruptcy organizations. She also is the recipient of the Michael R. Roser Excellence in Bankruptcy Award and the Robert L. Gernon Award for Outstanding Contribution to CLE, as well as the NCBJ Excellence in Education Award. Judge Norton received her B.A. in French and art history Phi Beta Kappa and *summa cum laude* from Kansas University in 1981, and her J.D. from the Kansas University Law School in 1984, where she was associate editor of its law review.

Hon. Bianca M. Rucker is a U.S. Bankruptcy Judge for the Eastern and Western Districts of Arkansas in Fayetteville, appointed on April 26, 2021. Prior to her judicial appointment, she was a chapter 7 panel bankruptcy trustee and attorney representing creditors and debtors in consumer and business bankruptcy matters at Rucker Law PLLC, in Fayetteville. Before working as a trustee, Judge Rucker was a partner at Wright, Lindsey & Jennings, LLP (WLJ), where her practice focused on bankruptcy, commercial litigation and insurance defense. She also served as a staff attorney to Hon. Richard D. Taylor (2006-07) and Hon. Ben T. Barry (2007-11) of the U.S. Bankruptcy Court for the Eastern and Western Districts of Arkansas. Judge Rucker has served as president of the Northwest Arkansas Debtor and Creditor Bar Association, and she is an adjunct professor at the University of Arkansas School of Law, where she teaches alcohol beverage law. She received her B.A. in political science in 2003 from the University of Arkansas at Little Rock and her J.D. with honors in 2006 from the William H. Bowen School of Law.

Hon. Anita L. Shodeen is a U.S. Bankruptcy Judge for the Southern District of Iowa in Des Moines, appointed on Aug. 26, 2009. Upon graduation law school, she clerked for Hon. Jerry Larson of the Iowa Supreme Court. As a practicing lawyer, Judge Shodeen focused primarily on bankruptcy, debtor/creditor and transactional issues. She also served as a chapter 7 trustee and chapter 12 trustee for the Southern District of Iowa. She currently serves on the Eighth Circuit Bankruptcy Appellate Panel and is an associate editor for the *American Bankruptcy Law Journal*. Judge Shodeen previously served on the Board of Governors for the National Association of Bankruptcy Judges and for two terms as a member of the Judicial Resources Committee of the Judicial Conference. She has also been an adjunct professor at Drake University Law School. Her professional memberships include the

American College of Bankruptcy, ABI, the National Conference of Bankruptcy Judges and the Federal Bar Association. Judge Shodeen received her J.D. in 1985 from Drake University Law School.

Hon. Dale L. Somers is Chief U.S. Bankruptcy Judge for the District of Kansas in Topeka, initially appointed in September 2003. He hears cases in Topeka, Kansas City and Wichita. Previously, he was in private practice for 32 years and a partner in the law firms of Eidson, Lewis, Porter & Haynes and Wright, Henson, Somers, Sebelius, Clark & Baker. Judge Somers was appointed to the Bankruptcy Appellate Panel for the U.S. Court of Appeals for the Tenth Circuit in March 2010. He served as a member of the Judicial Resources Committee of the Judicial Conference of the United States. Judge Somers served on the Board of Governors for the Kansas Bar Association from 1988-98 and as president from 1995-96. He is a Fellow of the of the American College of Bankruptcy and of the American Bar Association. Judge Somers received his undergraduate degree from Kansas State University in 1968 and his J.D. from the University of Kansas School of Law in 1971.

Hon. Kathy A. Surratt-States is a U.S. Bankruptcy Judge for the Eastern District of Missouri in St. Louis, initially appointed on March 17, 2003, and named Chief Judge from Feb. 1, 2013, to June 30, 2022. She began her legal career as law clerk to now-retired Bankruptcy Judge James J. Barta. In 1993, Judge Surratt-States was an associate at Campbell & Coyne, P.C., where her work focused on bankruptcy, commercial litigation and foreclosures. She then moved to Ziercher & Hocker, P.C. in 1998, where she became partner. The firm later merged with Husch Blackwell, where she was a partner in its insolvency practice group until her appointment to the bankruptcy court. In 1997, Judge Surratt-States was appointed to the Panel of Bankruptcy Trustees for the Eastern District of Missouri, and in 1999, she served as the chapter 7 trustee for Family Company of America, then the third-largest grocery store chain in St. Louis. Judge Surratt-States serves on the Board of Catholic Charities of St. Louis and is a member of Altrusa International, Inc. of St. Louis, an international association of professionals dedicated to serving their community. She also is a member of the Missouri Bar, the Bar Association of Metropolitan St. Louis, the Mound City Bar Association, the National Conference of Bankruptcy Judges, ABI and the International Women's Insolvency & Restructuring Confederation (IWIRC). Judge Surratt-States received her B.A. *cum laude* from Oklahoma City University in 1988 and her J.D. from Washington University School of Law in 1991.