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# Bankruptcy Ethics and the High Cost of Noncompliance: Avoiding Discipline, Disgorgement, Sanctions, or Prison

Navigating the Complex, Overlapping, and Conflicting Ethical Rules Applicable in Bankruptcy

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1pm Eastern | 12pm Central | 11am Mountain | 10am Pacific

Today's faculty features:

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# Bankruptcy Ethics and the High Cost of Noncompliance: Avoiding Discipline, Disgorgement, Sanctions, or Prison

Presented by
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# LEARNING OBJECTIVES

1. Identify Key Ethics Rules in Play in Chapter 11 Bankruptcies
2. Explore Recent Developments Providing Guidance on Ethical Issues in Chapter 11 Bankruptcies
3. Identify “Problem Areas” Where Ethics Rules Provide Limited Guidance and Assess Ethical Risks in These Areas

# TOPICS

1. Disclosure is King
2. Duties of Counsel for Debtor-in-Possession ("DIP")
3. Standards of Competency for Debtors' Counsel
4. Creditor Committee Issues
5. Ad Hoc Committees and Multiple Creditor Representations
6. The Role of Conflicts Counsel in Reorganizations
7. Retention, Payment Requirements, and Compensation
8. Ethical Issues in Section 363 Sales

# OVERVIEW

- State ethics rules do not always fit realities of bankruptcy practice. Numerous parties with shifting allegiances; different from two-party adversarial matter.

- Courts have recognized that the model rules promulgated by the ABA may be "ill-adapted" to bankruptcy proceedings, where "administrative matters rather than litigation may be the focus of an attorney's work." *In re Nguyen*, 447 B.R. 268, 277 (9th Cir. B.A.P. 2011).

- In addition to State ethics rules and guidance, Congress also imposed additional ethical requirements in the Bankruptcy Code.
  - Section 327: proposed counsel for the trustee should have no "interest adverse to the estate" and should be "disinterested persons"
  - "[I]n the bankruptcy context we are not constrained simply by the Code of Professional Responsibility but by the Bankruptcy Code itself." *In re The Leslie Fay Cos., Inc.*, 175 B.R. 525, 538 (Bankr. S.D.N.Y. 1994)

# A LITTLE HISTORY

## History of the Bankruptcy Code and Role of the U.S. Trustee

- Bankruptcies were originally run by the SEC
- As originally enacted, the Code was intended to facilitate rehabilitation of a company in financial straits. Corporate reorganizations were accomplished by equity receivers.
  - Upon filing of a complaint the Bankruptcy Act of 1898 contained no provision for reorganization or seeking a receiver.
  - While the district court would appoint a receiver for the corporation's assets, in reality, it was collusive, and management of the corporation would remain in control of the proceeding with very little oversight by courts.
- In response to apparent inability of equity receiverships to handle the business failures resulting from the Great Depression, Congress amended the Bankruptcy Act in 1933. The following year, Congress added section 77B to cover general corporate reorganizations. Under section 77B, corporations were permitted to file voluntary petitions for reorganization, and were generally permitted to remain in control of their affairs.

# A LITTLE HISTORY

- In 1938 Congress adopted the Chandler Act, which substantively rewrote the provisions of the 1898 Act relating to business reorganization.
- While the National Bankruptcy Conference had sought only minor changes in reorganizations under section 77B, the SEC believed that reorganizations under that section continued to suffer from many of the infirmities and abuses of equity receiverships. The SEC's efforts culminated in a reorganization statute which furnished much needed protection and shifted control of the reorganization process away from management and the reorganizers.
- This was accomplished by requiring a disinterested trustee in most cases, generally allowing all interested parties to participate in the formulations of a plan, with the disinterested trustee as the focal point, and the establishment of fiduciary concepts applicable to reorganizations

# A LITTLE HISTORY

## The Office of The United States Trustee ("OUST")

- The OUST was created to oversee the administration of bankruptcy cases and private trustees under 28 U.S.C. § 586 and 11 U.S.C. § 1010, et seq.
  - Per its website, the OUST is "a national program with broad administrative, regulatory, and litigation/enforcement authorities whose mission is to promote the integrity and efficiency of the bankruptcy system for the benefit of all stakeholders – debtors, creditors, and the public."

# A LITTLE HISTORY

## The Office of The United States Trustee ("OUST")

Specific responsibilities of the United States Trustee include:

- Taking legal action to enforce the requirements of the Bankruptcy Code and to prevent fraud and abuse;
- Referring matters for investigation and criminal prosecution when appropriate;
- Ensuring that bankruptcy estates are administered promptly and efficiently, and that professional fees are reasonable;
- Appointing and convening creditors' committees in Chapter 11 business reorganization cases;
- Reviewing disclosure statements and applications for the retention of professionals; and
- Advocating matters relating to the bankruptcy code and rules of procedure in court.

https://www.justice.gov/ust/about-program

# A LITTLE HISTORY

- In 1978, Congress passed the Bankruptcy Reform Act, creating Chapter 11, and included Section 1104 providing that the court "shall" order the appointment of a trustee if cause exists or if such appointment is in the interest of creditors and interest holders.
  - Cause = "fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor by current management … ."
- In 2005, Congress added Section 1104(e) requiring that the U.S. Trustee move for appointment of a trustee if there are reasonable grounds to believe cause exists.

# ROLE OF THE DEBTOR-IN-POSSESSION

Today, the Debtor-in-Possession ("DIP") is charged by statute with the responsibility of supervising Chapter 11 cases and is afforded broad discretion in doing so.

The DIP's authority upon motion and hearing to:

- Avoid certain transfers under §§ 544 - 550;
- Assume or reject executory contracts under § 365;
- Obtain credit under § 364;
- Use, sell, or lease property and use cash collateral of the estate under § 363;
- Retain professionals under § 327;
- Operate the debtor's business under § 1108; and
- To solicit votes on and confirm a plan of reorganization § 1121-1129

# DISCLOSURE IS KING

- Section 327 and 1103 set forth specific standards that proposed professionals must meet to be retained as an estate or committee professional.
  - Require professionals to meet certain standards of independence from parties other than their client.
  - The professional (i) must not hold or represent an interest adverse to the estate and (ii) must be disinterested. *See In re AroChem Corp.*, 176 F.3d 610, 621 (2d Cir. 1999); *In re JMK Constr. Group, Ltd.*, 441 B.R. 222 (Bankr. S.D.N.Y. 2010); *In re WorldCom, Inc.*, 311 B.R. 151, 163 (Bankr. S.D.N.Y. 2004).

- Fed. R. Bankr. P. 2014 requires a proposed professional to disclose connections that may raise an actual or potential conflict of interest with the client.

# DISCLOSURE OBLIGATIONS

Bankruptcy Rule 2014: Employment of Professional Persons

(a) APPLICATION FOR AND ORDER OF EMPLOYMENT.

*. . .* The application shall state the specific facts showing the necessity for the employment, the name of the person to be employed, the reasons for the selection, the professional services to be rendered, any proposed arrangement for compensation, and, to the best of the applicant's knowledge, all of the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee. The application shall be accompanied by a verified statement of the person to be employed setting forth the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee.

# DISCLOSURE OBLIGATIONS

- Purpose of FRBP 2014 is to provide the Court and the Office of the U.S. Trustee with information to determine whether professional's employment is in "best interests of the estate . . ." *See e.g., Exco Res. V. Milbank (In re Enron Corp.)*, No. 02-CV-5638 (S.D.N.Y. Jan. 28, 2003).

- Rule 2014 is to be "strictly construed" and failure to disclose relevant connections is "an independent basis for the bankruptcy court to disallow fees or to disqualify the professional from the case." *See id.; see also Banner v. Cohen, Estis & Assocs., Ltd.*, 345 B.R. 87, 111 (Bankr. S.D.N.Y. 2006)

# DISCLOSURE OBLIGATIONS

- FRBP 2014 does not limit the extent of disclosure of a professional's connections with the parties set out in the rule – the debtor, creditors of the debtor, other parties in interest, attorneys of the same, accountants of the same, and the U.S. trustee and persons employed by the U.S. trustee
- Courts find that professionals have little, if any, discretion in determining whether a connection is relevant to the employment application. *See generally In re Crivello*, 134 F.3d 831 (7th Cir. 1998).
- There has been confusion over the level of inclusiveness in disclosures.
- Led to "Phone book" sized disclosures where meaningful connections get lost

# DISCLOSURE OBLIGATIONS

## "One Percent" Rule

- Most likely triggered by secured creditors, but can apply to unsecured creditors as well.
- Courts have held that law firms should disclose if a secured creditor accounts for more than one percent of annual revenues under Rule 2014. *See e.g., In re Rockaway Bedding, Inc*., No. 04-14898, 2007 WL 1461319, at *4 (Bankr. D.N.J. May 14, 2007) (holding that no actual conflict of interest occurred when a secured creditor accounted for less than 1% of a Duane Morris' revenues).
- Criticized because, for a large law firm, one percent of annual revenues can be enormous amount of money. Also, this so-called rule is not codified in any statute or rule and is not universally applied in all Bankruptcy Courts. This is why competent and knowledgeable local counsel is imperative to avoid these and other pitfalls.
- Best practice is to disclose additional information, including size of the case, the number of active parties involved, the amount of the secured creditor's claim, when the secured loan was made, what law firm documented the loan, what issues are likely to arise regarding the secured creditor's claim, the actual revenues that the secured lender represents to the firm, the size of the firm, and who at the firm provides legal services on behalf of the secured creditor. *See* "The 1 Percent Rule Needs Fixing," Kenneth A. Rosen, Esq.

# DISCLOSURE OBLIGATIONS

*In re The Leslie Fay Cos., Inc.*, 175 B.R. 525 (Bankr. S.D.N.Y. 1994)

- Prepetition, audit committee had investigated misstatements in financial disclosures by company's management.
- Proposed debtors' counsel had prepetition represented (1) the audit committee in third-party securities fraud actions, (2) directors who were potential targets of investigation, and (3) large companies where directors were senior officers or general partners.
- Law firm failed to disclose these potential conflicts
- Court held that failure to disclose potential conflicts that might have impaired its investigation into fraud by management warranted monetary sanctions in the amount of cost of investigating counsel's performance, but not disqualification

# DISCLOSURE OBLIGATIONS

## Actual v. Potential Conflicts of Interest

- Section 327 provides that a person is not disqualified unless there is an objection and an "actual conflict of interest"
- Courts are divided on the proper application of conflict of interest standards.
  - Actual Conflict: "an active competition between two interests, in which one interest can only be served at the expense of the other." *Am. Printers & Lithographers*, 148 B.R. 862, 866 (Bankr. N.D. Ill. 1992))
    - Automatic disqualification
  - Potential Conflict: is said to occur where there is presently no competition between clients, but it may come into being if certain contingencies take place. *See Kendavis Indus. Int'l, Inc. (In re Kendavis Indus. Int'l)*, 91 B.R. 742, 753-54 (Bankr. N.D. Tex. 1988)).
    - Risk of future disqualification

# DISCLOSURE OBLIGATIONS

*In re The Leslie Fay Cos., Inc.,* 175 B.R. 525 (Bankr. S.D.N.Y. 1994)

- "Potential conflicts, no less than actual ones, can provide motives for attorneys to act in ways contrary to the best interests of their clients. Rather than worry about the potential/actual dichotomy it is more productive to ask whether a professional has "either a meaningful incentive to act contrary to the best interests of the estate and its sundry creditors—an incentive sufficient to place those parties at more than acceptable risk—or the reasonable perception of one." *Id.* at 533.
- Duty of disclosure is ongoing and estate professionals must inform the bankruptcy court of subsequent relationships that may call "disinterestedness" into question.

# DISCLOSURE OBLIGATIONS

*Caesars Ent. Op. Co., Inc.*, No. 15-01145 (Bankr. N.D. Ill.)

- Issue: when does representation of affiliates of equity interest holders constitute a disqualifying adverse interest?
- Debtor's counsel Kirkland & Ellis (K&E) represented on unrelated matters other portfolio companies of private equity firms Apollo and TPG, and affiliates of Apollo and TPG controlled debtor's parent. K&E disclosed that 3.4% of annual revenue was on account of Apollo and TPG-related work.
- K&E also represented TPG principal who was also debtor's director in an unrelated securities litigation
- Court approved K&E's employment. The court held that the representations raised a "potential conflict" only, which did not require disqualification.

# DISCLOSURE OBLIGATIONS

*Caesars Ent. Op. Co., Inc.*, No. 15-01145 (Bankr. N.D. Ill.)

- Mesirow Financial Consulting was hired to investigate allegations of asset-stripping by Caesar's parent company. On February 2015, Mesirow and lead CPA Melissa Knoll filed disclosures under Rule 2014.
- Knoll was having an extramarital affair with Vincent Lazar, an attorney who represented the parent company. She did not disclose this in the filing.
- Later, an attorney from the U.S. Trustee's office had a "chance encounter" with the pair in a social setting.
- Two weeks later, Mesirow disclosed the relationship to the court and removed Knoll from the case.
- The court nevertheless decided to discard the results of the investigation by Mesirow, saying that the investigation was "tainted" by Knoll's "sleeping with the enemy."
- Consequently, the Court ordered that Mesirow's fees be disgorged.

# DISCLOSURE OBLIGATIONS

Potential for criminal liability

- Some ethical violations may be criminal and carry penalties of fines and possible imprisonment
- 28 U.S.C. §157: a person who files a document in chapter 11 proceeding who has "devised or intend[s] to devise a scheme or artifice to defraud and for the purpose of executing or concealing such a scheme or artifice . . . shall be fined under this title, imprisoned not more than 5 years, or both"

# DISCLOSURE OBLIGATIONS

*U.S. v. Gellene*, 182 F.3d 578 (7th Cir. 1999)

- Gellene, a partner at Milbank, represented Bucyrus in a Chapter 11, and filed a Rule 2014 declaration failing to disclose Milbank's representation of a senior secured creditor or related parties.
- The US Trustee filed objections and the Court ordered second declarations with more detail. Still, Gellene failed to disclose the representation of the senior creditor or related parties. Notwithstanding, Gellene swore that "[a]fter due inquiry I am unaware of any other current representation by Milbank of an equity security holder or institutional creditor of [Bucyrus]."
- Another Milbank attorney raised the possibility of a conflict with Gellene on two occasions, and both times Gellene represented that it was not a problem and his disclosure requirements had been satisfied.

# DISCLOSURE OBLIGATIONS

*U.S. v. Gellene cont.*

- At a hearing regarding Milbank's request of over $2 million in attorney's fees, Gellene testified about the second disclosure filed, but still failed to disclose Milbank's prior representation of the senior secured party and related parties.
- The Court awarded Milbank $1.88 million in fees and expenses.
- It was later discovered that Milbank had represented one of the related parties, and a motion to disgorge fees was filed.
- Gellene then filed a third declaration, explaining an error in legal judgment by omitting the secured lender and one of the related parties.
- He was charged and indicted on two counts of knowingly and fraudulently making false material declarations under penalty of perjury in violation of 18 USC § 152(3) (for filing the first two declarations and one count of using a document under oath knowing it contained a material false declaration in violation of 18 USC § 1623 (perjury for testifying about 2nd declaration at fee hearing).
- Gellene was found guilty on all three counts and sentenced to 15 months in prison, a $15,000 fine, and two years of supervised release following his prison sentence.

# DISCLOSURE OBLIGATIONS

- In 2013, the American Bankruptcy Institute Ethics Task Force proposed amendments to FRBP 2014 that would (i) provide clarity to professionals concerning what relevant connections must be disclosed, and (ii) provide improved information for courts and other parties reviewing the disclosures.
- The Subcommittee on Attorney Conduct and Healthcare of the Advisory Committee on Bankruptcy Rules (a judicial committee) considered the proposed amendment, but rejected it August 2015.
  - The Subcommittee noted that such proposals could be implemented as best practices by the US Trustee, courts or practitioners without a rule amendment or official form.

# DISCLOSURE OBLIGATIONS

## TAKEAWAY

- Err on the side of over-disclosure
- “Phone book” approach may still be a model and use memorandum of law supporting retention application to highlight most relevant connections
- “Boiler plate” language may be helpful but isn’t a substitute for actual disclosures
- Should supplement disclosures on a regular basis
- Conflicts counsel can be used to deal with conflicts that would otherwise be disabling
- Caveat emptor: even if an attorney or firm takes all of the above-steps, a bankruptcy court may still retroactively find that a disqualifying conflict existed and impose sanctions.

# DEBTOR'S COUNSEL'S DUTIES

- Is counsel for a DIP also counsel for the estate?
- What are the DIP's fiduciary duties and how can counsel for the DIP advise a DIP on carrying them out?
  - What are the duties to unsecured creditors, who are typically the residual owners of the estate?
  - Interests of unsecured creditors typically do differ from the DIP's management and directors.

# DEBTOR'S COUNSEL'S DUTIES

Ethics Rule for Representing Entities – Model Rule of Professional Conduct 1.13

- A lawyer for an organization that knows that someone associated with the organization (i) intends to act in violation of legal obligations to the organization that is (ii) likely to result in substantial injury to the organization, must act in "best interest of the organization." (See Rule 1.13(b).)
- Lawyer may be required to reveal confidential information to avoid substantial injury to the organization. (See Rule 1.13(c).)

# DEBTOR'S COUNSEL'S DUTIES

Many courts have stated that DIP counsel is "counsel for the estate" with separate fiduciary duties to the "estate" to independently determine what is in the estate's best interest.

- *See e.g., In re Count Liberty, LLC*, 370 B.R. 259, 280 (Bankr. C.D. Cal. 2007) (asserting "majority view" that DIP counsel is a fiduciary of the estate); *Zeisler & Zeisler, PC v. Prudential Ins. Co. of Am.*, 210 B.R. 19, 25 (B.A.P. 2d Cir. 1997) (holding counsel's duties are to the estate in bankruptcy)

Other courts treat the DIP counsel as having a fiduciary client.

- *See e.g. Interwest Bus. Equip, Ins. v. U.S. Tr.*, 23 F.3d 311, 316-17 (10th Cir. 1997) (fiduciary duty is of DIP as trustee of estate and counsel's duty is to "independently serve the trustee")

# DEBTOR'S COUNSEL'S DUTIES

BEST PRACTICES RECOMMENDATIONS (from ABI Ethics Report)

- An attorney for a DIP must be proactive in counseling her client with respect to its compliance with its fiduciary duties to the bankruptcy estate.
- An attorney for a DIP must recognize and understand which hat (DIP or debtor) the client is wearing at a given time. The same lawyer may, and generally does, advise the DIP in its capacity as the debtor, including preparing and advocating for a reorganization plan that may include cram-down treatment of creditors. When doing so, the attorney must not advocate for personal debtor interests that violate the DIP's fiduciary duties.
- An attorney for a DIP must, at all times, comply with the applicable rules of professional responsibility. She must also meet the applicable requirements of the Bankruptcy Code and Rules for disclosure, non-adversity and disinterestedness, and reasonableness of fees and expenses.

# DEBTOR'S COUNSEL'S DUTIES

BEST PRACTICES RECOMMENDATIONS (from ABI Ethics Report)

An attorney must ensure that her DIP client knows and understands its basic fiduciary duties to the estate. These are:

- *Loyalty:* All actions taken must be fair and reasonable. The DIP and its management and owners must not obtain an improper personal benefit, even when pursuing their "debtor" interests. This standard is met by compliance with applicable provisions of the Code and Rules, full and accurate disclosures, and ratification or approval by the court when required by law.
- *Care:* All actions must be taken in good faith, with the care of a prudent person.
- *Impartiality:* All estate constituents must be treated fairly and within the structure of the Code, without unfairly favoring particular creditors to the detriment of others.

Build "Fiduciary Outs" into Restructuring Support Agreements, Stalking Horse Bids, Exit Financing Proposals, Etc.

# DEBTOR'S COUNSEL'S DUTIES

BEST PRACTICES RECOMMENDATIONS (from ABI Ethics Report)

The DIP's attorney cannot knowingly facilitate a DIP's violation of fiduciary duties.

- If the DIP client breaches any of its fiduciary duties, the DIP's attorney must explain the law and consequences and urge compliance.
- If the DIP still refuses to correct the violation after such counseling and the action rises to the level of violating applicable rules of professional conduct or other law, the DIP's attorney must seek court permission to withdraw from the representation and must make disclosures in the manner and to the extent allowed by the applicable rules of professional responsibility.

# DEBTOR'S COUNSEL'S DUTIES

BEST PRACTICES RECOMMENDATIONS (from ABI Ethics Report)

An attorney must be aware of the exceptions to the "no individual liability to creditors" rule.

- The DIP's attorney has no liability to individual creditors for the DIP's violation of its fiduciary duties *unless* the lawyer's actions are fraudulent or intentionally wrongful.
- Nonetheless, the DIP's attorney may be held liable for knowingly and actively participating in (and, in some jurisdictions, aiding and abetting), the DIP's breach of its fiduciary duties.
  - *In re Food Management,* 380 B.R. 677, 709–10(Bankr. S.D.N.Y. 2008) (recognizing that a court may impute to an attorney knowledge of his client's misconduct when facts establish that the attorney had reason to know of such misconduct.)
- The DIP's attorney may also be sanctioned in a variety of ways, including fee disallowance or referral to the appropriate disciplinary authorities, for violations of the Code, the Rules, or the applicable rules of professional responsibility.
  - *Matter of Futuronics Corp,* 655 F.2d 463, 470–71 (2nd Cir. 1981) (holding a court abuses its discretion when it fails to deny fees to attorneys who "flagrantly breached their fiduciary obligations")

# STANDARDS OF COMPETENCY FOR DEBTORS' COUNSEL

Model Rule of Professional Conduct 1.1: Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Because Chapter 11 cases generally require the knowledge and expertise of non-bankruptcy and bankruptcy attorneys, it is incumbent the latter educate the former regarding fiduciary duties, disclosure requirements, billing requirements, and the like.

# STANDARDS OF COMPETENCY FOR DEBTORS' COUNSEL

Core capacities of lawyer representing business bankruptcy clients (ABI Ethics Report)

1. A lawyer must have the knowledge and skill to provide pre-petition operational and exit strategy counseling and information to a client or prospective client in financial distress.

2. A lawyer should understand and be able to explain the myriad legal and business issues implicated by the prospect of a client's business bankruptcy filing.

- A lawyer should also be aware of the pre-petition steps required to be taken to prepare a case for filing. In addition to this substantive knowledge, a lawyer should have systems and procedures to execute the case filing efficiently and effectively.

# STANDARDS OF COMPETENCY FOR DEBTORS' COUNSEL

Core capacities of lawyer representing business bankruptcy clients (ABI Ethics Report) [con't]

3. A lawyer should know how to prepare and file a bankruptcy petition and the related schedules and statements efficiently and effectively.

4. Lawyers must be aware of and comply with the provisions of the Bankruptcy Code and related rules relevant during the immediate post-filing time period. A lawyer should have the knowledge and skills to argue first-day motions and otherwise take steps to address the substantive and procedural issues that arise at the beginning of a case.

# STANDARDS OF COMPETENCY FOR DEBTORS' COUNSEL

Core capacities of lawyer representing business bankruptcy clients (ABI Ethics Report) [con't]

5. The lawyer representing a reorganizing DIP must have the knowledge and skills to draft an effective and confirmable plan of reorganization and disclosure statement in compliance with the relevant Bankruptcy Code provisions.

6. A lawyer should have the substantive and procedural knowledge and skills to manage the bankruptcy case and to effectively represent his or her client in all case proceedings.

# STANDARDS OF COMPETENCY FOR DEBTORS' COUNSEL

Core capacities of lawyer representing business bankruptcy clients (ABI Ethics Report)

7. A lawyer must be aware of the need to offer his or her client ongoing advice and provide the court with relevant disclosures throughout the duration of the bankruptcy case.

8. The lawyer should have knowledge and understanding of the process of getting retained by the client, as well as the procedures required to be followed in order to receive professional fees. In addition, the lawyer must ensure that other professionals in the case understand the retention and payment requirements imposed by the Bankruptcy Code.

9. A lawyer must have the knowledge and skill to provide his or her client with advice concerning plan confirmation and the post-confirmation injunction.

# CREDITORS' COMMITTEE ISSUES

- An attorney representing a creditors' committee may not have an adverse interest in connection with the case. *See* §1103(b).
- The Court may deny compensation to professionals who are not disinterested or hold an interest adverse to the estate. *See* § 328 (c).
  - Courts apply an "appearance of impropriety standard to make this determination.

# CREDITORS' COMMITTEE ISSUES

*In re: Universal Building Products*, No. 10-12453 (Bankr. Del. 2010)

- Law firm improperly solicited potential clients, in violation of the model rules and Delaware rules of professional conduct.
  - "A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment from a prospective client when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contact is: (1) a lawyer; or (2) has a family, close personal, or proper professional relationship with the lawyer." (Del. Lawyers' R. of Prof. Cond. 7.3)
- Law firm also failed to provide complete and accurate disclosure at the outset of their connections with creditors and with individual who eventually served as one creditor's committee representative and as committee translator
- Consequently, law firm was disqualified from serving as committee's counsel.

# CREDITORS' COMMITTEE ISSUES

*In re: Universal Building Products*, cont.

- Court offered the following recommendations:
  - Requiring disclosure of the practice of using others to solicit proxies to act at a committee formation meeting.
  - Implementing procedures to reduce the likelihood of undue influence on the decision of a committee to hire professionals
  - Amending questionnaire sent to prospective committee members to include questions regarding whether they were solicited by anyone in connection with the case.

# FIDUCIARY DUTIES OF INDIVIDUAL COMMITTEE MEMBERS

## Neiman Marcus

- Daniel Kamensky, a New York hedge fund founder, was a member of the Official Committee of Unsecured Creditors. Pre-petition, Kamensky was involved in extensive litigation against Neiman Marcus and other bondholders over alleged asset-stripping transactions. As part of the chapter 11 case, Neiman proposed a sale transaction with the support of its investment bank, Jefferies, Inc.
- The terms of the proposed sale would benefit the estate but harm the hedge fund.
- Despite being a fiduciary as a member of the Creditors' Committee, Kamensky took steps to sabotage the sale so that his hedge fund would be a beneficiary of the transaction.
- Jefferies reported these efforts to counsel for the Committee and the Debtor.
- As a result, Kamensky charged with criminal fraud and extortion and sentenced to six months in prison and the repayment of $1.4 million dollars in restitution as part of a plea arrangement.
- Kamensky admitted that he pressured a rival bidder to abandon a higher offer for an asset of Neiman Marcus so that his hedge fund could buy it for a lower price, in violation of his duty to represent the interests of all unsecured creditors to secure the best offer.
-

# AD HOC COMMITTEES AND MULTIPLE CREDITOR REPRESENTATIONS

- Bankruptcy Rule 2019 requires certain disclosures in reorganization case and particularly applies to every entity or committee representing more than one creditor or equity security holder.
- In Chapter 11, there is a greater need for policing creditor groups and those who act on their behalf. Thus, an underlying and critical component of any Chapter 11 reorganization is that it "should be done openly and subject to scrutiny, whether it is the proposal of a plan of reorganization representation of the debtor, or representation of numerous creditors – secured or unsecured." *See In re Oklahama P.A.C. First limited Partnership*, 122 B.R. 387, 393 (Bankr. D. Ariz. 1990).

# AD HOC COMMITTEES AND MULTIPLE CREDITOR REPRESENTATIONS

- Accordingly, counsel to an *ad hoc* committee must be especially careful to disclose the identity of all members of the committee and the amounts of claims or interests owned by the members, when those claims were acquired and the amounts paid, and any sales or other disposition thereof. *See Northwest Airlines Corp.,* 363 B.R. 701 (Bankr. S.D.N.Y. 2007).
- Additionally, the disclosures must explain the circumstances and facts that give rise to the employment of the representing entity, including who organized the committee.
- Rule 2019 disclosures may not capture parties who are in effect "shadow creditors," such as Credit Default Swaps or participation interests.

# AD HOC COMMITTEES AND MULTIPLE CREDITOR REPRESENTATIONS

- Disclosure statements must say whether or not the representing entity has any claims or interests itself.
- If the representing entity itself holds claims or equity interests (e.g., an attorney representing multiple creditors has its own claims), then it must disclose:
  (1) the amount of claims or interests it owns;
  (2) the times when those claims or interests were acquired, and
  (3) the amounts paid for those claims or interests. In addition, it must disclose any sales or dispositions of claims or interests.
- A party governed by Rule 2019 who fails to file such a disclosure statement may be denied the right to be "heard further or to intervene in the case" or have "any authority, acceptance, rejection, or objection given" voided.

# AD HOC COMMITTEES AND MULTIPLE CREDITOR REPRESENTATIONS

*Northwest Airlines Corp.,* 363 B.R. 701 (Bankr. S.D.N.Y. 2007).

- Law firm representing *ad hoc* committee of equity security holder was required to include in its disclosure statement amount of claims owned by clients, when the interests were acquired, amounts paid, and any sales or disposition thereof.
- The Court also held that, despite the law firm's contention otherwise, the concerted efforts of the group the law firm represented qualified them as a committee under Rule 2019.

# AD HOC COMMITTEES AND MULTIPLE CREDITOR REPRESENTATIONS

*In re Blackwell,* 263 B.R. 505 (W.D. Tex. 2000)

- Western District reversed and vacated the bankruptcy court's order which protected the names of various creditors of the debtor who feared personal injury, kidnapping and/or death if their identities were revealed.
- The District Court concluded that the evidence presented was inadequate to rebut a presumption of openness.

# THE ROLE OF CONFLICTS COUNSEL IN REORGANIZATIONS

- When main counsel for the debtor is conflicted by ethics rules from representing the debtor in certain matters, the court can appoint "conflicts counsel."
- Some courts recognize the "1% rule" in this context, as well as the disclosures context:
  - If a firm's client represents less than 1% of that firm's billings, such a representation is inconsequential to warrant disqualification.
  - Problematic because, for example, the Skadden Arps' annual revenues are reported to be $2.1 billion, so 1% is $21 million

# THE ROLE OF CONFLICTS COUNSEL IN REORGANIZATIONS

Model Rule of Professional Conduct 1.7 Conflict Of Interest: Current Clients

- A lawyer shall not represent a client if the representation involves a "concurrent conflict of interest," meaning the representation will be "directly adverse" to another client or there is a "significant risk" that the representation will be "materially limited" by responsibilities to the other client.
- Lawyer can represent client notwithstanding concurrent conflict of interest if:
  - lawyer reasonably believes that she will be able to provide competent and diligent representation to each affected client;
  - the representation is not prohibited by law;
  - the representation does not involve the assertion of a claim by one client against another client in the same litigation; and
  - each affected client gives "informed consent" in writing.

# THE ROLE OF CONFLICTS COUNSEL IN REORGANIZATIONS

Authority to Appoint Conflicts Counsel: 11 U.S.C. § 327

(a) Except as otherwise provided in this section, the trustee, with the court's approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons . . .

(e) The trustee, with the court's approval, may employ, for a specified special purpose, other than to represent the trustee in conducting the case, an attorney that has represented the debtor, if in the best interest of the estate, and if such attorney does not represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which such attorney is to be employed.

# THE ROLE OF CONFLICTS COUNSEL IN REORGANIZATIONS

Guidelines for Use of Conflicts Counsel
(ABI Ethics Report)

- Examine magnitude and potential duration of conflicts – expected to last throughout case? Is the role of the conflicting party in the case is so central to the outcome, extensive, and significant that conflicts counsel would have to take over the primary duties of main general bankruptcy counsel, or would render division of responsibilities between co-counsel infeasible?
  - Consider the relationship of the conflicting party with main counsel -- so extensive or significant that there is significant risk that the representation will be materially limited by the counsel's responsibilities to that conflicting client?

# THE ROLE OF CONFLICTS COUNSEL IN REORGANIZATIONS

Guidelines for Use of Conflicts Counsel (ABI Ethics Report)

Define the scope of duties in the retention orders of main counsel and conflicts counsel, and allocate the work to minimize costs and reduce duplication

# THE ROLE OF CONFLICTS COUNSEL IN REORGANIZATIONS

Proposed Use of Conflicts Counsel May Have Unintended Consequences

- In some cases, bankruptcy course have replaced proposed DIP counsel with proposed Conflict's Counsel in name of efficiency
  - Does a law firm's repeated use of same conflicts' counsel in multiple chapter 11 cases create its own conflict over divided loyalties?

# RETENTION, PAYMENT, AND COMPENSATION OF PROFESSIONALS

## RETENTION

- Professionals must avoid conflicts of interest or risk not getting paid. When conflicts are revealed or decided late in a case, disallowed and disgorged fees can be substantial.
- The statute provides a penalty against professionals who either have or represent interest in conflict with those of the estate while the case is pending. *See* Bankr. R. §328(c).
- In addition to Bankruptcy Code requirements, individual judges and local court rules contain requirements relating to fee requests.
- The US Trustee has also issued fee guidelines with detailed requirements.

# RETENTION, PAYMENT, AND COMPENSATION OF PROFESSIONALS

- The J. Alix Protocol:
  - Originally developed to reconcile the dual nature of chief restructuring officers as both officers of the debtor (therefore insiders) and professionals providing bankruptcy restructuring services to the debtor's estate.
  - When the current Bankruptcy Code was enacted, the role of chief restructuring officer did not exist and therefore, the Bankruptcy Code did not specifically address their retention which, on the surface, appears to fly in the face of section 327's disinterested standard.
  - As a result of this inconsistency, and settlements between restructuring firm Jay Alix and Associates and the Office of the United States Trustee regarding the firm's retention, the Jay Alix Protocol ("J. Alix Protocol") was established and has been widely followed since. In simple terms, the Jay Alix Protocol provides that debtors should retain restructuring professionals pursuant to section 363 of the Bankruptcy Code, while applying the relevant disclosure and conflict provisions of section 327(a).

# RETENTION, PAYMENT, AND COMPENSATION OF PROFESSIONALS

*In re: McDermott International, et al*

- On May 20, 2020, Chief Bankruptcy Judge David R. Jones, sitting in the United States Bankruptcy Court for the Southern District of Texas, issued an opinion finding that retention of financial advisors under the Jay Alix Protocol is “completely unnecessary.”
- In his opinion, Judge Jones observed that Section 1107(b) specifically provides that a “person is not disqualified for employment under section 327 of this title by a debtor in possession solely because of such person’s employment by or representation of the debtor before the commencement of the case.”
- He further criticized the retention of restructuring professionals pursuant to section 363(b) as it allows such professionals to avoid court oversight through the fee application process as well as public scrutiny.
- In the future, a debtor seeking to employ a financial a financial advisor should file a single application for employment under the code section governing employment of professional persons, and not, pursuant to the J. Alix Protocol.

# RETENTION, PAYMENT, AND COMPENSATION OF PROFESSIONALS

## Purdue Pharma Bankruptcy- Failure to Make Disclosure Costs Law Firms Millions

Skadden, Arps, Slate, Meagher & Flom LLP, Wilmer Cutler Pickering Hale and Dorr LLP, and Dechert LLP were ordered to give back legal fees for failing to properly disclose an agreement between Purdue and members of the Sackler family who own Purdue over the defense against lawsuits relating to OxyContin.

- According to the UST, the firms failed to adequately disclose a joint defense and common interest agreement between Purdue and the Sackler Families.

The UST commented that "[t]hese disclosure violations are particularly concerning because a central question in these cases has been the independence of Purdue from Sackler Families. … This agreement reflects the UST's ongoing efforts to police law firms and other bankruptcy professionals who fail to disclose connections that may raise questions about their ability to perform their duties free of conflicts of interest.

Consequently, the firms collectively will relinquish $1 million in fees earned in the case and are required to supplement their prior disclosures.

# RETENTION, PAYMENT, AND COMPENSATION OF PROFESSIONALS

## COMPENSATION

11 U.S. Code § 328 - Limitation on compensation of professional persons:

- Trustee or committee can employ professionals on any “reasonable terms and conditions.”
- The court may allow for compensation different to these terms and conditions “if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions.”
- Court may disallow compensation for a professional who is not a “disinterested person, or represents or holds an interest adverse to the interest of the estate” with respect to the matter on which such professional person is employed.

# RETENTION, PAYMENT, AND COMPENSATION OF PROFESSIONALS

- Section 328 allows for a variety of creative compensation structures
- Compensation may be changed by court only if terms and conditions have “prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions” – a difficult standard

# RETENTION, PAYMENT, AND COMPENSATION OF PROFESSIONALS

Section 330(a)(3) provides a roadmap for reviewing compensation:

(3) In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

# RETENTION, PAYMENT, AND COMPENSATION OF PROFESSIONALS

## Common Trouble Areas:

- Vague time entries are routinely disallowed. *See* In re Quigley Co., 500 B.R. 347, 365 (Bankr. S.D.N.Y. 2013).
- Fees can be reduced or disallowed when incurred to pursue litigation without adequately weighing the costs against the likelihood of success. *See In re Haimil Realty Corp*., 579 B.R. 19 (Bankr. S.D.N.Y. 2017).
- Fees incurred in defending a fee application are not compensable under Section 330(a). *See Baker Botts L.L.P. v. ASARCO LLC*, 135 S. Ct. 2158 (2015)

# RETENTION, PAYMENT, AND COMPENSATION OF PROFESSIONALS

Framework for Approval of Compensation Under Section 328 (from ABI Ethics Report)

1. Be clear about the Bankruptcy Code provision under which approval is being sought.
2. A bankruptcy court has wide discretion to decide whether a proposed arrangement is or is not reasonable or appropriate.
3. The party seeking approval of a professional's employment has the burden of proof in its employment application.

# RETENTION, PAYMENT, AND COMPENSATION OF PROFESSIONALS

Framework for Approval of Compensation Under Section 328 (from ABI Ethics Rules) (con't)

4. Lawyers must be mindful of the dictates of state ethics rules.

5. Employment applications under section 328 must contain truthful assertions supporting the compensation method.

# RETENTION, PAYMENT, AND COMPENSATION OF PROFESSIONALS

Counsel's acceptance of payment of fees without bankruptcy court approval is improper, and can result in a court order disgorging fees.

- *In re McCrary & Dunlap Const. Co., LLC.,* 263 B.R. 574 (M.D. Tenn. 2001)
  - Special counsel failed to make full disclosure regarding tow $10,000 retainers received from debtor's largest unsecured creditor and the firm received postpetition payments from the estate without prior court approval.
  - Court sanctioned the attorney with full disgorgement and a denial of all compensation.

# RETENTION, PAYMENT, AND COMPENSATION OF PROFESSIONALS

- The Bankruptcy Court may exercise discretion to deny or reduce fees for failure to disclose a fee arrangement whether or not the estate suffers actual harm.
  - Failure to disclose a fee arrangement can result in denial of all fees.

    *In re Downs*, 103 F.3d 472 (6th Cir. 1996)).

# RETENTION, PAYMENT, AND COMPENSATION OF PROFESSIONALS

- The Court has the power to disgorge fees paid prepetition that are excessive. *See* 11 U.S.C. 329(b).
- The bankruptcy court has the authority to sua sponte order an attorney to disgorge excessive prepetition fees. *In re Zepecki*, 258 B.R. 719, 725 (B.A.P. 8th Cir. 2001)).

# RETENTION, PAYMENT, AND COMPENSATION OF PROFESSIONALS

*In re NNN 400 Capitol Ctr. 16 LLC*, 632 B.R. 243 (D. Del. 2021)

- UST and creditors sought disqualification of special counsel because they had a post-petition fee-sharing agreement with a loan broker who was engaged to find a lender for debtors' refinancing effort.
- The Court held that, by entering into the post-petition fee- sharing agreement with the loan broker, the special counsel acquired a pecuniary interest adverse to the debtor, in violation of Fed. R. Bankr. § 327(e).
- The Court also found that special counsel violated rule of professional conduct regarding the knowing acquisition of an ownership, possessory, security, or other pecuniary interest adverse to the client.

# RETENTION, PAYMENT, AND COMPENSATION OF PROFESSIONALS

*In re NNN 400 Capitol Ctr. 16 LLC*, 632 B.R. 243 (D. Del. 2021) cont.

- The special counsel was also obligated to disclose its pre-petition and post-petition fee sharing agreements with loan broker, as well as its pre-petition representation of debtors' property manager, which was one of the debtors' largest unsecured creditors *See* Fed. R. Bankr. P. 2016(b).
- Notwithstanding that obligation, the special counsel failed to disclosure the fee-sharing agreement and representation of the debtors' property manager.
- Bankruptcy court did not abuse its discretion in denying compensation to special counsel or by ordering that the special counsel reimburse debtors for their post-petition payment to the loan broker.

# RETENTION, PAYMENT, AND COMPENSATION OF PROFESSIONALS

Key Takeaways:

- Become familiar with the fee guidelines
- Disclose all actual or potential conflicts of interest
- Fully and completely disclose fee arrangements
- Take care to perform services that are reasonable and necessary to handling the case

# SECTION 363 SALES

- Counsel to the DIP owes a fiduciary duty of loyalty prohibiting such individual from self-dealing with estate assets.
  - Cannot advise a purchaser of bankruptcy estate assets.
  - Disqualifying adverse interest exist where a court-approved professional itself possess or asserts, as well as represents, a creditor's claim, an ownership interest, or status as a buyer. 11 U.S.C. § 372(a).
  - Involvement with investors acquiring or even attempting to acquire estate assets also results in a disqualifying adverse interest to the estate. *See In re W. Delta Oil Co.*, 432 F.3d 347, 356-57 (5th Cir. 2005) (Court held that the lawyer's undisclosed potential acquisition was an interest adverse to the estate.)

# SECTION 363 SALES

"A fiduciary cannot purchase property which he is empowered to sell. Property in the custody of a court has a special status and is sacrosanct. No dealings therein will be tolerated which are tainted with the possibility of unfairness of conflict between personal desires and trust obligations

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Even if there were full disclosure, adequacy of consideration, absence of secret profit, an open judicial sale will not avail separately or in combination as a defense for such a fiduciary. The prohibition is absolute in the public interest. It is establish to protect the courts themselves from suspicion of chicanery."

*Donavan and Schuenke v. Sampsell,* 225 F.2d 804, 811 (9th Cir. 1955)

# SECTION 363 SALES

It is a criminal act, punishable by forfeiture of office and fine, for trustee or other officer of the court to knowingly purchase estate property in case in which they are involved. 18 U.S.C. § 154(1)

*U.S. v. Rosen*, 130 F.3d 5 (1st Cir. 1997)

- Counsel was found guilty of mail fraud in deceiving bankruptcy court with undisclosed side deal in connection with estate asset sale.

*In re Rahe*, 178 B.R. 801, 802(Bankr. D. Neb. 1995)

- In a Chapter 7, Court found that counsel for trustee's purchase of estate property was unethical and criminal.

# SECTION 363 SALES

- Good-faith requirement prohibits fraudulent, collusive actions specifically intended to affect sale price or control outcome of sale. 11 U.S.C. § 363(b)
- Section 363(n) prohibits collusive bidding by multiple bidders.
- If a Section 363 Sale price "was controlled by an agreement among potential bidders," the trustee or debtor can avoid the sale or recover any excess consideration, recover its costs, and seek punitive damages. Courts have incorporated a bad or corrupt intent requirement into this provision. *See In re New York Trap Rock Co*rp., 42 F.3d 747, 752 (2d Cir. 1994)
- There may be times where joint bids by multiple bidders are more likely to succeed than lower single bids by each bidder, or sequential bidding on multiple assets may be appropriate. *See In re The Grand Union Co.,* 2000 WL 34033490 (Bankr. D. N.J. 2000). In such cases, joint bidders should get prior court approval in order to avoid being entangled in liability under section 363(n).
- The penalties for violation of this section are harsh: the sale can be avoided and the debtor may recover damages, costs and attorney's fees.

# SECTION 363 SALES

*In re New York Trap Rock,* 42 F.3d 747, 752 (2d Cir. 1994)

- Chapter 11 debtor brought adversary proceeding against bidders, alleging collusive bidding.
- Bidders failed to disclose an agreement between them to either the Bankruptcy Court or the debtor. The alleged agreement provided that that the first bidder would drop out of bidding in exchange for second bidder's purchase of the first bidder's interest.
- The Court explained that Section 363(n) prohibits secret cooperation between bidders that are intended to control price and deprive the estate of fair value.
- Failure to disclose agreements among bidders is a factor that the court may consider in determining whether the evidence supports an inference of collusive conduct.

# SECTION 363 SALES

*In re SageCres II LLC.,* 765 Fed.Appx. 473 (2nd Cir. 2019)

- Court found that a consulting agreement naming a creditor as Chapter 11 debtor's redevelopment consultant was unenforceable as a product of their collusive settlement agreement whose payment provisions were incorporated in the consulting agreement,
- The consulting agreement required the debtor to pay the creditor fixed retainers and consulting fees in exchange for the creditor's agreement to withdraw its competing bid for a property subsequently sold to the debtor's affiliated entity during Canadian bankruptcy proceeding, without informing Court.
- Under both agreements, the Second Circuit found that the parties engaged in illegal bid-rigging-side-deal that was a collusive thwarting of a rival bid in exchange for a guaranteed payment of more than $3.5 million.

# RECENT DECISIONS OF NOTE

- *In the Matter of Sam Babbs III*, D.C. Board on Professional Responsibility, Disciplinary Docket 2021-D142, et al.
  - A bankruptcy lawyer who had been sanction in court at least 30 times agreed to disbarment.
  - Misconduct allegations included misusing advanced funds from clients, practicing in states where he was not licensed.
    - In some instances, Babbs was ordered to disgorge fees as a result of his misconduct.

# RECENT DECISIONS OF NOTE

## No Withdrawal or Jury Trial On Claims That Lawyer Violation Section 526:

- District Judge  J. Phil Gilbert recently held that a law firm has no right to a jury trial and cannot withdraw the reference when the U.S Trustee goes after sanctions and an injunction for violation Section 526.
- Asserting violations of Sections 526(a)(1), (a)(3) and 329(b) and Bankruptcy Rule 2017, the U.S. Trustee alleged in the complaint that the firm "failed to provide immediate legal help and failed to act with appropriate diligence." The complaint sought an injunction, a civil penalty and disgorgement of fees.
- The U.S. Trustee took issue with the legal services provided by the law firm calling them "subpar and overpriced."
- According to Judge Gilbert, the government's watchdog claimed "that delays caused by not beginning legal work promptly cause harm to the bankruptcy filers."

# RECENT DECISIONS OF NOTE

No Withdrawal or Jury Trial On Claims That Lawyer Violation Section 526 (cont.):

- According to Judge Gilbert, the firm contended that it had the right to a jury trial on the U.S. Trustee's claim "for civil penalties for a clear and consistent pattern or practice of violating 11 U.S.C. § 526(a)(1) and (3). *See* 11 U.S.C. § 526(c)(5)(B)."
- Judge Gilbert said that the right to a jury trial turns on whether particular claims are legal or equitable. Of greater relevance to the instant withdrawal motion, he said, "Legal claims asserting public rights, as opposed to purely private ones, do not require a jury trial if Congress has assigned the adjudication of such claims to an administrative agency or a specialized court of equity sitting without a jury," citing *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 41 n.4, 51 (1989).

# RECENT DECISIONS OF NOTE

## No Withdrawal or Jury Trial On Claims That Lawyer Violation Section 526 (cont.):

- Judge Gilbert went on to say that "the Seventh Circuit Court of Appeals does not guarantee the right to a jury trial for legal actions based on statutory public rights committed to an equitable tribunal."
- Citing *Milavetz, Gallop & Milavetz, P.A. v. United States*, 559 U.S. 229 (2010), Judge Gilbert said that "Congress created a novel cause of action in 11 U.S.C. § 526 of the Bankruptcy Code to achieve the Government's legitimate interest in preventing a specific public harm — abusive practices by debt relief agencies."
- Judge Gilbert ultimately denied the motion for mandatory withdrawal of the reference, rejecting the firm's contention that its First Amendment rights were being violated.

# ANY QUESTIONS?

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