American Bankruptcy Institute

New York City Bankruptcy Conference 2021

The Opioid Crisis

PLENARY SESSION

Hon. Kevin J. Carey (ret.)
Hogan Lovells

Lara J. Fogel
New Jersey Attorney General's Office

David J. Molton
Brown Rudnick LLP

Arik Preis
Akin Gump Strauss Hauer & Feld LLP

Andrew M. Troop
Pillsbury Winthrop Shaw Pittman LLP

2021

The Stop shielding Assets from Corporate Known Liability by Eliminating non-debtor Releases (SACKLER) Act

Chairwoman Carolyn B. Maloney

The SACKLER Act amends a section of the Bankruptcy Code, 11 U.S.C. § 105, to prohibit a bankruptcy court from releasing non-debtors from liability for suits brought by government entities.

Lack of clarity in current law has enabled certain bankruptcy courts to release non-debtors from liability in litigation outside of bankruptcy. The SACKLER Act clarifies this uncertainty by specifying that a bankruptcy court cannot release claims brought by states, Tribes, municipalities, or the U.S. government, against non-debtors. The Act would ensure that individuals accused of wrongdoing by government actors are held accountable for their illegality and would be effective immediately.

Section (a)

Prohibits a court from enjoining or releasing a claim against a non-debtor by a governmental entity—a State, municipality, federally recognized Tribe, or the United States, except for in asbestos-related lawsuits—excluding asbestos proceedings.

Section (b)

Allows a court to issue a temporary stay, for a period not to exceed 90 days, on legal actions against non-debtors by a State, municipality, federally recognized Tribe, or the United States. This temporary stay provides bankruptcy courts time to evaluate the assets of the debtors and non-debtors.

Carolyn B. Maloney

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(Original Signature of Member)

117TH CONGRESS
1ST SESSION

H. R. _____

To prohibit the non-consensual release of claims by States, municipalities, federally recognized Tribes, or the United States against non-debtors, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mrs. CAROLYN B. MALONEY of New York introduced the following bill; which was referred to the Committee on ______________________________

A BILL

To prohibit the non-consensual release of claims by States, municipalities, federally recognized Tribes, or the United States against non-debtors, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Stop shielding Assets from Corporate Known Liability by Eliminating non-debtor Releases Act'' or the ''SACKLER Act''.

SEC. 2. NON-DEBTOR RELEASES.

(a) PROHIBITION ON CERTAIN NON-DEBTOR RELEASES.—Section 105(b) of title 11, United States Code, is amended by striking ‘‘a court may not’’ and all that follows, and inserting the following: ‘‘a court may not—

‘‘(1) appoint a receiver in a case under this title; or

‘‘(2) except as provided by section 524(g) of this title, enjoin or release a claim against a non-debtor by a State, municipality, federally recognized Tribe, or the United States.’’.

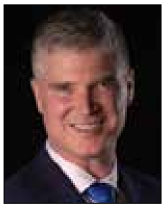
(b) TEMPORARY STAY ON ACTIONS AGAINST NON-DEBTORS.—Section 105 of title 11, United States Code, is amended by adding at the end the following:

‘‘(e) Notwithstanding subsection (b)(2), a court may issue an order staying, for a period not to exceed 90 days, the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding by a State, municipality, federally recognized Tribe, or the United States against a non-debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against a non-debtor that arose before the commencement of the case under this title.’’.

Mediation Matters

By George R. Calhoun

Mediation and a Lack of Transparency in Mass Tort Cases



George R. Calhoun
Ifrah PLLC
Washington, D.C.

George Calhoun is a member of Ifrah PLLC in Washington, D.C., where he chairs the firm's Financial Services and Business Litigation Practices. He represents parties in connection with mass tort insolvencies.

Editor's Note: *View a recording of the Mass Torts session at Insolvency 2020, held on Sept. 23 (recordings of all past sessions are available). To learn more and to register, visit insolvency2020.com.*

Bankruptcies prompted by sexual-assault claims have proliferated following the implementation of "reviver" statutes extending statutes of limitations, "Me Too," and now a pandemic. In the past 18 months, there have been bankruptcy filings from the Boy Scouts (February 2020), USA Gymnastics (December 2018) and multiple Catholic dioceses, including the Dioceses of Rochester (September 2019), Harrisburg (February 2020), Buffalo (February 2020), New Orleans (May 2020), St. Cloud (June 2020) and Syracuse (June 2020). As succinctly explained by Bishop Douglas Lucia of the Diocese of Syracuse, the decision to file for bankruptcy was due to "the financial impact of the Child Victims Act and the economic downturn of COVID-19."[1] These cases present unique challenges to debtors, claimants and insurers because bankruptcy courts are ill-equipped to handle such mass tort claims, and they lack jurisdiction to directly address the underlying personal-injury claims.

Because bankruptcy court is, at best, an imperfect forum to litigate complicated tort and insurance claims, courts and debtors have pushed early and hard for mandatory mediation. This has resulted in protracted multi-year mediations and millions of dollars in unnecessary bankruptcy costs. In their rush to mediation, however, the parties have lost the opportunity to explore the merits and value of the victims' claims, and insurers have been deprived of an opportunity to explore significant defenses to coverage. Although there is no one-size-fits-all solution to these complicated matters, in many cases delaying the rush to mediation and instead allowing a more fulsome discovery process would help the parties gauge the liability and damages associated with the claims, and simultaneously allow mediation discussions to take place in the context of a more developed record. While many debtors may prefer less disclosure, full transparency would provide greater justice to the parties and likely save costs in the long run.

Abuse-driven bankruptcies share some unique characteristics. The first set of complications arises out of the Bankruptcy Code structure. The Code has no specialized provision to address sexual-abuse claims. Unlike in the case of asbestos,[2] there is no express bankruptcy power for the resolution of abuse claims. Moreover, 28 U.S.C. § 157 limits the bankruptcy court's jurisdiction to decide the underlying personal-injury claims on an individual basis. The provisions of § 157(b)(5) authorize the district court in which the bankruptcy is pending to try personal-injury or wrongful-death cases against the debtor. In practice, few, if any, district courts want to sign on to try hundreds of sexual-abuse cases. As a result, this provision is not exercised, leaving bankruptcy courts with no meaningful way to try personal-injury claims. The bankruptcy courts' options are to encourage settlement or pass the claims back into the tort system through lifting the stay or as part of a plan. The debtors tend not to want to litigate the claims, regardless of whether it could be done efficiently. Instead, the debtors in these cases want the litigation (including disclosures concerning their conduct) to end. To do this, they typically seek a settlement that includes easy-to-satisfy claims procedures. In turn, the debtors — along with settling third parties and insurers — typically seek injunctive relief barring future claims. The bankruptcy courts generally have approved this process, but have been reluctant to approve any plan that does not meet or exceed the standards for third-party injunctions set out in § 524(g), including a super-majority vote of the claimants.

The second set of complications derives from the fact that debtors in these cases are typically charitable or religious organizations. Because nonprofit enterprises frequently depend on donations for revenue, their finances are often highly irregular and depend on the enterprise's reputation. An abuse scandal or an economic downturn can significantly stifle a nonprofit's income and strain existing assets. These factors create a dynamic where the debtors believe that only a consensual or near-consensual plan will provide the relief being sought, but place financial constraints on the debtor's ability to fund the bankruptcy process. In these circumstances, the debtors and claimants are heavily incentivized to reach a resolution to fund claims through insurance and an agreement upon an injunction to be issued pursuant to § 105 of the Bankruptcy Code.

1 "Roman Catholic Diocese of Syracuse Files for Chapter 11 Bankruptcy," CNY Central (June 19, 2020), *available at* cnycentral.com/news/local/roman-catholic-diocese-of-syracuse-files-for-chapter-11-bankruptcy (unless otherwise specified, all links in this article were last visited on Aug. 25, 2020.).

2 11 U.S.C. § 524(g).

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The numbers bear this out. Since 2004, 27 Catholic dioceses or religious orders have filed for bankruptcy protection due to abuse claims. Eighteen of those cases have been resolved, and nine remain pending. The resolved cases resulted in settlements with a total value of more than $1 billion, with more than $620 million coming from insurance.[3] Of the remaining claims, nearly all have pending coverage disputes and nearly all are in mediation. A similar pattern is found in non-clergy abuse cases.

This dependence on insurance also brings challenges that are sometimes unaddressed. Although abuse-driven bankruptcies often are accompanied by insurance coverage litigation, bankruptcy courts are increasingly refusing to allow that litigation to proceed in state courts. Frequently, plans are filed before the courts have fully addressed the coverage defenses raised by insurers. These defenses range from express molestation exclusions to arguments that the abuse does not constitute an "occurrence" under the insurance policy because it was "expected or intended" by the debtor.

The "expected or intended" coverage defense often plays prominently in church abuse cases where priests are transferred between or within dioceses despite the bishops' knowledge of abuse. For example, in *Diocese of Winona v. Interstate Fire & Cas. Co.*,[4] the Eighth Circuit considered whether abuse by a priest that had been transferred within a diocese was "expected or intended" by the diocese. The relevant policies in that case provided that an "occurrence" is defined as "an accident, including continuous or repeated exposure to conditions, which results in personal injury ... which is neither expected nor intended from the standpoint of the insured." Abuse by Father Thomas Adamson was expected by the diocese because it knew of his history of abuse but transferred him within the diocese.[5]

The prevalence of this issue is further highlighted by the Pennsylvania Diocesan Victims Report prepared by a grand jury in Pennsylvania.[6] The report details the abhorrent misconduct of numerous priests, that the dioceses knew that the abuse was occurring, and the "circle of secrecy" involved in the church's efforts to contain the scandal.[7] Given this sort of evidence, a claimant might be able to prove that a diocese is liable for the acts of an abusive priest, but at the same time prove that those actions fall outside of the diocese's insurance coverage. This tension is inherent in these claims and coverage issues. These cases also often involve difficult questions concerning the number of occurrences, allocation and reconstruction of policy records. Litigation of these issues can be protracted and expensive.

Because of the difficulty and expense of addressing these issues (not to mention the effort to avoid negative rulings), debtors largely have sought to shortcut coverage litigation. Although those coverage cases are entirely creatures of state law, the bankruptcy courts have largely deferred or denied insurers' motions to withdraw the references, frequently so that the parties can engage in mediation. For example, in the recent USAG, Diocese of Santa Fe, Diocese of Syracuse and Diocese of Winona-Rochester bankruptcies, these district courts denied motions to withdraw the reference due in large part to bankruptcy court orders requiring that the parties mediate. In *USAG*, after initial mediation efforts failed, the bankruptcy court went so far as to order the parties to go back to mediation despite the initial failure.[8]

Early mediation orders often result in a negative feedback loop due to an asymmetry of information. Claimants in these cases often face tension between the desire for a swift process that results in fair payouts, a desire to have their day in court to achieve a fair hearing on the wrongs done to them, and difficult insurance issues that often complicate both desires.[9] Debtors appear driven to avoid discovery on the claims at all costs, preferring to move to mediation where insurers' and claimants' discovery demands might be delayed or denied under the pressure of a mediation to resolve all issues.

Insurers are disincentivized to settle because they believe that they have legitimate coverage defenses that have been given short shrift. Claimants not only get no emotional closure or vindication, but the lack of clarity on coverage issues might cause them to believe that the debtor may have more insurance than what is available. This dynamic significantly impedes the negotiation process, so mediation of these disputes — rather than the quick and expedient process promised to the courts — has resulted in millions spent on an often-fruitless mediation process.

Short of allowing litigation to proceed, another way that the bankruptcy courts could address the lack of infor-

3 The average time in bankruptcy for those cases was two years and three months, and professional fees averaged $7.83 million. The latter figures do not account for all professionals' fees and includes prepackaged cases that were out of bankruptcy in less than a year. These figures show the cost and friction inherent in these cases. *See, e.g.*, Marie T. Reilly, "B: Outcomes of Cases," *Catholic Dioceses in Bankruptcy* at 36 (2020), *available at* elibrary.law.psu.edu/bankruptcy/36.

4 89 F.3d 1386 (8th Cir. 1996).

5 *Id.* at 1394 (holding as a matter of law "that Adamson's abuse ... was expected by the Diocese for purpose of determining whether there was an occurrence under the policies in question. A reasonably prudent person in the position of the Diocese should have known there was a substantial probability that Adamson would continue to sexually abuse children."). The Diocese of Winona-Rochester now is in bankruptcy and is in mediation concerning abuse claims, many of which also involve Father Adamson, as to whom the Eighth Circuit rendered this opinion on coverage.

6 Report I of the 40th Statewide Grand Jury, July 27, 2018, *available at* www.attorneygeneral.gov/wp-content/uploads/2018/08/A-Report-of-the-Fortieth-Statewide-Investigating-Grand-Jury_Cleland-Redactions-8-12-08_Redacted.pdf ("There have been other reports about child sex abuse within the Catholic Church. But never on this scale. For many of us, those earlier stories happened someplace else, someplace away. Now we know the truth: it happened everywhere.... We subpoenaed, and reviewed, half a million pages of internal diocesan documents. They contained credible allegations against over three hundred predator priests. Over one thousand child victims were identifiable, from the church's own records.").

7 *Id.*

8 *See* June 19, 2020, Order on Pretrial Conference, *available at* https://casedocs.omniagentsolutions.com/cmsvol2/pub_47282/825930_1145.pdf ("The Committee of Abuse Survivors, the USOPC, the insurance carriers and the Debtor are ordered to participate in a remote mediation with the mediators to occur on a date and time set by the mediators but to occur between July 27, 2020, and August 14, 2020. Ten (10) days prior to the mediation date, the Committee of Abuse Survivors, the USOPC, and the insurance carriers shall submit a *confidential and meaningful* settlement offer on the same date to the mediators.") (emphasis in original).

9 For example, Olympic Gymnast Simone Biles tweeted, after months of mediation involving two well-respected mediators and dozens of parties, "Still want answers from USAG and USOPC [U.S. Olympic and Paralympic Committee]. Wish they BOTH wanted an independent investigation as much as the survivors [and] I do." *See* twitter.com/Simone_Biles/status/1233763542978977793. Similarly, after the Diocese of Rochester bankruptcy filing, one victim noted, "Most of us do not give a hoot about the money.... We're after who's responsible, who's accountable, which priests are still in the diocese and currently in ministry." Corina Knoll, "He Sued Over a Priest's Abuse. Then the Diocese Filed for Bankruptcy," *New York Times* (Sept. 26, 2019), *available at* nytimes.com/2019/09/26/nyregion/sexual-abuse-rochester-diocese-catholic.html. In that victim's view, the ultimate goal of the diocesan bankruptcy was to evade transparency. *Id.*

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mation that undermines the mediation process and the victims' desire for justice is to appoint an examiner or require the creation of a data room containing materials concerning the debtors' actions in connection with the alleged abusers. Section 1104(c) of the Bankruptcy Code allows the bankruptcy court to appoint an examiner to investigate "any allegations of fraud, dishonesty, incompetence, misconduct, mismanagement or irregularity in the management of the affairs of the debtor of or by current or former management of the debtor." In sexual-abuse cases, the examiner could investigate the debtor's conduct, including whether it has shifted assets in advance of bankruptcy.[10] Such a process would be far more efficient than piecemeal litigation in dozens (or hundreds or more) of individual litigation actions and could simultaneously support a mediation process. Armed with information about the debtor's actions and assets, the parties would have a fuller understanding of the debtor's liability, the potential barriers to coverage and the availability of assets.

While more fulsome disclosure could reveal truths that debtors would rather remain buried, the resulting transparency would be a boon to the swift resolution of this type of complicated bankruptcy case, which intertwines coverage and personal-injury liability issues with traditional bankruptcy issues. Although most of these cases do eventually settle, they could likely be resolved more efficiently if the parties were given a real chance to vindicate their rights through discovery, coverage litigation or other adversarial process. abi

10 For example, claimants have accused the Boy Scouts of hiding assets in bankruptcy remote trusts. In the *Diocese of Santa Fe* case, claimants are seeking derivative standing to pursue alleged fraudulent transfers.

AUGUST 18, 2020

No 'Core' Jurisdiction to Protect Nondebtors with Injunctions, N.Y. District Judge Says

> New York district judge differs with the Third Circuit on a bankruptcy court's constitutional power to issue nondebtor, third-party releases.

It was not surprising when Chief District Judge Colleen McMahon of New York City upheld the bankruptcy court's preliminary injunction barring private litigants and government officials from suing nondebtor officers of opioid manufacturer Purdue Pharmaceuticals LP.

However, it may come as a surprise to learn that Judge McMahon ruled that the bankruptcy court did not have "arising in" jurisdiction to form the basis for the preliminary injunction. Instead, she held that the bankruptcy court had only non-core, "related to" jurisdiction to underpin the injunction.

The August 11 opinion seems to say that the bankruptcy court may only issue a report and recommendation if the debtor's chapter 11 plan includes a permanent injunction protecting nondebtors. In other words, a non-consensual third-party release in a plan may be subject to *de novo* review in district court. Consequently, the debtor might be unable to consummate a confirmed plan, even in the absence of an appeal, until the district court has reviewed aspects of the plan where jurisdiction was only “related to.”

By finding that the bankruptcy court lacked core jurisdiction, Judge McMahon’s decision seems to part company with a recent decision by the Third Circuit in *Opt-Out Lenders v. Millennium Lab Holdings II LLC (In re Millennium Lab Holdings II LLC)*, 945 F.3d 126 (3d Cir. Dec. 19, 2019). In *Millennium*, the Third Circuit found constitutional authority in the bankruptcy court to grant nondebtor, third-party releases.

Curiously, Judge McMahon’s decision is arguably at odds with the broader language in her own opinion from October 2018 in *Lynch v. Lapidem Ltd. (In re Kirwan Offices SARL)*, 592 B.R. 489 (S.D.N.Y. Oct. 10, 2018), *aff’d sub nom. Lynch v. Mascini Holdings Ltd. (In re Kirwan Offices SARL)*, 792 F. App’x 99 (2d Cir. 2019). To read ABI’s report, **click here**.

The District Attorneys’ Civil Suits

Six months before Purdue’s bankruptcy, five district attorneys in Tennessee mounted a lawsuit under state law against the opioid maker and its former president and co-chairman. The statute gave the plaintiffs a right of action for damages against those who participated in an illegal drug market in the state.

One month before Purdue’s chapter 11 filing, the district attorneys moved for summary judgment against the co-chairman as to liability. Immediately after bankruptcy, the debtor filed a motion for preliminary injunction to halt 2,600 governmental enforcement and private lawsuits in state and federal courts against the company’s nondebtor owners, officers and directors, including the co-chairman.

The bankruptcy court granted a five-month preliminary injunction followed by a six-month extension. The Tennessee district attorneys appealed both injunctions. Judge McMahon upheld the preliminary injunction, but with significant caveats regarding jurisdiction.

Court Finds "Related To" Jurisdiction

The district attorneys argued that the bankruptcy court lacked jurisdiction to support the injunctions.

Judge McMahon found "related to" jurisdiction, because the suit in state court against the co-chairman might have a "conceivable effect" on the corporate bankruptcy.

From Second Circuit authority stemming from Bernard Madoff's Ponzi scheme, Judge McMahon said "that when one tortfeasor files for bankruptcy, any action against their co-tortfeasors for the same conduct falls within the bankruptcy court's 'related to' jurisdiction, since a finding of joint and several liability against the whole group could impact the *res* of the insolvent party's estate." *See SPV Osus Ltd. v. UBS AG*, 882 F.3d 333, 342 (2d Cir. 2018). In other words, she said, there was a conceivable effect because "the individual case is likely to raise the issue of the corporate entity's liability, even if only indirectly."

There was also a conceivable effect, Judge McMahon said, because the co-chairman may have rights of indemnity and contribution from the debtor. Unlike the Third Circuit, she said that the Second Circuit does not require "the intervention of another lawsuit" before there is "related to" jurisdiction in those circumstances. *Cf. In re Combustion Engineering Inc.*, 391 F.3d 190, 227 (3d Cir. 2004).

Therefore, the bankruptcy court had "related to" jurisdiction to underpin the injunction. As a preliminary injunction lacking finality, there was no question about the effectiveness of the bankruptcy court's order without district court review.

But There Was No "Arising In" Jurisdiction

The bankruptcy court had also found "arising in" jurisdiction to support the injunction.
The bankruptcy court reasoned that the injunction arose in bankruptcy to enable

The bankruptcy court reasoned that the injunction arose in bankruptcy to enable sufficient time to foster negotiation of a settlement and plan. Judge McMahon disagreed.

Judge McMahon said that the state law claims against the co-chairman were "entirely independent of the bankruptcy proceeding; they arise under a state statute and they were filed months before there was any bankruptcy. Neither the [state statute] nor the lawsuit references or depends on any order of the Bankruptcy Court for their existence."

Because "arising in" proceedings are "core," but because the claims against the co-chairman did not "arise in" the bankruptcy case, Judge McMahon said that the bankruptcy court did not have authority to characterize the injunction against the co-chairman under Section 105(a) as a "core" proceeding.

Judge McMahon was not finished. She made several assumptions affecting the bankruptcy court's final adjudicatory authority as the chapter 11 case unfolds.

If there were a final, enforceable settlement agreement, if it were incorporated into a confirmable chapter 11 plan, and if an "arising in" jurisdictional argument were to arise "in the context of a confirmation fight," Judge McMahon said that "the Bankruptcy Court would still not be exercising core jurisdiction over the [state law] claims by confirming the plan."

There was more. Judge McMahon said that the "Bankruptcy Court cannot now, nor will it ever be able to, adjudicate the [state law] claims against [the co-chairman] without first being permitted to do so by this court, reviewing an order of the Bankruptcy Judge *de novo.*"

Although there was no "arising in" jurisdiction, Judge McMahon upheld issuance of the preliminary injunction given "related to" jurisdiction. She found no abuse of discretion under the traditional standards for a preliminary injunction.

However, Judge McMahon vacated portions of the preliminary injunction that referred to the suits as "core" proceedings. She remanded "for further proceedings with respect to the other [lawsuits against officers, directors and owners] that are not the subject of this appeal."

Observations

Observations

Finding no core jurisdiction for injunctions protecting nondebtors, Judge McMahon's opinion seems at odds with the Third Circuit's recent decision in *Millennium*. To read ABI's report, **click here**.

In *Millennium*, the Third Circuit found constitutional power for the bankruptcy court to enter a final order granting releases to company insiders who posted $325 million to fund a reorganization plan. The appeals court said the releases were constitutionally appropriate because there would have been no reorganization and no plan confirmation absent the $325 million contributed by the shareholders in return for releases.

In Purdue's reorganization, insiders might end up posting several billion dollars to fund a chapter 11 plan, in return for which they would be granted releases and injunctions barring creditors from suing them. Contrary to Judge McMahon's holding, it seems as though the Purdue bankruptcy judge would have final adjudicatory power to grant releases were the case in the Third Circuit.

In *Kirwan* in 2018, Judge McMahon appeared to hold that bankruptcy courts possess core jurisdiction and constitutional power to enter chapter 11 confirmation orders, including so-called nondebtor, third-party releases of non-bankruptcy claims. It is possible that Judge McMahon would find core jurisdiction for third-party releases as part of confirmation, but not at the stage of a preliminary injunction.

In her *Perdue* opinion, Judge McMahon said the bankruptcy court would not have core jurisdiction to "*adjudicate* the [state law] claims against [the co-chairman]." [Emphasis added.] However, the bankruptcy court at confirmation would not be adjudicating the state law claims. It would be entering an injunction in aid of confirmation.

The Second and Third Circuits have generally been on the same page when it comes to authorizing third-party, nondebtor injunctions in chapter 11 plans. However, the Second Circuit has not pinned down the bankruptcy court's constitutional power as succinctly as the Third Circuit.

Opinion Link

PREVIEW

https://abi-opinions.s3.amazonaws.com/Purdue.pdf

Case Details

Case Citation	Dunaway v. Purdue Pharmaceuticals LP (In re Purdue Pharmaceuticals LP), 19-10941 (S.D.N.Y. Aug. 11, 2020).
Case Name	Dunaway v. Purdue Pharmaceuticals LP (In

	re Purdue Pharmaceuticals LP)
Case Type	Business
Court	2nd Circuit New York New York Southern District
Bankruptcy Tags	Bankruptcy Litigation Practice and Procedure Venue/Jurisdiction Business Reorganization Mass Torts

[+] FEEDBACK

Faculty

Hon. Kevin J. Carey is a partner in Hogan Lovells US LLP's Business Restructuring and Insolvency and Financial Services practices in Philadelphia and is a retired bankruptcy judge. He represents both companies and creditors as they navigate the treacherous waters of domestic and cross-border bankruptcy proceedings. Judge Carey was first appointed to the U.S. Bankruptcy Court for the Eastern District of Pennsylvania in 2001, then in 2005 began service on the U.S. Bankruptcy Court for the District of Delaware (as chief judge from 2008-11). During that time, he authored more than 200 reported decisions, issued important rulings on key issues such as valuation, fiduciary duties and other complex chapter 11, confirmation issues, and presided over high-profile cases, including *Exide Technologies*, *Tribune Co.* and *New Century Financial*. He is ABI's Vice President-Membership, a past global chairman of the Turnaround Management Association and an honorary member of the Turnaround, Restructuring and Distressed Investing Hall of Fame. He also is a Fellow of the American College of Bankruptcy and a member of the International Insolvency Institute, and he is a member of the National Conference of Bankruptcy Judges. In addition, he was the first judge to serve as global chair of the Turnaround Management Association. Judge Carey lectures worldwide on bankruptcy issues and is a contributing author to *Collier on Bankruptcy*. In addition, he is a part-time adjunct professor in the LL.M. in Bankruptcy program at St. John's University School of Law in New York City. Judge Carey began his legal career in 1979 as law clerk to Bankruptcy Judge Thomas M. Twardowski, then served as clerk of court in the U.S. Bankruptcy Court for the Eastern District of Pennsylvania. He received his B.A. in 1976 from Pennsylvania State University and his J.D. in 1979 from Villanova University School of Law.

Lara J. Fogel is the chief of the Government & Healthcare Fraud Section in the Division of Law at the New Jersey Attorney General's Office in Newark. Before joining the Attorney General's Office, she worked as an associate at Levine Lee LLP in New York City in complex civil litigation and white collar and securities enforcement defense. Prior to that, she served as a career judicial clerk to Hon. Burton R. Lifland of the U.S. Bankruptcy Court for the Southern District of New York. Ms. Fogel began her law career as a litigation associate at Thacher Proffitt & Wood LLP in New York City. She received her undergraduate degree *summa cum laude* and Phi Beta Kappa from Barnard College, Columbia University, and her J.D. from Georgetown University Law School, where she served as the Executive Editor of the *American Criminal Law Review*.

David J. Molton is a partner at Brown Rudnick LLP in New York and a Fellow of INSOL International. He chairs the firm's Litigation & Arbitration and Bankruptcy & Corporate Restructuring Practice Groups, and is chair of Cross-Border, Mass Tort, and Restructuring Litigation. Mr. Molton specializes in complex financial, commercial and mass tort litigation matters in federal, state and bankruptcy courts in the U.S., and he represents foreign liquidators,official committees of creditors, unofficial ad hoc committees of creditors and interested parties in financial fraud and mass tort related litigations and bankruptcies in the U.S. and in foreign jurisdictions. Previously, Mr. Molton clerked for Hon. Edward Lumbard of the U.S. Court of Appeals for the Second Circuit, then served as an assistant district attorney for the district attorney for New York County, where he worked with the special narcotics prosecutor, Hon. Sterling Johnson, Jr., supervising joint federal and state law enforcement task force teams and investigations for the Department of Justice's New York Drug

Enforcement Task Force and Organized Crime Drug Enforcement Task Force. During this time, he prosecuted cases involving racketeering enterprises and organized crime narcotics conspiracies and distribution networks, and efforts to locate, seize and effectuate the forfeiture of proceeds and assets connected to those criminal activities both in the U.S. and abroad. Mr. Molton received his B.A. in 1979 from Brandeis University and his J.D. in 1982 from New York University School of Law.

Arik Preis is a partner with Akin Gump Strauss Hauer & Feld LLP in New York and concentrates his practice on corporate restructurings in chapter 11 cases and out-of-court restructurings. He has nearly 20 years of experience advising on restructurings across all industries, with a particular focus on retail and energy. Mr. Preis represents informal and official committees of creditors, debtors, individual creditors, rights-offering backstoppers, and lenders in in-court and out-of-court restructurings. He has also represented lenders and administrative agents in connection with non-restructuring-related loans, including leveraged loan transactions, mezzanine financings and more traditional loans. Mr. Preis's work extends to the representation of creditors in the analysis of all types of debt documents and capital structures. He has been recognized in *Chambers USA* from Bankruptcy/Restructuring from 2016-18 and in *IFLR1000 US* for Restructuring in 2019. Mr. Preis received his B.A. with honors in 1997 from Wesleyan University and his J.D. in 2020 from the University of Virginia School of Law.

Andrew M. Troop is a partner in Pillsbury Winthrop Shaw & Pittman LLP's Insolvency & Restructuring practice in New York, where he focuses his practice on business reorganizations and debtors' and creditors' rights. He also heads the firm's Distressed Energy Opportunity Task Force, which identifies and helps clients capitalize on opportunities across energy sources and disciplines. Mr. Troop has helped private-equity clients acquire, sell and reorganize U.S. and international portfolio companies and defend fraudulent-transfer and breach-of-duty claims. He also represents nonprofits in debtors' and creditors' rights matters. Recently, Mr. Troop was one of the lead lawyers in the successful reorganization of LyondellBasell Industries, the third-largest petrochemical company in the world. He also represented Saint Vincent Catholic Medical Centers in its chapter 11 reorganization case, as well other nonprofit, community-based service providers in both restructuring and corporate matters. Mr. Troop has an active *pro bono* practice. He has served on the board of directors for Greater Boston Legal Services for over a decade, and was honored by the Massachusetts Bar Association with its 2017 Pro Bono Publico award, which is presented to individuals who have been instrumental in developing, implementing and supporting *pro bono* programs. Mr. Troop is admitted to practice in New York and Massachusetts and is recognized by *Chambers USA* in Bankruptcy/Restructuring, is listed in *The Best Lawyers in America* for Bankruptcy and Creditor/Debtor Rights/Insolvency and Reorganization Law, Litigation – Bankruptcy from 2001-21), and is listed among *Nightingale Health Care News*'s "Top 10 Health Care Transaction Lawyers of the Year." He also co-chairs the American Bar Association's Business Bankruptcy Committee's Government Powers Subcommittee and is a coordinating editor for the *ABI Journal*'s Intensive Care column. Mr. Troop received his B.A. *cum laude* from Amherst College and his J.D. *cum laude* from Northwestern School of Law.