AMERICAN BANKRUPTCY INSTITUTE

2021 Alexander L. Paskay Memorial Virtual Bankruptcy Seminar

Business Bankruptcy Legal Update

Hon. Caryl E. Delano
U.S. Bankruptcy Court (M.D. Fla.) | Tampa

Daniel Etlinger
Jennis Morse Etlinger | Tampa

Leanne M. Prendergast
FisherBroyles, LLP | Jacksonville

Jay M. Sakalo
Bilzin Sumberg Baena Price & Axelrod, LLP | Miami

CONCURRENT SESSION

2021

Business Bankruptcy Legal Update
45th Annual Alexander L. Paskay Memorial Bankruptcy Seminar
March 26, 2021

Presented by:

Hon. Caryl E. Delano, Moderator
Chief United States Bankruptcy Judge
Middle District of Florida

******

Daniel Etlinger, Esquire
Jennis Morse Etlinger
Tampa, Florida

******

Leanne McKnight Prendergast, Esquire
FisherBroyles, LLP
Jacksonville, Florida

******

Jay M. Sakalo, Esquire
Bilzin Sumberg
Miami, Florida

******

Contributors:
Elena Paras Ketchum, Esq.
Stichter, Riedel, Blain & Postler, P.A.
Tampa, Florida

McKenzie L. McAdams
Stetson University College of Law

Business Bankruptcy Legal Update
45th Annual Alexander L. Paskay Memorial Bankruptcy Seminar
March 26, 2021

Table of Contents

LEGISLATIVE UPDATE

45th Annual Alexander L. Paskay Memorial Bankruptcy Seminar
Business Bankruptcy Legal Update
March 26, 2021

CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY (CARES) ACT
March 27, 2020

- Amended § 1182(a)(A) increases the eligibility limits of Subchapter V small business debtors from $2,725,625 to $7,500,000 for cases filed through 3/27/21.

- New § 101(10A)(B)(ii)(V) and § 1325(b)(2) exclude from "current monthly income" and "disposable income" any payments made to the debtor with respect to COVID-19 through 3/27/21.

- New § 1329(d)(1) permits a debtor who is experiencing or has experienced material financial hardship as a result of COVID-19 to modify a plan that was confirmed prior to March 27, 2020, for a period not to exceed seven years after the date the first payment was due under the original confirmed plan.

- Directed Secretary of Education to defer student loan payments and interest for six months. Later extended by Executive Order to 9/30/21.

****

LEGISLATIVE UPDATE

45th Annual Alexander L. Paskay Memorial Bankruptcy Seminar
Business Bankruptcy Legal Update
March 26, 2021

CONSOLIDATED APPROPRIATIONS ACT (CAA)
December 27, 2020

- New § 364(g)(1) permits debtors to obtain Payroll Protection Program loans, mooting the Eleventh Circuit's ruling in *USF Federal Credit Union v. Gateway Radiology Consultants, P.A.*, 983 F.3d 1239 (11th Cir. 2020). *But*, the Administrator of SBA MUST FIRST deliver a letter to U.S. Trustee saying the SBA will consider loan applications from bankruptcy debtors.

- Section 541(b)(ii) clarifies that COVID-19 payments are not property of the estate. Sunsets on 12/27/21.

- New § 1328(i) permits the bankruptcy court discretion to grant a discharge to a Chapter 13 debtor (1) who defaulted on three or fewer residential mortgage payments on or after March 13, 2020, because of material COVID-19-related hardship or (2) whose plan provides to cure and maintain under § 1322(b)(2) and has entered into a forbearance agreement. Sunsets on 12/27/21.

- Under new § 525(d), no persons may be denied relief under the CARES Act because they are or were a bankruptcy debtor. Sunsets on 12/27/21.

- New § 365(d)(3)(B) extends the time for the performance under an unexpired nonresidential real property lease in Subchapter V case for an additional 60 days if the debtor has or is experiencing hardship due to COVID-19. Sunsets on 12/27/22.

- New § 501(f)(1) and amended § 502(b)(9) allow certain mortgage servicers to file supplemental proofs of claim for payments not received during a forbearance agreement. Sunsets on 12/27/22.

- Section 365(d)(4)(a) extends the time for debtor or trustee to assume a non-residential real property lease from 120 days to 210 days. Sunsets on 12/27/22.

- Under new § 547(j), the trustee may not avoid the payment of certain covered rental and supplier arrearages. Sunsets on 12/27/22.

- New § 366(d) prohibits utilities from terminating services to individual debtors who have failed to provide adequate assurance of future performance if the debtor makes a payment to the utility for service provided during the 20 days after the order for relief and thereafter makes postpetition payments as they become due. Sunsets on 12/27/21.

- Section 507(d) subrogates the claims of parties who pay customs duties to the government to the government's priority status. Sunsets on 12/27/21.

****

BANKRUPTCY CODE INSERT

Relevant Bankruptcy Sections from Consolidated Appropriations Act, 2021

Compiled by:
Elena Paras Ketchum, Stichter, Riedel, Blain & Postler, P.A.

The Consolidated Appropriations Act, 2021 (the "Act") was signed into law and became effective on December 27, 2020.

The Act, by the provisions therein entitled (1) *Division N (Additional Coronavirus Response and Relief), Title III (Continuing the Paycheck Protection Program and Other Small Business Support), Section 320* and (2) *Division FF (Other Matter), Title X (Bankruptcy Relief), Section 1001*, amends specific sections of the United States Bankruptcy Code (the "Bankruptcy Code"). Sections 320 and 1001 of the Act are set out in full below so as to be inserted into your Bankruptcy Code for ease of reference. The amendments reflected in Sections 320 and 1001 of the Act sunset either on the date that is one (1) year after the date of enactment of the Act (December 27, 2021), or two (2) years after the enactment date (December 27, 2022).

Note, however, Section 320, pursuant to its own terms (paragraph (f)(1)), is not currently in effect. Section 320 shall only become effective upon the Administrator of the Small Business Administration's submitting to the Director of the Executive Office for United States Trustees a written determination that any debtor or trustee in bankruptcy is eligible for a loan under paragraphs (36) and (37) of section 7(a) of the Small Business Act. As of March 2, 2021, such determination has not been furnished.

I. Section 320 of Act:

The following (as set forth in Section 320 of the Act) are amendments to Sections 364, 503(b), 1191, 1225, and 1325 of the Bankruptcy Code. As noted in "Effective Date; Sunset; and Applicability" below, these amendments are not currently in effect. If the amendments do become effective, they shall apply to any bankruptcy case commenced before December 27, 2022 (the date that is two (2) years after the Act's enactment) and shall sunset on December 27, 2022.

Section 364 is amended by adding at the end the following:

> ''(g)(1) The court, after notice and a hearing, may authorize a debtor in possession or a trustee that is authorized to operate the business of the debtor under section 1183, 1184, 1203, 1204, or 1304 of this title to obtain a loan under paragraph (36) or (37) of section 7(a) of the Small Business Act (15 U.S.C. 636(a))[1], and such loan shall be treated as a debt

[1] This is what is commonly referred to as a PPP loan.

to the extent the loan is not forgiven in accordance with section 7A of the Small Business Act or subparagraph (J) of such paragraph (37), as applicable, with priority equal to a claim of the kind specified in subsection (c)(1) of this section.

''(2) The trustee may incur debt described in paragraph (1) notwithstanding any provision in a contract, prior order authorizing the trustee to incur debt under this section, prior order authorizing the trustee to use cash collateral under section 363, or applicable law that prohibits the debtor from incurring additional debt.

''(3) The court shall hold a hearing within 7 days after the filing and service of the motion to obtain a loan described in paragraph (1). Notwithstanding the Federal Rules of Bankruptcy Procedure, at such hearing, the court may grant relief on a final basis.''.[2]

Section 503(b) is amended—

in paragraph (8)(B), by striking ''and'' at the end;

in paragraph (9), by striking the period at the end and inserting ''; and''; and

by adding at the end the following:
''(10) any debt incurred under section 364(g)(1) of this title.''.

Section 1191 is amended by adding at the end the following:

''(f) SPECIAL PROVISION RELATED TO COVID–19 PANDEMIC.—Notwithstanding section 1129(a)(9)(A) of this title and subsection (e) of this section, a plan that provides for payment of a claim of a kind specified in section 503(b)(10) of this title may be confirmed under subsection (b) of this section if the plan proposes to make payments on account of such claim when due under the terms of the loan giving rise to such claim.''.

Section 1225 is amended by adding at the end the following:

''(d) Notwithstanding section 1222(a)(2) of this title and subsection (b)(1) of this section, a plan that provides for payment of a claim of a kind specified in section 503(b)(10) of this title may be confirmed if the plan proposes to make payments on account of such claim when due under the terms of the loan giving rise to such claim.''.

Section 1325 is amended by adding at the end the following:

''(d) Notwithstanding section 1322(a)(2) of this title and subsection (b)(1) of this section, a plan that provides for payment of a claim of a kind specified in section 503(b)(10) of this title may be confirmed if the plan proposes to make payments on account of such claim when due under the terms of the loan giving rise to such claim.''.

[2] Rule 4001(c)(2) states that a final hearing on a motion under §364 is to be held no earlier than 14 days after service of the motion. The rule is being amended to provide for the 7-day time period in the event Section 320 takes effect.

EFFECTIVE DATE; SUNSET; AND APPLICABILITY PROVISIONS:

The foregoing amendments to Sections 364, 503(b), 1191, 1225, and 1325 shall —

> (A) take effect on the date on which the Administrator submits to the Director of the Executive Office for United States Trustees a written determination that, subject to satisfying any other eligibility requirements, any debtor in possession or trustee that is authorized to operate the business of the debtor under section 1183, 1184, 1203, 1204, or 1304 of title 11, United States Code, would be eligible for a loan under paragraphs (36) and (37) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)); and
>
> (B) apply to any case pending on or commenced on or after the date described in subparagraph (A).

If the foregoing amendments made to Sections 364, 503(b), 1191, 1225, and 1325 of title 11, United States Code take effect in accordance with the "effective date" provision above, effective on the date that is 2 years after the date of enactment of this Act (or December 27, 2022) (i) section 364 of title 11, United States Code, is amended by striking subsection (g); (ii) section 503(b) of title 11, United States Code, is amended (I) in paragraph (8)(B), by adding ''and'' at the end; (II) in paragraph (9), by striking ''; and'' at the end and inserting a period; and (III) by striking paragraph (10); (iii) section 1191 of title 11, United States Code, is amended by striking subsection (f); (iv) section 1225 of title 11, United States Code, is amended by striking subsection (d); and (v) section 1325 of title 11, United States Code, is amended by striking subsection (d).

Notwithstanding the foregoing amendments, if the amendments made to Sections 364, 503(b), 1191, 1225, and 1325 of title 11, United States Code take effect in accordance with the "effective date" provision above, such amendments shall apply to any case under title 11, United States Code, commenced before the date that is 2 years after the date of enactment of this Act (or before December 27, 2022).

****

II. Section 1001 of Act:

The following (as set forth in Section 1001 of the Act) are amendments to Sections 541(b), 1328, 525, 501, 502(b)(9), 1329, 365(d), 547, 366, and 507(d) of the Bankruptcy Code. As noted in the "sunset" provisions below, the amendments shall sunset either on the date that is one (1) year after the date of enactment of the Act (December 27, 2021), or two (2) years after the enactment date (December 27, 2022).

Section 541(b) is amended—

> **in paragraph (9)**, in the matter following subparagraph (B), by striking ''or'';
>
> **in paragraph (10)(C)**, by striking the period at the end and inserting ''; or''; and
>
> **by inserting after paragraph (10) the following:**
> ''(11) recovery rebates made under section 6428 of the Internal Revenue Code of 1986.''.

Effective on the date that is 1 year after the date of enactment of this Act, section 541(b) of title 11, United States Code, is amended in paragraph (9), in the matter following subparagraph (B), by adding ''or'' at the end; in paragraph (10)(C), by striking ''; or'' and inserting a period; and by striking paragraph (11).

Section 1328 is amended by adding at the end the following:

> ''(i) Subject to subsection (d), after notice and a hearing, the court may grant a discharge of debts dischargeable under subsection (a) to a debtor who has not completed payments to the trustee or a creditor holding a security interest in the principal residence of the debtor if—
>
> > ''(1) the debtor defaults on not more than 3 monthly payments due on a residential mortgage under section 1322(b)(5) on or after March 13, 2020, to the trustee or creditor caused by a material financial hardship due, directly or indirectly, by the coronavirus disease 2019 (COVID–19) pandemic; or
> >
> > ''(2)(A) the plan provides for the curing of a default and maintenance of payments on a residential mortgage under section 1322(b)(5); and
> >
> > ''(B) the debtor has entered into a forbearance agreement or loan modification agreement with the holder or servicer (as defined in section 6(i) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605(i)) of the mortgage described in subparagraph (A).''.

Effective on the date that is 1 year after the date of enactment of this Act, section 1328 of title 11, United States Code, is amended by striking subsection (i).

Section 525 is amended by adding at the end the following:

''(d) A person may not be denied relief under sections 4022 through 4024 of the CARES Act (15 U.S.C. 9056, 9057, 9058) because the person is or has been a debtor under this title.''.

Effective on the date that is 1 year after the date of enactment of this Act, section 525 of title 11, United States Code, is amended by striking subsection (d).

Section 501 is amended by adding at the end the following:

''(f)(1) In this subsection—

''(A) the term 'CARES forbearance claim' means a supplemental claim for the amount of a Federally backed mortgage loan or a Federally backed multifamily mortgage loan that was not received by an eligible creditor during the forbearance period of a loan granted forbearance under section 4022 or 4023 of the CARES Act (15 U.S.C. 9056, 9057);

''(B) the term 'eligible creditor' means a servicer (as defined in section 6(i) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605(i)) with a claim for a Federally backed mortgage loan or a Federally backed multifamily mortgage loan of the debtor that is provided for by a plan under section 1322(b)(5);

''(C) the term 'Federally backed mortgage loan' has the meaning given the term in section 4022(a) of the CARES Act (15 U.S.C. 9056(a)); and

''(D) the term 'Federally backed multifamily mortgage loan' has the meaning given the term in section 4023(f) of the CARES Act (15 U.S.C. 9057(f)).

''(2)(A) Only an eligible creditor may file a supplemental proof of claim for a CARES forbearance claim.

''(B) If an underlying mortgage loan obligation has been modified or deferred by an agreement of the debtor and an eligible creditor of the mortgage loan in connection with a mortgage forbearance granted under section 4022 or 4023 of the CARES Act (15 U.S.C. 9056, 9057) in order to cure mortgage payments forborne under the forbearance, the proof of claim filed under subparagraph (A) shall include—

''(i) the relevant terms of the modification or deferral;

''(ii) for a modification or deferral that is in writing, a copy of the modification or deferral; and

''(iii) a description of the payments to be deferred until the date on which the mortgage loan matures.''.

Section 502(b)(9) is amended to read as follows:

> ''(9) proof of such claim is not timely filed, except to the extent tardily filed as permitted under paragraph (1), (2), or (3) of section 726(a) or under the Federal Rules of Bankruptcy Procedure, except that—
>
> > ''(A) a claim of a governmental unit shall be timely filed if it is filed before 180 days after the date of the order for relief or such later time as the Federal Rules of Bankruptcy Procedure may provide;
> >
> > ''(B) in a case under chapter 13, a claim of a governmental unit for a tax with respect to a return filed under section 1308 shall be timely if the claim is filed on or before the date that is 60 days after the date on which such return was filed as required; and
> >
> > ''(C) a CARES forbearance claim (as defined in section 501(f)(1)) shall be timely filed if the claim is filed before the date that is 120 days after the expiration of the forbearance period of a loan granted forbearance under section 4022 or 4023 of the CARES Act (15 U.S.C. 9056, 9057).''.

Effective on the date that is 1 year after the date of enactment of this Act, section 501 of title 11, United States Code, is amended by striking subsection (f); and section 502(b)(9) of title 11, United States Code, is amended (i) in subparagraph (A), by adding ''and'' at the end; (ii) in subparagraph (B), by striking ''; and'' and inserting a period; and (iii) by striking subparagraph (C).

Section 1329 is amended by adding at the end the following:

> ''(e)(1) A debtor of a case for which a creditor files a proof of claim under section 501(f) may file a request for a modification of the plan to provide for the proof of claim.
>
> ''(2) If the debtor does not file a request for a modification of the plan under paragraph (1) on or before the date that is 30 days after the date on which a creditor files a claim under section 501(f), after notice, the court, on a motion of the court or on a motion of the United States trustee, the trustee, a bankruptcy administrator, or any party in interest, may request a modification of the plan to provide for the proof of claim.''.

Effective on the date that is 1 year after the date of enactment of this Act, section 1329 of title 11, United States Code, is amended by striking subsection (e).

Section 365(d) is amended—

> **in paragraph (3)—**
>
> > (i) by inserting ''(A)'' after ''(3)'';
> >
> > (ii) by inserting '', except as provided in subparagraph (B)'' after ''such 60-day period''; and
> >
> > (iii) by adding at the end the following:

''(B) In a case under subchapter V of chapter 11, the time for performance of an obligation described in subparagraph (A) arising under any unexpired lease of nonresidential real property may be extended by the court if the debtor is experiencing or has experienced a material financial hardship due, directly or indirectly, to the coronavirus disease 2019 (COVID–19) pandemic until the earlier of—

''(i) the date that is 60 days after the date of the order for relief, which may be extended by the court for an additional period of 60 days if the court determines that the debtor is continuing to experience a material financial hardship due, directly or indirectly, to the coronavirus disease 2019 (COVID–19) pandemic; or

''(ii) the date on which the lease is assumed or rejected under this section.

''(C) An obligation described in subparagraph (A) for which an extension is granted under subparagraph (B) shall be treated as an administrative expense described in section 507(a)(2) for the purpose of section 1191(e).''; and

in paragraph (4), by striking ''120'' each place it appears and inserting ''210''.

Effective on the date that is 2 years after the date of enactment of this Act, section 365(d) of title 11, United States Code, is amended (i) in paragraph (3) by (I) striking ''(A)'' after ''(3)''; (II) striking '', except as provided in subparagraph (B)'' after ''such 60-day period''; and (III) striking subparagraphs (B) and (C); and (ii) in paragraph (4), by striking ''210'' each place it appears and inserting ''120''. Notwithstanding the amendments made by the foregoing, the amendments made in paragraphs (3) and (4) above shall apply in any case commenced under subchapter V of chapter 11 of title 11, United States Code, before the date that is 2 years after the date of enactment of this Act.

Section 547 is amended—

in subsection (b), in the matter preceding paragraph (1), by striking ''and (i)'' and inserting '', (i), and (j)''; and

by adding at the end the following:

''(j)(1) In this subsection:

''(A) The term 'covered payment of rental arrearages' means a payment of arrearages that—

''(i) is made in connection with an agreement or arrangement—

''(I) between the debtor and a lessor to defer or postpone the payment of rent and other periodic charges under a lease of nonresidential real property; and

''(II) made or entered into on or after March 13, 2020;

''(ii) does not exceed the amount of rental and other periodic charges agreed to under the lease of nonresidential real property described in clause (i)(I) before March 13, 2020; and

''(iii) does not include fees, penalties, or interest in an amount greater than the amount of fees, penalties, or interest—

''(I) scheduled to be paid under the lease of nonresidential real property described in clause (i)(I); or

''(II) that the debtor would owe if the debtor had made every payment due under the lease of nonresidential real property described in clause (i)(I) on time and in full before March 13, 2020.

''(B) The term 'covered payment of supplier arrearages' means a payment of arrearages that—

''(i) is made in connection with an agreement or arrangement—

''(I) between the debtor and a supplier of goods or services to defer or postpone the payment of amounts due under an executory contract for goods or services; and

''(II) made or entered into on or after March 13, 2020;

''(ii) does not exceed the amount due under the executory contract described in clause (i)(I) before March 13, 2020; and

''(iii) does not include fees, penalties, or interest in an amount greater than the amount of fees, penalties, or interest—

''(I) scheduled to be paid under the executory contract described in clause (i)(I); or

''(II) that the debtor would owe if the debtor had made every payment due under the executory contract described in clause (i)(I) on time and in full before March 13, 2020.

''(2) The trustee may not avoid a transfer under this section for—

''(A) a covered payment of rental arrearages; or

''(B) a covered payment of supplier arrearages.''.

Effective on the date that is 2 years after the date of enactment of this Act, section 547 of title 11, United States Code, is amended (i) in subsection (b), in the matter preceding paragraph (1), by striking '', (i), and (j)'' and inserting ''and (i)''; and (ii) by striking subsection (j). Notwithstanding the amendments made by the foregoing, the amendments made to section 547 above shall apply

in any case commenced under title 11, United States Code, before the date that is 2 years after the date of enactment of this Act.

Section 366 is amended by adding at the end the following:

> ''(d) Notwithstanding any other provision of this section, a utility may not alter, refuse, or discontinue service to a debtor who does not furnish adequate assurance of payment under this section if the debtor—
>
> > ''(1) is an individual;
> >
> > ''(2) makes a payment to the utility for any debt owed to the utility for service provided during the 20-day period beginning on the date of the order for relief; and
> >
> > ''(3) after the date on which the 20-day period beginning on the date of the order for relief ends, makes a payment to the utility for services provided during the pendency of case when such a payment becomes due.''.

Effective on the date that is 1 year after the date of enactment of this Act, section 366 of title 11, United States Code, is amended by striking subsection (d).

Section 507(d) is amended—

> **by striking** '', (a)(8)'';
>
> **by inserting** ''or subparagraphs (A) through (E) and (G) of subsection (a)(8)'' after ''(a)(9)''; and
>
> **by inserting** ''or subparagraph'' after ''such subsection''.

Effective on the date that is 1 year after the date of enactment of this Act, section 507(d) of title 11, United States Code, is amended by inserting '', (a)(8)'' before '', or (a)(9)''; by striking ''or subparagraphs (A) through (E) and (G) of subsection (a)(8)''; and by striking ''or subparagraph'' after ''such subsection''.

LEGISLATIVE UPDATE

BANKRUPTCY ADMINISTRATION IMPROVEMENT ACT
January 12, 2021

- Extends 25 temporary judgeships for five years from their current lapse date.

- Establishes a Chapter 7 Trustee Fund (28 U.S.C. § 589a(f)(1)(C)) to provide compensation of an additional $60 to Chapter 7 trustees under § 330(e).

- Provides funding to U.S. Trustee's Office and to offset cost of extending the 25 judgeships.

- Under new 28 U.S.C. § 1930(6)(B)(i), for five-year period beginning on January 1, 2021, quarterly fees in Chapter 11 cases (other than Subchapter V cases) are the greater of .4% of disbursements or $250 for each quarter in which disbursements total less than $1,000,000 and .8% of disbursements but not more than $250,000 for each quarter in which disbursements total at least $1,000,000.

Quarterly Disbursements	OLD	NEW
< $15,000	$325	$250
$62,624	$650	$250
$62,625	$650	$250.50 (.4%)
$150,000	$1,625	$600 (.4%)
$1,000,000	$10,000	$8,000 (.8%)

****

PENDING LEGISLATION

"State and Local Coronavirus Relief Extension Act"

- Would extend the CARES Act's bankruptcy provisions to 3/27/22.

- Would permit plan modifications under amended § 1329(d)(1) of cases that were confirmed prior to the date of enactment of the Extension Act (current version of § 1329(d)(1) requires plan confirmation prior to 3/27/20).

- The CAA's bankruptcy provisions that sunset on 12/27/21 remain the same.

- The CARES Act's PPP provision, currently sunsetting on 12/27/21, should sunset on date of enactment of the Extension Act (hopefully 3/27/22) but remain in effect as to cases filed before that date.

Information on the coronavirus available here

02.25.21

Durbin, Grassley Introduce Bipartisan Legislation To Extend CARES Act Bankruptcy Relief Provisions

WASHINGTON – Amid the ongoing COVID-19 pandemic, U.S. Senate Democratic Whip Dick Durbin (D-IL), Chair of the Senate Judiciary Committee, and U.S. Senator Chuck Grassley (R-IA), Ranking Member of the Senate Judiciary Committee, today introduced the *COVID-19 Bankruptcy Relief Extension Act*, bipartisan legislation to temporarily extend COVID-19 bankruptcy relief provisions enacted as part of the March 2020 *CARES Act* and December 2020 omnibus appropriations bill.

"Extending these temporary bankruptcy provisions until March 2022 will provide critical relief to families and small businesses facing hardships due to the ongoing COVID-19 pandemic," Durbin said.

"As businesses and individuals continue to struggle with the economic challenges of the ongoing pandemic, Congress is committed to providing the tools and flexibility for them to once again be successful. Last year, we passed temporary bankruptcy relief provisions to help those facing bankruptcy during the pandemic. This included increasing limits in my 2019 bill to streamline bankruptcy laws for small businesses. This bill extends that relief for an additional year," Grassley said.

The bill would extend for an additional year *CARES Act* bankruptcy provisions that are set to expire on March 27, 2021. These provisions do the following:

- Allow more small businesses to file for streamlined Chapter 11 bankruptcy proceedings underGrassley's Small Business Reorganization Act of 2019 by increasing the maximum debt limit for those procedures from $2.7m to $7.5m.

- Amend the definition of income for Chapters 7 and 13 (which govern individual bankruptcy filings) to exclude federal COVID-related relief payments from being treated as "income" for purposes of filing bankruptcy.

- Clarify that the calculation of disposable income for purposes of confirming a Chapter 13 plan does not include COVID-related relief payments.

- Permit individuals and families in Chapter 13 to seek payment plan modifications for plans confirmed before the date of enactment of this extender bill if they are experiencing a material financial hardship due to the coronavirus pandemic.

In addition, the bill would extend until March 27, 2022, several additional COVID bankruptcy relief provisions that were included in the December omnibus/COVID relief package and that are set to expire in December 2021. These provisions do the following:

- Provide that federal COVID relief payments to individuals are exempt from being treated as property of the estate in bankruptcy proceedings.

- Ensure that families in Chapter 13 bankruptcy plans who have made all plan payments but have missed 3 or fewer mortgage payments because of the pandemic are not denied a discharge for their other debts (though the mortgage payments would continue to be owed).

- Ensure that families that are or were in bankruptcy proceedings are not ineligible from *CARES Act*mortgage forbearance and eviction moratorium provisions.

- Set forth a process for creditors to file a proof of claim for payments deferred during forbearance periods granted under the *CARES Act*, and to permit modification of a chapter 13 plan to account for such proofs of claim.

- Prevent the termination of utility services in bankruptcy by ensuring that individuals and families will not be required to furnish a security deposit to maintain utility services during bankruptcy.

- Exempt customs brokers who collect and pay duties to Customs and Border Patrol on behalf of importers from the claw back provisions of the bankruptcy code when an importer files bankruptcy.

Daniel Etlinger, Esq.
McKenzie L. McAdams

EMPLOYMENT AND FEE UPDATES
"Heed Your Own Advice"

Significant Cases
In re Black & White Stripes, LLC, 623 B.R. 34 (Bankr. S.D. N.Y. 2020).
In re Vascular Access Ctrs., L.P., 613 B.R. 613 (Bankr. E.D. Pa. 2020).
In re Penland Heating & Air Conditioning, Inc., 2020 Bankr. LEXIS 1150 (Bankr. E.D.N.C. June 11, 2020).

Disclosures in Employment Applications

- ***In re Black & White Stripes, LLC***

Prepetition, Cushner & Associates, P.C. ("Cushner") represented the debtors (whose primary asset was the rights associated with a film about the Italian soccer team Juventus) and their two principals in a state court action under a "Limited Retainer Agreement." Cushner eventually filed a motion to withdraw stating that "[w]ithout disclosing any attorney-client privileges, significant differences have arisen between my firm and the Defendants as to the communication breakdown and an irrevocable breach has developed."

The debtors filed their bankruptcy cases, and in the jointly administered cases, they moved to employ Cushner as their bankruptcy counsel. The application was supported by an affidavit that made no reference to the state court matter. That affidavit was withdrawn and replaced with Cushner's affidavit that disclosed the state court case, but asserted that Cushner had no potential conflict with current *or* former clients. Several creditors and the United States Trustee objected, among other reasons, on the grounds that a potential conflict existed because, *e.g.*, "the debtors' principals may be subject to fraudulent conveyance actions as well as claims for abuse of corporate form."

The bankruptcy court analyzed the employment application under 11 U.S.C. § 327(a)'s "disinterested" requirement. First, the court noted that while Cushner's employment agreement in the state court action was titled "Limited Retainer Agreement," the retention was actually quite broad including review of the entire file and additional services as necessary. Second, the avoidance actions against the

debtors' principals might be among some of the debtors' estates' most significant assets. Third, the court distinguished a case in which an application to employ special litigation counsel "to pursue a specific set of claims against a specific set of defendants, against which it had already asserted substantially related claims on behalf of the debtor's creditor" was granted, because the retention in that case, *In re Arochem Corp.*, 176 F.3d 610 (2d Cir. 1999), was very narrow. For those reasons, the court denied Cushner's employment application.

- ***In re Vascular Access Ctrs., L.P.***
  In October 2019, Dilworth Paxson LLP ("Dilworth") was approached by the debtor's general partner who was contemplating personal bankruptcy. Just days later, Dilworth determined that the Debtor, not its general partner, was the appropriate entity to file bankruptcy. However, several creditors beat the debtor to the punch, and in November 2019, filed an involuntary against the debtor. The debtor filed its application to employ Dilworth supported by a declaration that noted, in part, the initial work performed in October, but that stated Dilworth did not represent the general partner. Dilworth filed a supplemental declaration to address additional payments received and, on January 3, 2020, filed a second supplemental declaration to provide additional disclosures regarding the Debtor's insiders.

  The United States Trustee objected to Dilworth's employment due to "lack of adequate disclosures, conflicts of interest and adverse interest to the estate." Again, the court analyzed the situation under 11 U.S.C. § 327(a)'s "disinterested" standard succinctly stating "the Court must disqualify Dilworth if it determines that Dilworth has an actual conflict of interest, may disqualify Dilworth if it determines that Dilworth has a potential conflict of interest, and may not disqualify Dilworth if it is based solely on an appearance of conflict."

  Here, the bankruptcy court determined that because of the limited duration of Dilworth's representation of the general partner and the lack of simultaneous representation, only a potential conflict of interest existed, and the court declined to exercise its discretion to disqualify Dilworth. However, because of Dilworth's failure to make proper disclosures under Bankruptcy Rule 2014(a), the court prospectively denied Dilworth's fees and costs expended prior to its January 3, 2020 accurate disclosure, likely costing Dilworth's tens of thousands of dollars.

- ***Takeaway* – Heed Your Own Advice!** Attorneys and professionals caution their clients to accurately and fully disclose matters to the tribunal lest there be repercussions. These cases serve as a reminder that we ourselves must be cognizant of the disclosures we submit to the court; otherwise we jeopardize our own employment and fee applications.

Subchapter V Employment Applications

- ***In re Penland Heating & Air Conditioning, Inc.***
  The debtor filed for relief under Subchapter V of Chapter 11, and the United States Bankruptcy Administrator appointed a Subchapter V trustee, who was an attorney himself (the "Trustee"). The Trustee filed an application to employ general counsel under 11 U.S.C. § 327(a). At a hearing on the application, the Trustee stated that he filed the application "as a matter of course but did not have any current need for legal representation in the Debtor's case."

  As a starting point, neither Section 327(a) nor the Small Business Reorganization Act of 2019 ("SBRA") prohibits a Subchapter V trustee from employing attorneys or other professionals on his or her behalf. However, quoting Bankruptcy Judge Paul W. Bonapfel (N.D. Ga.) in a law review article, the court noted that:

  > [E]mployment of attorneys or other professionals has the potential to substantially increase the administrative expenses of the case. In view of the intent of the SBRA to streamline and simplify chapter 11 cases for small business debtors and reduce administrative expenses, courts may be reluctant to permit a sub V trustee to retain attorneys or other professionals except in unusual circumstances.

  Ultimately, the court denied the application stating that to authorize "a Subchapter V trustee to employ professionals, including oneself as counsel, routinely and without specific jurisdiction or purpose is contrary to the intent and purpose of the SBRA."

- ***Takeaway* – Mind the Meter.** Subchapter V trustees are permitted to seek employment of attorneys and professionals should that specific case warrant it. If a determination is made and an application submitted, the trustee should be prepared to defend the request. Furthermore, the case stands for the broader proposition that all administrative expenses will be closely examined in a Subchapter V case which are specifically designed to travel lighter than a traditional Chapter 11 case.

An “Oldie but Goodie” Example of Questionable Administrative Expenses from the W.S.J.

Expenses questioned by judge or U.S. Trustee	Cost	Outcome
Roundtrip business class flight between London and New York by law firm Proskauer Rose.	**$8,675.78**	Proskauer cut $5,965.78 from request to match estimated cost of coach flight.
Photocopying and stationery charges from law firm Slaughter and May.	**$55,144.28**	Slaughter and May voluntarily reduced $73,000 for that and other expenses.
Blackstone Group client dinner with 17 attendees that exceeded the $20-per-person limit by $3,605.60.	**$4,000**	The firm withdrew the request.
Two three-night stays at the Waldorf-Astoria from restructuring firm Development Specialists.	**$3,451.41**	The firm said nearby hotels were full, but agreed to take $1,000 off the bill.
Car-service trips from consulting firm Goldin Associates.	**$937.87**	Goldin proposed to reduce travel expenses by $305.99.
Minibar charges at the London NYC Hotel from consultant San Marino Business Partners.	**$54.42**	Charges ultimately approved.

Source: Court filings and transcripts; the firms

The Wall Street Journal

AUTOMATIC STAY UPDATES[1]
"Can't Touch This"

Significant Cases
City of Chicago v. Fulton, 141 S. Ct. 585, 208 L. Ed. 2d 384 (2021).
In re Nocek, 2020 Bankr. LEXIS 978 (Bankr. E.D.N.C. Apr. 7, 2020).

Retention of Estate Property

- ***City of Chicago v. Fulton***
  In several bankruptcy cases, the City of Chicago (the "City") had impounded the debtors' vehicles prepetition for failure to pay fines for motor vehicle infractions. Each debtor then filed a Chapter 13 petition and requested that the City return his or her vehicle. The City refused to return the vehicles, and in each case, the bankruptcy court held that the City's refusal violated the automatic stay. The court of appeals affirmed all of the judgments in a consolidated opinion. The question before the Supreme Court was "whether an entity violates [11 U.S.C. § 362] by retaining possession of a debtor's property after a bankruptcy petition is filed."

  Justice Alito delivered the opinion for the Supreme Court joined by all members except for Justice Barrett who took no part in the consideration or decision of the case. The Court ruled that the mere retention of estate property does not violate the automatic stay. The Court found that the natural reading of § 362(c)(3) is to prohibit acts that that would "disturb the status quo of estate property as of the time when the bankruptcy petition was filed," and to read otherwise would render the turnover provisions of § 542 superfluous.

  Justice Sotomayor concurred separately to emphasize "that the Court has not decided whether and when § 362(a)'s other provisions may require a creditor to return a debtor's property." Justice Sotomayor wrote that the City's policy of refusing to return impounded vehicles "satisfies the letter of the Code, [but] it hardly comports with its spirit." Because, for many, having a car is vital to their employment and obtaining a fresh start, Justice Sotomayor urged the policymakers to shore up any gap left in the wake of the ruling.

- ***Takeaway* – Tread Carefully.** The Supreme Court's decision found that the City's actions did not violate the automatic stay. However, the Justices paid careful attention to the turnover powers provided in the Bankruptcy Code. The difference between passive retention and failure to comply with a demand can be blurred at times, and a party holding estate property should tread carefully.

[1] Consumer cases whose general holding applies to commercial cases.

- ***In re Nocek***
  On March 26, 2019, the debtor filed a Chapter 7 petition. During the course of the bankruptcy, a creditor **emailed** the debtor the following in its entirety:

> **My goal Bob is to get a lien on your house.**
>
> **I'm a very goal oriented person.**
>
> **Have a pleasant day.**

  The debtor filed a motion requesting an order barring the creditor from further collection activity and for sanctions following willful violations of the automatic stay and discharge injunction.

  11 U.S.C. § 362(k) provides that "an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages." The debtor bears the burden of proof to show a violation by a preponderance of evidence. Specifically, court stated that a debtor must show that "(1) the bankruptcy petition was filed; (2) the debtor is an 'individual,' for the purpose of an automatic stay; (3) notice of the debtor's bankruptcy petition was received by the creditor; and (4) the creditor willfully violated the automatic stay."

  The court found the first two criteria were not in dispute and that the creditor had constructive, if not actual, notice of the bankruptcy. As to the fourth prong, the court had "no difficulty concluding that a promise to obtain a lien comes squarely within the kind of conduct prohibited by both the letter and spirt of § 362(a)." The email was clearly willful as the creditor wrote and intentionally conveyed the message. As a result, the court granted the motion in part and awarded attorney's fees.

- ***Takeaway* – Can't Touch This.** We are accustomed to courts determining demand letters are violations of the automatic stay. The same, if not more, caution should be applied to emails which can be sent with greater ease and speed with the same consequences of intentionally violating the automatic stay safeguards.

Leanne McKnight Prendergast, Esq.
McKenzie L. McAdams

Pleading Due Diligence in Preference Complaints

Sommers v. Anixter, Inc. (In re Trailhead Eng'g LLC), 2020 Bankr. LEXIS 3547 (Bankr. S.D. Tex. Dec. 21, 2020).

The defendant moved to dismiss a preference claim, arguing the complaint failed to state a cause of action because it did not allege that the trustee had conducted due diligence as required by 11 U.S.C. § 547(b) ("the trustee may, based on reasonable due diligence in the circumstances of the case and taking into account a party's known or reasonably knowable affirmative defenses under subsection (c)," avoid preferential transfers). *Id*. at *19. The court noted that the defendant did not cite any authority for the proposition that due diligence must be affirmatively alleged other than a reference to *Collier* stating that it is unclear whether due diligence is an element of a preference claim. *Id*. at *20. Without deciding that issue, the court found the allegations of the complaint demonstrated that Chapter 7 trustee had reviewed the debtor's bank statements and material documents related to the transfer and thus, "in the circumstances of the case," contained sufficient information regarding due diligence to survive a motion to dismiss. *Id.*

Fraudulent Intent Must be Proven as to the Specific Transfers Sought to be Avoided

Welch v. Regions Bank (In re Mongelluzzi), Case No. 8:19-cv-02751-MSS (M.D. Fla. March 1, 2021).

The debtor wrote checks from his Synovus Bank account to cover overdrafts in his Regions Bank account. *Id.* at 2-3. The Chapter 7 trustee sued to recover deposits into the Regions account as fraudulent transfers, alleging they were made in furtherance of the debtor's check-kiting scheme. The bankruptcy court granted summary judgment on the constructive fraudulent transfer claims because regular deposits into the debtor's bank accounts were not "transfers" and the debtor received reasonably equivalent value for the covering deposits through the satisfaction of the overdrafts. *Id.* at 4. The bankruptcy court further granted summary judgment on the actual fraud claims because there was no evidence that the covering deposits were made in furtherance of the check-kiting scheme. *Id.* at 5.

The bankruptcy court reasoned that the trustee must show fraudulent intent as to the specific deposits she sought to avoid and that "[j]ust because a debtor is involved in a fraudulent scheme does not mean that every transfer made by that debtor is made with fraudulent intent." *Id.* In addition, because there was no evidence that the deposits caused the Synovus account to become overdrawn, there was no evidence that the deposits were related to the check-kiting scheme. *Id.* at 6.

On appeal to the district court, the trustee argued that a reasonable jury could have found that the deposits were related to the check-kiting scheme because their timing supports an "inference" that the overdrafts were paid in connection with the check-kiting scheme. But check-kiting is "drawing checks on an account in one bank and depositing them in an account in a second

bank when *neither account* has sufficient funds to cover the amounts drawn." *Id.* at 10. Thus, the district court agreed with the bankruptcy court that, in the absence of evidence that the Regions deposits caused the Synovus account to be overdrawn, no reasonable jury could conclude that the deposits were part of a check-kiting scheme. *Id*. And absent evidence linking the deposits to the check-kiting scheme, there was no basis to conclude that those specific transfers were made with actual intent to hinder, delay or defraud creditors. *Id.* at 8.

Subchapter V Debtors Must be "Engaged in Commercial or Business Activities"

In re Wright, 2020 Bankr. LEXIS 1240 (Bankr. D.S.C. Apr. 27, 2020).

The debtor was an individual with ownership interests in two defunct businesses. The United States Trustee filed a motion to strike the debtor's Subchapter V election, and the only question was whether the debtor was "a person engaged in commercial or business activities" under 11 U.S.C. § 101(51D). The court reasoned that nothing in the language of this definition requires debtors to be currently engaged in business or commercial activities. *Id*. at *7. Moreover, it held that the debtor was "engaged in commercial or business activities" because he was "addressing residual business debt." *Id*. at *8.

In re Johnson, 2021 Bankr. LEXIS 471 (Bankr. N.D. Tex. Mar. 1, 2021).

The debtors, a married couple, filed a motion to convert their Chapter 7 case to Chapter 11, conditioned upon their authorization to proceed as Subchapter V debtors. While the husband had previously owned several businesses, as of the petition date, the businesses were defunct and the debtors' only sources of income were through W-2 employment. *Id*. at *8. The debtors argued that the phrase "engaged in commercial or business activities" in 11 U.S.C. § 101(51D) does not contain any temporal limitations and thus may refer to former business activities.

The court rejected that argument, reasoning that, under the common definition of "engaged," the focus of the inquiry is "inherently contemporary" rather than retrospective. *Id*. at *15. In addition, the court noted, this interpretation is consistent with the purpose of § 101(51D), which is to identify debtors in need of the expediency and lower cost of Subchapter V, which are essential to reorganizing an operating business, but which are not essential to a business which is no longer operating. *Id.* at *15-16. Furthermore, the court noted, Congress has used the same language in other sections of the Bankruptcy Code which have also been interpreted as contemporary in focus and, if Congress intended a different meaning in § 101(51D), it could have used different language, but it did not. *Id.* at *17-18.

The court also rejected the argument that the husband's position as the president of an operating business constituted "engag[ing] in commercial or business activities." *Id.* at *21. Applying the ordinary meaning of the terms, the court held that a person engaged in "commercial or business activities" is a person "engaged in the exchange or buying and selling of economic goods or services for profit," and that neither of the debtors was engaged in the exchange or buying and selling of any economic goods or services of their own for profit. *Id.* In any event, even if the husband qualified as a small business debtor, the wife did not qualify as an "affiliate" as that term is defined under the Bankruptcy Code. *Id.* at *23-24.

Jay M. Sakalo, Esq.
McKenzie L. McAdams

Rent Has to Be Paid Current, Right?

In re Pier 1 Imports, Inc., 615 B.R. 196 (Bankr. E.D. Va. 2020).

Pier 1 Imports filed for Chapter 11 relief at the infancy of the global pandemic -- in February 2020. As the court stated, when the debtors filed, "[n]o constituency in these cases predicted that the world would effectively grind to a halt." However, as we all know, that quickly changed and, as the court explained, "the weeks and months that followed the Petition Date, this country has shuttered under mandatory stay-at-home orders and mandatory closures of "nonessential" retail businesses, like the Debtors."

In order to effectuate their own "shelter in place," the debtors filed an Emergency Motion for Entry of an Order (I) Approving Relief Related to the Interim Budget, (II) Temporarily Adjourning Certain Motions and Applications for Payment, and (III) Granting Related Relief. By the motion, the debtors proposed to curtail their business operations for a short period of time and sought authority to pay only the expenses the debtors determined to be "critical" in accordance with an interim budget. The effect of the motion would be to cause certain landlords not to be paid rent on a current basis, as the debtors sought to delay payment of certain accrued but unpaid rent obligations.

Not surprisingly, a number of landlords objected to the proposed delay of rent payments. The court granted the relief sought over the objections of the lessors who would not be receiving payment timely. The court found that while the debtors have an obligation to pay rent timely under Section 365(d)(3), the remedy for the failure to do so would only result in the lessors holding an administrative expense claim rather than a right to compel payment.

The court found that to compel payment would elevate the payment of rent to superpriority status to which the lessors are not entitled. Rather, the court concluded that the lessors are entitled to adequate protection under Section 363(e), which the court found was provided by the debtors' continued payment of insurance obligations, utility bills and other similar non-rent obligations, combined with the "assurance" of cure payments to be made in July. Ultimately, the court found that the relief sought by the motion was in "best interest of the estates in these Bankruptcy Cases and entered the Supplemental Order in order to extend the relief provided by the Original Order through the Limited Operations Period."

At bottom, the court explained its decision was results-oriented, by stating (emphasis added):

> There is no feasible alternative to the relief sought in the Motion. The Debtors cannot operate as a going concern and produce the revenue necessary to pay rent because they have been ordered to close their business. The Debtors cannot effectively liquidate the inventory while their stores remain closed. Unless and until the "stay at home" and "shelter in place" orders are relaxed, the Debtors

> are unable to open their stores to conduct the sales and customers are unable to come to the stores to buy the inventory marketed for sale. Any liquidation efforts would be ineffective and potentially squander assets that could otherwise be administered for the benefit of all creditors in this case.

An Irrevocable Trust Cannot Be Used by Creditors in a Chapter 11, Right?

Kearney v. Unsecured Creditors Committee, 987 F.3d 1284 (10th Cir. 2021).

The debtor was the lifetime income beneficiary of two spendthrift trusts (the "Trusts") when he filed for chapter 11 bankruptcy in 2011. Despite receiving approximately $800k per year, by 2017 the debtor had accumulated about $7 million in debts when he filed for Chapter 11.

A creditors' committee ("UCC") was appointed and significant litigation ensued between the debtor and UCC over the plan process and competing plans. Over time, the debtor proposed seven different plans; and, in contrast, the UCC filed a competing plan that called for three actions: first, a closely held company owned by the debtor's family would buy the Trusts' shares in that company for $12,571,799; second, the trustees would then pay $3 million to the debtor to pay his creditors; and third, the Trusts would pay the IRS the $350,890.55 in taxes the debtor owed from his share of income (the "Three Actions"). The UCC's plan hinged on an agreement between it and the trustees of the Trusts to allow a one-time modification of the spendthrift trusts to fund the obligations under the UCC's plan.

The debtor, believing the Trusts were impenetrable by outside creditors, was outraged at the UCC's plan and retaliated with lawsuits against the trustees of the Trusts, accusing them of, among things, breaches of their fiduciary duty in agreeing to the deal with the UCC. The trustees sought and obtained relief from the automatic stay to seek a determination from the state court as to whether the Trusts could be modified to allow the Three Actions. The state court ruled that the Three Actions were proper and consistent with applicable state law. Thereafter, the plan went out for vote and was approved by the requisite number and amount of creditors.

The debtor appealed the confirmation order, arguing that the plan violates Section 1129(a)(3)'s requirements of good faith and compliance with non-bankruptcy law. The debtor argued that the Three Actions violate section 541(c)(2) because it does not exclude his interest in the Trusts from the bankruptcy estate. The 10th Circuit found that the state court approved a one-time circumvention of the spendthrift provisions. The endorsement of the Three Actions by the state court was the UCC's permission to bypass this provision.

In addition, the debtor argued that the plan was not proposed in good faith. The circuit court found the plan to be proposed in good faith and stated that the debtor's arguments show "his mistaken belief that only he should be allowed to control the reorganization process, whatever the cost, delay, or acceptability of payment proposals."

Finally, the debtor argued that the bankruptcy court abused its discretion by approving the proposed settlement of the debtor's claims. However, the circuit court found that the legal claims involving the closely held family company were properly categorized as property of the estate, the

debtor was not likely to succeed on his claims, the settlement was backed by sufficient consideration, and the bankruptcy court's finding that the expense and complexity of litigation favor settlement was supported by the record.

Accordingly, the circuit court affirmed the bankruptcy court's confirmation of the UCC's plan.

Not All Bids Are the Same

In re Neiman Marcus Group Ltd LLC, et al., Case No. 20-32519 (DRJ) (jointly administered) pending in the United States Bankruptcy Court for the Southern District of Texas, Houston Division.

Mariposa Intermediate Holdings LLC, et al. v. Marble Ridge Capital Fund LP, et al., Adv. Proc. No. 20-03402.

- ECF No. 22 -- defendants agreed to a stipulated TRO whereby they agreed to fund a $55 million escrow to "ensure adequate liquidity for satisfaction of the Plaintiffs' monetary claims" in the adversary proceeding.
- The TRO arose as a result of affirmative claims asserted by the debtors against the defendants resulting from misconduct by a principal of the defendants.
- The principal of the defendants plead guilty to bankruptcy fraud in connection with pressuring a rival bidder for certain of the debtors' assets to abandon its higher bid so that the defendants could obtain those assets for a lower price.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ENTERED
08/28/2020

In re: NEIMAN MARCUS GROUP LTD LLC, *et al.*,[1] Debtors.	Chapter 11 Case No. 20-32519 (DRJ) (Jointly Administered)
MARIPOSA INTERMEDIATE HOLDINGS LLC, NEIMAN MARCUS GROUP LTD LLC, and THE NEIMAN MARCUS GROUP LLC, Plaintiffs, v. MARBLE RIDGE CAPITAL LP and MARBLE RIDGE MASTER FUND LP, Defendants.	Adv. Proc. No. 20-03402

STIPULATION AND AGREED-UPON TEMPORARY RESTRAINING ORDER

Plaintiffs Mariposa Intermediate Holdings LLC, Neiman Marcus Group LTD LLC, and The Neiman Marcus Group LLC and Defendants Marble Ridge Capital LP and Marble Ridge

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Neiman Marcus Group LTD LLC (9435); Bergdorf Goodman, Inc. (5530); Bergdorf Graphics, Inc. (9271); BG Productions, Inc. (3650); Mariposa Borrower, Inc. (9015); Mariposa Intermediate Holdings, LLC (5829); NEMA Beverage Corporation (3412); NEMA Beverage Holding Corporation (9264); NEMA Beverage Parent Corporation (9262); NM Bermuda, LLC (2943); NM Financial Services, Inc. (2446); NM Nevada Trust (3700); NMG California Salon LLC (9242); NMG Florida Salon LLC (9269); NMG Global Mobility, Inc. (0664); NMG Notes Propco LLC (1102); NMG Salon Holdings LLC (5236); NMG Salons LLC (1570); NMG Term Loan Propco LLC (0786); NMG Texas Salon LLC (0318); NMGP, LLC (1558); The Neiman Marcus Group LLC (9509); The NMG Subsidiary LLC (6074); and Worth Avenue Leasing Company (5996). The location of the Debtors' service address is One Marcus Square, 1618 Main Street, Dallas, Texas 75201.

Master Fund LP (collectively, "Marble Ridge," and together with Plaintiffs, the "Parties") hereby enter into this stipulation (the "Stipulation") and agree as follows:

WHEREAS, on August 26, 2020, Plaintiffs filed a Complaint And Application For A Temporary Restraining Order And Preliminary Injunction and supporting papers and exhibits [Docket Nos. 1 - 3];

WHEREAS, the Parties appeared before the Court on August 27, 2020 concerning Plaintiffs' request for a temporary restraining order;

WHEREAS, the Parties have agreed to the form of an agreed-upon temporary restraining order;

WHEREAS, the Parties have agreed that Marble Ridge shall fund an escrow account in the amount of $55 million that shall solely be held to ensure adequate liquidity for satisfaction of the Plaintiffs' monetary claims in this adversary proceeding, pending Plaintiffs' request for a preliminary injunction on September 18, 2020;

WHEREAS, the Parties have agreed that Plaintiffs' request for a preliminary injunction will be heard on September 18, 2020, with the hearing concluding by mid-afternoon;

WHEREAS, the Parties have agreed to a briefing schedule on such request;

WHEREAS, the Parties have agreed that, pending Plaintiffs' request for a preliminary injunction on September 18, 2020, Marble Ridge shall file a notice to the Plaintiffs of any transfer of its claims against or interests in the Debtors in a manner consistent with those set forth for transfers of claims pursuant to Federal Rule of Bankruptcy Procedure 3001(e) ;

NOW, THEREFORE, THE DEBTORS AND MARBLE RIDGE HEREBY AGREE AND STIPULATE AS FOLLOWS:

1. Marble Ridge will fund an escrow account in the amount of $55 million that shall solely be held to ensure adequate liquidity for satisfaction of the Plaintiffs' monetary claims in this adversary proceeding and for no other purpose until the Court rules on the Plaintiffs' request for a preliminary injunction on September 18, 2020;

2. Until the Court rules on the Plaintiffs' request for a preliminary injunction on September 18, 2020, if Marble Ridge intends to transfer a claim against or interest in the Debtors, it shall file a notice evidencing the terms of the transfer with the Court, and the Plaintiffs will have 7 days after the filing of the notice to object to the transfer before it occurs.

3. The Court will conduct a hearing on Plaintiffs' Application for a Preliminary Injunction at 9:00 a.m. on September 18, 2020.

4. Marble Ridge may submit a memorandum of law and any papers and declarations in response to the Application for a Preliminary Injunction by September 11, 2020.

5. Plaintiffs may submit any reply memorandum of law by September 16, 2020.

6. By consent of the parties, this temporary restraining order shall remain in full force and effect until 5:00 p.m. on September 18, 2020, at which time the order shall expire and dissolve unless either terminated earlier by court order or further extended as provided by law, agreement of the parties, or further order of this Court on good cause shown.

7. This Order is limited to its terms and is without prejudice to, and shall not serve as a waiver or concession of, any other of the Parties' rights, responses or defenses in this adversary proceeding.

8. The provisions of this Order constitute an Order of this Court and violations of the provisions of this Order are subject to enforcement and the imposition of legal sanctions in the same manner as any other Order of the Court.

IT IS SO ORDERED.

Signed: August 28, 2020.

DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE

Dated: August 28, 2020
Houston, Texas

/s/ *Matthew D. Cavenaugh*

JACKSON WALKER L.L.P.
Matthew D. Cavenaugh (TX Bar No. 24062656)
Jennifer F. Wertz (TX Bar No. 24072822)
Kristhy M. Peguero (TX Bar No. 24102776)
Veronica A. Polnick (TX Bar No. 24079148)
1401 McKinney Street, Suite 1900
Houston, Texas 77010
Telephone: (713) 752-4200
Facsimile: (713) 752-4221
Email: mcavenaugh@jw.com
jwertz@jw.com
kpeguero@jw.com
vpolnick@jw.com

-and-

KIRKLAND & ELLIS LLP
KIRKLAND & ELLIS INTERNATIONAL LLP
Anup Sathy, P.C. (admitted *pro hac vice*)
Chad J. Husnick, P.C. (admitted *pro hac vice*)
300 North LaSalle Street
Chicago, Illinois 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200
Email: anup.sathy@kirkland.com
chad.husnick@kirkland.com

-and-

Matthew C. Fagen (admitted *pro hac vice*)
601 Lexington Avenue
New York, New York 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900
Email: matthew.fagen@kirkland.com

Co-Counsel to the Plaintiffs

/s/ *Zachary D. Rosenbaum*

KOBRE & KIM LLP
Michael S. Kim (pro hac vice pending)
Zachary D. Rosenbaum (pro hac vice pending)
Daniel J. Saval (pro hac vice pending)
Leif T. Simonson (pro hac vice pending)
Alexandra Fellowes (pro hac vice pending)
800 Third Ave
New York, New York 10022
Telephone: +1 212 488 1200
Facsimile: +1 212 488 1220
Email:
Michael.Kim@kobrekim.com
Zachary.Rosenbaum@kobrekim.com
Daniel.Saval@kobrekim.com
Leif.Simonson@kobrekim.com
Alexandra.Fellowes@kobrekim.com

Counsel to Marble Ridge Capital LP and Marble Ridge Master Fund LP

United States Department of Justice

THE UNITED STATES ATTORNEY'S OFFICE
SOUTHERN DISTRICT of NEW YORK

U.S. Attorneys » Southern District of New York » News » Press Releases

Department of Justice

U.S. Attorney's Office

Southern District of New York

FOR IMMEDIATE RELEASE Wednesday, February 3, 2021

New York Hedge Fund Founder Pleads Guilty To Bankruptcy Fraud In Connection With Neiman Marcus Bankruptcy

Audrey Strauss, the United States Attorney for the Southern District of New York announced today that DANIEL KAMENSKY, the founder and manager of New York-based hedge fund Marble Ridge Capital ("Marble Ridge"), pled guilty to one count of bankruptcy fraud in connection with his scheme to pressure a rival bidder to abandon its higher bid for assets in connection with Neiman Marcus's bankruptcy proceedings so that Marble Ridge could obtain those assets for a lower price. KAMENSKY pled guilty before United States District Judge Denise Cote.

U.S. Attorney Audrey Strauss said: "Daniel Kamensky abused his position as a committee member in the Neiman Marcus Bankruptcy to corrupt the process for distributing assets and take extra profits for himself and his hedge fund. Kamensky predicted in his own words to a colleague: *'Do you understand…I can go to jail?'… 'this is going to the U.S. Attorney's Office.*' His fraud has indeed come to the U.S. Attorney's Office and now has been revealed in open court."

As alleged in the Complaint, the Information, and statements made in court:

DANIEL KAMENSKY was the principal of Marble Ridge, a hedge fund with assets under management of more than $1 billion that invested in securities in distressed situations, including bankruptcies. Prior to opening Marble Ridge, KAMENSKY worked for many years as a bankruptcy attorney at a well-known international law firm, and as a distressed debt investor at prominent financial institutions.

The Neiman Marcus Bankruptcy

Neiman Marcus, an American chain of luxury department stores with stores located across the United States, filed for Chapter 11 bankruptcy protection in the United States Bankruptcy Court for the Southern District of Texas (the "Bankruptcy Court") in May 2020. At the outset of the bankruptcy, Marble Ridge, through KAMENSKY, applied to be on the Official Committee of Unsecured Creditors (the "Committee") and was thereafter appointed to be a member of the Committee. As a member of the Committee, KAMENSKY had a fiduciary duty to represent the interests of all unsecured creditors as a group.

During the bankruptcy process, the Committee had negotiated with the owners of Neiman Marcus to obtain certain securities, known as MyTheresa Series B Shares (the "MYT Securities"), and ultimately, the Committee was successful in coming to a settlement to obtain 140 million shares of MYT Securities for the

benefit of certain unsecured creditors of the bankruptcy estate. In July 2020, KAMENSKY was negotiating with the Committee for Marble Ridge to offer twenty cents per share to purchase MYT Securities from any unsecured creditor who preferred to receive cash, rather than MYT Securities, as part of that settlement.

KAMENSKY's Fraudulent Scheme

On July 31, 2020, KAMENSKY learned that a diversified financial services company headquartered in Manhattan, New York (the "Investment Bank") had informed the Committee that it was interested in bidding a price between thirty and forty cents per share—substantially higher than KAMENSKY's bid—to purchase the MYT Securities from any unsecured creditor who was interested in receiving cash.

That afternoon, KAMENSKY sent messages to a senior trader at the Investment Bank ("IB Employee-1") telling him not to place a bid, and followed those messages up with a phone call with IB Employee-1 and a senior analyst of the Investment Bank ("IB Employee-2," and collectively the "Employees"). During that call, KAMENSKY asserted that Marble Ridge should have the exclusive right to purchase MYT Securities, and threatened to use his official role as co-chair of the Committee to prevent the Investment Bank from acquiring the MYT Securities. KAMENSKY also stated that Marble Ridge had been a client of the Investment Bank in the past but that if the Investment Bank moved forward with its bid, then Marble Ridge would cease doing business with the Investment Bank.

The Investment Bank thereafter decided to not make a bid to purchase MYT Securities and informed the legal advisor to the Committee of its decision. The Investment Bank further told the legal advisor they made that decision because KAMENSKY—a client of the Investment Bank—had asked them not to.

Advisors to the Committee informed counsel for Marble Ridge of their call with the Employees, and after speaking with KAMENSKY, counsel for Marble Ridge falsely informed the advisors that KAMENSKY had not asked the Employees not to bid, but instead had told them to place a bid only if they were serious. Later that evening, KAMENSKY contacted IB Employee-1 and attempted to influence what IB Employee-1 would tell others, including the Committee and law enforcement, about KAMENSKY's attempt to block the Investment Bank's bid for the MYT Securities. KAMENSKY said at the outset of the call, in substance, "this conversation never happened." During the call, KAMENSKY asked IB Employee-1 to falsely say that IB Employee-1 had been mistaken and KAMENSKY had actually suggested that the Investment Bank only bid if it was serious, and made comments including the following: "Do you understand…I can go to jail?" "I pray you tell them that it was a huge misunderstanding, okay, and I'm going to invite you to bid and be part of the process." "But I'm telling you…this is going to the U.S. Attorney's Office. This is going to go to the court." "[I]f you're going to continue to tell them what you just told me, I'm going to jail, okay? Because they're going to say that I abused my position as a fiduciary, which I probably did, right? Maybe I should go to jail. But I'm asking you not to put me in jail."

During a subsequent interview with the Office of the United States Trustee, which was conducted under oath and in the presence of counsel, KAMENSKY stated that his calls to IB Employee-1 were a "terrible mistake" and "profound errors in lapses of judgment."

After this series of events, Marble Ridge resigned from the Committee and has advised its investors that it intended to begin winding down operations and returning investor capital.

* * *

KAMENSKY, 48, of Roslyn, New York, pled guilty to one count of bankruptcy fraud, which carries a maximum sentence of five years in prison. Sentencing has been scheduled for May 7, 2021.

U.S. Attorney Strauss praised the work of the FBI. Ms. Strauss further thanked the Office of United States Trustee and the Securities and Exchange Commission for their cooperation and assistance in this investigation.

This case is being handled by the Office's Securities and Commodities Fraud Task Force. Assistant U.S. Attorneys Richard Cooper and Daniel Tracer are in charge of the prosecution.

Topic(s):
Bankruptcy

Component(s):
USAO - New York, Southern
U.S. Trustee Program

Contact:
Nicholas Biase, Jim Margolin
(212) 637-2600

Press Release Number:
21-020

Updated February 4, 2021

One Day In, One Day Out

In re Belk, Inc., et al., Case No. 21-30630 (MI) (jointly administered) pending in the United States Bankruptcy Court for the Southern District of Texas, Houston Division.

In what can only be described as warp speed, the regional retailer, Belk, confirmed its Chapter 11 cases in one day after commencing the cases. On February 23, 2021, the debtors commenced their cases and filed their *Joint Prepackaged Plan of Reorganization of Belk, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [ECF No. 10]. Only one day later, over objections lodged by the Office of the United States Trustee [ECF No. 44] and other parties-in-interest, the court entered its order confirming the Chapter 11 cases [ECF NO. 61].

In order to "preserve" due process to stakeholders, immediately after entry of the confirmation order, the court entered its *Due Process Preservation Order* [ECF No. 62]. By the Due Process Preservation Order:

- The court gave parties approximately five weeks to opt out of the releases contained in the plan and the confirmation order.
- Any holder of secured claims (other than those participating in the debt-for-equity swap under the plan) and unsecured claims could have their disputed claims, if any, resolved in any court of competent jurisdiction, any arbitration tribunal under applicable non-bankruptcy law (to the extent the claim is arbitrable) or the bankruptcy court.
- The debtors were barred from commencing claims objections in the bankruptcy court.
- The court limited the scope of the plan's exculpation provisions to be consistent with those permitted by the 5th Circuit in *In re Pac. Lumber Co.*, 584 F.3d 229 (5th Cir. 2009).
- The court gave any person or governmental unit five weeks to allege that it had inadequate due process notice and opportunity to object to the plan or the confirmation order. The court will conduct an initial status conference on any such objections and, if such person and/or governmental unit demonstrates a deprivation of its due process rights, the court "will issue an appropriate order that fully vindicates those due process rights." Specifically, the Order proscribed any estoppel or mootness arguments.

A week after the Due Process Preservation Order was entered, the debtors filed the *Notice of Opportunity for Holders of Claims to Opt Out of the Third-Party Releases* [ECF No. 127].

Copies of the Due Process Preservation Order and the Opt-Out Notice follow. The remaining filings, which are voluminous, may be accessed via PACER.

ENTERED
02/24/2021

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:	§	
BELK, INC., *et al*	§	**CASE NO: 21-30630**
	§	
BELK DEPARTMENT STORES LP	§	**CASE NO: 21-30625**
	§	
BELK ACCOUNTS RECEIVABLE LLC	§	**CASE NO: 21-30626**
	§	
BEAR PARENT INC.	§	**CASE NO: 21-30627**
	§	
BELK ECOMMERCE LLC	§	**CASE NO: 21-30628**
	§	
BELK ADMINISTRATION, LLC	§	**CASE NO: 21-30629**
	§	
BELK GIFT CARD COMPANY LLC	§	**CASE NO: 21-30631**
	§	
BELK INTERNATIONAL, INC.	§	**CASE NO: 21-30633**
	§	
BELK MERCHANDISING LLC	§	**CASE NO: 21-30634**
	§	
BELK TEXAS HOLDINGS LLC	§	**CASE NO: 21-30635**
	§	
BELK SOURCING LLC	§	**CASE NO: 21-30636**
	§	
FASHION HOLDINGS INTERMEDIATE LLC	§	**CASE NO: 21-30637**
	§	
	§	
BELK STORES OF MISSISSIPPI LLC	§	**CASE NO: 21-30638**
	§	
BELK STORES OF VIRGINIA LLC	§	**CASE NO: 21-30639**
	§	
BELK STORES SERVICES, LLC	§	**CASE NO: 21-30640**
	§	
BELK-SIMPSON COMPANY, GREENVILLE, SOUTH CAROLINA	§	**CASE NO: 21-30642**
	§	
	§	
FASHION INTERMEDIATE INC.	§	**CASE NO: 21-30643**
	§	
THE BELK CENTER, INC.,	§	**CASE NO: 21-30644**
	§	**Jointly Administered**
Debtors.	§	
	§	**CHAPTER 11**

DUE PROCESS PRESERVATION ORDER

In the Confirmation Order issued on this date, the Court confirmed the Debtors' proposed Chapter 11 Plan filed at ECF No. 10 on February 23, 2021. For the reasons set forth on the record, this Due Process Preservation Order is issued by the Court.

The Court Orders:

1. To the extent of any conflict between this Due Process Preservation Order and the Confirmation Order or the Chapter 11 Plan, this Due Process Preservation Order controls.

2. Each person and governmental unit will have until March 31, 2021 to elect to opt out of the releases contained in the Plan or the Confirmation Order. The Debtors are ordered to prepare, in consultation with the United States Trustee, an appropriate opt out notice to be served on each "Releasing Party" along with a copy of this Order. The Court will conduct a hearing on March 1, 2021 at 4:00 p.m. to approve the form of notice.

3. Any holder of a claim in Classes 1, 2, 3, 6, or 8, whether or not the claim is an allowed claim, may resolve any dispute with the Debtors about the payment or allowance of its claim in either (i) any court of competent jurisdiction; (ii) any arbitration tribunal to the extent that such claim is arbitrable under applicable non-bankruptcy law; or (iii) this Court. The Debtors are barred from commencing any dispute in this Court to resolve any such dispute, and may not remove any such dispute to Federal Court on the basis of jurisdiction arising under § 1334. Provided, the Court retains exclusive jurisdiction and will determine the application of (i) the statutory limitations contained in sections 502(a)(2), 502(a)(3), 502(a)(6), 502(a)(7), and 502(a)(8) of the Bankruptcy Code; and (ii) the limitations contained in sections 502(d), 502(e) and 502(h) of the Bankruptcy Code.

4. Notwithstanding paragraph 3 of this Order, the Court retains exclusive jurisdiction to determine whether an executory contract or lease may be assumed and/or assigned, and the terms of any such assumption and assignment. Any holder of an executory contract or lease that objects to the assumption and or assignment of that executory contract or lease under the Plan, should immediately contact Matthew Fagen at matthew.fagen@kirkland.com, with such contact being made no later than March 24, 2021. Any holder of any such executory contract or lease may file an objection to the assumption or rejection of the executory contract or lease not later than March 31, 2021. The Court will conduct an initial status conference on any such objection on April 5, 2021 at 9:00 a.m.

5. The Court retains exclusive jurisdiction over the allowance and treatment of claims and interests in Classes 4, 5 and 9.

6. The exculpation provisions in the Plan and the Confirmation Order are limited to those exculpations that are permitted by *In re Pac. Lumber Co.,* 584 F.3d 229 (5th Cir. 2009). This Court retains exclusive jurisdiction to determine the application and scope of the exculpation provisions.

7. Any person or governmental unit alleging that it had inadequate due process notice and opportunity to object to the Plan or Confirmation order may file an objection to the Plan or Confirmation Order not later than March 31, 2021. The Court will conduct an initial status conference on any such objection on April 5, 2021 at 9:00 a.m. If any person or government unit demonstrates a deprivation of its due process rights, the Court will issue an appropriate order that fully vindicates those due process rights. No prejudice will be imposed on any such person or governmental unit based on estoppel or mootness as a consequence of the Plan or the Confirmation Order.

8. Any person or governmental unit may seek an emergency hearing at any time to assure that their due process rights are fully protected.

SIGNED 02/24/2021

Marvin Isgur
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	)	Chapter 11
BELK, INC., *et al.,*[1]	)	Case No. 21-30630 (MI)
Reorganized Debtors.	)	(Jointly Administered)
	)	**Re: Docket Nos. 10, 61, and 62**

NOTICE OF OPPORTUNITY FOR HOLDERS OF CLAIMS TO OPT OUT OF THE THIRD-PARTY RELEASES

PLEASE TAKE NOTICE that, on February 23, 2021, Belk, Inc. and its affiliates, (collectively, the "Debtors" and following the occurrence of the Effective Date, the "Reorganized Debtors") commenced chapter 11 cases in the United States Bankruptcy Court for the Southern District of Texas (the "Bankruptcy Court").

PLEASE TAKE FURTHER NOTICE that, on February 24, 2021, the Honorable Marvin Isgur, United States Bankruptcy Judge of the Bankruptcy Court entered the *Order Approving the Debtors' Disclosure Statement for, and Confirming, the Debtors' Joint Prepackaged Chapter 11 Plan* [Docket No. 61] (the "Confirmation Order"), confirming, as modified therein, the *Joint Prepackaged Plan of Reorganization of Belk, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code (Technical Modifications)* [Docket No. 10] (the "Plan"), and immediately afterward entered the *Due Process Preservation Order* [Docket No. 62] (the "Due Process Preservation Order") with respect thereto and attached hereto as **Exhibit A**.[2]

PLEASE TAKE FURTHER NOTICE THAT the Plan, Confirmation Order, and Due Process Preservation Order are accessible now, free of charge, on the Debtors' restructuring website, **https://cases.primeclerk.com/belk.** Copies of the Plan, the Confirmation Order, and the Due Process Preservation Order may also be obtained (a) upon request of the Debtors' proposed co-counsel, Kirkland & Ellis LLP and Jackson Walker LLP, (b) for a fee via PACER at https://pacer.uscourts.gov/ (PACER login required), and (c) for free at the Clerk of the Bankruptcy Court, 5th Floor, 515 Rusk Street, Houston, Texas 77002, between the hours of 8:00 a.m. to 5:00 p.m., prevailing Central Time.

PLEASE TAKE FURTHER NOTICE THAT you are a Holder or potential Holder of a Claim against the Debtors.

[1] A complete list of each of the Debtors in the Chapter 11 Cases may be obtained on the website of the Debtors' claims and noticing agent at https://cases.primeclerk.com/belk. The location of the Reorganized Debtors' service address is 2801 West Tyvola Road, Charlotte, North Carolina 28217.

[2] Capitalized terms used but not defined herein shall have the meanings given to them in the Plan or the Confirmation Order, as applicable.

PLEASE TAKE FURTHER NOTICE THAT if you have questions regarding this notice you should contact Prime Clerk LLC, the Debtors' solicitation agent in the chapter 11 cases (the "Claims and Noticing Agent"), by: (a) writing to Belk Ballot Processing, c/o Prime Clerk LLC, One Grand Central Place, 60 East 42nd Street, Suite 1440, New York, New York 10165; (b) emailing belkballots@primeclerk.com and referencing "Belk, Inc." in the subject line; and/or (c) calling the Debtors' restructuring hotline at (347) 919-5765 (domestic) or (877) 329-2058 (international toll-free).

THE OPT-OUT FORM ATTACHED HERETO PROVIDES YOU WITH THE OPTION TO NOT GRANT THE VOLUNTARY RELEASE CONTAINED IN ARTICLE VIII OF THE PLAN. YOU WILL RECEIVE THE SAME RECOVERY AND TREATMENT ON ACCOUNT OF YOUR CLAIM UNDER THE PLAN REGARDLESS OF WHETHER YOU ELECT TO NOT GRANT THE VOLUNTARY RELEASE CONTAINED IN ARTICLE VIII OF THE PLAN.

PLEASE TAKE FURTHER NOTICE THAT the following provisions are included in the Plan:

ARTICLE VIII OF THE PLAN CONTAINS RELEASE, EXCULPATION, AND INJUNCTION PROVISIONS, AND ARTICLE VIII.D CONTAINS THE FOLLOWING THIRD-PARTY RELEASE (THE "THIRD-PARTY RELEASE"):

Notwithstanding anything contained in this Plan to the contrary, on and after the Effective Date, in exchange for good and valuable consideration, the adequacy of which is hereby confirmed, each Released Party is, and is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably and forever, released and discharged by each Releasing Party from any and all Claims and Causes of Action, in each case on behalf of themselves and their respective successors, assigns, and representatives, and any and all Entities who may purport to assert any Claim or Cause of Action, directly or derivatively, by, through, for, or because of the foregoing Entities, from any and all Claims and Causes of Action, including any derivative claims, asserted or assertable on behalf of any of the foregoing Entities, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort, or otherwise, including any derivative claims asserted or assertable on behalf of the Debtors, the Reorganized Debtors, or their Estates, that such Entity would have been legally entitled to assert (whether individually or collectively) or on behalf of the Holder of any Claim against, or Interest in, a Debtor, a Reorganized Debtor, or their Estates or other Entity, based on or relating to, or in any manner arising from, in whole or in part, the Debtors (including the capital structure, management, ownership, or operation thereof), the purchase, sale, or rescission of any security of the Debtors or the Reorganized Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in this Plan, the business or contractual arrangements between or among any Debtor and any Released Party, the ownership and/or operation of the Debtors by any Released Party or the distribution of any Cash or other property of the Debtors to any Released Party, the assertion or enforcement of rights or remedies against the Debtors, the Debtors' in- or out-of-court restructuring efforts, any Avoidance Actions (but excluding Avoidance Actions brought as counterclaims or defenses to Claims asserted against the Debtors), intercompany transactions between or among a Debtor or an Affiliate of a Debtor and another Debtor or Affiliate of a Debtor, the Chapter 11 Cases, the formulation, preparation, dissemination,

negotiation, or filing of the RSA and related prepetition transactions, the Disclosure Statement, the New Credit Facilities, the ABL Facility, the New ABL Facility, the Plan (including, for the avoidance of doubt, the Plan Supplement), any other Definitive Documentation, or any Restructuring Transaction, contract, instrument, release, or other agreement or document (including any legal opinion requested by any Entity regarding any transaction, contract, instrument, document or other agreement contemplated by the Plan or the reliance by any Released Party on the Plan or the Confirmation Order in lieu of such legal opinion) relating to any of the foregoing, created or entered into in connection with the RSA, the New Credit Facilities, the ABL Facility, the New ABL Facility, the Disclosure Statement, the Plan, the Plan Supplement, before or during the Chapter 11 Cases, any preference, fraudulent transfer, or other avoidance claim arising pursuant to chapter 5 of the Bankruptcy Code or other applicable law, the filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of Consummation, the administration and implementation of the Plan, including the issuance or distribution of Securities pursuant to the Plan, or the distribution of property under the Plan or any other related agreement, or upon any other act or omission, transaction, agreement, event, or other occurrence related or relating to any of the foregoing taking place on or before the Effective Date. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release any post-Effective Date obligations of any party or Entity under the Plan, the Confirmation Order, any Restructuring Transaction, or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan, including the New Credit Facilities Documents and the New ABL Facility Documents, or any Claim or obligation arising under the Plan.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the Third-Party Release, which includes by reference each of the related provisions and definitions contained herein, and, further, shall constitute the Bankruptcy Court's finding that the Third-Party Release is: (a) consensual; (b) essential to the Confirmation of the Plan; (c) given in exchange for the good and valuable consideration provided by each of the Released Parties, including, without limitation, the Released Parties' substantial contributions to facilitating the Restructuring Transactions and implementing the Plan; (d) a good faith settlement and compromise of the Claims released by the Third-Party Release; (e) in the best interests of the Debtors and their Estates; (f) fair, equitable, and reasonable; (g) given and made after due notice and opportunity for hearing; and (h) a bar to any of the Releasing Parties asserting any Claim or Cause of Action released pursuant to the Third-Party Release.

Definitions Related to the Third-Party Release under the Plan:

"**Governing Body**" means, in each case in its capacity as such, the board of directors, board of managers, manager, general partner, investment committee, special committee, or such similar governing body of any of the Debtors or the Reorganized Debtors, as applicable.

"**Related Party**" means, each of, and in each case in its capacity as such, current and former directors, managers, officers, investment committee members, special committee members, equity holders (regardless of whether such interests are held directly or indirectly), affiliated investment funds or investment vehicles, managed accounts or funds, predecessors, assignors, participants, successors, assigns, subsidiaries, affiliates, partners, limited partners, general partners, principals, members, management companies, fund advisors or managers, employees, agents, trustees,

advisory board members, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, and other professionals and advisors. For the avoidance of doubt, the current and former members of each Governing Body (and their attorneys and other professionals retained by them in their capacity as members of a Governing Body) are Related Parties of the Debtors.

"**Released Party**" means, each of, and in each case in its capacity as such: (a) the Debtors; (b) the Reorganized Debtors; (c) each Consenting Stakeholder; (d) each member of the Ad Hoc Crossover Lender Group; (e) each member of the Ad Hoc First Lien Term Lender Group; (f) each Company Party; (g) each Agent; (h) each ABL Lender; (i) each First Lien Term Lender; (j) each Second Lien Term Lender; (k) all Holders of Interests; (l) each Backstop Party; (m) each Sponsor; (n) each New Credit Facility Lender; (o) each New ABL Facility Lender; and (p) each current and former Affiliate of each Entity in clause (a) through the following clause (q); and (q) each Related Party of each Entity in clause (a) through this clause (q); provided that in each case, an Entity shall not be a Released Party if it: (x) elects to opt out of the releases contained in the Plan; or (y) timely objects to the releases contained in the Plan and such objection is not resolved before Confirmation of the Plan.

"**Releasing Party**" means, each of, and in each case in its capacity as such: (a) the Debtors; (b) the Reorganized Debtors; (c) each Consenting Stakeholder; (d) each member of the Ad Hoc Crossover Lender Group; (e) each member of the Ad Hoc First Lien Term Lender Group; (f) each Company Party; (g) each Agent; (h) each ABL Lender; (i) each First Lien Term Lender; (j) each Second Lien Term Lender; (k) all Holders of Claims; (l) all Holders of Interests; (m) each Sponsor; (n) each Backstop Party; (o) each New Credit Facility Lender; (p) each New ABL Facility Lender; and (q) each current and former Affiliate of each Entity in clause (a) through the following clause (r); and (r) each Related Party of each Entity in clause (a) through this clause (r); provided that in each case, an Entity shall not be a Releasing Party if it: (x) elects to opt out of the releases contained in the Plan; or (y) timely objects to the releases contained in the Plan and such objection is not resolved before Confirmation of the Plan.

* * *

THIS NOTICE IS BEING SENT TO YOU FOR INFORMATIONAL PURPOSES AND TO PROVIDE YOU WITH THE ATTACHED OPT-OUT FORM WITH RESPECT TO THE THIRD-PARTY RELEASES INCLUDED IN THE PLAN. IF YOU HAVE QUESTIONS REGARDING YOUR RIGHTS UNDER THE PLAN OR ANYTHING STATED HEREIN OR THEREIN, YOU MAY CONTACT THE CLAIMS AND NOTICING AGENT OR DEBTORS' COUNSEL AT THE ADDRESSES PROVIDED BELOW.

Houston, Texas
March 1, 2021

/s/ *Kristhy M. Peguero*

JACKSON WALKER L.L.P.
Kristhy M. Peguero (TX Bar No. 24102776)
Matthew D. Cavenaugh (TX Bar No. 24062656)
1401 McKinney Street, Suite 1900
Houston, Texas 77010
Telephone: (713) 752-4200
Facsimile: (713) 752-4221
kpeguero@jw.com
mcavenaugh@jw.com

Proposed Co-Counsel to the Debtors and Debtors in Possession

KIRKLAND & ELLIS LLP
KIRKLAND & ELLIS INTERNATIONAL LLP
Joshua A. Sussberg, P.C.
Steven N. Serajeddini, P.C.
Matthew C. Fagen
601 Lexington Avenue
New York, New York 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900
Email: joshua.sussberg@kirkland.com
steven.serajeddini@kirkland.com
matthew.fagen@kirkland.com

Proposed Co-Counsel to the Debtors and Debtors in Possession

OPTIONAL: RELEASE OPT-OUT FORM

You are receiving this opt out form (the "Opt-Out Form") because you may be a Holder of a Claim under the *Joint Prepackaged Plan of Reorganization of Belk, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code (Technical Modifications)* [Docket No. 10] (as amended, supplemented, or otherwise modified from time to time, the "Plan"). Holders of Claims are deemed to grant the Third-Party Release set forth in the Notice unless a Holder affirmatively opts out of the Third-Party Release on or before March 31, 2021, at 4:00 p.m., prevailing Central Time (the "Opt-Out Deadline").

If you believe you are a Holder of a Claim with respect to Belk, Inc. or its Debtor affiliates and choose to opt out of the Third-Party Release set forth in Article VIII.D of the Plan, you may submit your election to opt-out through one of the following methods: (i) completing, signing, and returning the Opt-Out Form via first class mail, overnight courier, or hand delivery to Belk Ballot Processing, c/o Prime Clerk LLC, One Grand Central Place, 60 East 42nd Street, Suite 1440, New York, New York 10165, so that it is actually received by the Claims and Noticing Agent prior to the Opt-Out Deadline or (ii) by completing, signing, and returning the Opt-Out Form via email by emailing belkballots@primeclerk.com and referencing "Belk, Inc." in the subject line.

Opt-Out Form

To ensure that your Opt-Out Form is counted, clearly sign and return your Opt-Out Form via (a) first class mail, overnight courier, or hand delivery to Belk Ballot Processing, c/o Prime Clerk LLC, One Grand Central Place, 60 East 42nd Street, Suite 1440, New York, New York 10165, or (b) email by emailing belkballots@primeclerk.com and referencing "Belk, Inc." in the subject line.

THIS OPT-OUT FORM MUST BE ACTUALLY RECEIVED BY PRIME CLERK LLC (THE "CLAIMS AND NOTICING AGENT") BY MARCH 31, 2021, AT 4:00 P.M. PREVAILING CENTRAL TIME (THE "OPT-OUT DEADLINE"). IF THE OPT-OUT FORM IS RECEIVED AFTER THE OPT-OUT DEADLINE, IT WILL NOT BE COUNTED.

Item 1. Important information regarding the Third-Party Release.

AS A HOLDER OF A CLAIM, YOU ARE A "RELEASING PARTY" UNDER THE PLAN AND ARE DEEMED TO PROVIDE THE THIRD-PARTY RELEASE CONTAINED IN ARTICLE VIII.D OF THE PLAN, AS SET FORTH BELOW. YOU MAY CHECK THE BOX BELOW TO ELECT NOT TO GRANT THE RELEASE CONTAINED IN ARTICLE VIII.D OF THE PLAN. YOU WILL NOT BE CONSIDERED A "RELEASING PARTY" UNDER THE PLAN ONLY IF YOU CHECK THE BOX BELOW AND SUBMIT THE OPT-OUT FORM BY THE OPT-OUT DEADLINE. THE ELECTION TO WITHHOLD CONSENT TO GRANT THE THIRD-PARTY RELEASE IS AT YOUR OPTION.

☐ **By checking this box, you elect to opt out of the Third-Party Releases.**

Article VIII.D of the Plan contains the following Third-Party Release:

Notwithstanding anything contained in this Plan to the contrary, on and after the Effective Date, in exchange for good and valuable consideration, the adequacy of which is hereby confirmed, each Released Party is, and is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably and forever, released and discharged by each Releasing Party from any and all Claims and Causes of Action, in each case on behalf of themselves and their respective successors, assigns, and representatives, and any and all Entities who may purport to assert any Claim or Cause of Action, directly or derivatively, by, through, for, or because of the foregoing Entities, from any and all Claims and Causes of Action, including any derivative claims, asserted or assertable on behalf of any of the foregoing Entities, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort, or otherwise, including any derivative claims asserted or assertable on behalf of the Debtors, the Reorganized Debtors, or their Estates, that such Entity would have been legally entitled to assert (whether individually or collectively) or on behalf of the Holder of any Claim against, or Interest in, a Debtor, a Reorganized Debtor, or their Estates or other Entity, based on or relating to, or in any manner arising from, in whole or in part, the Debtors (including the capital structure, management, ownership, or operation thereof), the purchase, sale, or rescission of any security of the Debtors or the Reorganized Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in this Plan, the business or contractual arrangements between or among any Debtor and any Released Party, the ownership and/or operation of the Debtors by any Released Party or the

distribution of any Cash or other property of the Debtors to any Released Party, the assertion or enforcement of rights or remedies against the Debtors, the Debtors' in- or out-of-court restructuring efforts, any Avoidance Actions (but excluding Avoidance Actions brought as counterclaims or defenses to Claims asserted against the Debtors), intercompany transactions between or among a Debtor or an Affiliate of a Debtor and another Debtor or Affiliate of a Debtor, the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, or filing of the RSA and related prepetition transactions, the Disclosure Statement, the New Credit Facilities, the ABL Facility, the New ABL Facility, the Plan (including, for the avoidance of doubt, the Plan Supplement), any other Definitive Documentation, or any Restructuring Transaction, contract, instrument, release, or other agreement or document (including any legal opinion requested by any Entity regarding any transaction, contract, instrument, document or other agreement contemplated by the Plan or the reliance by any Released Party on the Plan or the Confirmation Order in lieu of such legal opinion) relating to any of the foregoing, created or entered into in connection with the RSA, the New Credit Facilities, the ABL Facility, the New ABL Facility, the Disclosure Statement, the Plan, the Plan Supplement, before or during the Chapter 11 Cases, any preference, fraudulent transfer, or other avoidance claim arising pursuant to chapter 5 of the Bankruptcy Code or other applicable law, the filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of Consummation, the administration and implementation of the Plan, including the issuance or distribution of Securities pursuant to the Plan, or the distribution of property under the Plan or any other related agreement, or upon any other act or omission, transaction, agreement, event, or other occurrence related or relating to any of the foregoing taking place on or before the Effective Date. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release any post-Effective Date obligations of any party or Entity under the Plan, the Confirmation Order, any Restructuring Transaction, or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan, including the New Credit Facilities Documents and the New ABL Facility Documents, or any Claim or obligation arising under the Plan.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the Third-Party Release, which includes by reference each of the related provisions and definitions contained herein, and, further, shall constitute the Bankruptcy Court's finding that the Third-Party Release is: (a) consensual; (b) essential to the Confirmation of the Plan; (c) given in exchange for the good and valuable consideration provided by each of the Released Parties, including, without limitation, the Released Parties' substantial contributions to facilitating the Restructuring Transactions and implementing the Plan; (d) a good faith settlement and compromise of the Claims released by the Third-Party Release; (e) in the best interests of the Debtors and their Estates; (f) fair, equitable, and reasonable; (g) given and made after due notice and opportunity for hearing; and (h) a bar to any of the Releasing Parties asserting any Claim or Cause of Action released pursuant to the Third-Party Release.

Definitions Related to the Debtor Release and the Third-Party Release:

UNDER THE PLAN "***RELEASED PARTY***" MEANS, EACH OF, AND IN EACH CASE IN ITS CAPACITY AS SUCH: (A) THE DEBTORS; (B) THE REORGANIZED DEBTORS; (C) EACH CONSENTING STAKEHOLDER; (D) EACH MEMBER OF THE AD HOC CROSSOVER LENDER GROUP; (E) EACH MEMBER OF THE AD HOC FIRST LIEN TERM LENDER GROUP; (F) EACH COMPANY PARTY; (G) EACH AGENT; (H) EACH ABL LENDER; (I) EACH FIRST LIEN TERM LENDER; (J) EACH SECOND LIEN TERM LENDER; (K) ALL HOLDERS OF INTERESTS; (L) EACH BACKSTOP PARTY; (M) EACH SPONSOR; (N) EACH NEW CREDIT FACILITY LENDER; (O) EACH NEW ABL FACILITY LENDER; AND (P) EACH CURRENT AND FORMER AFFILIATE OF EACH ENTITY IN CLAUSE (A) THROUGH THE FOLLOWING CLAUSE (Q); AND (Q) EACH RELATED PARTY OF EACH ENTITY IN CLAUSE (A) THROUGH THIS CLAUSE (Q); PROVIDED THAT IN EACH CASE, AN ENTITY SHALL NOT BE A RELEASED PARTY IF IT: (X) ELECTS TO OPT OUT OF THE RELEASES CONTAINED IN THE PLAN; OR (Y) TIMELY OBJECTS TO THE RELEASES CONTAINED IN THE PLAN AND SUCH OBJECTION IS NOT RESOLVED BEFORE CONFIRMATION OF THE PLAN.

UNDER THE PLAN "***RELEASING PARTY***" MEANS, EACH OF, AND IN EACH CASE IN ITS CAPACITY AS SUCH: (A) THE DEBTORS; (B) THE REORGANIZED DEBTORS; (C) EACH CONSENTING STAKEHOLDER; (D) EACH MEMBER OF THE AD HOC CROSSOVER LENDER GROUP; (E) EACH MEMBER OF THE AD HOC FIRST LIEN TERM LENDER GROUP; (F) EACH COMPANY PARTY; (G) EACH AGENT; (H) EACH ABL LENDER; (I) EACH FIRST LIEN TERM LENDER; (J) EACH SECOND LIEN TERM LENDER; (K) ALL HOLDERS OF CLAIMS; (L) ALL HOLDERS OF INTERESTS; (M) EACH SPONSOR; (N) EACH BACKSTOP PARTY; (O) EACH NEW CREDIT FACILITY LENDER; (P) EACH NEW ABL FACILITY LENDER; AND (Q) EACH CURRENT AND FORMER AFFILIATE OF EACH ENTITY IN CLAUSE (A) THROUGH THE FOLLOWING CLAUSE (R); AND (R) EACH RELATED PARTY OF EACH ENTITY IN CLAUSE (A) THROUGH THIS CLAUSE (R); PROVIDED THAT IN EACH CASE, AN ENTITY SHALL NOT BE A RELEASING PARTY IF IT: (X) ELECTS TO OPT OUT OF THE RELEASES CONTAINED IN THE PLAN; OR (Y) TIMELY OBJECTS TO THE RELEASES CONTAINED IN THE PLAN AND SUCH OBJECTION IS NOT RESOLVED BEFORE CONFIRMATION OF THE PLAN.

Item 2. Certifications.

By signing this Opt-Out Form, the undersigned certifies:

(a) that, as of the Record Date, either: (i) the Entity is the Holder of Claims; or (ii) the Entity is an authorized signatory for an Entity that is a Holder of the Claims;

(b) that the Holder has received a copy of the *Notice of Opportunity for Holders of Claims to Opt Out of the Third-Party Releases* and that this Opt-Out Form is submitted pursuant to the terms and conditions set forth therein; and

(c) that the Entity has submitted the same respective election concerning the releases with respect to all Claims held by such Holder.

Name of Holder:	_____ (Print or Type)
Signature:	_____
Name of Signatory:	_____ (If other than Holder)
Title:	_____
Address:	_____
	_____
Telephone Number:	_____
Email:	_____
Date Completed:	_____

IF YOU WISH TO OPT OUT, PLEASE COMPLETE, SIGN, AND DATE THIS OPT-OUT FORM AND RETURN PROMPTLY VIA (I) EMAIL BY EMAILING BELKBALLOTS@PRIMECLERK.COM AND REFERENCING "BELK, INC." IN THE SUBJECT LINE, OR (II) FIRST CLASS MAIL, OVERNIGHT COURIER OR HAND DELIVERY TO:

Belk Ballot Processing
c/o Prime Clerk LLC
One Grand Central Place
60 East 42nd Street, Suite 1440
New York, NY 10165

Exhibit A

Due Process Preservation Order

Faculty

Hon. Caryl E. Delano is Chief Bankruptcy Judge for the U.S. Bankruptcy Court for the Middle District of Florida in Tampa, initially appointed on June 25, 2008, and named Chief Judge on October 1, 2019. She also was appointed Presiding Judge of the Fort Myers Division in July 2012. Previously, Judge Delano practiced before the bankruptcy courts of the Central District of California for 14 years. In 1994, she returned to Tampa and most recently practiced law with the firm of Addison & Delano, P.A., where she concentrated her practice on bankruptcy and commercial litigation. Judge Delano has represented debtors and creditors in numerous chapter 11 cases and related adversary proceedings. She is a member of The Florida Bar, The State Bar of California, the National Conference of Bankruptcy Judges, ABI, the Business Law Section of The Florida Bar (Executive Council, CLE Committee), the Hillsborough County Bar Association and the Tampa Bay Bankruptcy Bar Association. In addition, she served as the liaison judge to the Middle District of Florida's Local Rules Lawyers' Advisory Committee from 2011-20 and is a member of the National Conference of Bankruptcy Judges Federal Rules Advisory Committee. In 2017, Judge Delano received the Southwest Florida Bankruptcy Professionals Association's Alexander L. Paskay Professionalism Award. In addition, she is the former executive director and past-president of the J. Clifford Cheatwood American Inn of Court. Judge Delano received her B.A. in English *cum laude* in 1976 from the University of South Florida and her J.D. in 1979 from Indiana University School of Law, having completed her final year of law school at Emory University School of Law.

Daniel Etlinger is a partner with Jennis Morse Etlinger in Tampa, Fla., where he focuses his practice on transactional representation, particularly in commercial bankruptcies, corporate law, financial services and real property law. He was the first attorney to confirm a subchapter V bankruptcy in the Middle District of Florida. Mr. Etlinger has authored several articles on bankruptcy matters, including "Per Plan vs. Per Debtor" with the Tampa Bay Bankruptcy Bar Association and "To Be or Not to Be? Counting a Wholly Unsecured Claim in a Chapter 13 Following a Chapter 7" with the ABI's Young and New Members Committee. He recently served as a panelist at St. Leo University's presentation on Re-Imagine Your Future Under Subchapter V: A Chapter 11 Survival Tool, and participated as a guest lecturer at Stetson University College of Law's bankruptcy course titled Procedural Issues Including Withdrawal of the Reference, Jurisdiction (*Stern* and Safe Harbor Issues), Venue, and Abstention. Mr. Etlinger has earned Avvo's and Martindale-Hubbells's highest ratings, Superb and AV-Preeminent, respectively. He received his B.A. from the University of Rochester and his J.D. and M.B.A. from the University of Pittsburgh.

Leanne M. Prendergast is a partner with FisherBroyles, LLP in Jacksonville, Fla., and has more than 20 years of experience in commercial litigation and bankruptcy. She represents creditors, debtors, trustees, receivers and assignees at the trial and appellate levels. Ms. Prendergast practices in state and federal courts throughout Florida. She has earned the designation Certified E-Discovery Specialist from the Association of Certified E-Discovery Specialists and is a member of Women in E-Discovery. In 2015, she participated on a panel on E-Discovery in Bankruptcy at the Jacksonville Bankruptcy Bar Association's Annual Seminar. Ms. Prendergast is also active in the International Women's Insolvency & Restructuring Confederation (IWIRC); she serves as chair of IWIRC's Florida Network and is a three-time delegate to IWIRC's Annual International Leadership Conference. In

2016, she was recognized as an Unsung Shero by the Women's Center of Jacksonville. Ms. Prendergast received her J.D. from the University of Florida College of Law.

Jay M. Sakalo is a partner in the Business Finance & Restructuring and Corporate Practice at Bilzin Sumberg Baena Price & Axelrod, LLP in Miami, and represents clients throughout the financial spectrum, from structuring and restructuring complex financings on behalf of lenders, to representing secured creditors and purchasers in bankruptcy proceedings. He focuses on the representation of private-equity funds, hedge funds, alternative lenders, borrowers and issuers. Mr. Sakalo has experience in the real estate finance, hospitality, health care, aviation and gaming industries. He is a frequent speaker on restructuring and bankruptcy topics, and has been listed in *Chambers USA*, *The Best Lawyers in America*, *Florida Super Lawyers* and *Florida Trends Legal Elite*, among others. Mr. Sakalo received his B.S.B.A. with honors in finance from the University of Florida in 1995 and his J.D. with honors in 1998 from the University of Florida Levin College of Law.