AMERICAN BANKRUPTCY INSTITUTE

Southeast Bankruptcy Workshop

Bridging the Gaps: Issues of First Impression in Subchapter V Cases, and How Courts and Practitioners Are Creatively Resolving Them

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SUB-V: BRIDGING THE GAPS

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Introduction

Since its inception, Subchapter V has presented unique and challenging questions for bankruptcy courts and lawyers. Not surprisingly, the law is still developing and opinions on issues of first impression continue to be entered around the country. Several recent opinions highlight the creativity of bankruptcy courts and practitioners in interpreting Subchapter V and in filling statutory gaps, providing useful tools and guidance for debtors, creditors and Subchapter V trustees alike.

Removing the Debtor-in-Possession

Under 11 U.S.C. § 1185(a), a debtor-in-possession may be removed "for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor. . . ." In In re ComedyMX, LLC, 647 B.R. 457 (Bankr. D. Del. 2022), the bankruptcy court weighed whether to (a) de-designate the case from Subchapter V to a regular chapter 11 case and appoint a chapter 11 trustee, or (b) remove the debtors as debtors-in-possession under § 1185 and authorize the Subchapter V trustee, under 11 U.S.C. § 1183(b), to operate the debtors' business. The debtors' principal was both the owner of the debtors and their sole officer and employee. Based on emails sent by the principal, it became clear to the court that the principal could not serve in a fiduciary capacity to the bankruptcy estate. Id. at 459. The debtors' primary business rival moved to de-designate the case and appoint a regular chapter 11 trustee, or alternatively remove the debtors as debtors-in-possession and authorize the Subchapter V trustee to operate the businesses. The U.S. Trustee moved to remove the debtors-in-possession or, alternatively, to dismiss the jointly administered cases.

The court noted that a Subchapter V debtor-in-possession is required under 11 U.S.C. § 1184 "to perform [the] functions and duties … of a trustee serving in a case under this chapter." Id. at 465. Having considered the actions of the debtors' principal, the court determined that "a manifest demonstration that management is unable to conduct itself as an appropriate fiduciary for the bankruptcy estate is … 'cause' to dispossess the debtor under § 1185." Id. The court found authority in § 1183(b)(5) to authorize the Subchapter V trustee to operate the debtors' businesses going forward due to the debtors ceasing to be debtors-in-possession. Id. While the court ultimately decided to remove the debtors-in-possession, the opinion nonetheless includes a robust discussion of the theoretical possibility of de-designation of Subchapter V status while concluding

that any such authority "ought to be exercised only as a last resort." Id. at 464. Notably, despite the Subchapter V trustee taking over operation of the debtors' businesses and continuing to "facilitate the development of a consensual plan of reorganization" under 11 1183(b)(7), the debtors nonetheless retained the sole authority to file a plan in accordance with 11 U.S.C. § 1189(a). Id. at 465.

In In re National Business Alliance, Inc., 642 B.R. 345 (Bankr. D.D.C. 2022), the court determined as a matter of first impression that it could effectively revoke the debtor's Subchapter V election and appoint a Chapter 11 trustee to manage the debtor. While acknowledging that the Code does not expressly provide for post-petition revocation of the Subchapter V election, the court noted several prior decisions holding that an eligible debtor in a case initiated prior to the enactment of Subchapter V could amend its petition after the enactment of Subchapter V to proceed under Subchapter V rather than under ordinary chapter 11. Id. at 348. In the court's determination, logically it must follow that the opposite must also be an option, *i.e.*, a debtor may amend its petition to revoke the Subchapter V election and proceed under ordinary chapter 11. Id. Having determined that revocation of the Subchapter V election is an option under the Code, the court then found authority in 11 U.S.C. § 105(a) to revoke the debtor's Subchapter V election and appoint a chapter 11 trustee where the debtor was clearly unable to meet the deadlines and requirements of Subchapter V. Id. at 349. Early in the case the court had dispossessed the debtor as debtor-in-possession under § 1185(a) and ordered the Subchapter V trustee to perform the duties set forth in § 1185(b)(5), and in its ruling to revoke the Subchapter V election the court noted it was clear from the record that the debtor's management should not be repossessed with operational control of the debtor. Id. at 350

The bankruptcy court for the Eastern District of North Carolina reached a similar result in In re Livewell Assisted Living, Inc., Case No. 22-00264-5-DMW (Bankr. E.D.N.C. May 31, 2022). The debtor there operated several assisted living facilities and filed a chapter 11 petition in February 2022. The debtor filed an amended petition in April 2022 electing to proceed under Subchapter V. A subchapter V trustee was appointed and, based on previous concerns over the debtor's financial management, the court entered an order expanding the Subchapter V trustee's duties to include those under 11 U.S.C. § 1106(a)(3), specifically authorizing the trustee to "investigate the acts, conduct, assets, liabilities, and financial condition of the Debtor, the operation of the Debtor's business and the desirability of the continuance of the business, and any other

matters relevant to the case or to the formulation of a plan." Id. at p. 3. A creditor interested in purchasing the debtor's business filed a motion to remove the debtor as debtor-in-possession under § 1185(a), or alternatively convert the case to chapter 7 pursuant to 11 U.S.C. § 1112(a). Following a hearing, the court agreed that the debtor's president and manager had grossly mismanaged the debtor's financial affairs both prior to and during the bankruptcy case. Finding that mere dispossession of the debtor as debtor-in-possession under § 1185(a) would be an inadequate remedy, the court "annulled" the debtor's Subchapter V election and appointed a chapter 11 trustee under 11 U.S.C. § 1104(a)(1) based on the gross mismanagement of the debtor's affairs.

More recently, the bankruptcy court in In re Duling Sons, Inc., 650 B.R. 578 (Bankr. D.S.D. 2023) found cause to remove the Subchapter V debtor as debtor-in-possession under § 1185(a) and expand the duties and role of the Subchapter V trustee under §§ 1183(b)(2) and (5). The case was commenced in December 2021 with the debtor electing to proceed under Subchapter V. The debtor's principal was its sole director and held all corporate officer positions. Following an investigation by the Subchapter V trustee pursuant to § 1183(b)(2) and § 1106(a), it became clear that the principal had "engaged in gross mismanagement of Debtor's business, and likely committed fraud and/or self-dealing against Debtor." Id. at 581. The U.S. Trustee, as well as other parties including the debtor's majority stockholder, filed motions to convert the case to chapter 7, or alternatively to remove the debtor as debtor-in-possession.

The court found there was "cause" for both converting the case to chapter 7 under 11 U.S.C. § 1112 and to remove the debtor as debtor-in-possession under § 1185(a). In deciding which course to take, the court noted the general advantages of Subchapter V (cost-effectiveness, elimination of absolute priority rule and impaired accepting class requirements for plan confirmation) as well as the Subchapter V trustee's extensive knowledge of the debtor's operations and the bankruptcy estate given the trustee's prior investigation and close interaction with the debtor over the 16 months the case had been pending. Conversion would require duplicative work from a new trustee and would further delay distributions to creditors. On balance, the court determined it was "in the best interest of the estate to preserve the general benefits of subchapter V. It is also in the best interests of creditors and the estate to avoid the quarterly UST fees of a traditional chapter 11 or the statutory compensation of a newly appointed chapter 7 panel trustee." As a result, the court removed the debtor as debtor-in-possession under § 1185(a) and expanded the Subchapter V

trustee's duties and power under §§ 1183(b)(2) and (5), noting that if the trustee and debtor failed to timely file a joint plan the case would convert to chapter 7. Id. at 583.

In In re Macedon Consulting, Inc., 2023 WL 4004484 (Bankr. E.D. Va. June 14, 2023), the court considered whether to dismiss the Subchapter V case under various theories but ultimately revoked the Subchapter V designation and converted the case to a regular chapter 11 case. The debtor filed its Subchapter V case on February 28, 2023 and immediately filed a motion to reject its commercial office space leases. The lessors filed a motion to dismiss, arguing that the case should be dismissed (i) under 11 U.S.C. § 105 as an abusive filing; (ii) for cause under 11 U.S.C. § 1112(b); or (iii) because the debtor was ineligible for Subchapter V. The court declined to consider dismissal under § 105 "when a more specific code section – section1112 – governs dismissal of chapter 11 cases. Section 1112 applies in subchapter V cases as well as in regular chapter 11 cases." Id. at *3. Applying the bad-faith dismissal standard set forth by the Fourth Circuit in Carolin Corp. v. Miller, 886 F.2d 693 (4th Cir. 1989), the court held that the lessors failed to prove either subjective bad faith or objective futility in the filing, such that dismissal under § 1112 was unwarranted. Lastly, the court agreed that the debtor exceeded the Subchapter V debt limits but concluded that revocation of the Subchapter V designation was preferable to dismissing the case, where dismissal would only benefit the lessors but not the estate or other stakeholders. Id. at *4.

Debt Limit

In In re Free Speech Systems, LLC, 649 B.R. 729 (Bankr. S.D. Tex. 2023), the debtor had filed a voluntary petition in July 2022 and elected to proceed under Subchapter V. Some five months later, the debtor's owner, Alex Jones, filed a separate chapter 11 case. Following Jones's filing, the creditors of Free Speech Systems, LLC filed a motion to revoke the debtor's Subchapter V election and change the case to a traditional chapter 11, arguing that Jones was an affiliate of Free Speech Systems whose debts exceeded the $7.5 million cap in 11 U.S.C. § 1182(1)(B), rendering Free Speech Systems ineligible under § 1182(1)(A). Notably, the creditors acknowledged that Free Speech Systems qualified as a Subchapter V debtor as of its petition date. However, they argued that it ceased being eligible when Jones filed his bankruptcy case. Specifically, the creditors noted the absence of the phrase "as of the date of the filing of the petition" from § 1182(1)(B).

After carefully reviewing the Bankruptcy Rules, the court concluded that the eligibility analysis under § 1182(1)(B) is limited to the petition date and cannot thereafter be altered based on postpetition events. Rule 1020(a) requires a debtor to state in its petition whether it elects to proceed under Subchapter V and provides that a case proceeds in accordance with the debtor's election "unless and until the court enters an order finding that the debtor's statement is incorrect." Fed. R. Bankr. P. 1020(a). A party in interest may object to the Subchapter V election "no later than 30 days after the conclusion of the meeting of creditors held under § 341(a) of the Code, or within 30 days after any amendment to the statement, whichever is later." Fed. R. Bankr. P. 1020(b). In the case of Free Speech Systems, the debtor's Subchapter V election in its petition and the basis for making it as of that day remained true. In addition, the challenge period provided for in Rule 1020(b) expired long before the creditors brought their motion. Noting the streamlined chapter 11 process in Subchapter V, the court expressed concern that allowing postpetition events to determine a debtor's Subchapter V eligibility would open the possibility of debtors "float[ing] in and out of Subchapter V at any time. That contradicts the text and purpose of Subchapter V." Id. at 734.

In a more recent case, the court in In re Dobson, 2023 WL 3520546 (Bankr. W.D. Va. May 17, 2023) agreed with Free Speech Systems and held that the individual Subchapter V debtors were eligible under § 1182(1)(B) on their petition date and subsequent events would not negate their eligibility. The male debtor had previously run a home construction company of which he was the sole shareholder. The day after the individuals filed their Subchapter V chapter 11 case, the company filed a chapter 7 petition. The combined amount of the company's debts and the individuals' debts exceeded the $7.5 million statutory cap for Subchapter V eligibility under § 1182(1)(B)(i). The U.S. Trustee objected to the individuals' Subchapter V election, arguing that the "plain language" of § 1182 required the court to "consider eligibility based on events that occur postpetition (such as the later filing of a bankruptcy case by an affiliate of a debtor) because the phrase 'as of the petition date' is not expressed in subsection (B)(i)." Id. at *3. The court disagreed, stating that "[a] later event does not make a statement made as of the petition date incorrect. It does not change the eligibility as of the petition date. The debtor is either eligible or not. He does not change his existence during the case." Id. at *4. The court noted that accepting the U.S. Trustee's argument would create the possibility for a Subchapter V debtor to become ineligible simply by obtaining postpetition financing under 11 U.S.C. § 364 that pushed the debtor over the

$7.5 million statutory debt limit. Id. at *5. The court held that the debtors were eligible for Subchapter V on their petition date and overruled the U.S. Trustee's objection. Id. at *7.

"Engaged in Commercial or Business Activities"

In In re Blue, 630 B.R. 179 (Bankr. M.D.N.C. 2021), the court considered the Subchapter V eligibility of a salaried employee who was also receiving income from part-time consulting work as an independent contractor. The debtor was also renting out her former residence. The court viewed the term "activities" as much broader than "operations", concluding that "nothing in the Bankruptcy Code or legislative history of subchapter V mandates that commercial or business activities must be full-time to qualify, and Debtor's activities in this case are substantial and material." Id. at 190. Having determined that the debtor was "engaged in commercial or business activities" as required by § 1182(1)(A), the court went on to hold that a debtor's ongoing "commercial or business activities" as of the petition date need not be connected to the "commercial or business activities" giving rise to the debtor's prepetition debt for purposes of § 1181(1)(A)'s requirement that at least 50% of the debtor's debt arise from the debtor's "commercial or business activities." Id. at 191.

In In re Reis, 2023 WL 3215833 (Bankr. D. Id. May 2, 2023), the court considered whether at least 50% of the debtor's debts arose from commercial or business activities, which determination turned on the characterization of the debtor's student loan debt. The debtor had filed chapter 7 bankruptcy in 2018, indicating that her debts (including student loan debt) were primarily consumer debts. In November 2022 the debtor filed a chapter 11 petition and elected to proceed under Subchapter V, indicating her debts were not primarily consumer debts. The U.S. Trustee filed a timely objection to the Subchapter V election, arguing that § 1182(1)(A) requires a "nexus or contemporaneousness between Debtor's engagement in commercial activity and the debts that 'arose from' commercial activity." Id. at *4. The debtor countered that she "had to have business activities on the petition date, and also had to have at least 50% of the debt arise from commercial or business activities, but no nexus between the two is required." Id.

The court agreed with the debtor's analytical framework but nonetheless sustained the U.S. Trustee's objection, holding that the debtor's student loan debt did not arise from commercial or business activities for purposes of meeting § 1182(1)(A)'s 50% threshold. Id. at *7. The court noted that the debtor's medical student loans were incurred more than ten years prior to her chapter

11 filing, and she did not operate a business after obtaining her medical degree until more than a decade had passed. Id. at *6. While not foreclosing the possibility that student loan debt could qualify as debt arising from commercial or business activities to satisfy Subchapter V eligibility, the student loan debt in Reis, "incurred over ten years prior to opening the medical practice, is simply too far removed for Debtor to qualify for Sub V relief." Id. at *7.

In In re Ikalowych, 629 B.R. 261 (Bankr. D. Colo. 2021), the court looked to chapter 12 case law in holding that qualifying business debts for purposes of § 1182(1)(A) "must be directly and substantially connected to the 'commercial or business activities' of the debtor." Id. at 288. In addition, the court held that the commercial or business activities giving rise to the debtor's debts must have arisen from the same commercial or business activities in which the debtor is engaged on the petition date for purposes of satisfying § 1182(1)(A). Id. at 275. Interestingly, the court concluded that an individual working as a salaried employee or wage earner satisfies the "exceptionally broad scope" of § 1182(1)(A)'s "engaged in commercial or business activities" requirement. Although this ruling suggests "that virtually all private sector wage earners may be considered as 'engaged in commercial or business activities,'" the court noted that the effect of this conclusion was largely blunted by the additional requirement that at least 50% of the debtor's debts arise from the same activity. Id. at 286-87. The court held that the debtor was eligible for Subchapter V even though the limited liability company that the debtor managed and in which the debtor held an indirect 30% ownership interest had surrendered its assets to its secured lender immediately prepetition, as the debtor was still engaged in efforts to wind down the company on the petition date. Id. at 284-285.

Role of the Subchapter V Trustee

While Subchapter V trustees generally have somewhat limited duties under 11 U.S.C. § 1183, the court may expand the trustee's duties and powers under appropriate circumstances. In In re Corinthian Communications, Inc., 642 B.R. 224 (Bankr. S.D.N.Y. 2022), the U.S. Trustee filed a motion to remove the Subchapter V debtor as debtor-in-possession under 11 U.S.C. § 1185(a) which motion was supported by the Subchapter V trustee and joined by the debtor's landlord. Id. at 226. The debtor's principal was its sole owner, president and sole director. Id. at 227. The U.S. Trustee's motion was based on allegations of fraud committed by the debtor, gross mismanagement for failing to follow corporate formalities, conflicts of interest between the debtor

and its principal and affiliates, and a lack of transparency, forthrightness and credibility in the debtor's disclosures. Id. at 228-29. The Subchapter V trustee reported a lack of disclosure regarding outstanding document and information requests. The court declined to remove the debtor as debtor-in-possession under § 1185(a) but entered an order expanding the Subchapter V trustee's duties under § 1183(b)(2) "to include an investigation of 'the acts, conduct, assets, liabilities, and financial condition of the debtor, the operation of the debtor's business and the desirability of the continuation of such business ….'" Id. at 232 (quoting 11 U.S.C. § 1106(a)(3)).

Creditor View

In In re Staples, Case No. 22-cv-157 (M.D. Fla. Jan. 6, 2023), the *pro se* debtor filed a chapter 11 petition in November 2020 and elected to proceed as a small business debtor under Subchapter V. The debtor filed a proposed plan and several amended plans, filing a Fourth Amended Chapter 11 Plan in September 2021. The bankruptcy court entered an order in February 2022 confirming the plan with certain modifications. The debtor objected to certain plan modifications imposed by the bankruptcy court in its confirmation order, specifically a provision directing that all payments to unsecured creditors shall be based on the debtor's actual disposable income rather than projected disposable income, and a provision directing the debtor to prepare and file quarterly postconfirmation monthly operating reports. On appeal the debtor argued that these provisions conflict with the Subchapter V confirmation standards under 11 U.S.C. §§ 1191(c) and (d) and the bankruptcy court was without authority to impose the requirements.

The district court overruled the debtor's objections on appeal, holding that the provisions did not conflict with 11 U.S.C. §§ 1191(c) or (d), were well within the bankruptcy court's authority under the All Writs Act (28 U.S.C. § 1651(a)) and 11 U.S.C. § 105(a), and were clearly necessary and appropriate under the facts of the case.

The Fourth Circuit held in Cantwell-Cleary Co., Inc. v. Cleary Packaging, LLC (In re Cleary Packaging, LLC), 647 B.R. 457 (4th Cir. 2022), that debts that are nondischargeable as to individuals under 11 U.S.C. § 523(a) cannot be discharged by corporate debtors under Subchapter V of chapter 11. Calling it a "close" question, the Fourth Circuit concluded that "fairness and equity" require making such debts nondischargeable for Subchapter V debtors since such debtors have an easier road to plan confirmation under Subchapter V. Id. at 517-18. The debt in question arose from a $4.7 million state court judgment for tortious interference with contract including a

jury finding that the debtor had stolen customer information from the creditor. When the debtor filed chapter 11 and elected to proceed under Subchapter V, the creditor filed an adversary proceeding seeking a declaration that the judgment debt was nondischargeable under 11 U.S.C. § 1192(2) and 11 U.S.C. § 523(a)(6) as a debt for "willful and malicious injury" to the creditor's property. The bankruptcy court granted the debtor's motion to dismiss the complaint for failure to state a claim, holding that the list of discharge exceptions in § 523(a) applies only to individual debtors. On the creditor's motion, the bankruptcy court certified a direct appeal to the Fourth Circuit.

Noting a "lack of clarity in the relationship between § 1192(2) and § 523(a)," the Fourth Circuit relied on a "textual review" along with "practical and equitable considerations" in concluding that the debt was nondischargeable in Subchapter V. Id. at 513. The court stated that a Subchapter V debtor "should not especially benefit from the discharge of debtor incurred in circumstances of fraud, willful and malicious injury, and the other violations of public policy reflected in § 523(a)'s list of exceptions" when the debtor is immune from the absolute priority rule and enjoys the other unique benefits of Subchapter V. Id. at 518. See also In re Duntov Motor Co., LLC, Adv. P. No. 21-04030-MXM (Bankr. N.D. Tex. Aug. 26, 2021); Sun City Truck Sales et al. v. Tonka Int'l. Corp. et al. (In re Tonka Int'l. Corp.), Case No. 20-4064-BTR (Bankr. E.D. Tex. Sept. 16, 2020); In re Better Than Logs, Inc., 631 B.R. 670 (Bankr. D. Mont. 2021) (granting partial nondischargeability summary judgment against corporate Subchapter V debtor without addressing § 1192(2) or the applicability of § 523(a) to non-individual debtors).

The bankruptcy court in In re GFS Industries, LLC, 647 B.R. 337 (Bankr. W.D. Tex. 2022) reached a contrary conclusion, holding that Subchapter V corporate debtors are not subject to § 523(a) dischargeability complaints. Id. at 352. The bankruptcy court described the relationship between § 1192(2) and § 523(a) as follows:

> First, § 1192(2)'s reference to § 523(a) only incorporates the list of nondischargeable debts, without expanding it. In other words, the language of § 1192(2) does not intend to except from discharge any debts that § 523(a) does not already except. Because § 523(a) unequivocally applies only to individuals, the language of 1192(2) does not empower § 523(a) to cast a wider net than the text of § 523(a) permits. Had Congress included a phrase in 1192(2) explicitly stating that the list found in § 523(a) applies to all debtor proceedings in Subchapter V, then the interpretation would be straightforward. Congress's choice not to insert this language is instructive.

Id. at 342-43. The court therefore held that "the statutory language along with the broader Chapter 11 statutory scheme mandate this Court's holding that corporate debtors proceeding under Subchapter V cannot be made defendants in § 523 dischargeability actions." Id. at 344. See also In re Lapeer Aviation, Inc., 2022 WL 1110072 (Bankr. E.D. Mich. April 13, 2022); In re Rtech Fabrications, LLC, 635 B.R. 559 (Bankr. D. Id. 2021); In re Satellite Restaurants Inc. Crabcake Factory USA, 626 B.R. 871 (Bankr. D. Md. 2021); In re Hall, 651 B.R. 62 (Bankr. M.D. Fla. 2023). [NB: The Fifth Circuit has accepted a direct appeal from the bankruptcy court in GFS with appellant's brief due on June 26, 2023.]

Faculty

Peter J. Barrett is a partner in Kutak Rock LLP's Richmond, Va., office, where he concentrates his practice on financial restructuring matters. He represents unsecured and secured creditors, trustees, equityholders, distressed investors and corporate debtors in insolvency matters, including chapter 11 reorganizations, business liquidations and out-of-court restructurings. Mr. Barrett has experience representing interested parties in asset sales and has been involved in a number of complex chapter 11 bankruptcy cases throughout the country involving industries such as manufacturing, hospitality, construction, retail, entertainment and real estate. He also works with other firm attorneys to analyze the effects of insolvency and bankruptcy on corporate and financial transactions. Mr. Barrett is a member of the panel of chapter 7 bankruptcy trustees for the Eastern District of Virginia, Richmond Division, and is licensed to practice in Virginia and California. He received his J.D. from the University of Virginia School of Law.

Hon. Benjamin A. Kahn is a U.S. Bankruptcy Judge for the Middle District of North Carolina in Greensboro, sworn in on Feb. 3, 2014. He also is the chair of the Advisory Committee on Bankruptcy Judge Education for the Federal Judicial Center, for which he serves as one of the instructors for Phase I and Phase II Orientation for Newly Appointed Bankruptcy Judges. Judge Kahn is a member of the U.S. Judicial Conference Advisory Committee on the Bankruptcy Rules, and is chair of its Forms Subcommittee. In addition, he is a conferee of the National Bankruptcy Conference, for which he previously served on the Executive Committee and currently serves as chair of the Committee on the Court System and Bankruptcy Administration and on the Nominating Committee. Judge Kahn is a contributing author and member of the board of editors for *Collier on Bankruptcy* and has served as the judicial chair of ABI's Southeast Bankruptcy Workshop. Prior to his appointment, he was a member of Nexsen Pruet PLLC and clerked for Bankruptcy Judge Jerry G. Tart of the Middle District of North Carolina. Judge Kahn is certified as a specialist in business and consumer bankruptcy law by the American Board of Certification, for which he served as a member of its board of directors until his appointment to the bench. Prior to joining the bench, Judge Kahn was a certified mediator in North Carolina and was recognized as among the Top 10 North Carolina *Super Lawyers* across all practice areas for the two years immediately preceding his appointment, elected to the Legal Elite Hall of Fame by *Business North Carolina Magazine* in 2014 as the category winner in North Carolina for Bankruptcy, and was included among Band 1 bankruptcy practitioners in North Carolina in *Chambers and Partners USA*. He received his B.A. in political science and history in 1990, and his J.D. with honors in 1993, from the University of North Carolina at Chapel Hill.

Soneet R. Kapila, CPA, CFF, CFE, CIRA is a founding partner of KapilaMukamal, LLP in Fort Lauderdale, Fla., and ABI's President. For more than 25 years, he has concentrated his efforts in the areas of consulting in insolvency, fiduciary and creditors' rights matters. Mr. Kapila is a federal bankruptcy trustee and serves as an examiner, CRO, chapter 7 and 11 trustee, subchapter V trustee, liquidating trustee, corporate monitor (SEC appointments), and as a state and federal court-appointed receiver. He has been appointed in numerous matters in the Southern and Middle Districts of Florida. As a trustee plaintiff, Mr. Kapila has managed complex litigation in significant cases. He advises and represents debtors, secured creditors and creditors' committees in formulating, analyzing and negotiating plans of reorganization. As a recognized expert in fraudulent conveyance, Ponzi schemes and

insolvency issues, Mr. Kapila has provided expert testimony and litigation-support services to law firms involving complex insolvency issues and commercial damages. He has worked in conjunction with the SEC, FBI and U.S. Attorney's Office, and he has served both as a consultant and expert witness for litigation matters in state and federal courts. Mr. Kapila has spoken to various groups, including ABI, New York Law School, St. Thomas University Law School, and the National Conference of Bankruptcy Judges, Southeastern Bankruptcy Law Institute, National Association of Bankruptcy Trustees (NABT), Receiver's Forum, Association of Insolvency and Restructuring Advisors, Florida Institute of Certified Public Accountants, Turnaround Management Association, University of Miami School of Law, Florida International University School of Law, American Bar Association and the National Business Institute on topics related to insolvency, underperforming businesses and insolvency taxation. He is a Fellow of the American College of Bankruptcy and a past-president and past-chairman of the Association of Insolvency & Restructuring Advisors, for which he serves on its board of directors. Mr. Kapila has served on the advisory boards of ABI's Southeast Bankruptcy Workshop and Caribbean Insolvency Symposium. He also co-authored ABI's *Fraud and Forensics: Piercing Through the Deception in a Commercial Fraud Case* (2015). Mr. Kapila received his M.B.A. in 1978 from Cranfield School of Management.

Michael D. Mueller is chair of the Restructuring & Bankruptcy Practice at Williams Mullen in Richmond, Va. He focuses his practice on financial restructuring matters, insolvency law and distressed transactions. Mr. Mueller represents all types of creditors in commercial collection matters and insolvency proceedings, including bankruptcy, receiverships and assignments for the benefit of creditors. He represents lending institutions, secured creditors, creditors' committees, trustees, receivers, landlords, and asset- and debt-purchasers. Mr. Mueller has assisted financial institutions by structuring and implementing in-court and out-of-court debt restructuring. He has bankruptcy experience in claims prosecution, debtor-in-possession financing, dischargeability of debts, executory contracts and leases, fraudulent conveyances, involuntary petitions, officers' and directors' liability, plan confirmation and preference actions. He also has experience in lender liability and UCC matters in state and federal courts. Mr. Mueller's experience has spanned numerous industries, including retail, food and beverage, equipment manufacturing, real estate, energy, coal and car dealerships. His bankruptcy law work has been recognized by several publications, including *Virginia Super Lawyers* for Bankruptcy Law (2010-present), *Virginia Business* as a member of their "Legal Elite" for Bankruptcy/Creditors' Rights (2005-present) and in *The Best Lawyers in America*© (2021-present). He previously served on the board of governors for the Virginia State Bar's Bankruptcy Law Section, and he is a former chair of the Richmond Bar Association's Bankruptcy Section and the Virginia Bar Association's Bankruptcy Law Section. In addition, he is a former board member and president of the Virginia Business and Financial Turnaround Association. Before entering private practice, Mr. Mueller clerked for Hon. Ross W. Krumm, the former U.S. Bankruptcy Court Chief Judge in the Western District of Virginia. He received his B.S. *magna cum laude* from Edgewood College and a G.C.S. from the London School of Economics and Political Science, and his J.D. from the Washington & Lee University School of Law.

Rebecca F. Redwine is a partner with Hendren, Redwine & Malone, PLLC in Raleigh, N.C., and focuses her practice on debtor representation in chapter 11 and chapter 7 bankruptcies for both businesses and individuals. She also counsels clients experiencing insolvency, assists in workouts, routinely serves as local counsel and is a certified mediator. Ms. Redwine has served as unsecured creditors' committee counsel and has been appointed as examiner and as a receiver in various proceedings.

She is admitted to practice in the Eastern, Middle and Western Districts of North Carolina in the U.S. District Court and the U.S. Court of Appeals for the Fourth Circuit. Ms. Redwine serves on the Local Rules Committee for the U.S. Bankruptcy Court for the Eastern District of North Carolina and as chair of the Bankruptcy Law Specialty Committee for the North Carolina State Bar Board of Legal Specialization. She holds various leadership roles with ABI, the International Women's Insolvency & Restructuring Confederation (IWIRC), the American Board of Certification and the North Carolina Bar Association. She is a frequent presenter at bankruptcy conferences and is a guest lecturer in bankruptcy classes at the University of North Carolina School of Law and Campbell University School of Law. Ms. Redwine earned a Phi Beta Kappa key from North Carolina State University, where she received her B.A. in 2004, and was an honor student at the University of North Carolina School of Law, where she received her J.D. in 2007.