



AMERICAN
BANKRUPTCY
INSTITUTE

Southwest Bankruptcy Conference

Old Mistakes and New Mistakes

Steven M. Berman

Shumaker, Loop & Kendrick, LLP | Tampa, Fla.

Steven W. Golden

Pachulski Stang Ziehl & Jones | Wilmington, Del.

Hon. Michele J. Kim

U.S. Bankruptcy Court (S.D. Ga.) | Brunswick

Stacy H. Rubin

Howard & Howard Attorneys PLLC | Las Vegas

Hon. Madeleine C. Wanslee

U.S. Bankruptcy Court (D. Ariz.) | Phoenix



Old Mistakes and New Mistakes

Hon. Michele J. Kim (U.S.B.C. S.D. Ga.)

Hon. Madeleine C. Wanslee (U.S.B.C. D. Ariz.)

Steven M. Berman (Shumaker, Loop & Kendrick, LLP)

Steven W. Golden (Pachulski Stang Ziehl & Jones LLP)

Stacy H. Rubin (Howard & Howard Attorneys PLLC)



- I. Artificial Intelligence and the Practice of Law
- II. Use of Evidence in Bankruptcy Proceedings
- III. Chapter 15 After *Purdue*
- IV. Estate Professional Disclosure Obligations



Chapter 15 After *Purdue*

"A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law."

Model Rule 3.1

"The advocate has a duty to use legal procedure for the fullest benefit of the client's cause, but also a duty not to abuse legal procedure. The law, both procedural and substantive, establishes the limits within which an advocate may proceed. However, the law is not always clear and never is static."

Comment 1 to Model Rule 3.1



“Upon recognition of a foreign proceeding, whether main or nonmain, where necessary to effectuate the purpose of this chapter and to protect the assets of the debtor or the interests of the creditors, the court may, at the request of the foreign representative, grant any appropriate relief, including—”

11 U.S.C. § 1521(a)

“Subject to the specific limitations stated elsewhere in this chapter the court, if recognition is granted, may provide additional assistance to a foreign representative under this title or under other laws of the United States.”

11 U.S.C. § 1507(a)



In interpreting this chapter, the court shall consider its international origin, and the need to promote an application of this chapter that is consistent with the application of similar statutes adopted by foreign jurisdictions.

11 U.S.C. § 1508

(b) If the court grants recognition under section 1517, and subject to any limitations that the court may impose consistent with the policy of this chapter . . .

(3) a court in the United States shall grant comity or cooperation to the foreign representative

11 U.S.C. § 1509

Nothing in this chapter prevents the court from refusing to take an action governed by this chapter if the action would be manifestly contrary to the public policy of the United States.

11 U.S.C. § 1506



“Put another way, §§ 1509(b)(3) and 1506, read *in pari materia*, provide that comity shall be granted following the U.S. recognition of a foreign proceeding under Chapter 15, subject to the caveat that comity shall not be granted when doing so would contravene fundamental U.S. public policy.”

In re Qimonda AG Bankr. Litig., 433 B.R. 547, 565 (E.D. Va. 2010).



- Pre-*Purdue*, courts “often enforced third-party releases in foreign proceedings under section 1507 of the Bankruptcy Code.” *In re Avanti Communs. Grp. PLC*, 582 B.R. 603, 617 (Bankr. S.D.N.Y. 2018).
 - *In re PT Bakrie Telecom Tbk*, 628 B.R. 859, 882 (Bankr. S.D.N.Y. 2021) (“Even in Circuits where third-party releases in United States bankruptcy cases are categorically impermissible, such relief may be permitted to foreign proceedings under Chapter 15.”)
 - *In re Ocean Rig UDW, Inc.*, 570 B.R. 687 (Bankr. S.D.N.Y. 2017)
 - *In re Sino-Forest Corp.*, 501 B.R. 655 (Bankr. S.D.N.Y. 2013)
 - *In re Metcalfe & Mansfield Alternative Invs.*, 421 B.R. 685 (Bankr. S.D.N.Y. 2010)

Faculty

Steven M. Berman is a partner in the Tampa, Fla., office of Shumaker, Loop & Kendrick, LLP, specializing in the firm's bankruptcy and creditors' rights practice group. He has more than 30 years of bankruptcy experience and focuses his practice on business bankruptcy litigation, representing creditors, investors, distressed-debt lenders, trustees, committees and business entities litigating disputes in bankruptcy court. Mr. Berman is Board Certified by the American Board of Certification in both Creditors' Rights Law and Business Bankruptcy Law, and he is a member of the Florida, California, District of Columbia, New York, Puerto Rico (Federal) and Texas bars. He is also admitted to practice before the Second and Eleventh Circuit Courts of Appeals and the U.S. Supreme Court. Mr. Berman serves on the boards of directors for ABI and serves on its Endowment Committee and its Task Force on Veterans and Servicemembers Affairs. He routinely volunteers and speaks at its seminars and other programs. On a local level, Mr. Berman is a member of the Tampa Bay Bankruptcy Bar Association, the Bankruptcy Bar Association of the Southern District of Florida, the Southwest Florida Bankruptcy Professionals Association and the San Diego Bankruptcy Forum. In addition, he guest lectures at the University of Florida College of Law and Stetson University College of Law in their advanced bankruptcy courses. Mr. Berman provides *pro bono* bankruptcy and insolvency services and training for U.S. Navy Judge Advocate General officers and staff, and represents servicemembers and their families in need. He is AV-rated by Martindale-Hubbell and was listed in *Florida Super Lawyers* from 2013-22. Mr. Berman received his B.S. in multinational business operations in 1987 from Florida State University and his J.D. in 1990 from the University of Florida Levin College of Law.

Steven W. Golden is a partner with Pachulski Stang Ziehl & Jones in its Wilmington, Del., and New York offices. He concentrates his practice on representing debtors, official committees, foreign representatives and other parties in complex corporate bankruptcy proceedings throughout the nation. Among his many engagements, Mr. Golden was instrumental in the firm's representation of Amyris, Watsonville Hospital and CarbonLite in their chapter 11 cases, and of the official creditors' committees in dozens of chapter 11 cases, such as Neiman Marcus, Payless Shoes, Studio Movie Grill and The Weinstein Company. He also has represented the foreign representative in Nexii's chapter 15 proceedings and is a member of the International Insolvency Institute's NextGen Class X. Mr. Golden has authored some 20 articles and other publications on a wide range of bankruptcy topics and was recognized in 2021 as one of 19 recipients of the American Bar Association's inaugural "20/20 Partners Rising Young Leader Award." He received his Bachelor's degree from Emory University, his J.D. from Georgia State University College of Law and his LL.M. in bankruptcy law from St. John's University School of Law.

Hon. Michele J. Kim is a Chief Judge for U.S. Bankruptcy Court for the Southern District of Georgia in Brunswick, initially appointed on June 23, 2017. She previously clerked for U.S. Bankruptcy Court Judge John S. Dalis and Hon. Anthony Alaimo, and worked for King & Spalding in its Atlanta office, where she specialized in financial restructuring and bankruptcy law. Judge Kim received her J.D. with honors in 2006 from the University of Georgia School of Law.

Stacy H. Rubin is an attorney with Howard & Howard Attorneys PLLC in Las Vegas, where she focuses her practice on bankruptcy litigation, representing creditors' interests in bankruptcy courts and all aspects of commercial litigation, both state and federal, at the trial and appellate levels. She also has experience with federal and state consumer protection and lending regulation statutes, including the FDCPA, FCRA, RESPA and UDAAP. Ms. Rubin represents a variety of clients, including financial institutions, creditors, and related entities in finance, mortgage banking and consumer financing. She regularly counsels clients such as lenders, asset-managers and landlords on bankruptcy issues, guiding them through various matters, including disclosure statements and plans of reorganization, assumption and assignment of leases and executory contracts. Ms. Rubin has experience in developing defensive strategies, investigating allegations, taking and defending depositions, conducting and responding to discovery, drafting and arguing dispositive motions, handling arbitrations and mediations, authoring appellate briefs and preparing for trial. She is admitted to practice in California, Nevada, the U.S. District and Bankruptcy Courts for the Northern, Central, Southern and Eastern Districts of California, the U.S. District and Bankruptcy Courts for the District of Nevada, and the U.S. Court of Appeals for the Ninth Circuit. Ms. Rubin is a member of the California Receivers Forum, ABI and the Southern Nevada Association of Bankruptcy Attorneys. She received her B.A. in 1999 from the University of California, Santa Barbara and her J.D. in 2003 from California Western School of Law.

Hon. Madeleine C. Wanslee is a U.S. Bankruptcy Judge for the District of Arizona in Phoenix, sworn in on March 17, 2014. She has been a member of the Ninth Circuit Conference Executive Committee since 2018 and currently chairs the 2024 Judicial Conference. Before joining the bench in 2014, Judge Wanslee practiced at Gust Rosenfeld, PLC, where she served on the firm's management committee and concentrated her practice on bankruptcy, creditors' rights and related appeals. She is Board Certified by the American Board of Certification, and while in private practice, she briefed and argued a bankruptcy case before the U.S. Supreme Court. Judge Wanslee is a former chair of the Ninth Circuit Bankruptcy Judges Education Committee, the Ninth Circuit Lawyer Representatives Coordinating Committee and the Arizona State Bar's Bankruptcy Section. She previously served on the American Board of Certification's Standards Committee and on the Arizona State Bar's Advisory Committee, which certify bankruptcy specialists. She helped to charter and is past president of the Arizona Bankruptcy American Inn of Court. Judge Wanslee began her legal career as a law clerk for Hon. Robert Clive Jones of the Ninth Circuit Bankruptcy Appellate Panel. She received her B.F.A. and B.A. from the University of Arizona and her J.D. from Gonzaga University School of Law, where she served as a writer and executive editor of the *Gonzaga Law Review*.