

FINANCIAL POISE WEBINARS

BANKRUPTCY BATTLE ROYALE - COMMON LITIGATION SCENARIOS

SERIES OVERVIEW

No matter how you are involved in a bankruptcy proceeding, there is a real chance you will wind up litigating some issue. Litigating in bankruptcy court, however, is very different than litigating in any other federal or state court because the customs, rules and players are all different. Whether you are a general litigator or a business person who has never had to fight in bankruptcy court, this webinar series is for you if you want to understand some of the more commonly litigated issues in bankruptcy cases. Each episode is delivered in Plain English understandable to business owners and executives without much background in these areas. Yet, each episode is proven to be valuable to seasoned professionals. As with all Financial Poise Webinars, each episode in the series brings you into engaging, sometimes humorous, conversations designed to entertain as it teaches. And, as with all Financial Poise Webinars, each episode in the series is designed to be viewed independently of the other episodes, so that participants will enhance their knowledge of this area whether they attend one, some, or all of the episodes.

EPISODE SUMMARIES

EPISODE #1

Venue Fights

Venue- where a case can be filed- can be a hotly contested issue. This is because, while there is a single federal Bankruptcy Code, there are hundreds of bankruptcy judges throughout the United States and each one has the authority to interpret many of the Code's provisions differently. And, while debtors are generally given wide latitude to select the venue of their choice, there are circumstances in which creditors or other interested parties successfully challenge the debtor's choice. This webinar explores how to analyze venue options and how to best challenge the debtor's chosen venue. It also discusses the issue of venue among nations: traditionally, venue fights centered over where in the

United States a bankruptcy could be properly filed. More and more in these days of globalization, venue disputes can span not only states, but also nations.

EPISODE #2

Cash Collateral and DIP Loan Contests

Show me the money! Debtors in Chapter 11 proceedings cannot survive without money to continue operations, pay vendors and professionals, and work to restructure debt and/or sell assets. Where do those necessary funds come from? There are really only two sources – existing or generated cash (generally the collateral of the secured lender) or new money coming into estate in the form of a post-petition debtor-in-possession (DIP) loan. At the very outset of the case, a debtor must get a court order allowing the use of either type of funds, and that order often contains terms that impact the entire course of the proceeding. As a result, the battles over the terms of the use of cash collateral or DIP financing are some of the most hotly contested in the Chapter 11 process, involving numerous parties including the debtor, secured lender, unsecured creditors' committee, and third party DIP lender. This webinar presents practical tips for each of these parties to protect their respective interests.

EPISODE #3

Lift-Stay Battles

Most businesses of any meaningful size in the United States have a line of credit or term loan with a bank or other lender that is secured by a lien on substantially all of the assets of that business. One of the strongest tools in a secured lender's toolbox is the ability to ask the bankruptcy court to lift or modify the automatic stay to allow the secured lender to get to its collateral. Needless to say, the debtor will often oppose the lender's request. This is just one of many aspects of litigation surrounding the automatic stay. The bankruptcy code provides for specific circumstances under which relief from the stay is permitted, and litigation over whether the requisite conditions exist is common. This webinar discusses the scope of the automatic stay and the procedure and grounds for seeking relief.

EPISODE #4

Contract and Lease Disputes

A debtor's continuing rights and obligations under prepetition executory contracts and leases do not simply end upon the filing of a bankruptcy proceeding. Indeed, one of the most valuable tools that a

bankruptcy filing gives to a debtor is the ability to analyze those existing contracts and leases and determine whether they still have value to the estate or whether the debtor would be better off without them. The bankruptcy code provides the procedures and mechanisms whereby a debtor can “assume” or “reject” those contracts or leases. This webinar discusses the rules a debtor must follow to do this, including timing for rejection/assumption, cure requirements for assumption, the right/ability to further assign assumed contracts, standards for rejection and calculating rejection damages.

EPISODE #5

Contesting Confirmation

The standard end goal of a chapter 11 bankruptcy is the confirmation, or court approval, of the debtor’s plan of reorganization or liquidation. The debtor’s plan is the document that controls the methodology and order by which the debtor plans to pay its creditors. The plan is subject to comment and criticism by any party affected by it – namely, each and every creditor of the debtor, potential targets of causes of action that the debtor may have and parties that may have potential causes of action against the debtor. The confirmation process is often rife with dispute and litigation. There are battles not only over specific plan provisions, but also those that go to the fundamental confirmability of the plan (i.e. can the debtor actually do what it proposes to do, and does the plan meet the bankruptcy code requirements). Confirmation contests often require evidentiary hearings with experts presenting testimony and opinions as to valuation issues. This webinar explores this process and provides guidance as to how to both defend and attack the confirmation of a debtor’s chapter 11 plan.

EPISODE #6

Anatomy of a Preference Action

Chapter 5 of the bankruptcy code creates certain causes of action that arise only upon the filing of a bankruptcy proceeding. Specifically, these provisions allow the debtor or trustee to take actions to bring assets back into the debtor’s estate. Most commonly, these are fraudulent transfer or preference actions. This webinar discusses the standards for bringing these causes of action and then dives more deeply into how to defend against them. The panelists also provide practical tips on how creditors can try to protect and insulate themselves from these attacks ahead of time, by taking certain precautions when dealing with distressed business prior to the filing of a bankruptcy proceeding.