Oregon State Bar Debtor-Creditor Section

OREGON DEBTOR-CREDITOR

Newsletter

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HIGHLIGHTS

COMMENTS FROM THE CHAIR

By Justin D. Leonard, Leonard Law Group LLC

Daylight savings time is ending, and we are transitioning into our dark and rainy season. While the cycle feels familiar, this year it has seemed particularly challenging. In recent times, we have had to say goodbye to esteemed friends and colleagues through retirement or otherwise. Many in our Section continue to be challenged by the continuing dearth of bankruptcy filings and debtor-creditor work. As of our Court's October 2 report, total filings in 2018 are down an additional 4.0% from last year's already low figure. Yet despite the reduced consumer and commercial bankruptcy activity, the pleas for help among our most impoverished grow louder. Our pro bono bankruptcy clinics have growing wait lists and look to us for additional support. At a national level, the Fed reports that the already large gap between the rich and poor continues to increase. Meanwhile, our country seems more stratified politically—as anger against the "other" is fueled, even threatening the foundations of our rule of law.

Amid these challenging times, we are each trying to meet the day-to-day expectations of our profession and within our personal lives. It is important to remember that these personal and professional responsibilities can take a toll, even in the best of seasons. According to a recent nationwide survey of 13,000 practicing attorneys by the ABA-Hazelden Betty Ford Foundation, our profession is particularly at risk for social isolation, work addiction, suicide, sleep deprivation, job dissatisfaction, and work-life conflicts. As reported by the Oregon Attorney Assistance Program earlier this year, between 21% and 36% of practicing attorneys qualified as problem drinkers (i.e., hazardous use, possible dependence); 28% struggled with depression; 19% struggled with anxiety; and 23% struggled with unhealthy stress. In other words, more than one in three of us could qualify as "problem drinkers," and more than one in four of us struggle with clinical depression! The ABA-Hazelden report highlights the current challenges of our profession—especially when one considers that the attorneys who were surveyed likely under-reported such stigmatized behaviors and issues.

This subject matter is not pleasant, and it may not be the best way to kick off our Section's final newsletter of the year. However, acknowledgement of these very real—yet generally well-hidden—issues within our profession is important. I suspect that we all face them to some degree, directly or through loved ones or colleagues. Furthermore, awareness does not equate to hopelessness. Awareness allows us to confront and hopefully prevent or offset at least some of these issues —such as by strengthening our personal and professional communities.

Community-building organizations like this Section help to combat the negativity around us—not unlike a warm cozy fire on a dark and stormy night. Whether one is collaborating and socializing at a Section committee meeting, sharing practical advice at a Circle of Love meeting, teaming up to counsel low-income (and highly appreciative) individuals at a bankruptcy clinic, sharing

practical financial wisdom and experience with a classroom of kids, or simply mingling with colleagues at a Section CLE, our Section's activities help expand one's community.

Whether a debtor-, creditor-, or trustee-side attorney, part of the bench, or counsel for a governmental entity; whether a "fiscal Republican" or "Social Democrat" or currently "hopeless"; whether born in Oregon, outside of the country, or even California; whether male, female, or transitioning; whether young-and-idealistic, old-and-wise, or somewhere in-between; and regardless of one's color or creed—all continue to be welcomed in our Section.

In fact, our membership is self-selecting. The only criterion is an interest in debtor-creditor issues—and, hopefully, also a respect for the Section's long-standing tradition of collegiality and professionalism that took root in the generations that came before us. As a result, our Section serves a unique role. It brings together not only your like-minded colleagues, but also the "clearly wrong" opposing counsel from your last contested case hearing, the attorney for the U.S. Trustee who weighed in with unsolicited comments, the judge carefully considering your case, the law clerks helping the judge analyze your case, the panels of trustees who may or may not be involved, and the Clerk of the Court who makes sure all bankruptcy cases move smoothly, whether they go before a judge or not. Remarkably, once outside of the courtroom, we can usually move beyond our adversarial positions in order to work, learn, and socialize together with a common purpose.

The Section—and the tradition of collegiality that it fosters—helps make this possible. Thank you to all of you for your role in continuing this collegiality. It does not have to be through participation in a Section event. Simply calling up your opposing counsel and inviting them to coffee or beer can serve the same purpose. Either way, we are building interpersonal relationships, which make life more meaningful generally—and they can serve to buoy us through stormy seasons.

To accomplish this, I hope you consider how you can participate in Section activities. For example:

- Helping address the current needs of our pro bono clinics, as described further below;
- Calling in to the Circle of Love's meetings. (You are encouraged to do so wherever you practice in the state, and whether or not you are a consumer debtor's attorney. The telephonic meetings are announced by email on the Section's listserv. You can just listen in, or actively participate in the discussion.); and
- Collaborating with your colleagues and planning Section activities by serving on one of our committees. (Let someone on the Executive Committee know if you are interested).

As one more suggestion, consider picking up the phone today (rather than sending an email) as a means of creating and fostering a personal connection—while still scratching that task off your list. If you have time, give me a call and let me know whether it works—or whether you have any other suggestions or feedback for the Executive Committee.

Executive Committee's 2018 Year-End Report

This year's Executive Committee has accomplished a great deal so far, both procedurally and substantively. Procedurally, we have implemented changes

Debtor-Creditor Newsletter

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to our meeting structure and agendas. We now prepare and disseminate committee reports in advance, so that we can identify and focus on the main issues during our time together. This provides time for us to make big-picture goals for the Section and move towards them. This year, our goals included the following:

- Evaluating and improving our annual meeting and CLE event. We surveyed the Section regarding possible locations, timing preferences, and other issues. The first choice was Tolovana Inn at Cannon Beach, with an overnight schedule (from noon Friday through noon Saturday) sometime in the month of September. As a result, we have already booked the 2019 Annual Meeting and CLE in order to lock in good dates that worked with the judges and should still be sunny. If you haven't already, please mark your calendar for our Annual Meeting / CLE retreat on **September 13-14, 2019, at Tolovana Inn at Cannon Beach**. We are implementing the second choice (a one-day downtown Portland event) this year.
- Expanding our Section's CLEs to cover a broader "debtor-creditor" scope—not just bankruptcy. As a result, this year's Annual Meeting and CLE will include strategies for dealing with debtor-creditor issues in marijuana-related businesses; commercial leases and insolvency; debate sessions, including whether parties should be required to participate in mandatory settlement conferences; and ethics issues involving engagement agreements and termination of representation.
- Designing a program with the OSB to help educate non-bankruptcy lawyers—similar to the Tax Section's program for non-tax lawyers held every other year. An intensive half-day "What Non-Bankruptcy Lawyers Should Know About Bankruptcy" CLE has been planned for December 7, 2018—and we hope to offer this program every two years, together with the Federal Bar Association. The goal is to help non-bankruptcy practitioners identify and spot important issues in their specific areas of practice (including real estate, business, probate, and tax law), so that they know when they should call a bankruptcy lawyer for help.
- Adding additional functionality to our Section's website (https://debtorcreditor.osbar.org/). Headed by Laura Donaldson (our 2018 Web Czar), we have worked this year on updating existing areas and incorporating more information and resources of use to bankruptcy professionals. We are also working on adding additional functionality to the website, including creating a user-friendly member directory based on location and by area of focus. We are hoping to include the ability to search for valuation experts, accountants, liquidators, appraisers, receivers, and other professionals as part of this system. To be included, these non-lawyers would be expected to join the section and pay our regular annual dues of $35 as associate members.
- Evaluating our long-running Debtor-Creditor Newsletter, including ways to make it sustainable while serving the needs of the Section. Based on a recent survey, the Newsletter's Editorial Board has proposed, and the Executive Committee has approved, the reduction of issues from 3 to 2 per year and the hiring of a professional (non-lawyer) editor, along with a law student editor, to manage the production. Meanwhile, we are evaluating options for disseminating important information by email—likely through the regular bankruptcy court updates issued Section-wide by Debbie Guyol. (If you are a member of the Section and you do not receive these typically monthly updates, please let me or Debbie know.)
- Expanding the Section's membership by recruiting attorneys who regularly practice in our bankruptcy court and file cases and pleadings, but who are not members of the Section. As enrollment for the 2019 calendar year begins, the Executive Committee will reach out to these practitioners to encourage them to join and to find out what the Section could do better from their perspective. We hope that by growing the Section, we can become more collaborative and make the practice of debtor-creditor law in Oregon better for all.

Pro Bono Clinic Updates

Our oldest and largest clinic, organized in conjunction with the Legal Aid Services Office (LASO) in Portland, is seeing an increased demand for volunteers. Through retirement and other factors, our base of volunteer attorneys has diminished over the last few years. This August, LASO had to temporarily suspend further intakes because all 2018 clinics had been filled. (No clinics are held in August and December.) The Section's Pro Bono Committee is exploring options for recruiting additional volunteers in 2019 to serve the significant need among our most vulnerable. If you are in the Portland area, please consider offering to take an additional direct referral to assist someone in need during this holiday season.

In Eugene, long-time volunteer Steve Behrends continues to work with Erika Hente, the managing attorney at Lane County Legal Aid & Oregon Law Center, for referrals for Lane County pro bono cases. A core group of attorneys volunteers to accept these clients, including Steve, Tom Butcher, Alan Seligson, Kevin Swingdoff, Erin Uhlemann, and Bill Critchlow. If you are in the Lane County area, please contact Steve to get involved.

Our Section's Salem-based bankruptcy clinic has been a "huge success" in its first year, according to LASO. With Salem attorney volunteers' support, LASO has filled all client appointments through the four quarterly clinics and met its low-income clients' needs. The Salem LASO office is exploring having a Spanish-language clinic amid regular (likely quarterly) clinics in 2019. Thank you to the many Salem-based attorneys—both debtor- and creditor-side—who volunteered time to our newest LASO collaboration.

Our Bend-based bankruptcy clinic has three volunteers who take cases regularly: Rex Daines, Brian Hemphill, and Andrew Harris. LASO could use at least one to two additional attorneys to meet the current need in Bend. Also, our small Pendleton clinic could use additional attorney volunteers. Please let me know (at jleonard@LLG-LLC.com) if you are interested in volunteering at any of our locations.

Finally, for those of you who are unable to file "no asset" Chapter 7 bankruptcy cases in our clinic, there is now a new way to share your expertise with someone in need and give back to your community. Judge Thomas Renn is developing a pro bono assistance program for individuals who are unrepresented and require assistance with a discrete matter—such as representation in an adversary proceeding, settlement conference, or with specific "contested case" issues (e.g., exemption challenges or stay litigation). Judge Renn is working with Judge Peter McKittrick to expand the program to the Portland court. They are exploring coordination with the Federal Bar Association here in Oregon, including by using the volunteer list and process already used by our District Court. If you are interested in volunteering once the program is established, please contact Judge Renn or Judge McKittrick through their respective chambers.

Public Education Committee Outreach

Britta Warren and Cassie Jones have been active in leading our public education outreach efforts throughout the state—primarily through the CARE and Financial Beginnings programs.

Financial Beginnings issues a Weekly Volunteer Digest, listing classes that need volunteer presenters, including new classes at Columbia River Correctional Facility and live webcast presentations co-hosted with the Department of Consumer and Business Services's Division of Financial Regulation. The Public Education Committee also developed material for presentations specific to student loans that can be made available upon request. If you are interested in presenting through CARE or Financial Beginnings, please reach out to Britta or Cassie.

This year, the Public Education and New Lawyers Committees of the Debtor-Creditor Section co-sponsored a new financial education program for law students entitled "MONEY MATTERS: Managing Student Loans and Making Smart Financial Decisions," on October 24, 2018, at Lewis & Clark Law School, in conjunction with the Oregon New Lawyers Division. The panelists included attorneys as well as a professional counselor and financial therapist. The Committee will evaluate the program's success with an eye on coordinating similar programming for law students at the other law schools in Oregon.

Celebrating our Bankruptcy Bench and Bar at Judge Leavy's Annual Farm Picnic

To conclude my report, the U.S. District Court of Oregon Historical Society's annual family picnic at Judge Edward Leavy's farm was held on Sunday, August 5. This year, the picnic specially honored us—the Bankruptcy Bench and Bar—and especially all those who volunteer in our pro bono bankruptcy clinics throughout the state. Thank you to those of you who attended. This photo from the event captures some of our Section members who were honored:

SCOUNDRELLY INTENT: CAN DEBTOR'S MISREPRESENTATION ABOUT A SINGLE ASSET DEFEAT NON-DISCHARGABILITY UNDER SECTION 523(A)(2)(A)?

By Susan T. Alterman, Kell, Alterman & Runstein, LLP; Margot Seitz, Farleigh Wada Witt

This summer the United States Supreme Court clarified the scope of 11 USC § 523(a)(2)(A) in its largely unanimous opinion in *Lamar, Archer & Cofrin, LLP v. Appling*, 138 S.Ct. 1752 (2018). Section 523(a)(2)(A) bars the discharge of debts arising from "false pretenses, a false representation, or actual fraud" unless the discharge is based on a "statement respecting the debtor's or an insider's financial condition." The question in *Lamar* was whether a debtor's oral statements to a creditor regarding a single asset (in this case, the amount of his tax refund) fall under this exception and qualify as a statement "respecting" his or her "financial condition." The Court held that an oral misrepresentation about a "single asset" can, indeed, fall under this exception. As a result, an oral misrepresentation about a single asset—even if made with scoundrelly intent and reasonably relied on by a creditor—will likely not give rise to a nondischargeability claim under § 523(a)(2).

Lamar is a tale as old as the legal profession itself. R. Scott Appling ("Appling") hired the law firm Lamar, Archer & Cofrin, LLP ("Lamar") to represent him in a business litigation matter. Midstream, Appling fell behind on his bills. Lamar told Appling that it would withdraw from representation and place a lien on its work product if the bill was not brought current. The parties met in March 2005, and Appling represented that he was expecting a tax return of approximately $100,000 that he would use to pay his outstanding legal bill. Lamar resumed work based on this representation. The parties met again in November 2005 and Appling told Lamar that he had not yet received the refund. In fact, Appling's tax refund was slightly less than $60,000, he had received the refund in October 2005, and he had already spent the funds. Lamar continued to represent Appling until it learned the truth. Lamar eventually sued Appling and obtained a state court judgment for roughly $104,000. Appling and his wife promptly filed for bankruptcy relief under Chapter 7. Lamar filed an adversary proceeding, seeking to have the debt deemed nondischargeable.

Lamar argued that Appling's misrepresentations about the tax refund were fraudulent and excepted from discharge under Section 523(a)(2)(A). Appling moved to dismiss on the ground that his alleged misrepresentations were merely statements "respecting" his "financial condition," and thus specifically excluded from Section 523(a)(2)(A). That section excepts from discharge those debts obtained by "false pretenses, a false representation, or actual fraud, *other than* a statement respecting the debtor's ... financial condition" (emphasis added). To except a debt from discharge where the debtor has made a false statement about the debtor's "financial condition," a creditor must rely on Section 523(a)(2)(B). That section only applies to debts "obtained by" "use of a statement *in writing*" that is "materially false" "respecting" the debtor's "financial condition" "on which the creditor … reasonably relied" and that the debtor "caused to be made or published with the intent to deceive." Because Appling's misstatements were oral, he argued that they did not fall under either Section 523(a)(2)(A) or Section 523(a)(2)(B).

The Bankruptcy Court disagreed and held that a statement regarding a *single asset* is not a "statement respecting the debtor's financial condition." The Bankruptcy Court also found that Appling knowingly made false representations to Lamar, that Lamar justifiably relied on those statements, and that Lamar incurred damages as a result.

Appling appealed and the Eleventh Circuit reversed, finding that Appling's statements about the amount and timing of his tax return were statements "respecting the debtor's financial condition." Because Appling's statements were regarding his "financial condition" and not in writing, neither Section (a)(2)(A) nor Section (a)(2)(B) prevented discharge.

The Supreme Court's analysis focused primarily on the text of Section 523(a)(2)(A). Because Appling never promised Lamar in writing that he would use his tax refund to pay his bill, Lamar's argument turned on its ability to convince the Court that Appling's statements about his tax refund were not statements "respecting" his "financial condition." To that end, Lamar argued that this phrase should be applied only to "statements" that capture a debtor's *overall* financial status (i.e., a statement "about" the debtor's overall financial well-being). The Court rejected that narrow interpretation and explained that the word "respecting" means "in view of; considering; with regard or relation to; regarding; concerning." The Court stressed that the word "respecting" in the "legal context has a broadening effect, ensuring that the scope of a provision covers not only its subject but also matters relating to that subject." Similarly, the phrase "related to" (which is encompassed in the word "respecting") has historically been interpreted expansively, not narrowly.

The Court held that any oral statement which has a "direct relation or impact" on a debtor's "overall financial

status" will fall under this exception. Because a single asset can have a direct impact on a debtor's aggregate financial condition and can help indicate whether a debtor is "solvent or insolvent, able to repay a debt or not," statements concerning a single asset can indeed speak to a debtor's "financial condition." Lamar argued that an expansive reading of this exception undermined a fundamental purpose of the Bankruptcy Code—to give *honest* debtors a fresh start while protecting innocent victims from fraudsters. Based on the Bankruptcy Court's factual findings, Appling was certainly dishonest and his statements were meant to induce his lawyers to continue to work for him. The Supreme Court disagreed, explaining that Congress purposefully included a heightened requirement in Sections 523(a)(2)(A)-(B) not to shield dishonest debtors but rather to "balance the potential misuse of such statements by both debtors and creditors."

Even if the result in *Lamar* is not particularly surprising, and overlooking the fact that the debtor's outright lies were rewarded, the Supreme Court's opinion does resolve a split among the federal courts of appeal. Prior to *Lamar*, the Fifth and Tenth Circuit Court of Appeals held that a misrepresentation about a single asset is not a statement respecting a debtor's financial condition, while the Fourth and Eleventh Circuits came to the opposite conclusion. See *In re Bandi*, 683 F. 3d 671, 676 (CA5 2012) (a statement about a single asset is not a statement respecting the debtor's financial condition); *In re Joelson*, 427 F. 3d 700, 714 (CA10 2005) (same); See also *In re Appling*, 848 F. 3d 958, 960 (CA11 2017) (a statement about a single asset can be a statement respecting the debtor's financial condition); *Engler v. Van Steinburg*, 744 F. 2d 1060, 1061 (CA4 1984) (same). With this new clarity, creditors would do well to confirm in writing any statement they rely on regarding a client's financial condition as a condition of continued work. A man's word may indeed be his bond but, particularly after *Lamar*, best to get it in writing.

THE OREGON RECEIVERSHIP CODE IN ACTION: EARLY IMPRESSIONS

By Kevin Kono, Davis Wright Tremaine LLP

The Oregon Receivership Code ("Code"), ORS § 37.010 *et seq.* (2017), took effect on January 1, 2018. In the short time it has been in effect, practitioners have put the statute to good use, revealing the Code's benefits as well as some areas where further legislative tweaking may be warranted.

Other articles have described the Code in some detail. Because this article focuses on some potential challenges arising under the Code in certain circumstances, it only briefly summarizes the Code, with a focus on the legislative history to give context to the discussion.

The Code was primarily drafted by an Oregon Law Commission Work Group comprised of judges, practitioners, and law professors ("Work Group"), which was tasked with evaluating an improved approach to Oregon receivership law that would address the lack of statutory guidance regarding receivership proceedings in Oregon, resulting in courts taking a somewhat unpredictable, ad hoc approach.

The Work Group considered the Uniform Commercial Real Estate Receivership Act ("Uniform Act") and Washington's well-developed receivership body of law, and it ultimately drafted a bill based on a combination of the two, as well as on the Work Group's own discussions and insights.

As promised, in many circumstances, the Code provides an efficient, defined mechanism for the appointment and use of a receiver to manage or dispose of property during the pendency of an action. Rather than defining and providing for types of receiverships, the Code provides lists of rights and duties from which the court and parties may choose. This "a la carte" approach to the powers and duties of the receiver indeed functions to allow parties and courts to fashion a receivership order tailored to the specific circumstances at hand. The catch-all provisions stating that the court "may limit, expand or modify the powers conferred by the court on the receiver at any time," ORS § 37.110(2), and "may impose additional duties on the receiver at any time [and] … may limit, expand or modify duties imposed by the court on a receiver at any time," ORS § 37.120(4), are particularly helpful. They give the court broad plenary power to craft the receivership.

Query, however, whether ORS § 37.120(4) allows the court to restrict or limit the duties of the receiver set forth in the Code. While the court may limit the receiver's powers in any way under ORS § 37.110(2), by its plain language, ORS § 37.120(4) only authorizes the court to limit or modify receiver duties *"imposed by the court."* Read literally, this suggests that if the court exercises its authority to expand the receiver's duties, the court has the power later to limit those expanded duties, but not to alter a statutory obligation the Code imposes on the receiver. Notably, this differs from the language in Section 12 of the Uniform Act, which says more broadly that "[t]he powers and duties of a receiver may be expanded, modified, or limited by court order."

For example, the Code requires a receiver to file a schedule of all known creditors, ORS § 37.160, and to

establish and follow a formal claims process, ORS § 37.340-37.370. These provisions are largely written in terms of what the receiver "shall" do. Can the court limit or eliminate those requirements under ORS § 37.120(4)? The Work Group report that introduced the Code bill is consistent with the Uniform Act approach, stating that Section 12 (now ORS § 37.120) "provides that the court may limit, expand, or modify the receiver's duties at any time," but that does not account for the phrase "imposed by the court," which arguably qualifies the "duties" language in ORS § 37.120(4). In practice, so far under the Code, the parties and courts appear to have taken a practical approach in limiting and modifying statutory duties to reflect the needs of the case, despite the statutory ambiguity.

Another provision that arguably has unintended side effects is the automatic stay provision. Under the automatic stay provision, the entry of an order appointing a receiver operates as a stay of all proceedings involving the "owner" and of any action to enforce a judgment or take the owner's property. ORS § 37.220. Any affected person may then move the court for relief from the stay. On the one hand, the stay provision, like the automatic stay in bankruptcy, provides the "owner" with important procedural protections while also setting up a process for the orderly and efficient review of collection and enforcement proceedings that might affect the receivership estate.

On the other hand, the stay provision may be overly broad in many receiverships. ORS § 37.220 applies to the *"owner,"* whereas the parallel provision of the Uniform Act, Section 14, which contains stay provisions very similar to those in Section 22 of the Code, is directed at the *"receivership property"*—a term the Code does not adopt. Under the Uniform Act, "receivership property" means "the property of an owner which is described in the order appointing the receiver or a subsequent order" and includes "any proceeds, products, offspring, rents, or profits of or from the property." UNIF. COMMERCIAL REAL ESTATE RECEIVERSHIP ACT § 2(16) (UNIF. LAW COMM'N 2015). This makes sense—if the property is placed in a receivership, all other actions affecting that property (or proceeds, etc., therefrom) should be stayed pending the court's review. Consistent with the Uniform Act provision, the Work Group Report states that the purpose of Code Section 22 (now ORS § 37.220) is "[t]o prevent interference with the receiver's possession and management of *estate property* or the performance of the receiver's duties[.]" REP. OF THE RECEIVERSHIP WORK GROUP ON S. B. 899A (Or. 2017) (emphasis added). The Work Group Report, however, does not explain the substitution of "owner" for "receivership property." *See id.*

The Code's application of the stay provisions to the "owner" rather than the "receivership property" may create problems when the receivership estate does not include all of the owner's property. Owner is defined as "the person over whose property a receiver is appointed." ORS § 37.030(11). Given the breadth of this definition, the effect of the stay is to enjoin all action against all property of the "owner," regardless of whether the property is in the receivership estate.

This has potentially far-reaching implications. Consider the following scenario: An "owner" owns two apartment buildings, Building A and Building B. There is no connection between the two properties other than the fact that they share a common owner. A secured creditor with a lien on Building A sues to foreclose and obtains a foreclosure judgment. Meanwhile, a secured creditor with a lien on Building B commences a foreclosure suit and moves for the appointment of a receiver to collect rents until the foreclosure is complete. Under the Uniform Act, the receivership stay provision would apply only as to the rents from Building B—the receivership property. Under the Code, however, execution of the foreclosure judgment obtained by the lienholder on Building A is automatically stayed, and the *Building A* lienholder must move the court handling the foreclosure of *Building B* for relief from the stay, even though neither the holder of the foreclosure judgment nor the proceeding relating to Building A has anything to do with Building B. We doubt that the adopters of the Code intended this potential result, which unexpectedly imposes a burden on the receivership court and on otherwise unrelated parties. Harkening back to the discussion above, it is not clear this problem can be solved at the outset by a blanket order limiting the reach of the stay, given that the stay is not "imposed by the court" and cannot reasonably be characterized as one of the "duties of the receiver" that may be limited or modified.

Another issue, albeit a less daunting one, arises in the context of ancillary receiverships. The Code allows a receiver appointed in a foreign action (or any party to a foreign action in which a receiver has been appointed) to move an Oregon court for appointment of an ancillary receiver over receivership property in Oregon. ORS § 37.390(2). Specifically, the Code provides: "A receiver appointed in a foreign action, or any party to the foreign action, may move a court of this state for appointment of that same receiver with respect to any property of the foreign receivership that is located in this state." *Id.* But absent a pending Oregon action, there will be no place for the receiver (or party) to file such a motion. Thus, obtaining an ancillary receiver will usually require filing a new action for appointment of a receiver. Whether such an action may be filed by the receiver or must be filed by the foreign plaintiff is a question the Code does not address.

One other important Code provision that is likely to see frequent use allows a receiver to sell property "free and clear" of liens—but not of liens senior to the lien of the party obtaining appointment of the receiver. ORS § 37.250. In practice, this means there is no mechanism to "force" senior lienholders into consenting to a sale free of their liens, even on terms whereby their liens would attach to the proceeds. This could provide significant leverage to a senior lienholder in some cases, e.g., one in which the validity and/or amount of the senior lien was contested, but a quick sale was necessary—and a sale "subject to" the senior lien would chill the bidding.

On the whole, the Code is a positive addition to Oregon's receivership law, but as its benefits and flaws are discovered through practice under the statutory scheme, some fine-tuning may be warranted.

MICHAEL BATLAN: A TRANSITION

by Jeffrey Misley, Sussman Shank LLP

Each year brings changes to the debtor/creditor world, and this year is no exception. One notable change is that after serving as a bankruptcy trustee in Oregon for many years, Michael Batlan retired from the Chapter 7 trustee panel at the end of 2017.

To those of us who work in the area of creditors' rights, Mike has long been a familiar face, and his ties to the bankruptcy world date back to the 1980s. After completing his MBA at Willamette, Mike held jobs in lending and banking. A request to act as a state court-appointed receiver soon led to other opportunities in the area of creditors' rights. Mike became a Chapter 7 trustee in 1989 and administered bankruptcy cases in Bend and Portland until his retirement in December.

Mike's motto has always been "do the right thing." During his years as trustee, Mike successfully administered many difficult, complex, and high-profile cases. As someone who had the privilege to work with Mike on many matters, I saw that Mike treated everyone with respect and was always fair and practical. Mike has the unique ability to find creative ways to resolve and settle difficult business disputes—a skill that served him well as trustee. And through it all, Mike always managed to maintain a sense of humor, even during the most difficult and challenging cases.

For many years, Mike's "other job" has been officiating college football. Mike served as a Pac-12 football official for a number of years, including many years as a referee. For those less-versed in football, the referee is the chief of the officiating crew, the one in the white hat. Years ago, at a difficult creditors meeting, an angry creditor expressed frustration with the status of the case and warned Mike and me that creditors "will not be happy with you." Mike had the perfect response: "You don't understand; I am a college football official. Every Saturday, thousands of people boo me. You can't possibly hurt my feelings."

Attorneys practicing in the area of creditors' rights and bankruptcy appreciated the similarity of Mike's role as trustee with his role as a football official, as both positions are highly scrutinized and involve making difficult (and sometimes unpopular) decisions that affect those on both sides. Mike always excelled in both positions and has always been able to strike a fair balance that served all parties well.

These days, Mike's role as a football official is also in transition. Mike is no longer on the field with his officiating crew, but rather is now in the Pac-12 replay booth reviewing difficult plays, making sure that the right calls are made.

Mike is very well-respected by all who have worked with him over the years. Judith Bennington, CPA, describes Mike as "organized, compassionate, funny, serious, generous, caring, and honorable. Truly a delight to work with."

Judge Peter McKittrick, who served on the Chapter 7 panel with Mike and represented him on several cases, notes that "Mike is always reasonable and compassionate, but firm when he needs to be. Not being a lawyer was helpful to Mike—he always approached cases with a business mind rather than being caught up in legal issues." Judge McKittrick will miss Mike's famous quotes, including, "If you can't tell your mom about it, don't do it," and "Often wrong, but never in doubt."

And so, we leave Mike (or rather, Mike leaves us) in a good place. Family is the most important thing to Mike, and he is looking forward to traveling more with his wife Kathy and spending more time with their daughters, Libby and Celia, and three young grandchildren. And although we will miss seeing Mike in our daily professional lives, it is somewhat reassuring to know that Mike is still up in the replay booth, keeping watch over those below, always ready to make the final call and "do the right thing."

All of us thank Mike for a job well done.

You Too Can Be An Author

If you would like to write an article, or would like to read an article on a particular topic, please contact: **René Ferrán** [ferranjr.rene@yahoo.com]. Your letter should include the topic and a brief synopsis for the article and indicate whether you are willing to be the author.

NINTH CIRCUIT NOTES

By Stephen Raher

Good-Faith Belief Can Shield Creditors from Liability for Violation of Discharge Injunction

Lorenzen v. Taggart (In re Taggart),
888 F.3d 438 (9th Cir. 2018)

Despite the potentially huge impact of this decision, the opinion itself is quite terse. The slip opinion weighs in at sixteen pages, but the captions take up four of those pages (the opinion involves seven consolidated appeals), and five pages are devoted to the complicated procedural history.

Debtor was a part-owner of an LLC that owned commercial property. He transferred his LLC membership interest to his attorney in 2007. When other LLC members (the "Plaintiffs") learned of the transfer, they sued Debtor (and the transferee), alleging that the transfer violated the operating agreement. Plaintiffs' complaint included a demand for attorney fees under the operating agreement. Debtor sought to dismiss the complaint and filed a counterclaim for his own attorney fees.

Debtor filed a Chapter 7 petition (thereby staying the state-court litigation) and received a discharge. Post-discharge, Plaintiffs continued the litigation. When Debtor raised the issue of his discharge, the state court found that Debtor was an indispensable party, but the Plaintiffs agreed that he would not be subject to a money judgment. When Plaintiffs prevailed at trial, they then sought attorney fees against Debtor but limited their request to fees that were incurred post-discharge. The state court found that Debtor had "returned to the fray" and ordered him to pay the post-discharge fees—if a debtor "returns to the fray" by actively engaging in litigation, he or she can be subject to liability for post-bankruptcy attorney fees on a prepetition claim. *In re Castellino Villas*, 836 F.3d 1028 (9th Cir. 2016).

Meanwhile, Debtor reopened his bankruptcy case to argue that Plaintiffs had violated the discharge injunction by petitioning for attorney fees. Judge Randall Dunn denied the motion, agreeing with the reasoning of the state court. On appeal, the district court reversed, finding that the fee petition had violated the injunction, but it remanded so that the bankruptcy court could determine whether Plaintiffs had *knowingly* violated the injunction. On remand, the bankruptcy court found that Plaintiffs had acted knowingly and awarded sanctions to Debtor.

Plaintiffs then appealed to the BAP, which reversed, holding that Plaintiffs' violation had not been knowing because they had a good-faith belief that the discharge injunction did not apply. Around this same time, the Oregon Court of Appeals reversed the state trial court, essentially agreeing with the district court's finding that Debtor had not "returned to the fray."

After recounting this labyrinthine history, the Ninth Circuit's opinion is remarkably brief. The court begins by reiterating the two-part test for contempt under *In re Zilog*, 450 F.3d 996 (9th Cir. 2006): the movant must prove the creditor (1) knew the discharge injunction was applicable, and (2) intended the actions that violated the injunction. When deciding the first prong, the court held that a creditor's "good faith belief that the discharge injunction does not apply to the creditor's claim precludes a finding of contempt, even if the creditor's belief is unreasonable." *Lorenzen*, 888 F.3d at 444. Noting that the Plaintiffs were no longer able to obtain attorney fees (in light of the Oregon Court of Appeals ruling), the panel expressed no opinion as to whether Plaintiffs had violated the discharge injunction by seeking such fees. But regardless of whether the fee petition violated the injunction, the court stated that Plaintiffs could not be held in contempt because "they acted pursuant to their good faith belief that, due to [Debtor]'s 'return to the fray,' the discharge injunction did not apply to their claims." *Id.* at 445.

Bankruptcy Courts May Award Emotional Distress Damages to Debtors Injured by IRS's Violation of the Automatic Stay

Hunsaker v. U.S.,
902 F.3d 963 (9th Cir. 2018)

After Debtors filed a Chapter 13 petition, the IRS continued sending collection notices and threatening to levy the Debtors' Social Security benefits. Debtors filed an adversary complaint alleging violations of the automatic stay and seeking damages for emotional distress. The IRS conceded that it had violated the stay, but it argued that the bankruptcy court could not hold the agency liable for emotional distress damages due to sovereign immunity. Judge Frank Alley awarded the Debtors $4,000 as compensation for their emotional distress, but on appeal to the district court, Judge Michael McShane reversed, concluding that Congress had not waived sovereign immunity for emotional distress damages under § 362(k).

On appeal, the Ninth Circuit reversed the district court, holding that § 106 unambiguously allowed for the award of such damages. The waiver of sovereign immunity in § 106(a)(3) allows a court to "issue against a governmental unit an order, process, or judgment … including an order or judgment awarding a money recovery, but not including an award of punitive damages." This waiver applies to § 362(k), which allows individual debtors to recover actual damages for stay violations. In 2004, the

Ninth Circuit held that emotional distress damages are a type of actual damages recoverable under § 362(k). *Dawson v. Washington Mutual Bank* (*In re Dawson*), 390 F.3d 1139 (9th Cir. 2004).

The IRS argued that § 106(a)(3)'s reference to a "money recovery" only covered claims "seeking to restore to the bankruptcy estate sums of money unlawfully in the possession of governmental entities," *Hunsaker*, 902 F.3d at 968, but the court found this reading unpersuasive and inconsistent with the plain text of the statute. The court admitted that its ruling conflicts with the First Circuit's holding in *U.S. v. Rivera Torres* (*In re Rivera Torres*), 432 F.3d 20 (1st Cir. 2005), but the unanimous Ninth Circuit panel noted that it was unpersuaded by the reasoning of Torres.

Creditor Seeking to Block Confirmation Need Not Purchase All Claims in a Given Class

Pacific Western Bank v. Fagerdala USA – Lompoc, Inc. (In re Fagerdala USA – Lompoc, Inc.),
891 F.3d 848 (9th Cir. 2018)

Under § 1126(e), a court may disallow (or "designate," in the language of the Code) claims for voting purposes if the court finds the claimant's "acceptance or rejection of [the] plan was not in good faith, or was not solicited or procured in good faith." In this case, the Debtor filed a plan with four classes, two of which are relevant to this appeal. Class 1 consisted of the first-lien lender (the "Lender"). The plan proposed cancelling the default interest rate and modifying the term of the loan. Class 4 consisted of unsecured creditors, who would be paid in full, with interest, sixty days after the effective date.

Prior to the confirmation hearing, the Lender purchased over half of the unsecured claims and voted them against the plan, thereby blocking confirmation under § 1129(a)(10). The Debtor then successfully moved to designate the lender's purchased claims, after which it was able to confirm the plan. The Lender appealed to the district court, which affirmed, but a unanimous panel of the Ninth Circuit reversed.

In granting the Debtor's motion to designate, the bankruptcy court made two findings. First, the Lender admitted that it had not attempted to purchase every Class 4 claim. Second, the court found that the Lender's selective purchase of claims was prejudicial to those unsecured creditors who did not receive a purchase offer (and who would be financially disadvantaged if the Debtor's plan was not confirmed). In reaching their respective decisions, the bankruptcy and district courts relied on *Figter, Ltd. v. Teachers Ins. & Annuity Ass'n of Am.* (*In re Figter*), 118 F.3d 635, 639 (9th Cir. 1997), in which the appellate court had affirmed a bankruptcy court's denial of a motion to designate. *Figter* acknowledges that purchasing claims for the purpose of blocking confirmation is not per se bad faith, but in ruling that the creditor had acted in good faith, the *Figter* court noted that it had offered to purchase all claims in the relevant class.

In the present case, the Ninth Circuit held that the fact that the Figter creditor had offered to purchase all claims was simply one of several, non-dispositive factors the court considered. In other words, "while offering to purchase all claims is certainly an indicator of *good faith*, failing to do so cannot be evidence of *bad faith*." 891 F.3d at 855 (emphasis in original). The appellate panel also criticized the bankruptcy court's finding of prejudice to unsecured creditors, noting that the analysis did not consider the lender's appropriate (if economically selfish) motive. For purposes of § 1126(e), the court held that bad faith does not include acting in one's economic self-interest, but rather requires an attempt to obtain a benefit to which the creditor was not entitled. Examples of bad faith include a non-creditor purchasing claims to block an action against it, competitors purchasing claims to destroy the debtor's business, or a debtor arranging for an insider to purchase claims.

[*Full disclosure*: the author represented this debtor at the beginning of the case but left private practice before the advent of the issues discussed here.]

Failure to Object Does Not Equal Lack of Appellate Standing…

Harkey v. Grobstein (In re Point Center Financial, Inc.),
890 F.3d 1188 (9th Cir. 2018)

Debtor was a loan originator and servicer that pooled investor funds and made loans. Investors would receive a fractional interest in any loans they funded, along with a corresponding interest in the trust deed securing the loan. When a loan defaulted, and after Debtor had foreclosed, it would create a special purpose LLC to hold the collateral. The investors who held fractional interests in the loan would then receive a corresponding membership interest in the new LLC.

The appellants in this case were investors who held interests in Dillon Avenue 44, LLC ("Dillon"), one of the entities created by Debtor to hold foreclosed collateral. Dillon was governed pursuant to a 2011 operating agreement that named Debtor as the LLC manager.

Debtor filed a voluntary Chapter 11 petition in 2013, but the case subsequently converted to Chapter 7. Eventually, the bankruptcy court set February 28, 2014, as the deadline for the trustee to assume or reject executory contracts. In May 2016, the trustee moved to assume the

Dillon operating agreement, alleging that his failure to do so by the 2014 deadline was the result of excusable neglect stemming from reliance on misrepresentations by certain of the appellants. When the court held a hearing on the trustee's request, no one appeared in opposition, and the court orally granted the motion. Before an order was entered granting the motion, appellants (who had received notice of the initial motion) filed an emergency motion for reconsideration. The bankruptcy court considered the merits of appellants' arguments but declined the requested reconsideration and entered the order granting the trustee's motion.

Appellants sought review by the district court, which dismissed their appeal for lack of standing. Specifically, the district court relied on the generally accepted principle that in bankruptcy proceedings, only a party "aggrieved by the order" has standing to appeal. Citing dictum from *Brady v. Andrew (In re Commercial Western Finance Corp.)*, 761 F.2d 1329 (9th Cir. 1985), the court noted that "attendance and objection" in the lower court "should usually" be prerequisites to meeting the "person aggrieved" standard.

The Court of Appeals reversed, although it acknowledged a split among the circuits regarding this issue. Noting that "[w]e do not automatically toss a litigant out of court for noncompliance with a trial court rule without allowing the litigant to explain why the noncompliance should be excused, caused no harm, or had limited impact," *Harkey*, 890 F.3d at 1193, the court held that failure to attend and object at a hearing has no bearing on that party's standing to appeal an order. At the same time, the panel did acknowledge that a party's failure to object could result in a finding of waiver or forfeiture (waiver is the intentional relinquishment or abandonment of a known right, while forfeiture is the failure to timely assert a right). Because the appellants laid out their merit arguments as part of the motion for reconsideration (and the bankruptcy court considered these arguments), the appellate court held that waiver did not apply. It did, however, remand to the district court for a determination of whether the appellants had forfeited their objection.

…But It Can Still Sink an Appeal

Reid & Hellyer, APC v. Laski (In re Wrightwood Guest Ranch), 896 F.3d 1109 (9th Cir. 2018)

This case began with an involuntary Chapter 11 petition. A trustee was appointed soon after the petition was filed. The trustee and the senior secured lender ultimately reached a settlement: the trustee would sell the Debtor's principal asset to an affiliate of the lender, and the lender would agree to a $500,000 carveout. Three-hundred fifty thousand dollars of the carveout was allocated to the trustee and his professionals as a § 506(c) surcharge, and the remaining $150,000 was earmarked for general unsecured creditors, skipping over the other administrative claimants (whether this settlement would survive in a post-*Jevic* world is an issue that appellants unsuccessfully tried to raise in this appeal).

The Debtor and the creditors' committee—acting through their respective counsel—filed objections to the settlement and appeared at a hearing on the matter. Both objections noted that the proposed settlement was unfair to the administrative claimants (including Debtor's and committee counsel), who would not receive anything. The bankruptcy court approved the settlement and the sale closed. The two law firms then appealed in their own names. The district court dismissed the appeals, holding that the firms lacked standing because they had not filed their own objections below.

On appeal, the Ninth Circuit affirmed on different grounds. Citing *Harkey v. Grobstein* (*In re Point Center Financial, Inc.*), 890 F.3d 1188 (9th Cir. 2018), the court noted that the district court had mislabeled the question as one of standing. Rather, the question was whether the firms forfeited or waived their right to appeal. Unlike *Point Center*, the appellate court concluded that there was no need to remand here because the record contained a sufficient analysis of both waiver and forfeiture. Specifically, the court noted that, while the attorneys had both identified themselves as appearing on behalf of their clients at the hearing, the firms had not filed written objections in their own names, and (unlike the *Point Center* creditors who had filed a motion for reconsideration) neither firm took corrective action to clarify the record prior to filing a notice of appeal. Because neither law firm made an objection on their own behalf, the panel unanimously concluded that they had forfeited their right to appeal the order approving the settlement.

State Law Determines Who May Authorize the Filing of a Petition

Sino Clean Energy, Inc. v. Seiden (In re Sino Clean Energy, Inc.), 901 F.3d 1139 (9th Cir. 2018)

State law determines who has authority to file a voluntary bankruptcy petition. Given this settled and relatively uncontroversial matter of law, it's somewhat difficult to understand why this case warranted a published opinion.

The Debtor was a Nevada holding company that owned various operating subsidiaries that conduct business in China. It began experiencing various financial and management troubles in 2011. In October 2013, forty-three of Debtor's shareholders filed a civil action in Nevada to compel production of the company's books and records.

Debtor was properly served but made no appearance. Several months after an order of default had been entered, the plaintiffs moved for appointment of a receiver. The court appointed a receiver in May 2014. Pursuant to the order of appointment, the receiver removed the Debtor's directors and appointed a new sole director.

In July 2015, Debtor's former CEO purported to "reconstitute" the previous board of directors, then filed a voluntary Chapter 11 petition. The bankruptcy court dismissed the petition, finding it was filed without requisite corporate authorization. The district court affirmed, as did the Ninth Circuit, holding that "[n]o matter the equitable considerations, state law dictates which persons may file a bankruptcy petition on behalf of a debtor corporation." 901 F.3d at 1142. Because the Debtor's board had been lawfully removed by a duly-appointed receiver, it therefore lacked the authority to file a petition on Debtor's behalf.

Chapter 13 Provides the Potential to Discharge Post-Petition Condo Assessments

Goudelock v. Sixty-01 Ass'n of Apartment Owners,
895 F.3d 633 (9th Cir. 2018)

Section 523(a)(16) excepts from discharge "a [condominium] fee or assessment that becomes due and payable after the [petition date]." In a case of first impression for any circuit court, the Ninth Circuit addressed how this provision applies (or doesn't apply) to Chapter 13 debtors.

Debtor Penny Goudelock purchased a Washington condo in 2001 but stopped paying her monthly assessments in 2009. Under Washington law, unpaid condo assessments are both a lien on the property and a personal obligation of the owner(s) (Oregon law contains a similar provision). The condo association sought to foreclose its lien, but Debtor moved out and in 2011 filed a Chapter 13 petition. She then confirmed a plan that provided for surrender of the condo unit. In February 2015, her mortgage lender foreclosed on the unit, and five months later, Debtor completed her plan and received a discharge. The condo association brought an adversary proceeding to determine whether Debtor's personal liability for the post-petition, pre-foreclosure assessments had been discharged.

The bankruptcy court and district court both ruled in favor of the condo association, but a unanimous panel of the Ninth Circuit reversed. Beginning with a history lesson, the court noted that, prior to the enactment of § 523(a)(16), courts had been divided into two schools of thought regarding discharge of condo assessments. One school of thought held that personal liability for assessments was dischargeable because such liability was "an unmatured contingent debt under the Bankruptcy Code that arose prepetition (when the debtors purchased the property) and that merely became mature when the assessments became due post-petition." *Goudelock*, 895 F.3d at 636 (citing *In re Rosteck*, 899 F.2d 694 (7th Cir. 1990)). The other camp held that assessments arose each month as they came due, in which case assessments billed post-petition were not subject to discharge. In 1994, Congress endorsed the latter view when it enacted § 523(a)(16).

But the Ninth Circuit noted that the exception to discharge contained in § 523(a)(16) is not carved out of the Chapter 13 "superdischarge" in § 1328(a). Adopting the reasoning of *Rosteck*, the court held that Debtor's *in personam* liability for the assessments was subject to a Chapter 13 discharge, even though the association's lien rights were, of course, undisturbed.

SCRA's Private Right of Action Is Subject to Four-Year Limitations Period

McGreevey v. PHH Mortg. Corp.,
897 F.3d 1037 (9th Cir. 2018)

Section 303(c) of the Servicemembers Civil Relief Act (the "SCRA") prohibits foreclosures during, and immediately following, a borrower's active service in the military. 50 U.S.C. § 3953(c). About six years after PHH foreclosed on his Vancouver home, the plaintiff in this case filed a complaint alleging that the foreclosure violated the SCRA. PHH responded by arguing the suit was untimely.

What should be a straightforward question was actually a matter of first impression, in part because § 303(c) of the SCRA contains no limitations period. The district court looked for the "closest state analog" to the SCRA and ended up borrowing the statute of limitations from Washington's Consumer Protection Act. Claims under that Washington law are subject to a four-year limitations period, so the court dismissed plaintiff's SCRA claim as untimely.

On appeal, the Ninth Circuit affirmed, but on different grounds. Prior to 1990, the district court's method of borrowing a limitations period from the closest state analog would have been correct. But in 1990, Congress enacted 28 U.S.C. § 1658(a), which provides a four-year limitations period for action under any federal law that doesn't contain its own limitations provision. However, § 1658(a) only applies to laws enacted after December 1, 1990. The SCRA has been around (under various names) since 1918, but the foreclosure prohibition of § 303(c) did not contain a private right of action until Congress amended the law in 2010. The Ninth Circuit thus concluded that 2010 was the relevant date of enactment for purposes of plaintiff's claim, and therefore that § 1658(a) applied. Since the limitations period under § 1658(a) is the same as Washington's

Consumer Protection Act, the court affirmed the dismissal of plaintiff's claim.

Attorney in Judicial Foreclosure Action Can Be Liable for FDCPA Violations

McNair v. Maxwell & Morgan PC,
897 F.3d 1037 (9th Cir. 2018)

Plaintiff was a homeowner who defaulted on her HOA dues. The HOA hired the defendant law firm to file a judicial foreclosure action. When plaintiff sued the law firm for alleged violations of the Fair Debt Collection Practices Act ("FDCPA"), the firm pointed to *Ho v. ReconTrust Co.*, 858 F.3d 568 (9th Cir. 2017), where the Ninth Circuit concluded that a non-judicial foreclosure is not "debt collection" for purposes of the statute, because the creditor is simply enforcing its lien rights.

A unanimous panel of the Ninth Circuit agreed with Plaintiff that *Ho* did not apply to the present case because the law firm had filed a complaint for judicial foreclosure. Applicable state law provided that the HOA could obtain a deficiency judgment against the homeowner—something that was not possible in the non-judicial foreclosure procedure at issue in *Ho*. That fact was enough to distinguish the present situation from *Ho*, and the court remanded for consideration of the merits of the FDCPA claims.

BAP CASE NOTES

By Jesús Miguel Palomares, Miller Nash Graham & Dunn LLP

Bankruptcy Courts Can Order Chapter 7 Debtors to Sign Consent Directive to Reach Foreign Bank Account Records

In re Mastro,
585 B.R. 587 (9th Cir. BAP 2018)

After Mastro, an involuntary Chapter 7 debtor, fled to France with his wife to avoid a related criminal case and extradition back to the United States, the Chapter 7 trustee moved for an order under Rule 2004 and § 521(a)(3) and (4) compelling Mastro to sign a consent directive that the trustee would send to foreign banks and financial entities to identify undisclosed Mastro accounts. A consent directive generally instructs any bank or other financial institution that receives it to disclose any accounts held by the signatory. Mastro opposed the motion, which the bankruptcy court agreed with, ruling that it lacked the authority under Rule 2004 to order a consent directive. The trustee appealed.

The BAP reversed, finding that the bankruptcy court indeed had discretion to authorize and enforce the consent directive requested by the trustee. The Bankruptcy Code imposes both statutory investigatory duties on trustees and statutory disclosure obligations on debtors. Section 704(a)(1) and (4) requires a Chapter 7 trustee to, among other things, collect the property of the estate and investigate a debtor's financial affairs. Meanwhile, § 521(a)(4) requires a debtor to surrender all property of the estate and furnish the trustee with "any recorded information, including books, documents, records, and papers, relating to property of the estate." Property of the estate includes foreign bank accounts.

Consent directives are investigatory tools, not testimonial

The BAP began the case by explaining that consent directives are indeed investigatory tools. Consent directives are not necessarily consensual because the signatory does not identify the contemplated recipients or accounts in the document. As a result, by signing a consent directive, the signatory does not admit to the existence of any specific account at any particular financial institution. This distinction makes consent directives non-testimonial in nature and thus does not trigger the signatory's Fifth Amendment rights. In so noting, the BAP found the Supreme Court's decision in *Doe v. U.S.*, 487 U.S. 201 (1988) controlling.

In its analysis, the BAP first looked to other governmental agencies that use consent directives—the IRS, the FTC, and the SEC—and noted these consent directives are often not consensual, but rather serve as a discovery tool requiring a party to produce or allow for third-party production of documents. Each of these governmental agencies is statutorily-provided with investigatory powers, as are trustees and bankruptcy courts by the Bankruptcy Code. Thus, the BAP found that the trustee's investigatory powers resemble those of the government agencies that use consent directives—like the highlighted agencies, the trustee has statutory authority to require production of documents in furtherance of an investigatory duty also created by statute. Similarly, a debtor's duty to provide information and cooperate with an investigation is at least equal to that of a regulated party subject to an agency's investigation.

Rule 2004 and § 105(a) provide bankruptcy courts with broad authority to enter orders carrying out Code-based obligations, including issuing consent directives

Bankruptcy courts have "broad authority" under § 105(a) "to take any action that is necessary or appropriate to prevent an abuse of process," *Mastro*, 585 B.R. at 596 (quoting *Marrama v. Citizens Bank of Mass.*,

549 U.S. 365, 375 (2007)), but that section cannot by itself justify a consent directive. However, the BAP noted that when a trustee requests a consent directive, § 105 enables the trustee's § 704 investigation of the debtor's financial affairs and is consistent with a debtor's § 521 obligation to cooperate with the trustee's investigation.

Similarly, Rule 2004 is the basic discovery device in bankruptcy cases, allowing broad examination relating to "the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge." Thus, a consent directive issued in connection with Rule 2004 enables the financial affairs investigation and is thus "firmly tethered to the trustee's § 704 statutory duties." *Mastro*, 585 B.R. at 597.

In holding that a bankruptcy court may use § 105 and Rule 2004 to compel a debtor to sign a consent directive, the BAP summarized as follows: "Rule 2004 serves as an additional bridge between §§ 521 and 704, as it provides trustees a mechanism to require debtors to produce. And, again, to the extent Rule 2004 is not sufficiently broad, § 105 would allow issuance of a consent directive to require a debtor to fulfill a statutory duty. Section 105(a) is not being used as an independent basis for the consent directive; it is, rather, being used in concert with §§ 521 and 704." *Id.* at 598.

Finally, the BAP added that the bankruptcy court had the discretion to decide whether to issue the consent directive in the first place, given that the consent directive involved international entities that could present additional issues and require additional procedural safeguards for a Rule 2004 examination.

Pawn Shops Beware: Failure to Seek Relief from Stay Voids Otherwise Proper Notice of Pawn Loan Termination

In re Sorensen,
586 B.R. 327 (9th Cir. BAP 2018)

This case presented a question of first impression in the Ninth Circuit: whether jewelry pawned pre-petition remains property of the bankruptcy estate. In answering yes, the BAP presents a good reminder why it's always a safe idea to seek relief from the automatic stay.

The Debtor pawned the jewelry as collateral for loans with the Pawnshop, then later filed a Chapter 13 petition before the termination date of the loans. Her schedules identified the Pawnshop as a creditor holding claims secured by the jewelry, and the amended Chapter 13 plan proposed making monthly payments to the Pawnshop and retain the jewelry. The Pawnshop did not oppose the plan, which was eventually confirmed.

During the bankruptcy, the Pawnshop issued a notice of loan termination, providing a 10-day right to redemption that was required by state law (the "Notice"). The Pawnshop did not, however, seek relief from the automatic stay. The Debtor did not redeem the jewelry during the redemption period. The Debtor subsequently filed an adversary proceeding against the Pawnshop for injunctive and declaratory relief; the complaint sought an injunction and temporary restraining order preventing the Pawnshop from disposing of the jewelry because it was part of the bankruptcy estate and thus subject to the automatic stay.

In response, the Pawnshop argued that the jewelry was excluded from the bankruptcy estate pursuant to §§ 541(b)(8) and 108(b) because the redemption period for pawn loans had expired and the Pawnshop had issued the statutorily required notice of termination and redemption. As such, the Pawnshop reasoned that the jewelry was excluded from the bankruptcy estate and the automatic stay never applied. The Pawnshop repeated these arguments after plan confirmation in a motion to dismiss the adversary complaint.

The bankruptcy court ruled that the Notice was void for violating the automatic stay and the Debtor's confirmed Chapter 13 plan was binding on the parties. The court reasoned that although the Pawnshop provided the Notice with a redemption period required under state law, the 10-day statutory time period had not expired because the Pawnshop did not first seek relief from stay, and nothing in § 541(b)(8) created an exception to the stay. Furthermore, the confirmed plan controlled the disposition of the jewelry, so the Debtor's intention to retain the jewelry and make payments prevailed. The Pawnshop appealed.

Noting that the issue was one of first impression in the Ninth Circuit, the BAP affirmed for the Debtor. Under § 541(a), an estate is created at the filing of a bankruptcy petition that contains, subject to certain exceptions, all legal or equitable interests of the debtor in property as of the commencement of the case. This includes a pre-foreclosure right to redeem property, as well as rights that a debtor retains in their pawned property.

Sections 541(b)(8)(A) through (C) govern how and whether pawned property is part of the bankruptcy estate. To be excluded from the bankruptcy estate, (A) the pawned property must be in the possession of the third-party pledgee (or pawnor); (B) the debtor must not be obligated to buy back the pawned property; and (C) the debtor and trustee must not have exercised any right to redeem in a timely manner as provided by state law and § 108(b). In this case, the parties agreed that only prong (C) was at issue.

Section 108(b) provides in relevant part that if a debtor has a redemption right that has not expired before the petition date, then the redemption right may be exercised before the later of (1) the end of the given contractual period, or (2) 60 days after the order for relief. The BAP looked to state law (since it provided the longer redemption period), which provided that if the jewelry was not redeemed before the end of the loan period, the Pawnshop must give notice of loan termination and provide a 10-day redemption period.

Following this road map, the BAP ruled for the Debtor. First, the BAP found that when the Debtor filed her Chapter 13 petition, her interest in the jewelry became part of the bankruptcy estate under § 541. Second, under state law, § 541(b)(8) did not automatically exclude pawned property from the bankruptcy estate without notice to the Debtor. The BAP reviewed the applicable state law requirements and explained that under state law, the Pawnshop did not become vested with ownership of the jewelry until ten days after it gave proper notice to the Debtor. The Notice given by the Pawnshop was void—and never started the 10-day redemption period—because the Pawnshop failed to first seek relief from stay.

To sum up, the 10-day redemption period never began to run under the state law requirement, the Debtor's redemption right was never extinguished, the Pawnshop never took title to the jewelry under state law, and § 541(b)(8) did not remove the jewelry from the estate.

OREGON SUPREME COURT CASE NOTE

By Ridgway K. "Dick" Foley Jr.,
Williams Kastner Greene & Markley

Trinity v. Apex Directional Drilling LLC
363 Or. 257, P.3d (2018)

Trinity (Bank of the West), the lender, loaned funds to Apex, the borrower. Lachner, the guarantor, guaranteed the Apex loan. The lender prepared all documents, including a forum selection clause that required all actions to be filed in San Francisco. When the borrower defaulted, the lender filed a claim against the guarantor in Clackamas County Circuit Court. The guarantor moved to dismiss the claim against him for failure to file in the prescribed forum. The Clackamas County judge denied the motion, stating he had "discretion" to enforce or refuse to enforce the clause. The guarantor filed a writ of mandamus to the Oregon Supreme Court, which issued an alternate writ, ordering vacation of the Circuit Court order and requiring the lower court to show cause why it should not do so. Undaunted, the trial court judge declined to dismiss the case, held another hearing, and decided that Oregon was a "more reasonable" forum.

Because the lower court refused to vacate the improper order, the Supreme Court heard arguments, decided that insufficient grounds existed to invalidate the forum selection clause, and issued a peremptory writ of mandamus. The Supreme Court reminded the trial judge that recent case law clearly holds that forum selection clauses are to be presumed valid unless the clause is "unfair or unreasonable" and that the party seeking to avoid such a clause bears the burden of persuasion. In the instant case, the clause was not the product of a contract of adhesion, was not imposed by a party possessing unfair and unusual bargaining power, was not unconscionable, and did not violate public policy. The Court also noted that the Restatement (Second) of Conflict of Laws recognizes occasional exceptions when a clause was so "seriously inconvenient" as to be "unjust." Since the lending bank, Trinity, drafted the contract and the clause, one suspects that our staid Supreme Court found application of that exception laughable.

The decision contains several lessons. Trial judges should be expected to know the rules and to follow them, and not decide cases on "feelings"; considering the choice between a hearing in Oregon City or in San Francisco as posing some sort of serious inconvenience is farcical. As for banks and other commercial lenders, be careful what you wish for—lending banks ordinarily control all documentation, and they ought to live by the words they select.

OREGON COURT OF APPEALS CASE NOTE

By Ridgway K. "Dick" Foley Jr.,
Williams Kastner Greene & Markley

State v. Walker
291 Or. App. 188, 419 P.3d 794 (2018)

Why would commercial attorneys be interested in a criminal law decision? All litigators, both civil and criminal, need to understand the court's use of the abuse of discretion standard—and that truism makes *Walker* important to all attorneys. The elemental facts in *Walker* are plain and simple: Mr. Walker was charged with first degree theft. His testimony contained some minor inconsistencies and different word usages. Over a clear defense objection, the prosecutor sought—and the trial court gave—a traditional "witness false in part" instruction, and the jury convicted the defendant.

In a commendable and tightly reasoned opinion, the Court of Appeals reversed Mr. Walker's conviction—and in doing so provided an excellent summary of the appropriate uses and limitations of the abuse of discretion standard. Among other salient matters, the Court reminds us that judicial discretion must always be exercised within a mandatory framework: it must be exercised lawfully to reach a decision that falls within a permissible range of legally proper outcomes. A court errs if it is guided by an incorrect legal standard, which means that an appellate court must review the standard applied freely for legal error. Further, a court abuses its discretion if it bases its decision on erroneous predicate legal conclusions or upon predicate factual determinations that lack adequate evidentiary support. As a pitchman would say, "but wait, there's more"—a court may abuse its discretion even when it applies the correct legal standard and sufficient evidentiary support exists, "if its decision is clearly against all reason and evidence."

Governed by these fundamental guidelines, the Court of Appeals reversed the *Walker* conviction. It stopped short of disfavoring the "witness false in part" instruction but affirmed that it must be approached with caution. Mere inconsistency—and in some instances, patently minor contradictory testimony—does not permit trial judges to give the pattern instruction in all cases. The appellate panel concluded that the *Walker* record lacked sufficient evidentiary support for the giving of the instruction—it concluded that there was insufficient evidence that any witness consciously testified falsely. Mr. Walker's testimony was not incompatible with other factual evidence at trial, such as a security video, and any minor discrepancies likely arose from various witnesses' word choices. Whatever inconsistency could be inferred, it "did not constitute sufficient evidence from which a jury could find that one witness *consciously testified falsely*." 291 Or. App. at 194 (*italics by Court)*.

You Too Can Be An Author

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Your letter should include the topic and a brief synopsis for the article and indicate whether you are willing to be the author.

LOCAL BANKRUPTCY COURT CASE NOTES

By Margot Seitz

Hasta La Vista, Baby! Redemption Rights Terminate and Cannot Be Revived Under 11 U.S.C. § 547(b)

Hull v. Klamath County (In re Hull),
2018 WL 4214231; Bankruptcy Case No. 17-63283-tmr13
(Bankr. D. Or. Sept. 4, 2018)

This case addresses the question of whether the expiration of a redemption right in a tax lien foreclosure scenario is an avoidable preferential transfer under 11 U.S.C. § 547(b). The short answer is no. The longer answer is that statutory redemption rights generally terminate on a date certain and cannot be revived. They are akin to option rights. Neither are considered avoidable "transfers." As the bankruptcy court explained, "[u]nder both scenarios, the right simply disappears." A statutory redemption right terminates; it is not a "transfer" that can be unwound.

After the Debtors failed to pay property taxes for a number of years, Klamath County (the "County") initiated a tax lien foreclosure action and obtained a judgment on September 23, 2015. The Debtors continued to live at the subject property (the "Property"). Roughly a year later, the County delivered a redemption notice to Debtors indicating that they had until 4:00 p.m. on September 25, 2017, to redeem the Property by paying $4,915.78 in back taxes. The Debtors did not redeem, and on September 26, 2017, the County recorded a deed transferring the Property to the County. Roughly a month later, the Debtors filed for bankruptcy relief.

Debtors argued, in part, that the deed transferring title to the County upon the expiration of the two-year statutory redemption period constituted an avoidable preferential transfer. In turn, the County contended that the relevant "transfer" occurred when the tax foreclosure judgment was entered in 2015, more than two years prior to the Debtors' bankruptcy filing.

The court began its analysis by considering Chapter 312 of the Oregon Revised Statutes. It concluded that the County unequivocally obtained title to the Property when the foreclosure judgment was entered. More specifically, a county obtains title to real property by foreclosure but then must hold the property for two years subject to interested parties' redemption rights. See, ORS §§ 312.270, 312.120(1). The court agreed with the County's finding that, at the point when the deed was

recorded, the Debtors held no interest in the Property. Title vested to the County in 2015 and the Debtor's redemption rights expired prior to the deed being recorded. Therefore, the deed recording, in and of itself, was not a transfer under § 101(54)(D) because no interest changed hands.

The court similarly concluded that the termination of a statutory redemption right did not constitute a transfer. Interestingly, the court distinguished the expiration of a statutory redemption right in the tax lien foreclosure context with the expiration of a redemption right for pawned personal property. In Oregon, a pawn broker obtains a lien on personal property placed with the broker. That lien is only foreclosed if the personal property is not redeemed within a certain period. The original owner's interest in the personal property is terminated when his or her redemption right expires. Unlike the tax lien foreclosure scenario discussed above, a pawn broker only obtains title when the prior owner's interest is forfeited (upon termination of the redemption right). The court explained that a person has an equitable right of redemption until his or her interest in the property is terminated. After termination, the party may have a statutory right of redemption, but has no actual other, independent rights to the property. Here, the Debtors did not have an equitable right of redemption, and their statutory rights terminated based solely on the passage of time. This was simply the expiration of a right. There was no "transfer" to unwind.

Lastly, the court discussed how the County's interest in the Property was perfected upon entry of the certified copy of the judgment into the court registry. That occurred more than two years prior to the bankruptcy filing, so it was clearly outside the 90-day preferential transfer window and could not be avoided.

Show Me the Writing—
Oral Loan Modification Held Unenforceable

Szanto v. Bank of America (In re Szanto),
2018 WL 2059601; Bankruptcy Case No. 16-33185-pcm7
(Bankr. D. Or. Apr. 30, 2018)

Debtor Peter Szanto (the "Debtor") filed an adversary proceeding against his mortgage lender, Bank of America ("BOA"), seeking specific performance of an alleged loan modification. After a senior lender began foreclosure proceedings, BOA apparently accelerated the Debtor's mortgage loan. Debtor claimed that BOA then agreed to reinstate an interest-only provision of his mortgage loan if he paid $45,300.41 (the minimum payment due, including past due payments and finance charges). Debtor made the payment, but BOA refused to reinstate the provision. Debtor claimed that BOA repeatedly indicated that a signed, notarized novation agreement was sent to him. He never received it.

BOA filed a motion for summary judgment, arguing that the alleged oral loan modification was unenforceable under the statute of frauds. First, the Debtor argued that BOA failed to provide specific discovery central to the dispute. After a lengthy discussion regarding the Debtor's various opportunities to obtain needed discovery and BOA's compliance with the Debtor's prior discovery requests, the court rejected the Debtor's arguments.

Next, the Debtor argued that the statute of frauds was satisfied by two writings or, alternatively, by partial performance (*i.e.*, payment of $45,300.41). In this case, the contract was governed by California law. In California, an agreement to modify a loan secured by real property must be in writing, subscribed by the party against whom it is to be enforced. Unfortunately, neither of the documents proffered by the Debtor contained any essential terms of the alleged modification. Those documents primarily recited the amounts due and received by BOA. As such, the Debtor could not satisfy the statute of frauds.

The court also rejected the Debtor's partial performance argument. The Debtor argued there was no reason to make the payment if he was not obtaining a modification in return. The court explained that partial performance allows the enforcement of an oral agreement, where the party's actions clearly refer or relate to the contract terms. However, the party seeking enforcement based on partial performance must have also changed his or her position in reliance on the oral contract such that it would be an "unjust or unconscionable loss, amounting in effect to fraud" not to enforce the contract. Under California law, simply making a payment is not sufficient to take an oral agreement out of the statute of frauds.

Lastly, the court noted that based on the Debtor's own pleadings, the alleged loan modification was never completed. The Debtor alleged that BOA sent him the novation agreement and directed him to sign, notarize, and return or submit the agreement for recording—if it was acceptable to him. He never received the agreement; therefore, he never accepted it. The Debtor did not allege otherwise. Therefore, the court granted BOA's motion for summary judgment.

Chapter 13 Trustee Fee Rights Depend on Claim Impairment

In re Evans,
584 B.R. 917 (Bankr. D. Or. 2018)

This case addresses the fundamental questions of when and whether a Chapter 13 trustee is entitled to take a fee on claims that are paid through escrow (rather than paid

by the trustee). The Debtor's Chapter 13 plan proposed to pay two secured creditors through escrow upon the sale or refinance of certain real property (the "Property"). The creditors would receive payment within three years. The trustee objected to the plan and asserted that he was entitled to take his statutory fee on funds paid through escrow under LBR 3015-1(b)(7). That local rule provides:

> If a debtor and the trustee agree, the debtor may pay mortgage arrearages and other claims secured by real property upon a sale or refinance of the property directly to the creditor. The trustee may, upon demand, be paid the trustee's authorized fee based upon those payments either by the debtor or the escrow agent.

The Debtor disagreed and argued that LBR 3015-1(b)(7) was inapplicable and inconsistent with 28 U.S.C. § 586(e). If funds are paid to a trustee for distribution under a plan, then 28 U.S.C. § 586(e)(2) permits the trustee to collect a fee on the amounts received. In turn, § 1326(c) provides that the trustee shall make payments to creditors under each Chapter 13 plan, unless payments are provided for otherwise in the plan or order confirming plan. The court explained that the Ninth Circuit addressed the issue of when it is appropriate for a debtor to pay creditors directly through a plan in *Cohen v. Lopez* (*In re Lopez*), 372 B.R. 40 (9th Cir. BAP 2007), *aff'd* 550 F.3d 1202 (9th Cir. 2008). In *Lopez*, the BAP held that the trustee (not the debtor) must pay all *impaired* claims unless the court, in its discretion, determines that direct payment is appropriate. *Id.* at 46-47. Since "impairment" is not defined in Chapter 13 of the Code, the court discussed various descriptions of impairment provided in case law and under Chapter 11. The court concluded that when those various descriptions are considered together, they "define impairment as any proposed alteration of the rights of a creditor, which the debtor could not insist on but for the protections of the Bankruptcy Code." The Debtor urged the court to find that the secured claims were not impaired. The court rejected that argument and held that the claims were clearly impaired because of the three-year delay in payment proposed in the plan. Among other things, during that period, the county could not pursue foreclosure.

As a result, the court held that the claims fell under § 1326(c) and the presumption that the trustee (not the escrow agent) should make payments to these creditors. The court also explained that there was no conflict between 28 U.S.C. § 586 and LBR 3015-1(b)(7) because LBR 3015-1(b)(7) applies in situations where there is an agreement between the trustee and debtor. Here, there was no such agreement. Where debtors propose to pay the impaired claims directly and the trustee does not consent, the plan will not satisfy § 1326(c) (or LBR 3015-1(b)(7)) and cannot be confirmed. In other words, debtors cannot simply avoid paying trustee fees by proposing to pay impaired claims directly through escrow.

CIRCLE OF LOVE

By Theodore Piteo, Michael D. O'Brien & Associates PC

June 7, 2018

Judge Peter McKittrick started the meeting off by announcing that his former clerk, Diane Bridge, would retire on July 31, and that Carolyn Cantrell will take over the position starting August 6.

Judge McKittrick then announced that he and Judge Thomas Renn would be working to harmonize the procedures and practices between the Portland and Eugene courts.

The initial project they undertook regards the case dismissal process. Under past practice in Portland, when a debtor filed a motion to dismiss, the court generally would enter a dismissal order immediately. In Eugene, generally a 21-day notice was given to parties prior to the entry of the dismissal order. The court recognized that the Supreme Court in *Marrama* modified that immediate dismissal standard in Chapter 13 cases. Therefore, going forward, the courts will now issue a 7-day notice for objections to dismissal as a text-only docket entry. The courts will continue to entertain motions to dismiss immediately, but they should have the Chapter 13 trustee's consent noted on the motion.

In Chapter 7 cases, motions to dismiss will be auto-docketed for a hearing approximately 28+ days in the future. If no objection is raised within 21 days of the motion, the court may cancel the hearing and grant the motion at its discretion.

Finally, the judges are also working on the procedure for withdrawal of the reference for adversary non-core matters. Anyone who wishes to submit comments or suggestions about findings and recommendations, or where and when to lodge objections to allowing a final bankruptcy court order to enter, should contact Judge Renn or Judge McKittrick.

Judge McKittrick made one final announcement regarding Chapter 7 reaffirmation agreements. He indicated that attorneys should advise their clients more about the requirements for enforceability of reaffirmation agreements under Section 524(c). The court noted that some agreements, without attorney certification, are generally not approvable. The attorneys in attendance noted that potential liability for signing these agreements was a reason why they do not. Plus, debtors' counsel pointed out that

so long as the court denies the reaffirmation agreement, the ride through doctrine still appears to apply and is a better option for clients in most respects. Judge Trish Brown offered to take a second look at denied reaffirmation agreements if the lender will make concessions and asked that counsel send her a letter (on the record) if a second look was needed.

Jeff Thompson, the new operations coordinator for the bankruptcy court, made two system announcements. First, ECF now has an event allowing a request for appearance by phone to be filed. These requests should be automatically granted subject to a few exceptions. The court will list the procedures and exceptions on its website soon. Second, the court will now try to include some text blurbs when it refuses to sign or enter orders to update counsel.

Jeff Wurstler for the IRS wanted to remind everyone to make their estimated tax payments. He also urged everyone to check the wage withholding calculator due to the new tax bill coming up. No one wants nasty tax bill surprises, especially not debtor clients.

The next meeting took place September 6. Thanks to Vanden Bos & Chapman for the refreshments at this meeting.

September 6, 2018

Charlene Hiss started the meeting by announcing that the Local Rules Committee had submitted its report to the judges, and they would be up for public comment for 30 days.

Jeff Wurstler for the IRS made a few announcements: 1) Please send in your quarterly payments! 2) The new tax code is going to open up lots of Section 1305 claims this year; he wanted debtors' counsel to start taking steps now to prepare their clients. 3) The IRS is starting to look into debtors who work for their own LLC and take large corporate distributions but small wage payments. The IRS may reclassify your distributions as wages by looking at standard salaries in your area. The IRS will also examine loans between debtors and their LLCs for potential problems.

Mike Fuller announced that the 9th Circuit recently decided the *Hunsaker* case, holding the IRS in contempt for violation of the automatic stay. However, damages may only be awarded for emotional injury, not for attorney fees, when administrative remedies are not exhausted first.

Clarke Balcom made an announcement that he believes that the TFS Bill Pay program is causing more Plan defaults in the district then when wage orders were required. The problem is that TFS allows clients to make partial payments. He urged debtors' counsel to talk to their clients about not altering their payment schedule via TFS to keep delinquencies low. He also urged debtors' counsel to sign up for notifications from TFS for clients not making their full payment.

Laura Donaldson made two announcements: 1) She wants everyone to join the Federal Bar Association as they get preferred announcements and seating allocations for CLEs; and 2) she is starting to work on the Debtor-Creditor Section website and would like to hear from practitioners about what content they would like to see posted that might be helpful to their practice (i.e., articles, committee notices, etc.).

Rich Parker wants to hear any comments or concerns that attendees may have about the Newsletter and its articles. The editorial board is set to start making some updates and would like some feedback. He also wanted to urge the Bankruptcy bar to consider sending a representative to the 9th Circuit lawyer meetings. You can contact Rich for more information.

Mike Fuller ended the meeting by asking anyone who has historical pictures of documents or interesting historical facts to send those along to him for use in upcoming social media campaigns.

The next meeting will take place on November 15 at 4:30 p.m. Thanks to Michael D. O'Brien & Associates and Todd Trierweiler & Associates for the food at the meeting!

Save the Date

2019 Debtor-Creditor Section Annual Meeting / CLE retreat

September 13-14, 2019
Tolovana Inn at Cannon Beach

Children's Books Appreciated

Judge Trish M. Brown and Stephen Raher are collecting new and gently used children's books for all ages, so that every child who visits his or her mom or grandmother at Coffee Creek Correctional Facility in Wilsonville during the month of December can take home a book of their own!

If you would like to donate books, please drop them off at the Bankruptcy Court intake counter in Portland or contact Suzanne Marx at (503) 326-1592 or Suzanne_Marx@orb.uscourts.gov.