

Bankruptcy Court Decisions

WEEKLY NEWS & COMMENT

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TOP LEGAL CASES

APPEALS

The 3d U.S. Circuit Court of Appeals joins sister circuits in holding that the time requirement for filing a bankruptcy appeal is jurisdictional.

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STANDING

A New York judge holds that a real estate mortgage investment conduit's certificateholder lacks standing to object to a Chapter 11 debtor's motion for an order authorizing the debtor to enter into a commitment letter with a stalking horse bidder.

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HOT CASE

A judge in New Jersey rules that a Chapter 11 debtor's hotel revenues are available for use as cash collateral. Notwithstanding the broad definition of "rents" in the assignment of rents, which included revenues from guest rooms, hotel occupants are not tenants.

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Cases reported

Supreme Court Docket, **page 10**; New Judicial Decisions, **pages 11-18**.

COVER STORY

Break with tradition reflects ABI's value

The American Bankruptcy Institute broke from tradition at its 29th Annual Spring Meeting, held March 31 through April 3 in Washington, DC.

It wasn't outgoing president Melissa Kibler Knoll who introduced incoming president Geoffrey L. Berman before a conference hall packed with many of the ABI's 3,000 members.

Rather, it was Robert J. Keach, ABI's president in 2009, who did the honors.

The break from longstanding tradition was appropriate. Despite living about as far away from one another as two U.S. residents possibly can, Berman and Keach have grown to be the closest of friends, in large part because of their mutual involvement with the organization.

The group's role in fostering such relationships is one reason why Berman describes heading the ABI's volunteer leadership as a "privilege." **Sit in on our conversation with the ABI's new president on pages 4-5.**

HIGHLIGHTS

Judiciary: Deep cuts will hinder administration of justice

One FY 2012 budget proposal making its way around Capital Hill would reduce spending to FY 2008 levels. Another would reduce spending to FY 2006 levels. That might work for some areas of government, but not for the judiciary, warned Judge Julia Gibbons, chair of the Judicial Conference Budget Committee.

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Whoa! 'Racino' needs time to prove itself, debtor pleads

Overleveraged from inception, Indianapolis Downs' combined race track and casino is only now beginning to realize its full potential, according to the CRO. The "racino" owner also recently realized something else — a need to file Chapter 11.

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Litigation sends 4Kids seeking court protection

4Kids Entertainment Inc. doesn't have any debt. But now that the owners of the popular children's anime series "Yu-Gi-Oh!" terminated 4Kids' licensing contract, it won't have much in the way of assets, either.

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ABI president aims to prep organization, Code for the future

Twenty years ago, the American Bankruptcy Institute and the National Association of Credit Management formed a joint task force, the result of which was the *Creditors' Committee Manual*, one of the very first books ABI published. For Geoffrey L. Berman, who's now vice president at Development Specialists Inc., serving on that task force marked the first time he raised his hand to volunteer for the ABI. Twenty years later, he says, he hasn't lowered his hand.

Berman later went on to chair an ABI task force on general assignments, and penned the first and second editions of *General Assignments for the Benefit of Creditors: The ABCs of ABCs*. On other writing projects, he volunteered to serve as editor. By 2002, Berman was selected to serve on the ABI's board of directors. Then, when Reginald Jackson vacated his position as executive editor of the *ABI Journal* to serve as president, Berman volunteered to fill the vacancy. And when John Ames, vice president of publications, was tapped for the presidency four years ago, Berman was asked to take over where he left off.

It's not surprising that, on April 2, 2011, as Berman officially kicked off his presidency, his fellow ABI members honored him with a standing ovation.

N&C: *Over the past 20 years, you've contributed an enormous amount of time to the ABI. How did this organization become such an important part of your career?*

GB: Well, I could tease and say that I raised my hand 20 years ago, and I haven't figured out how to get it down! Honestly, though, I don't regret a minute of it. I'm a firm believer that if you're going to do something, do it to the best of your ability or don't do it. I grew up in Los Angeles, and those who know me, know I'm not a short guy. So, I played basketball in high school and attended [UCLA legend] John Wooden's basketball camp. He had this quote about the definition of success that stuck with me. He said: "Along the way, you never cease trying to be the best you can be — that you always strive to be your personal best. That is success. And don't let anybody tell you otherwise."

So, for me, if you're going to be involved in an organization, be *involved*, don't just sit back and say, "What did you do for me lately?" If they ask you to do something, do it to the best of your ability. If they keep asking, why not keep doing it? Being involved enhances our professional reputation. In the crassest sense, is it marketing? Absolutely, it is. But it also provides an opportunity to expand your base of contacts, and over time, some of those contacts become your best friends. It's hard to replace that.

N&C: *The opportunity to form close business and personal relationships is an often-cited benefit of the ABI. What has your experience been?*

GB: It's true. You can make some awfully strong long-lasting friendships through this organization. [Former ABI President] Bob Keach introduced me during the induction ceremony at the Annual Spring Meeting because, through our involvement in ABI, he has grown to be one of my closest friends. He's in Portland, Maine and I'm in Los Angeles. One of the major out-of-court restructurings that I've been involved with in recent years is that of Pasadena Paper. And who got me involved in Pasadena Paper? Bob Keach. Who did I just get off the phone with before this interview? Bob Keach. That's what you can get out of ABI, if you want to. If you want to sit at your desk and read the *Journal*, and use the online capability, that's great — that's worth more than the cost of membership. But if you put more into it, there's so much more you can get out of it.

N&C: *One of your goals is to convey those kinds of benefits to young practitioners, right?*

GB: Right. Other than hopefully leaving the organization no worse than I found it, one of my primary goals is to find ways to get young practitioners to buy in to what ABI represents, and to encourage them to get involved. We need to identify young leaders and nurture them within the organization, with the goal being that sometime in the not-so-distant future, ABI will have a group of professionals in their mid-40s to early 50s serving as the president, president-elect, and immediate past president.

N&C: *Why is it so important to get younger practitioners involved?*

GB: I've watched too many bar groups get tired because the same group of people remains in leadership roles over the years. Over time, those professionals become less interested in what's going on in the practice, and the organization suffers. I would hate to see that happen to ABI.

Let's face it, as nice an honor it is for me to be the president, I'm 57, and the practice has certainly changed from when I started. I mean, I first asked out my wife, 30 years ago, in the era of onion skin blue-back pleadings. I needed to make a change on a pleading that the lawyer had already signed. He wasn't there to change it, so to make it up to her, I bought her dinner. You didn't have a PDF, you didn't have e-mail, and you barely had faxes. I typed my undergraduate honors thesis on an electric typewriter! And look where we are today: ECF, Pacer, Twitter, Facebook, and who knows what's next. If we can attract young practitioner-leaders who have grown

ABI names new officers and directors

Next spring, it's James T. Markus of Markus Williams Young & Zimmerman LLC, who will take the reins as president of the American Bankruptcy Institute. The ABI's board of directors named Markus president-elect at the group's Annual Spring Meeting, held March 31 to April 2 in Washington, D.C.

Development Specialists Inc.'s Geoffrey L. Beraman moved to the president's post, succeeding Melissa Kibler Knoll of Mesirow Financial Consulting LLC. Robert J. Keach of Bernstein Shur succeeds John W. Ames of Greenebaum, Doll & McDonald PLLC as chairman of the board for a one-year term.

The ABI also welcomed the following individuals to their new leadership positions:

- VP-Education: Jeffrey N. Pomerantz, Pachtulski Stang Ziehl & Jones LLP, succeeding Markus.
- VP-Communication & Information Technology: James Patrick Shea, Shea & Carlyon Ltd., succeeding Judge Eugene R. Wedoff (Bankr. N.D. Ill.).
- Board of Directors: Judge Kevin J. Carey (Bankr. D. Del.); Jay M. Goffman of Skadden, Arps, Slate, Meagher & Flom LLP; Judge Barbara J. Houser (Bankr. N.D. Texas); Mitch Ryan of Epiq; and Ronald J. Silverman of Bingham McCutchen LLP.

There are 60 members of the ABI Board of Directors. The complete list of directors and officers is available at www.abiworld.org. ■

up with these kinds of things, ABI will stay relevant to the practice, because it will stay in tune with the changes to the practice.

N&C: *So, what do you do? How do you engage young practitioners?*

GB: Look, I have a 24-year-old and a 20-year-old, and, trust me, I'm not going to pretend I know what the answer is — what it is that will get young practitioners excited about ABI. So, I have a group of ABI members, including board members and professors, who will participate on a task force charged with figuring out ways to reach out to young people at firms and law schools and in MBA programs.

One of the ideas I've been thinking about is asking judges to come back onto the bench after a hearing to talk to the young lawyers in attendance about how the judge reacted to the arguments — sort of like a moot court review. That way, the first time that young lawyer has to stand up in front of that judge, the judge knows that they're a young lawyer, and the young lawyer, while they're bound to be a little nervous, has alleviated some of those jitters by having already met the judge, and having gained an idea of what the judge is looking for. If we could do that somehow under the ABI banner, that would be great.

There are probably hundreds of ideas, and this task force is going to work to find and develop them.

N&C: *But that's far from all you'll be working on this year. What projects are you planning to help fulfill ABI's mission to inform Congress on bankruptcy issues?*

GB: Well, my other main initiative for the year is a follow up to the ABI's Chapter 11 Symposium, which was held in October 2009. The symposium dealt with whether or not Chapter 11 is working

and how we can fix it going forward. There are many issues that were discussed at the symposium that are still being discussed today — too big to fail, for instance. It's time to follow up on that effort. So, we're in the process of putting together something like the National Bankruptcy Review Commission that was established in the 1994 Code amendments. The group will be made up of 10 to 12 leading practitioners on both the debtor and creditor side. I can't tell you who, yet, because we're still doing our outreach, but these professionals will volunteer their time to identify the problems with Chapter 11 today, and to come up with recommendations as to how to make it more efficient.

The end result, hopefully, is a report that Congress can look at as a framework to fix Chapter 11. And, remember, because the report would be coming out under the auspices of the ABI, it's nonpartisan. It's not geared to be a lobbying effort.

Now, I don't expect that this is something that will be done in 12 months. But, along the way, ABI will hold a plenary session at one of its annual meetings, where the group can report on its work. We'll also have a new column in the *Journal* geared toward the work of the commission, for example, addressing topics they're working on, or issues they want input on.

N&C: *It sounds like it's going to be a busy year.*

GB: I'm certainly not going to complain. It's a privilege to serve as president and it's one I will cherish for the rest of my life. There's a long list of good people on that board and they could have picked any number of other people to serve in this role. I'm honored and touched that they thought enough of me to put me in this position. ■