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Bankruptcy 2022:
Views from the Bench

Committee Challenges in 2022

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2022

VIEWS FROM THE BENCH 2022

COMMITTEE CHALLENGES IN 2022

Panelists:
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Hon. Christopher M. Klein, U.S. Bankruptcy Judge (E.D. Cal.)
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RECENT ISSUES SURROUNDING MULTIPLE OFFICIAL COMMITTEES

A. In General

Under Bankruptcy Code section 1102, an official statutory committee other than the unsecured creditors' committee may be appointed by the United States Trustee if it deems it appropriate. If different classes of creditors are affected by the Chapter 11 case, *e.g.*, subordinated versus senior unsecured creditors, priority versus nonpriority creditors, *etc.*, the bankruptcy court may order the U.S. Trustee to appoint separate committees to protect the interests of each class of creditors whose rights are affected differently than the rights of other classes. The appointment of an additional committee of unsecured creditors will be ordered only if necessary to assure adequate representation of unsecured creditors.

The appointment of one or more additional committees is viewed by courts as an extraordinary remedy that they are reluctant to grant. Many courts considering the extraordinary appointment of an additional committee, have employed a two-step process. First, the court determines whether the appointment of an additional committee is needed to assure adequate representation. Courts consider various factors in evaluating adequacy of representation, including to the extent applicable: (i) the ability of the current committee to function; (ii) the nature of the case; (iii) the standing and desires of the various constituencies; (iv) the ability for creditors to participate in the case without an official committee and the potential to recover expenses pursuant to Code section 503(b); (v) whether different classes may be treated differently under a plan and need representation; (vi) the motivation of movants; (vii) the costs incurred by the appointment of additional committees; and (viii) the tasks that a committee or separate committee would perform.

Next, if the answer to the first question is yes, the court considers whether it should exercise its discretion to appoint an additional committee. Courts have more specifically considered the following factors: (i) the cost associated with the appointment; (ii) the timing of the application, whether early or late in the confirmation process; (iii) the potential for added complexity; and (iv) the presence of other avenues for creditor participation. The size of the Chapter 11 case will likely be a significant factor indicating whether optional committees should be appointed. Large cases often involve complex debt and equity structures with competing interests, and such cases can more feasibly support the cost of multiple committees.

Clashes among debtors, the U.S. Trustee, and creditor and equity groups over the need for and role of additional special committees are not surprising in that, among other things, such committees may potentially hinder or make more difficult or complicate plan and case negotiations and the significant cost of the professionals of such committees will be borne by the estate.

B. *Ad Hoc* Committees

In some situations, trade creditors, noteholders, and other creditors form themselves into informal committees to deal with the debtor before the filing of the bankruptcy petition. Such committees are self-appointed and thus, unregulated. The potential benefits of acting as an unofficial committee include (a) sharing costs of counsel and other professionals, (b) increased bargaining power, and (c) presenting a united front to the debtor and other stakeholders. A prepetition *ad hoc* committee commonly spends a great deal of time and energy with the debtor, learning about its financial problems. Notably, if a bankruptcy is thereafter filed, the prepetition committee may be converted to an official unsecured creditors' committee postpetition by the U.S. Trustee if the committee members fairly represent a reasonable cross-section of unsecured creditor claims against the debtor.

It should be noted that, depending on the Chapter 11 case's circumstances, while its *de jure* powers are very limited, an *ad hoc* committee's *de facto* powers may be substantial. Without the cooperation of a key *ad hoc* committee, it is unlikely that the debtor will be able to effectively restructure its debts. Potentially, however, active involvement in the case by one or more *ad hoc* committees may incentivize more aggressive posturing or litigation among creditor groups, since an *ad hoc* committee represents only one group of claims.

C. Equity Committees

Typically, courts treat the likelihood of a recovery to equityholders as the primary factor in their analysis of whether to allow an official equity committee. If the debtor is or appears to be solvent, the concern is that a creditors' committee will negotiate a plan based on a conservative estimate of the debtor's value. However, the equityholders of an insolvent debtor have no economic interest in the case and thus, the estate should not have to bear the expenses of an equity committee over what would amount to a gift.[1]

Even if it is not entirely clear that equityholders will receive a recovery through a Chapter 11 plan, a bankruptcy court may choose to appoint an equity committee in order to ensure that value is preserved for such parties-in-interest and if an equity committee may possibly add value or other benefits in the case. In some cases, the result may not be positive. For example, equity committees were appointed in the *Horsehead Holding* and *Energy XXI* cases where there were allegations of wrongdoing, misconduct, misrepresentation or other bad faith conduct by a debtor or its officers and directors – even though the courts ruled that they could not conclude that there was a substantial likelihood of solvency. *In re Horsehead Holding Corp.*, Case No. 16-10287 (Bankr. D. Del.); *In re Energy XXI Ltd.*, Case No. 16-31928 (Bankr. S.D. Tex.). Ultimately, in both the *Horsehead Holding* and *Energy XXI* cases, equityholders received nothing under the confirmed plans.

As a practical matter, having status as an official committee likely improves equityholders' chances of extracting some settlement value from the debtor. However, as the foregoing cases also demonstrate, the appointment of an equity committee does not ensure a recovery for equityholders.

[1] *See, e.g., In re Williams Communications Grp. Inc.*, 281 B.R. 216, 220 (Bankr. S.D.N.Y. 2002) (factors include (i) whether debtors are likely to prove solvency, (ii) whether equity is adequately represented by stakeholders already at the table, (iii) complexity of debtors' cases, and (iv) likely cost to estates of an equity committee); *In re Kalvar Microfilm Inc.*, 195 B.R. 599 (Bankr. D. Del. 1996) (similar).

D. Mass Tort Committees

As more mass tort chapter 11 cases are filed, not surprisingly, tort claimant committees are being increasingly appointed (*e.g.*, the LTL case discussed herein, Boy Scouts of America, USA Gymnastics, Roman Catholic Diocese and other religious order cases, and opioid drug companies). Generally, Chapter 11 is attractive to mass tort defendants because of its power to achieve some finality as to current and future tort claims. For many tort claimants, transactional/litigation costs would be too high for them to pursue claims on their own. An effective Chapter 11 case, utilizing an effective tort claimants committee, can provide an efficient, collective resolution of mass tort claims by streamlining proceedings and getting all key parties to the negotiating table.

E. Other Official Committees

Courts have appointed additional creditors' committees to represent, among other groups, employees, priority creditors, subordinated note holders, retirees, and franchisees. Other than in some large mass tort cases, multiple committees, however, are rare and, when formed, often serve a narrow function.

F. The LTL (Johnson & Johnson) Talc Case

The U.S. Trustee recently clashed with the debtor in the LTL Management LLC case (Johnson & Johnson's spinoff), pending in the Bankruptcy Court for the District of New Jersey (Case No. 21-30589 (MBK)). LTL was spun off from Johnson & Johnson to house liabilities from J&J's talc products; this new company LTL then filed Chapter 11 in North Carolina Bankruptcy Court in October 2021. In LTL's bankruptcy case, all mesothelioma and ovarian cancer victims were initially represented by one tort claimant committee[2] selected by the Bankruptcy Administrator in North Carolina and approved by the North Carolina Bankruptcy Court after a lengthy, thorough process.[3] The debtor's case was then transferred to the New Jersey Bankruptcy Court, with the support of the original committee. Six weeks thereafter, apparently without prior notice, the U.S. Trustee appointed two new tort committees, which it described as a "reconstitution and amendment" of the original committee.

The U.S. Trustee argued its two committee approach (one committee for ovarian cancer claimants (with about 38,000 cases) and the other committee for mesothelioma victims (with less than 500 lawsuits)) should be deferred to by the court and the debtor. The debtor argued that the original, single creditors' committee approved by the North Carolina Bankruptcy Court should be reinstated, as the U.S. Trustee's appointment of the two committees was unauthorized and improper. In the debtor's view, the U.S. Trustee could not unilaterally remove or reform the original committee approved by the North Carolina Bankruptcy Court, and the New Jersey

[2] This original committee was comprised of six ovarian cancer claimants, four mesothelioma claimants, and one insurer.

[3] While all other jurisdictions utilize U.S. Trustees, North Carolina and Alabama have bankruptcy administrators who oversee the bankruptcy cases filed in those jurisdictions. The bankruptcy administrator recommends the appointment of a creditors' committee and the bankruptcy court then must approve the appointment. In U.S. Trustee jurisdictions, generally the U.S. Trustee simply appoints a creditors' committee and files notice thereof, without need of any court approval.

Bankruptcy had inherent powers and authority under section 105 and 1102(a)(4) to reconstitute the original committee. Pursuant to an order entered in January 2022 [Docket No. 1273], the New Jersey Bankruptcy Court, presiding over the debtor's case, found that the North Carolina Bankruptcy Court's order approving the first committee was law of the case, precluding the U.S. Trustee's unilateral appointment of the two committees. The judge granted the motion without prejudice however, leaving the door open for someone to later request a second committee if circumstances change or develop.

Other interesting aspects:

- The U.S. Trustee cited as one relevant factor that the non-debtor indirect parent, Johnson & Johnson, one of the world's largest consumer products companies, had agreed to cover any unpaid administrative claims in the debtors' cases, as necessary, through a prepetition "funding agreement." Apparently, the U.S. Trustee believed this mitigated any complaints about the substantial costs of two committees being borne by the estate.

- The U.S. Trustee's pleadings argued for discretion in the case of committee appointments and significant deference by the courts on such matters. The Court concluded there should be some meaningful monitoring ability by the court over the U.S. Trustee's actions. As explained by the LTL court: "Although there is a sharp conflict among courts regarding this issue of reviewability, this Court finds more persuasive the arguments and decisions that favor judicial review [of the U.S. Trustee]."; "In reaching this conclusion, the Court is guided, in part, by practicality. Indeed, the notion that the U.S. Trustee's decisions regarding committee appointments are not subject to any type of review by any authority seems to belie common sense."; "While §1102(a)(1) grants the U.S. Trustee the authority to appoint additional committees as he or she 'deems appropriate,' there is nothing in this section that expressly or impliedly restricts judicial review of such decisions. Thus, neither the statute's language nor structure demonstrates that Congress wanted the U.S. Trustee to 'police its own conduct.'"

- Arguably in favor of multiple committees, the two types of cancer --allegedly brought on by asbestos in J&J's baby powder products-- are sufficiently different to warrant separate representation. The survival rates and causation links are apparently considerably different between the two groups of victims, suggesting the timing and payout goals of the two groups may be substantially different. That said, there are also often materially divergent goals of creditors in a more typical chapter 11 case (such as noteholders versus landlords versus vendors, *etc.*). The debtor asserted that mesothelioma claimants comprised only 1% of the talc claims being asserted against the debtor but were already well represented (actually overrepresented) by the original committee, and thus mesothelioma claimants did not need their own separate committee.

- The debtor also underscored the substantial increase in estate costs that would stem from the two committees, and that the two committees would slow down and complicate negotiations and a consensual resolution in the bankruptcy.

G. Difficulties in Reaching Consensus With Multiple Committees

At times, creditors with competing goals and objectives will sit on the same official committee. Conceptually, this is beneficial to the Chapter 11 process because it encourages the resolution of intercreditor disputes through compromise and negotiation, instead of litigation. Adding another committee to the mix will, in some cases, make this consensus-building process even more difficult, costlier and longer.

In most cases, multiple committees will add substantially to costs -- counsel, advisors, experts, and other committee expenses. To mitigate the expense issue, the committees can be put on budgets, and these committees should avoid duplication of the efforts of each. Further, to a great extent, all committees will have common interest in administrative or operating matters, but not all committees need be active on these matters.

Multiple committees will likely complicate decision making. An added committee presents one more party (itself comprised of multiple members) that will take positions in a case on operating, administrative and restructuring issues. This complicates the process of arriving at a consensus on these issues and may result in more complex litigation of such matters before the court.

H. Investigation Issues

Examinations ordered under Rule 2004 of the Federal Rules of Bankruptcy Procedure are a powerful tool available for parties, including creditors' committees, wishing to launch investigations in connection with a debtor's bankruptcy case. Bankruptcy Rule 2004 grants courts broad authority to order examinations relating to a debtor's bankruptcy case. Despite that broad authority, there are several limitations and local nuances that shape application of the rule in practice.

By its own terms, the Bankruptcy Rule 2004 is permissive in nature. *See* Fed. R. Bankr. P. 2004(a) ("the court *may* order the examination") (emphasis added). Courts permit examination under Bankruptcy Rule 2004 if the movant demonstrates "good cause." *ePlus, Inc. v. Katz (In re Metiom Inc.)*, 318 B.R. 263, 268 (S.D.N.Y. 2004); *In re Dinubilo*, 177 B.R. 932, 940 (E.D. Cal. 1993). Good cause is generally shown when the "examination is necessary to establish the claim of the party seeking the examination, or if denial of such request would cause the examiner under hardship or injustice." *Dinubilo*, 177 B.R. at 943; *see also Bank One, Columbus, N.A. v. Hammond) In re Hammond*, 140 B.R. 197, 201 (S.D. Ohio 1992) (requiring only that the requesting party only demonstrate that an examination is reasonably necessary to protect its legitimate interests); *In re Wilcher*, 56 B.R. 428, 434 (Bankr. N.D. Ill. 1985).

In determining good cause, some courts have applied a "sliding scale" or "balancing" test by weighing the movant's interest in the examination against the amount of intrusiveness involved.[4] It is well-settled that the scope of Bankruptcy Rule 2004 is "unfettered and broad."[5] The scope is so broad that courts often describe examinations under the rule as "fishing expedition."[6] Specifically, "[Bankruptcy] Rule 2004 affords a party in interest an opportunity to conduct a wide-ranging examination with respect to a debtor's financial affairs."[7]

Although Bankruptcy Rule 2004 examinations are well-recognized as being broad in nature, they are not without limitations.[8] Examinations cannot be used for purposes of abuse, harassment, or to investigate matters irrelevant to the debtor's bankruptcy.

Furthermore, the so-called "pending proceeding rule" prohibits Bankruptcy Rule 2004 discovery when adversary proceedings or other outside litigation is pending.[9] Bankruptcy courts have prohibited the use of Bankruptcy Rule 2004 in such situations because it lacks many procedural safeguards afforded under the Federal Rules of Civil Procedure. Courts have also limited or outright prohibited Bankruptcy Rule 2004 examinations in other predictable situations.[10]

Depending on the Chapter 11 case's circumstances and the level of cooperation among the debtor, the multiple committees in the case, and other key parties, there is a substantial likelihood that the multiple participants (including multiple committees) would materially complicate, lengthen and increase the overall costs of the investigations and/or other discovery in the case. On the other hand, depending on the case's circumstances, the investigations and discovery in the case could be cost-effective and efficient (if, for instance, the multiple committees agree not to overlap or duplicate their efforts), and could also lead to more material substantive information being discovered through multiple parties' involvement in the process.

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[4] *See, e.g., In re Countrywide Home Loans, Inc.*, 384 B.R. 373, 393 (Bankr. W.D. Pa. 2008); *In re Express One Int'l, Inc.*, 217 B.R. 215, 217 (Bankr. E.D. Tex.1998); *In re Texaco, Inc.*, 79 B.R. 551, 556 (Bankr. S.D.N.Y. 1987).

[5] *In re Washington Mut., Inc.*, 408 B.R. 45, 49 (Bankr. D. Del. 2009) (citing *In re Bennett Funding Grp., Inc.*, 203 B.R. 24, 28 (Bankr. N.D.N.Y. 1996)); *In re N. Plaza LLC*, 395 B.R. 113, 122 n. 9 (S.D. Cal. 2008).

[6] *See, e.g., Wilcher*, 56 B.R. at 433; *In re Johns-Manville Corp.*, 42 B.R. 362, 364 (S.D.N.Y. 1984).

[7] *Texaco*, 79 B.R. at 553; *In re Roman Cath. Church of Diocese of Gallup*, Nos. 13-13676-t11, 13-13677-t11, 2014 WL 3339618, at *1 (Bankr. D. N.M. July 8, 2014) (noting that examinations are used to "ascertain the extent and location of the estate's assets").

[8] *In re Buccaneer Res. LLC*, No. 14-60041, 2015 WL 8527424, at *6 (Bankr. S.D. Tex. Dec. 10, 2015); *Eagle-Picher*, 169 B.R. at 134; *Texaco*, 79 B.R. at 553.

[9] *See, e.g., In re Enron Corp.*, 281 B.R. 836, 840 (Bankr. S.D.N.Y. 2002); *Snyder v. Soc'y Bank*, 181 B.R. 40, 42 (S.D. Tex. 1994), *aff'd sub nom. In re Snyder*, 52 F.3d 1067 (5th Cir. 1995); *In re 2435 Plainfield Ave. Inc.*, 223 B.R. 440, 455-56 (Bankr. D. N.J. 1998) (collecting cases).

[10] *See, e.g., In re French*, 145 B.R. 991, 993 (Bankr. D. S.D. 1992) (no examination of debtor's attorney); *In re Carmelo Bambace Inc.*, 134 B.R. 125, 130 (Bankr. S.D.N.Y. 1991) (post-confirmation; no assets remaining); *In re Fin. Corp. of Am.*, 119 B.R. 728, 733 (Bankr. C.D. Cal. 1990) (privilege asserted); *In re Kekahuna*, 35 B.R. 13, 14 (Bankr. D. Haw. 1983) (case closed); *Wilcher*, 56 B.R. at 440 (barred by *res judicata* and collateral estoppel).

Faculty

Sam J. Alberts is a partner in Dentons US LLP's Restructuring, Insolvency and Bankruptcy Group in Washington, D.C. Ranked by *Chambers USA* since 2005, he is experienced in both in- and out-of-court restructurings, both in the U.S. and abroad. Named in *The Best Lawyers in America* (2018) and listed in *The Legal 500 US*, Mr. Alberts has represented clients in high-value restructurings, investigations, workouts, litigation and sale transactions. He has served as and represented trustees in bankruptcies, as well as creditors, debtors and other parties, including governmental and quasi-governmental entities. He also has experience with respect to distressed financial institutions, pensions and health care. Mr. Alberts has been recognized in *The Deal Pipeline*'s "Top Bankruptcy Lawyers" league table and as a "Local Litigation Star" in the District of Columbia by *Benchmark Litigation*. He is admitted to practice in the District of Columbia, Maryland and Virginia, and before the U.S. Courts of Appeals for the District of Columbia Circuit, Fourth Circuit and Ninth Circuit, the U.S. Court of Federal Claims, and the U.S. District Courts for the District of Columbia, Eastern and Western Districts of Virginia and the Western District of Washington. Mr. Alberts received his B.A. *cum laude* in 1987 from New York University and his J.D. in 1992 with honors from George Washington University School of Law.

Hon. Janet S. Baer is a U.S. Bankruptcy Judge for the Northern District of Illinois in Chicago, appointed on March 5, 2012. She also acts on a regular basis as the presiding judge in the Northern District of Illinois for naturalization ceremonies. Previously, Judge Baer was a restructuring lawyer for more than 25 years and was involved in some of the most significant chapter 11 bankruptcy cases in the country. The majority of her practice focused on the representation of large, publicly held debtors in both restructuring and chapter 11 matters, and she also represented companies in commercial litigation matters, including lender liability, fraud, breach of contract and breach of fiduciary duty. Prior to forming her own firm in 2009, Judge Baer was a partner at Kirkland & Ellis LLP, Winston & Strawn and Schwartz, Cooper, Greenberger & Krauss. She is a member of the ABI Board of Directors, the CARE National and Chicago Advisory Boards, and the Chicago IWIRC Network Board, as well as several committees. She also is chair of the NCBJ 2023 Education Committee and a frequent speaker for ABI, the ABA, the Chicago Bar Association, IWIRC and NCBJ, and she regularly acts as the presiding judge for the Northern District of Illinois in naturalization ceremonies. Judge Baer earned her B.A. from the University of Wisconsin - Madison and her J.D. from DePaul College of Law.

Hon. Lisa G. Beckerman is a U.S. Bankruptcy Judge, sworn in on Feb. 26, 2021. From May 1999 until she was appointed to the bench, she was a partner in the financial restructuring group at Akin Gump Strauss Hauer & Feld LLP. From September 1989 until May 1999, she was an associate and then a partner in the bankruptcy group at Stroock & Stroock & Lavan LLP. Prior to her appointment, Judge Beckerman served as a co-chair of the Executive Committee of UJA-Federation of New York's Bankruptcy and Reorganization Group, as co-chair and as a member of the Advisory Board of ABI's New York City Bankruptcy Conference, and as a member of ABI's Board of Directors of from 2013-19. She is a Fellow and a member of the board of directors of the American College of Bankruptcy and a member of the National Conference of Bankruptcy Judges (NCBJ) and the 2021 NCBJ Education Committee. She also is a member of the Dean's Advisory Board for Boston University School of Law. Judge Beckerman received her A.B. from University of Chicago in 1984, her M.B.A. from the University of Texas in 1986 and her J.D. from Boston University in 1989.

Hon. John T. Dorsey is a U.S. Bankruptcy Judge for the District of Delaware in Wilmington, sworn in on June 11, 2019. Previously, he practiced complex commercial litigation in Wilmington for 28 years. For 16 of those years, Judge Dorsey was a partner at Young Conaway Stargatt & Taylor, LLC, where he represented debtors and creditors in chapter 11 litigation matters. He also served as general counsel to Young Conaway for five years. Prior to joining Young Conaway, Judge Dorsey practiced with Richards Layton & Finger, PC, and served as the state director for then-U.S. Senator Joseph R. Biden, Jr. Prior to practicing law, he served in both the U.S. Army as a Military Police Investigator and the U.S. Air Force as an ICBM launch officer. Judge Dorsey was a board member of Delaware Volunteer Legal Services for 25 years and was active as a volunteer for the Delaware Office of Child Advocate representing children in foster care. He received his B.A. from the University of New York at Binghamton and his J.D. *magna cum laude* from Wake Forest University School of Law.

Laura Davis Jones is a named partner and management committee member of Pachulski Stang Ziehl & Jones LLP in Wilmington, Del., and is the managing partner of the firm's Delaware office. She gained national recognition as debtor's counsel in the *Continental Airlines* bankruptcy case and has represented numerous debtors, creditors' committees, bank groups, acquirers and other significant constituencies in national chapter 11 cases and workout proceedings. Ms. Jones participates as a speaker at national bankruptcy and litigation seminars, and she has authored numerous articles. She was named "Deal Maker of the Year" by *The American Lawyer* in 2002, which also has profiled her. Ms. Jones has been named continuously by her peers as one of the *The Best Lawyers in America*" and as one of the "Best Lawyers in Delaware," and was selected as one of the top 10 lawyers in Delaware by *Delaware Super Lawyers*. She is a Fellow of the American College of Bankruptcy and a *Chambers USA* "Star Individual," the highest honor a lawyer can receive. Ms. Jones has been recognized in the *K&A Restructuring Register* and the *Lawdragon 500* since their inception, has been named repeatedly to the *International Who's Who of Insolvency and Restructuring Lawyers*, and is AV-rated by Martindale-Hubbell. In 2018, she received the prestigious "Women Leadership" award at Global M&A Network's Turnaround Atlas Awards, which honors the achievement of influential women leaders in the restructuring and turnaround communities. She started her career as a judicial law clerk in the U.S. Bankruptcy Court for the District of Delaware. Ms. Jones is admitted to practice in Delaware and the District of Columbia. She received her undergraduate degree from the University of Delaware and her J.D. from Dickinson School of Law, where she was on the board of editors and business manager for the *Dickinson Law Review* and served on the Appellate Moot Court Board.

Hon. Christopher M. Klein is a U.S. Bankruptcy Judge for the Eastern District of California in Sacramento, appointed in 1988, and he was a member of the Bankruptcy Appellate Panel of the Ninth Circuit from 1998 until August 2008, serving as Chief Judge from 2007-08. He is admitted to the California, District of Columbia, Illinois and Massachusetts Bar Associations. After completing service in the U.S. Marine Corps as an artillery officer in Vietnam and judge advocate, Judge Klein was a trial attorney in the U.S. Department of Justice, in private practice with Cleary, Gottlieb, Steen & Hamilton, and deputy general counsel-litigation of the National Railroad Passenger Corporation. In 1988, he was appointed a U.S. Bankruptcy Judge for the Eastern District of California. He was appointed to the Bankruptcy Appellate Panel in 1998 and served for 10 years. From 2000-07, Judge

Klein was a member of Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States and the Advisory Committee on the Federal Rules of Evidence. He is a Fellow of the American College of Bankruptcy and a member of the American Law Institute, International Insolvency Institute, ABI and the American Bar Association's Business Bankruptcy Committee. In addition, he serves as NGO delegate to the Cross-Border Insolvency Working Group of UNCITRAL. Judge Klein received his B.A. and M.A. from Brown and his M.B.A. and J.D. from the University of Chicago, where he was executive editor of its law review.