AMERICAN BANKRUPTCY INSTITUTE

2019 New York City Bankruptcy Conference

Ethics Panel

Marc E. Hirschfield, Moderator
Royer Cooper Cohen Braunfeld LLC

Jonathan L. Flaxer
Golenbock Eiseman Assor Bell & Peskoe LLP

Ira L. Herman
Blank Rome LLP

Deirdre A. McGuinness
Epiq

Oscar N. Pinkas
Dentons

Hon. Elizabeth S. Stong
U.S. Bankruptcy Court (E.D.N.Y.)

Brian Trust
Mayer Brown

William P. Weintraub
Goodwin Procter LLP

Ethics and Professionalism for Bankruptcy Practitioners

BLANKROME

I. Introduction

Bankruptcy law practitioners are subject to the same ethical rules as non-bankruptcy law practitioners.

BLANKROME

© 2019 BLANK ROME LLP. ALL RIGHTS RESERVED. PLEASE CONTACT BLANK ROME FOR PERMISSION TO REUSE.

I. Introduction

General Applicability

- As the threshold matter, **all attorneys are bound by the ethical code or rules in force in the jurisdiction where they practice law**, regardless of the type of law they practice.
- For example, **counsel may *never* comingle his or her own funds with client funds**.*

* (See ***In re Jiminez***)

BLANKROME

I. Introduction

Ethical considerations for an attorney representing a debtor or debtor in possession, also **derive from the client's statutory responsibilities under Chapter 11**.

BLANKROME

II. Ethical Obligations – Retention of Counsel

- When does the attorney/client **relationship begin**?
- The use of **engagement letters** in this regard—

BLANKROME

II. Ethical Obligations – Retention of Counsel

Be **very** aware of the rules concerning the improper **solicitation** of clients.

BLANKROME

© 2019 BLANK ROME LLP. ALL RIGHTS RESERVED. PLEASE CONTACT BLANK ROME FOR PERMISSION TO REUSE.

II. Ethical Obligations – Retention of Counsel

When does the attorney/ client **relationship end**?

- What is the **scope** of the attorney/client relationship?
- **Ask**:
  - What are my continuing **obligations** to the client?
  - Do I have to defend adversary proceedings or respond to motion practice (a "Contested Matter")?
- The use of **engagement letters** in this regard—

BLANKROME

II. Ethical Obligations – Retention of Counsel

Charles Barsotti, *The New Yorker Book of Lawyer Cartoons*

- Counsel is **obligated to provide legal services** when retained.
- This obligation **cannot be delegated** to a non-attorney.*

*(See ***In re Santiago***)

BLANKROME

II. Ethical Obligations – Retention of Counsel

Non-bankruptcy **"conflict of interest"** rules are premised on the litigation model where parties are pitted **directly** against each other.

BLANKROME

II. Ethical Obligations – Retention of Counsel

- This may not be so in a multiparty bankruptcy case under Chapter 7, 9, 11, or 15.
- The very definition of "conflict" is different in this multiparty context, as the interests of different parties are not always pitted **directly** against each other or they even may be aligned.

BLANKROME

II. Ethical Obligations – Retention of Counsel

- The client **is** important!
- Basic concepts applicable to bankruptcy counsel – such as the duty of loyalty, independent judgment, and even who **the** client is – are drawn from the applicable non-bankruptcy law sources.

Q: How many lawyers does it take to change a light bulb?
A: None, they'd rather keep their client in the dark.

BLANKROME

III. Conflicts

- Conflicts Between Two or More Current Clients (Model Rule 1.7B).
- Business and other Conflicts

BLANKROME

III. Conflicts

C. Imputed Disqualification

- The Model Rules provide that **where an individual attorney is disqualified, the entire firm also is disqualified**, based upon the notion of shared confidences.
- All is not lost!
  - as the expansive reading of the Model Rule would be burdensome for attorneys at large firms, many courts have treated the rules as creating a rebuttable presumption.
- One way to rebut the presumption is by **using screening devices** to protect client confidences within a firm.

BLANKROME

III. Conflicts

D. Consents and Waivers

- Do it Right!
- One formulation:
  - disclose risks "in such detail that the person can understand the reasons why it might be reasonable to withhold consent"

BLANKROME

IV. Bankruptcy Code Retention Requirements – Disinterestedness

A. Introduction

- Section 327(a) of the Bankruptcy Code requires that a professional retained by the debtor may not hold interests, or represent other parties with interests, that are "adverse" to the estate.

BLANKROME

15

IV. Bankruptcy Code Requirements Retention – Disinterestedness

While creditors and debtors may be ***adverse***, as they have differing economic interests regarding a debt obligation, in a bankruptcy case, their interests may be aligned – **the successful rehabilitation of the debtor**.

BLANKROME

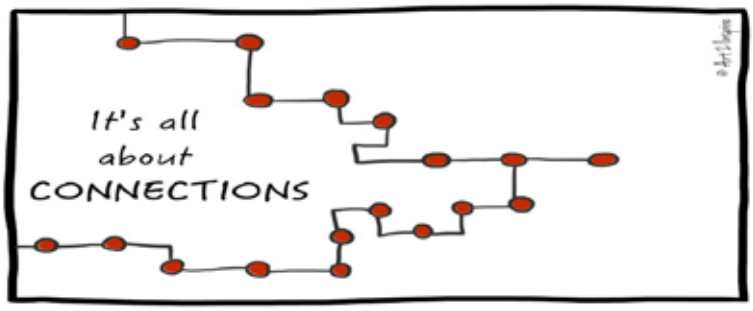
16

IV. Bankruptcy Code Requirements – Disinterestedness

- Whether counsel's ***connections*** to a creditor give rise to sufficient ***adverseness*** to disqualify the professional from representing a debtor is fact specific.

Bankruptcy Code Requirements

- As analysis in this area of bankruptcy law is highly fact-specific, there exist many hundreds of reported decisions on the issue.



BLANKROME

IV. Bankruptcy Code Requirements – Disinterestedness

- The Bankruptcy Code generally requires professionals to be "disinterested," as set forth in Section 101(14) of the Bankruptcy Code.
  - BAPCPA excludes investment bankers from the requirement to be "**disinterested**."

"The Simpsons," Fox Broadcasting Company.

BLANKROME

IV. Bankruptcy Code Requirements – Disinterestedness

Counsel's compliance with the **disinterestedness** requirement, under Section 327(a) of the Bankruptcy Code, applies at the time of retention and throughout the case.

BLANKROME

IV. Bankruptcy Code Requirements – Disinterestedness

Does materiality matter?

Maybe.

- some courts say **no!** – see ***Jore***.
- other courts are more lenient – adverse interest must be sufficiently material to create **an "unacceptable risk" of conflicting loyalty**.

BLANKROME

IV. Bankruptcy Code Requirements – Disinterestedness

Read literally together with Section 328(a), Section 101(14) would disqualify any professional from employment by the debtor if the professional –

1. was a creditor, equity security holder, or insider of the debtor;
2. was a director, officer or employee of the debtor within two years prior to the petition date;
3. has an interest materially adverse to the estate "for any other reason."

BLANKROME

IV. Bankruptcy Code Requirements – Disinterestedness

- In an attempt to create a bright line for materiality – some courts have drawn **a distinction between "actual" and "potential" conflicts**.
- Other courts have rejected the actual/potential distinction.
- The **actual/potential debate** appears to be an attempt to distinguish between conflicts contingent on future events **having a reasonable likelihood of occurring, on one hand, and those that merely are "hypothetical," "theoretical," or "speculative**."

BLANKROME

IV. Bankruptcy Code Requirements – Disinterestedness

- In the words of the First Circuit:

  "Horrible imaginings alone cannot be allowed to carry the day. Not every conceivable conflict must result in sending counsel away to lick his wounds."

- Nonetheless, it has been suggested that **even purely hypothetical conflicts can be disabling if there is a "reasonable perception" that the professional subject to judicial scrutiny on the issue is not disinterested**.

BLANKROME

IV. Bankruptcy Code Requirements – Disinterestedness: The Jay Alix Protocol

- If you're a CRO, you can serve only in that capacity (as CRO) and can't work in other capacities.
- Same types of disclosures as if you were being hired under sec. 327.
- Limitations on investing in the debtor (3 years after the conclusion of the engagement).
- As an officer of the company, you have specific fiduciary duties.

BLANKROME

IV. Bankruptcy Code Requirements – Disinterestness: The Jay Alix Protocol

- CROs/FAs
- How has the FA role evolved?
- Are people still being hired as CROs, or have FAs taken over that role?
- What market forces are at work?
- How have the courts and positions taken by the OUST influenced the evolution of the CRO and FA roles?

BLANKROME

IV. Bankruptcy Code Requirements – Waivers

C. Conflict Waivers and Consents in Bankruptcy Cases

- A split of authority exists as to whether a client's informed consent within the meaning of the Model Code or Model Rules can operate to cure conflicts of interest in bankruptcy cases.

BLANKROME

IV. Bankruptcy Code Requirements – Waivers

Waivers

- Market practice regarding advance conflict waivers of adverse representation in unrelated litigation and bankruptcy proceedings.
- Effectiveness of "advance waivers."
- *Sheppard, Mullin v. J-M.*
- *In re Relativity Media LLC*
- Conflict waivers and disinterestedness.
- Practical considerations.
- Disclosure.
- Likelihood of objection to retention or disqualification motion.
- Ethical walls.
- Conflicts counsel.

BLANKROME

IV. Bankruptcy Code Requirements – Special Counsel

- Section 327(e) allows a debtor to retain special counsel not disinterested in all respects, so long as such counsel is **disinterested as to matters for which it is retained**.
- Section 1107(b) allows a debtor to retain **a professional who may have represented the debtor prior to the filing of the chapter 11 case**, **as long as they are otherwise disinterested**.

BLANKROME

V. Bankruptcy Code Requirements – Disclosure of Connections

A professional seeking to be retained **under Section 327** of the Bankruptcy Code is required to disclose "connections" with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States Trustee, or any person employed by the Office of the United States Trustee. **Bankruptcy Rule 2014(a)**.

BLANKROME

V. Bankruptcy Code Requirements – Disclosure of Connections

- Rule 2014(a) means **full disclosure** of all facts bearing upon eligibility to be employed.
- Rule 2014(a) **does not permit professionals to make a unilateral determination** regarding the relevance of particular connections.
- Rule 2014(a) **does not permit professionals to make a unilateral determination** that certain connections to a debtor are too insignificant to disclose.

BLANKROME

V. Bankruptcy Code Requirements – Disclosure of Connections

- Professionals have **a continuing duty** to satisfy the disclosure requirements, and must update their disclosure as new matters arise concerning the disinterestedness of counsel.

- **Harsh Penalties** for Failure to Disclose
  - See **SonicBlue**, **Jore**, **Leslie Fay**,and others.

BLANKROME

V. Bankruptcy Code Requirements – Disclosure of Connections

- The harsh result of **Jore** should not be ignored, although the court reached its decision after concluding that it was bound by the strict disclosure standards articulated by the Ninth Circuit.
- ". . . a violation is enough to disqualify a professional, deny compensation and order disgorgement of fees regardless of whether the undisclosed connections were materially adverse to the estate or **de minimus**."
- Fortunately, the Ninth Circuit rule requiring disclosure of all connections "no matter how **de minimus**," has not been adopted elsewhere.

BLANKROME

V. Bankruptcy Code Requirements – Disclosure of Connections

SonicBlue and the Failure to Disclose

- Counsel represented SonicBlue from filing in 2003 until 2007, when it came to light that the firm had failed to disclose a pre-bankruptcy letter to three hedge funds stating that the law firm would repay the hedge funds in full, should SonicBlue file for bankruptcy relief.
- Attorneys for Debtor's Counsel later described the letter as a "scrivener's error."

BLANKROME

V. Bankruptcy Code Requirements – Disclosure of Connections

SonicBlue's estate sued bankruptcy counsel for malpractice and breach of fiduciary duty, **demanding**

a) the return $4.2 million in fees, and
b) $11 million in damages.
c) Counsel agreed to **pay $7.6 million and forgo the $2.4 million** in outstanding fees.

BLANKROME

V. Bankruptcy Code Requirements – Disclosure of Connections: Alix v. McKinsey – Case Study

- In May of 2018, **Jay Alix (individually) filed suit in the USDC SDNY against McKinsey, et. al.,** alleging numerous knowing and fraudulent violations of various bankruptcy and non-bankruptcy criminal statutes bankruptcy civil statutes, and bankruptcy rules to support an alleged pattern of racketeering activity and various RICO Enterprises

BLANKROME

V. Bankruptcy Code Requirements – Disclosure of Connections: Alix v. McKinsey – Case Study

- In addition to the RICO claims, there are **allegations of breach of contract, promissory estoppel, and tortious interference with Jay Alix's business expectancy.** The suit seeks compensation for actual damages caused to Alix as a McKinsey competitor that allegedly was not hired (instead of McKinsey) and an injunction prohibiting future similar allegedly illegal practices.

BLANKROME

V. Bankruptcy Code Requirements – Disclosure of Connections: Alix v. McKinsey – Case Study

McKinsey has filed motions to dismiss the complaint alleging among other things that Jay Alix as a business competitor has not been directly injured by the alleged disclosures, that **Jay Alix's** allegedly flawed interpretation of the bankruptcy rules does not support either their alleged inaccuracy or serve as a predicate act for the sweeping racketeering allegations in the complaint and there has been insufficient allegations concerning causation of the alleged damages to Alix Partners.

Plaintiffs have filed replies, and **the amended motion to dismiss has not been ruled on** by the New York District Court, to date.

BLANKROME

V. Bankruptcy Code Requirements – Disclosure of Connections: UST v. McKinsey – Case Study

- **The U.S. Trustee separately sought to reopen the ANR bankruptcy case** after Jay Alix had filed a motion to reopen. **Alix also objected to McKinsey's pending application in Westmoreland Coal,** based on allegedly insufficient disclosures.

BLANKROME

V. Bankruptcy Code Requirements – Disclosure of Connections: UST v. McKinsey – Case Study

- The ***ANR*** and ***Westmoreland*** bankruptcy judges ordered the parties to mediation before Bankruptcy Judge Marvin Isgar.
- The U.S. Trustee and McKinsey reached a settlement as to all McKinsey-related bankruptcy cases, **in exchange for $15 million (payable $5 million each in *ANR, Westmoreland,* and *Sun Edison*), and the UST released all claims related to inadequate disclosures** except for potential future claims that show that McKinsey is **not "disinterested."**
- Alix did not settle and continues to pursue discovery and other types of relief in its litigation.

BLANKROME

VI. Committee Counsel Issues – Positional Conflicts

- **In *In re Caldor, Inc.*, 193 B.R. 165 (Bankr. S.D.N.Y. 1996),** Bankruptcy Judge Garrity faced the issue of retaining a law firm to represent a creditors' committee, where proposed counsel already was representing the creditors' committee of one of the debtor's prime competitors.

- Although Judge Garrity found the two debtors to be competitors, he focused his analysis on the committees to be represented. By **finding that the two committees were not likely to become "rival claimants,"** the Judge refused to disqualify the firm from representing the second committee.

BLANKROME

VI. Committee Counsel Issues – Who Is the Client?

> Akin's performance of services on behalf of AIG and Post in furtherance of their self-interests and its lack of objectivity and disinterestedness in representing the Committee and the Committee members, exacerbated the tempest that raged in these chapter 11 cases. Such services were in disregard and not in the best interest of the Committee's constituency – all of the general unsecured creditors of FiberMark.

– Harvey R. Miller, as Examiner

In re FiberMark, Inc, et al.

BLANKROME

VII. Committee Counsel Retention Issues – *Universal Building Products*: The issues Raised – A Case Study

Addresses many issues:

- **Standing** of debtor to object to committee retention
- Violation of rules of Prof. Resp. as grounds for **denial of a motion to retain counsel**
- The **improper solicitation** of clients (and unavailing First Amendment defense)
- **Adverse interest v. disinterestedness**
- **Failure to disclose**

2010 WL 4642046;
2010 Bankr. LEXIS 3828 (Bankr. D. Del. 2010)

BLANKROME

VII. Committee Counsel Retention Issues – *Universal Building Products*: The Facts – A Case Study

- Dr. Lui had served as translator for Asian creditors in other cases in which **committee counsel** had been involved
- **The attorneys involved** (from two different firms) had extensive contact with Dr. Lui while he was soliciting creditors to have their proxies on a creditors' committee
- **Counsel knew** Dr. Lui was making cold call telephone solicitations and they helped him do so;
- **Counsel**, in the first instance, **failed to make disclosure** regarding the solicitation process
- **Counsel provided legal analysis** concerning interests of individual creditors to help Dr. Lui with the solicitation effort
- Dr. Lui voted his proxy to retain counsel; counsel then recommended him as translator (**an apparent quid pro quo**)

BLANKROME

VII. Committee Counsel Retention Issues – *Universal Building Products*: A Case Study – The Standing Issue

- **Debtors had standing to object** to committee retention applications
- Section 1109—debtors have right to appear and be heard on issues in their cases
- As we were reminded in ***SonicBlue***, an attorney with knowledge of violation of rules of professional conduct has an ethical **obligation to report** such violation

BLANKROME

VII. Committee Counsel Retention Issues – *Universal Building Products*: A Case Study – The Solicitation Issue

Rule 7.3 of Model Rules governs the in-person, telephonic or real-time electronic solicitation of clients (there are exclusions – including, lawyers, family, friends, or other person with whom counsel has had a prior professional relationship with the lawyer).

Rule 8.4 of Model Rules prohibits using third parties to violate the Rules

BLANKROME

VII. Committee Counsel Retention Issues – *Universal Building Products*: A Case Study – Duty of Counsel to Disclose

What about Committee Counsel in the *SonicBlue* Case?

- A federal judge approved a $2.5 million malpractice settlement between ***SonicBlue*** and former Committee Counsel to settle a complaint by the ***SonicBlue*** Chapter 11 trustee against the firm, which was targeted for failing to disclose the alleged conflict of bankruptcy counsel.

BLANKROME

VII. Committee Counsel Retention Issues – *Universal Building Products*: A Case Study – The Outcome

- **The Court made analogies** to solicitation by the use of "runners" or chiropractors in personal injury cases or bail bondsmen where criminality is involved
- **The Court rejected First Amendment argument**, especially in light of fact that prospective clients were foreign creditors without knowledge of US bankruptcy laws
- The Court held that the violation of the Rules justified the **disqualification** of counsel

BLANKROME

VII. Committee Counsel Retention Issues – *Universal Building Products*: A Case Study – "Everybody's Doing It"

- The lawyers said they **weren't the only ones** seeking Dr. Lui's assistance to get proxies and vote them in their favor
- Dr. Lui's testimony suggested debtors' counsel might have done **the same thing in another case** (using him to solicit)
- **Court said that wasn't a good excuse – even if others may have violated the rules**

BLANKROME

VII. Committee Counsel Retention Issues – *Universal Building Products*: A Case Study – What Was Proper/Improper

- **Key Facts: Actively encouraging and assisting** Dr. Lui in soliciting creditors to get their proxies for the formation meeting and to vote for counsel
- **Court Finding: Not improper to provide lists** of creditors to contacts or to use written solicitations
- **Court Finding:** Once it was clear Dr. Lui did not have prior relationships with the creditors he was soliciting, **personal solicitation through him was improper**

BLANKROME

VII. Committee Counsel Retention Issues – *Universal Building Products*: A Case Study – Disinterestedness

The Analytical Framework

- **Counsel may not have been disinterested, because they provided legal advice to Dr. Lui to be passed on to individual creditors** (although even if they were not disinterested, Section 1103 only requires that they not hold or represent interests and does not require disinterestedness).
- **The analogy cocktail party talk** was unavailing.
- **Only a potential conflict existed not enough to support a finding that there existed an "adverse" interest**.

BLANKROME

VII. Committee Counsel Retention Issues - *Universal Building Products*: A Case Study – The Failure to Disclose

- **Counsel failed to disclose all "connections"** to parties in interest, **as required by Rule 2014**
- One firm disclosed having been involved in cases where Dr. Lui was a translator, but nothing about helping him solicit creditors
- The other firm initially revealed nothing at all about its prior involvement with Dr. Lui
- Full disclosure was made **only after a discovery request by the US Trustee and Debtors – justification enough for the denial of the motion to retain**

BLANKROME

VII. Committee Counsel Retention Issues – *Universal Building Products*: A Case Study – Financial Advisors?

- Footnote 16 of the ***Universal Building Products*** case states that all professionals, including financial advisors, are subject to Rule 2014 and should disclose direct calls to creditors (who were not their clients) seeking to be employed in a bankruptcy case.
- Is this right?
- *Alix v. McKinsey*; *UST v. McKinsey*

BLANKROME

VIII. Compensation Matters

General Rule:

- **Section 330(a)(3)(F)** bases reasonable compensation upon the customary compensation charged by comparably skilled practitioners in cases other than bankruptcy cases.

BLANKROME

VIII. Compensation Matters – *Haimil Realty*: A Case Study – Benefit to the Estate

In *Haimil Realty Corp.* the bankruptcy court held that the chapter 11 debtor owed more than $2.6 million to its secured lender and entered an order allowing the lender's claim in that amount, with interest accruing at 24 percent.

This put a high cost to the debtor of any unsuccessful appeal, in addition to the legal fees that would accrue.

The debtor appealed.

The district court affirmed.

BLANKROME

VIII. Compensation Matters – *Haimil Realty*: A Case Study – Benefit to the Estate

Ultimately, when **the bankruptcy court confirmed the debtor's chapter 11 plan** and the debtor sold the commercial real property at issue, close to $1 million interest had accrued on the debt since the petition date, approximately $330,000 of which had accrued from the date the bankruptcy court entered its decision through the date the district court affirmed.

BLANKROME

VIII. Compensation Matters – *Haimil Realty*: A Case Study – Benefit to the Estate

This set up a fee dispute between the debtor's equity holder and debtor's bankruptcy counsel under **§ 330**.

While the bankruptcy court found that the initial litigation against the secured lender had merit and many of the services performed were proper, **it held that debtor's counsel did not provide the debtor with a realistic analysis of the potential cost of prosecuting its appeal** in light of the accruing interest.

BLANKROME

VIII. Compensation Matters – *Haimil Realty*: A Case Study – Benefit to the Estate

In the context of the proposed estate-benefit analysis, the court found that the appeal in ***Haimil*** **passed muster under Rule 9011**, but also found that counsel did not fully analyze the "worst"-case scenario and present that outcome to the debtor

BLANKROME

VIII. Compensation Matters – *Haimil Realty*: A Case Study – Benefit to the Estate

In light of the continuing default interest, it appears that there was a likelihood of material detriment to the estate in the event of an unsuccessful outcome. Thus, it was not improper or unethical to proceed; counsel and the client are still free to "roll the dice" in such circumstances should they so choose. However, the unsuccessful outcome in ***Haimil*** left the fees at risk. **As a result, the court reduced debtor's counsel's fees by $55,000.42.**

579 B.R. 19 (Bankr. S.D.N.Y. 2017).

BLANKROME

VIII. Compensation Matters – Documents

Documents

- When a professional seeks compensation for time spent sending or reviewing documents, the professional must identify each participant, describe the substance of the communication, justify the necessity of the task and explain its outcome.

BLANKROME

VIII. Compensation Matters – Reimbursement

Travel Time

- In the past, travel time for out of town professionals was often disallowed. The more modern approach has been for courts to determine on a case by case basis whether retention of out-of-state professionals was warranted and their travel time compensable.

Preparation of Fee Application

- Generally, time spent preparing an application is compensable, but time spent "fixing" or supplementing a defective application is not!

BLANKROME

VIII. Compensation Matters – Reimbursement of Expenses

Expenses

- **Must be reasonable!**
- Different rules for different categories.
  - Illustration: Mileage, parking and tolls – should be allowed; rental car cost for nearly every day of a professional's engagement "is overreaching and de facto ineligible for compensation from the estate."
- **Pay attention to the Local Rules, Administrative Orders, and UST Guidelines**

BLANKROME

Ira Herman, a partner at Blank Rome, has been in practice for over 35 years and regularly advises lenders and other clients on the management of bankruptcy risk in their transactions; indenture trustees regarding defaulted public debt issues; and lenders regarding restructuring and bankruptcy, including distressed M&A transactions and inter-creditor issues. Additionally, he provides services on the debtors' side, counseling financially distressed entities and their management on restructuring challenges pertaining to corporate governance issues, and litigating corporate governance matters, such as breach of duty in good faith and dealing.
As a court appointed mediator for over 15 years, Ira has been able to facilitate the resolution of controversies involving U.S. and non-U.S. parties concerning bankruptcy and commercial law issues. He is on the Register of Mediators and Arbitrators for the U.S. Bankruptcy Courts for Delaware, E. Dist. New York, and S. Dist. New York, and the U.S. District Court, E. Dist. New York.
In addition to his restructuring and bankruptcy practice, Ira has been providing support to for-profit and nonprofit entities concerning data privacy and cybersecurity issues.

Ira L. Herman
Partner
Blank Rome LLP
212.885.5052
iherman@blankrome.com

BLANKROME

Marc Hirschfield is an experienced bankruptcy and business lawyer who assists clients with insolvency and reorganization issues and with all kinds of lending transactions. He regularly represents debtors, committees, DIP lenders, secured and unsecured creditors and acquirers of assets in both out-of-court workouts and bankruptcy cases. Mr. Hirschfield has also served as an expert witness on bankruptcy matters. He is an experienced mediator and is on the mediation panels for the Southern and Eastern Districts of New York and the District of Delaware. Mr. Hirschfield has been honored by Chambers USA: America's Leading Lawyers for Business, New York "Super Lawyers" and Best Lawyers in America. When not working, Mr. Hirschfield is a volunteer Emergency Medical Technician and a ski patroller.

Marc E. Hirschfield
Partner
Royer Cooper Cohen Braunfeld LLC
212.994.0451
mhirschfield@rccblaw.com

BLANKROME

Mr. Flaxer is co-managing partner of Golenbock Eiseman Assor Bell & Peskoe LLP, where he heads the bankruptcy and reorganization practice. He has devoted his career to business bankruptcy practice, representing debtors and trustees, creditors' committees, distressed debt investors, distressed asset acquirers, indenture trustees, and landlords. Mr. Flaxer has also led several fraud investigations resulting in significant recoveries. He is active in several professional organizations and writes and lectures on bankruptcy-related topics. He received his B.A. from New York University, J.D. from Brooklyn Law School, and served as Law Clerk to the Hon. Manuel J. Price (ret.), U.S. Bankruptcy Court for the Eastern District of New York.

Jonathan L. Flaxer
Partner
Golenbock Eisman Assor Bell & Peskoe
212.907.7327
jflaxer@golenbock.com

BLANKROME

Deirdre A. McGuinness is Managing Director at Epiq, leading the company's origination efforts in corporate restructuring. McGuinness and her team focus on enterprise-wide initiatives to strengthen and expand Epiq's law firm and corporate client relationships. During her over 25 years in the bankruptcy industry, she has worked in the legal, banking and consulting professions which had lead to a deep understanding of the issues affecting stakeholders in the bankruptcy process. McGuinness's expertise is highly regarded in the legal and restructuring community and has been instrumental in advancing Epiq's objective to be the preferred strategic partner for complex legal matters across the globe.

McGuinness began her career as a lawyer with the United States Attorney's office for the District of Connecticut representing federal agencies in bankruptcy and prosecuting bankruptcy crimes. After several years in private practice, McGuinness was appointed United States Trustee for the Southern District of New York. During her tenure, she oversaw the administration of some of the largest and most complex Chapter 11 restructurings in bankruptcy history. Later McGuinness was a Managing Director at CIT Group and Wells Fargo Capital Finance in New York where she focused on providing financing and liquidity solutions to challenge companies.

McGuinness was the inaugural recipient of the 2006 Women of Year in Restructuring Award from the International Women's Insolvency and Restructuring Confederation (IWIRC). She is the recipient of the New York Institute of Credit Women in Achievement Award and the Catholic Charities Recipient of the 2018 St Francis Service Award. She currently serves on the strategic planning committees for the Southern and Eastern District of New York Bankruptcy Courts. Additionally, McGuinness has served as Chair of the Bankruptcy and Corporate Reorganization Committee of the New York City Bar Association from 2008-2011. McGuinness holds a Juris Doctor from Quinnipiac University School of Law and a Bachelor of Arts from New York University. She is a proud graduate of The Mary Louis Academy and serves as an adjunct professor of law at St. John's University, LLM Program.

Deirdre A. McGuinness
Head of National Sales
Epiq
646.282.2493
dmcguinness@epiqglobal.com

BLANKROME

Oscar is a Global Leader in Dentons' Restructuring, Insolvency & Bankruptcy practice. He represents clients in and out of court in situations involving strategic, operational, or financial issues, with an emphasis on M&A, equity or debt financing transactions.

Clients include investors, purchasers, lenders/agents, indenture trustees, estate fiduciaries, committees and debtors. Known for his creativity, ability to execute and practicality, Oscar is frequently called upon by clients in situations that are unique, sensitive or complex. Clients describe him as an "out of the box thinker" and a "pleasure to work with."

Oscar has received several accolades, including being named a 40 Under 40 Leader in Insolvency by the American Bankruptcy Institute, an Emerging Leader in M&A, Financing and Turnaround by The M&A Advisor, a Top 50 Rising Star Dealmaker in the Americas by Global M&A Network, and a Top Rated Bankruptcy Attorney by Super Lawyers.

Oscar N. Pinkas
Partner
Dentons US LLP
212.768.6701
oscar.pinkas@dentons.com

BLANKROME

Judge Elizabeth S. Stong has served as U.S. Bankruptcy Judge for the Eastern District of New York since 2003. Before entering on duty, she was a litigation partner and associate at Willkie Farr & Gallagher in New York, an associate at Cravath, Swaine & Moore, and law clerk to Hon. A. David Mazzone, U.S. District Judge in the District of Massachusetts.

Judge Stong is a member of the Council on Foreign Relations and the Council and Membership Committee of the American Law Institute. She is also a Trustee and member of the Executive Committee of the Practising Law Institute, a member of the board of P.R.I.M.E. Finance, an international dispute resolution organization that promotes judicial education in complex financial disputes, and a member of the Board of Directors of the Harvard Law School Association of New York City. She is co-chair of the New York Fellows of the American Bar Foundation, serves on the ABA Center for Innovation Advisory Board, and represents the ABA's National Conference of Federal Trial Judges in its House of Delegate. She serves as co-chair of the New York City Bar Council on the Profession, a member of the New York County Lawyers Association Justice Center Advisory Board, and a board member of the New York Law Institute. She is an adjunct professor at Brooklyn Law School and St. John's University School of Law.

Judge Stong is active in international judicial capacity building and has trained judges on five continents, including in Central Europe, North Africa, the Middle East, and the Arabian Peninsula, as an expert with the World Bank, the International Finance Corporation, and U.S. Department of Commerce Commercial Law Development Program. She has consulted with the Supreme Court of China and People's High Courts in Beijing and Guangzhou, and has participated in judicial workshops in Cambodia, Brazil, Argentina and Chile. She is an elected member of the European Law Institute and an Adviser to the ELI-UNIDROIT Principles of Transnational Civil Procedure project.

Judge Stong previously served as President of the Harvard Law School Association, chair of the International Judicial Relations Committee of the National Conference of Bankruptcy Judges, Vice President of the Federal Bar Council, Vice President of the Board of Directors of New York City Bar Fund Inc. and the City Bar Justice Center, Chair of the New York City Bar's Alternative Dispute Resolution Committee and Vice Chair of its Judiciary Committee, the Board of Directors of the International Insolvency Institute, and an officer and Council member of the ABA Business Law Section. She was also a member of the board of MFY Legal Services, Inc., one of the largest providers of free civil legal services to low-income residents of New York City, and served on the ABA's Standing Committee on Pro Bono and Public Service, Standing Committee on the American Judicial System, Standing Committee on Continuing Legal Education, Commission on Women in the Profession, and Commission on Homelessness and Poverty.

Judge Stong received the 2017 Judicial Service Award of the Association of Insolvency and Restructuring Advisors, the Brooklyn Bar Association's Freda Nisnewitz Award for Pro Bono Service, the New York Institute of Credit's Hon. Cecelia H. Goetz Award, the ABA Business Law Section's Glass Cutter Award, and the MFY Legal Services Scales of Justice Award, among other recognitions.

Elizabeth S. Stong
Judge
U.S. Bankruptcy Court - EDNY
347.394.1862
Elizabeth_Stong@nyeb.uscourts.gov

BLANKROME

Brian Trust leads Mayer Brown's Global Restructuring, Bankruptcy & Insolvency practice. He focuses on representing large institutional creditors, including agent banks, lending syndicates, insurance companies and other investors. Brian has extensive experience in complex Chapter 11 reorganizations, out-of-court restructurings and recapitalizations, mergers and acquisitions of financially distressed companies, acquisition and divestiture of claims against and equity interests in distressed companies, debtor-in-possession and exit financings, and cross-border insolvencies.

Ranked year after year by Chambers USA and Chambers Global, clients praise Brian for his "wealth of restructuring experience" and "superior ability to thoroughly analyze complex issues from both the legal and the business sides," and applaud him for doing a "fantastic job on complex work." Brian is lauded for his "great reputation in the bankruptcy and restructuring community," described as "very bright, client-oriented, attentive and very practical," and viewed as "very strategic, a great communicator, and talented on a myriad of levels." The Legal 500 USA highlights Brian for his corporate restructuring work, commending Brian for being "extremely responsive" and "technically very strong," and noting that he "knows the issues important to banks" and has "excellent judgment." Additionally, Brian is listed in the Best Lawyers in America in Bankruptcy and Creditor Debtor Rights/Insolvency and Reorganization Law and, for over ten years, New York Super Lawyers has recognized Brian as a top lawyer in the area of "Creditor Debtors Rights: Business." Recognized as a thought leader, Brian is a frequent lecturer and author on novel and complex bankruptcy and reorganization issues. The media often interviews Brian for his views on innovative and timely reorganization topics.

Brian Trust
Partner
Mayer Brown
212-506-2570
BTrust@mayerbrown.com

BLANKROME

William P. Weintraub is co-head of the Financial Restructuring practice at Goodwin Procter LLP. Mr. Weintraub focuses on business reorganizations, workouts, bankruptcy and related litigation and he routinely represents debtors and creditors in diverse industries.

Representative cases include FullBeauty Brands Holdings Corp.; The Rockport Company, LLC; In re Millennium Lab Holdings II, LLC, et al.; In re SunEdison, Inc., et al.; In re General Motors LLC Ignition Switch Litigation; In re Caesars Entertainment Operating Company, Inc., et al.; In re Texas Competitive Electric Holdings Company, LLC, et al.; In re New England Compounding Pharmacy, Inc.; In re Bernard L. Madoff Securities, Inc.; In re Tribune Corporation, et al.; In re Lyondell Chemical Co.; In re Quigley, Inc.; In re Blitz, Inc.; and In re Dewey LLP.

Mr. Weintraub is a frequent lecturer on advanced chapter 11 topics for the American Bankruptcy Institute, the American Bar Association, the Norton Institutes, California CEB and other organizations. He has written widely on such varied topics as debtor in possession financing, third-party plan releases, indirect preferences, cross default provisions in executory contracts, the assignability of intellectual property licenses in bankruptcy, the fiduciary duties of the board of directors of insolvent companies, the availability of first day orders, equitable subordination of claims, reclamation, the Supreme Court's decision in the Travelers case, and the credit bidding decisions in Philadelphia Newspapers and River Road Hotel Partners. He is also the author of a comprehensive chapter on financing the debtor in possession in the Norton treatise and he wrote the stockbroker liquidation chapter for a prior edition of the Collier treatise. Mr. Weintraub's most recent articles are Avoiding the Avoidable: The Uncertainty of Selling Avoidance Actions, NORTON JOURNAL OF BANKRUPTCY LAW & PRACTICE (Vol. 26, No. 26, Dec. 2017) and Permissibility of Third-Party Releases in Non-Asbestos Cases, THE REVIEW OF BANKING & FINANCIAL SERVICES (Vol. 32, No. 12, Dec. 2016).
Mr. Weintraub is a Fellow of the American College of Bankruptcy. He graduated magna cum laude from the State University of New York at Albany in 1975 and received his law degree from the University of Michigan Law School in 1979.

William P. Weintraub
Partner
Goodwin Procter LLP
212.813.8839
WWeintraub@goodwinlaw.com

BLANKROME