Bankruptcy 2022:
Views from the Bench

Nuts and Bolts of Bankruptcy Appeals

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Otterbourg P.C. | New York

Hon. Thomas L. Ambro
U.S. Court of Appeals (3d Cir.) | Wilmington, Del.

Hon. Dennis R. Dow
U.S. Bankruptcy Court (W.D. Mo.) | Kansas City

Hon. Scott M. Grossman
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Hon. Cecelia G. Morris
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- Hon. Thomas L. Ambro (United States Court of Appeals for the Third Circuit)
- Hon. Dennis R. Dow (United States Bankruptcy Court for the Western District of Missouri)
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- Hon. Cecelia G. Morris (United States Bankruptcy Court for the Southern District of New York)
- Melanie L. Cyganowski (Otterbourg, P.C., formerly Chief Judge of the United States Bankruptcy Court for the Eastern District of New York)

NUTS AND BOLTS OF BANKRUPTCY APPEALS

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I. PRE-APPEAL CONSIDERATIONS

A. Standing to Appeal?

- **"Persons Aggrieved" Standard**. In bankruptcy, allowing each and every party to appeal each and every order would clog up the system and bog down the courts. Thus, only individuals that are "persons aggrieved" by the bankruptcy order being appealed have standing to appeal that decision. This standard is more exacting than constitutional standing under Article III. A "person aggrieved" is one that was "directly and adversely affected pecuniarily by the order of the bankruptcy court. Stated differently, bankruptcy standing requires "a higher causal nexus between act and injury", that narrows the playing field to only those with "a direct, financial stake in a given order to appeal it." *Matter of Technicool Systems, Incorporated*, 896 F.3d 382, 385 (5th. Cir. 2018); *In re Boy Scouts of America*, 35 F.4th 149, 157 (3rd. Cir., 2022) ("potential appellants are 'persons aggrieved' only if they can show that 'the order of the bankruptcy court diminishes their property, increases their burdens, or impairs their rights'"); *In re Mark IV Industries, Inc*., 558 Fed Appx. 135, 137 (2d. Cir. 2014) (granting standing to "creditors appealing orders of the bankruptcy court disposing of property of the estate because such orders directly affect the creditors' ability to receive payment of their claims);

- According to the Third Circuit Court of Appeals, the "person aggrieved" doctrine "[e]xists to fill the need for an explicit limitation on standing to appeal in bankruptcy proceedings. This need springs from the nature of bankruptcy litigation which almost always involves the interests of persons who are not formally parties to the litigation. In the course of administration of the bankruptcy estate disputes arise in which numerous persons are to some degree interested. Efficient judicial administration requires that appellate review be limited to those persons whose interests are directly affected." "Standing has thus been denied to marginal parties involved in bankruptcy proceedings who, even though they may be exposed to some potential harm incident to the bankruptcy court's order, are not "directly affected" by that order." *Travelers Ins. Co. v. H.K. Porter Co., Inc.,* 45 F.3d 737, 741-42 (*citing Kane v. Johns-Manville Corp,* 843 F.3d 636 (2d. Cir. 1988).

    - Creditor of debtor's creditors lacks standing. *In re Comcoach Corp.,* 698 F.2d 571, 574 (2d Cir. 1983) (holding that a mortgagee lacked standing to move to lift

an automatic stay on proceedings against the mortgagor's lessee, the debtor); *In re Lifeco Inv. Group*, 173 B.R. 478, 487-88 (Bankr. D. Del.1994) (collecting cases and finding "no statutory or judicial support to conclude that a creditor of a creditor has standing in a bankruptcy case"); *In re Tour Train P'ship*, 15 B.R. 401, 402 (Bankr. D. Vt. 1981) (holding that a judgment creditor of the debtor's creditor lacked standing to move to lift an automatic stay on proceedings against the debtor). *See also Seacoast National Bank v. Jordyn Holdings IV, LLC,* 392 B.R. 876 (M.D. Fla. 2008).

- Creditor with disallowed claim lacks standing. *In re Mark IV Industries, Inc.*, 558 Fed. Appx. 135 (2d. Cir. 2014) (holding that creditor who appealed order lacked standing because the court had disallowed her proofs of claim and her appeal of that decision was untimely).

- Party with interest in avoiding liability lacks standing. *Valley Nat'l Bank v. Warren (In re Westport Holdings Tampa, LP),* 2022 U.S. App. LEXIS 8480 at *10-11 (11th. Cir. Mar. 31, 2022) ("when a party's "sole interest is that of an adversary defendant in avoiding liability," he is not a person aggrieved by the bankruptcy court's order… a party must show both a direct harm *and* hold an interest within the scope of the bankruptcy").

- Assignor of claim against debtor lacks standing. *In re Fullenkamp*, 477 B.R. 826, 830-31 (Bankr. M.D. Fla. 2011) (holding that a judgment creditor that assigned to a third party the judgment creditor's claim against the debtor lacked standing to object to the debtor's application to employ a law firm); *In JMP-Newcor Int'l, Inc*, 225 B.R. 462, 464 (Bankr. N.D. Ill. 1998) (holding that an assignor of a claim against the debtor lacked standing to object to a final judgment even though the assignor maintained a legal claim against the assignee and the assignee received no distribution under the bankruptcy plan).

- Tort victims of parent company have standing in subsidiary company appeal. *In re LTL Management*, App Nos 22-8015-16, 20-21 (3rd Cir., May 11, 2022) (Third Circuit agreed to hear appeal from tort claimants appealing bankruptcy court's decision denying motion to dismiss the bankruptcy case filed by the Johnson and

Johnson spinoff company holding all of the company's tort liability).

B. Final Order or Interlocutory Order?

i. **Jurisdictional Issue.** The court has "an independent obligation to ascertain [its] own jurisdiction before [it] reach[es] the merits of the case." *In re. Klaas*, 858 F.3d 820 (3rd. Cir. 2017). "District courts have jurisdiction to hear appeals from final judgments, orders and decrees of bankruptcy judges, and in turn, [circuit courts] have jurisdiction to hear appeals from all final decisions, judgments, orders, and decrees entered by a district court. On appeal, then, the finality issue must be resolved with respect to the decisions of both the bankruptcy judge and the district court." *Id.* (internal quotation marks and citations omitted).

- Filing the notice of appeal to create jurisdiction. *In re Cleveland Imagine and Surg. Hosp., LLC*, 26 F. 4th 285 (5th. Cir. 2022) ("a notice of appeal in [a] main bankruptcy proceeding cannot serve as a notice of appeal in [a related] adversary proceeding. Instead, the main bankruptcy case and adversary proceeding must be treated as distinct for the purpose of appeal." (*quoting Dietrich v. Tiernan (In re Dietrich),* 490 F. App'x 802, 804 (6th Cir. 2012)) ("After all, adversary proceedings are discrete judicial units. Given that the doctors didn't file a notice of appeal on the adversary docket, their notice didn't embrace the dismissal of their adversary proceeding. Thus, we lack jurisdiction.")

ii. **Final Orders**. 28 U.S.C. § 158(a)(1) (right to immediate appeal from the bankruptcy court to the district court from "final judgments, orders, and decrees.") and Fed. R. Bankr. P. 8001(a)."[T]he meaning of final order is broader in bankruptcy. Orders in bankruptcy proceedings are immediately appealable if they finally dispose of discrete disputes within the larger bankruptcy case. In other words, the usual judicial unit for analyzing finality in ordinary civil litigation is the case, but in bankruptcy, it is often the proceeding.'" *Clark v. Almy*, 211 WL 5851067 at *1 (4th. Cir. Dec. 9, 2021) (internal quotation marks and citations omitted). This "flexible interpretation" in the bankruptcy context is warranted because "a bankruptcy case embraces an aggregation of individual controversies." *Ritzen Group, Inc. v. Jackson Masonry, LLC*, 140 S.Ct. 582, 586 (2020).

- "[A] final judgment or order is one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." *In re Celotex Corp*., 700 F.3d 1262, 1265 (11th Cir. 2012) (internal quotation marks and citations omitted); *In re Ingram*, 460 B.R. 904 (6th. Cir. BAP, 2011) (same); *In re Rodriguez Camacho*, 361 B.R. 294 (1st. Cir. BAP, 2007) (same)

- To qualify as final, the proceeding and the appealed order must "determine[ ] and seriously affect[ ] [the] substantial rights [of a party] and can cause irreparable harm if the losing party must wait until bankruptcy proceedings terminate before appealing." 1 Collier on Bankruptcy ¶ 5.08; *Ritzen Group,* 140 S. Ct. at 590.

- In determining whether an order of a bankruptcy court is final, "[a] court may consider a variety of factors including, but not limited to the following: (1) whether the order leaves additional work to be done by the bankruptcy court; (2) whether the order implicates purely legal issues; (3) the impact of the bankruptcy court's order upon the assets of the debtor's estate; (4) the necessity for further fact-finding on remand to the bankruptcy court; (5) the preclusive effect of the district court's decision on the merits of subsequent litigation; and (6) the furtherance of judicial economy." *In re Northwestern Corp.,* 319 B.R. 68 (D. Del., 2005).

- *In re Belli*, 268 B.R. 851, 854-855 (9th Cir. BAP 2001) ("Adversary proceedings are merely federal civil actions under another name, and do not ordinarily present the types of uncertainties that necessitate 'flexible finality' analysis. . . Thus, we hold that finality for purposes of jurisdiction over 'as of right' appeals under 28 U.S.C. § 158(a)(1) in adversary proceedings does not differ from finality in ordinary federal civil actions under 28 U.S.C. § 1291").

- There are exceptions to finality: (1) the collateral order doctrine (*Cohen* doctrine); (2) the *Forgay-Conrad* rule; and (3) the marginal finality rule (the *Gillespie* rule).

iii. <u>Interlocutory Orders.</u>

- District courts have the discretion to hear an appeal from any interlocutory order. To do so, a party needs leave of court under 28 U.S.C. § 158(a). The same analysis used in a non-bankruptcy, federal action generally applies, which is the analysis under 28 U.S.C. § 1292(b). It asks whether: (a) there is a controlling question of law; (b) as to which there is substantial ground for difference of opinion; and (c) an immediate appeal may materially advance the ultimate termination of the litigation.

- Circuit courts, on the contrary, have appellate jurisdiction only for interlocutory orders "granting, continuing, modifying, refusing or dissolving injunctions under 28 U.S.C. §1292(a)(1). There is no other jurisdictional provision authorizing courts of appeal to hear an appeal from a district court's decision regarding a bankruptcy court's interlocutory order." *In re Kassover*, 343 F.3d 91, 94 (2d. Cir. 2003) (denying jurisdiction over appeal of bankruptcy order

declining leave to appeal); *see also Matter of Pro-Snax Distributors, Inc.*, 157 F.3d 414, 420 (5th. Cir. 1998) ("unlike a district court, which has discretion to take jurisdiction over interlocutory appeals from the bankruptcy court, we have no such discretion and are limited to reviewing only final orders" (overruled on irrelevant grounds concerning attorneys fees).

- "The list of contested matters is 'endless' and covers all sorts of minor disagreements. *Bullard v Blue Hills*, 135 S.Ct. 1686, 1694 (2015). 10 Collier on Bankruptcy ¶ 9014.01, at 9014-3.

- "An interlocutory order is one that "does not finally determine a cause of action but only decides some intervening matter pertaining to the cause, and which requires further steps to be taken in order to enable the court to adjudicate the cause on the merits." *In re Kutner*, 656 F.2d 1107, 1111 (5th Cir. 1981).

- An order is not final for appellate review when it merely disposes of an incidental procedural matter during the proceedings in bankruptcy court." *Id.*

    - Orders confirming chapter 13 plan are interlocutory. *Bullard v. Blue Hills*, 135 S.Ct. 1686, (2015) "Because the district court didn't finally dispose of a discrete dispute when it vacated the order confirming the plan, we conclude that the district court's order was not "final" for purposes of appellate jurisdiction." (internal citations omitted); *Bank of New York Mellon v. Watt*, 867 F.3d 1155 (9th. Cir. 2017) (same in context of appellate court – rather than bankruptcy court – jurisdiction).

    - Orders appointing or denying counsel for trustees are interlocutory (majority view). *In re Delta Servs. Indus., Etc*, 782 F.2d 1267, 1273 (5th Cir. 1986); *KK-PB Fin., LLC v. 160 Royal Palm,* LLC, 2019 WL 9075950, at 2 (S.D. Fla. 2019); *Estate of Arlene Townsend v. Scharrer*, No. 8:20-cv-00928-SDM (M.D. Fla. Sept. 21, 2020); 1 Collier on Bankruptcy ¶ 5.08.

    - Orders granting or denying discovery are generally not final orders and not immediately appealable. *See Bacher v. Allstate Ins. Co.*, 211 F.3d 52, 53 (3rd. Cir. 2000); *In re Bryson*, 406 F.3d 284, 288 (4th. 2005).

- Interlocutory review is generally disfavored for its piecemeal effect on cases. Many courts view interlocutory appeals as "inherently disruptive, time-consuming, and expensive." *Prado-Steiman ex rel.*

Prado v. Bush, 221 F.3d 1266, 1276 (11th Cir. 2000); *Waste Management Holdings, Inc. v. Mowbray*, 208 F.3d 288, 294 (1st. Cir. 2000) ("we have elevated the threshold for discretionary review [of interlocutory appeals], endeavoring to discourage piecemeal appeals").

- Consider whether, in a bankruptcy appeal, an order from a district court to a circuit court of appeals is still final and appealable, depending on the action taken in the appeal by the district court.

iv. Judgment on Multiple Claims or Involving Multiple Parties.

- Fed. R. Civ. P. 54(b) Certifications (incorporated into Fed. R. Bankr. P. 7054(a))-"Express Determination" and "Express Direction": When an action presents more than one claim for relief, whether as a claim, counterclaim, crossclaim, or third-party claim, or when multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay. Otherwise, any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities. *See also* 19 MOORE'S FEDERAL PRACTICE - Civil § 202.06; accord 10 COLLIER ON BANKRUPTCY ¶ 7054.03.

- A prevailing party may move for Rule 54(b) certification. *See Curtiss-Wright Corp. v. General Elec. Co.*, 446 U.S. 1, 3 (1980) (approving the prevailing party's motion for certification under Rule 54(b)); *Williams v. Taylor Seidenbach, Inc.*, 958 F.3d 341, 353 (5th Cir. 2020) (("[B]oth the winning and losing side of a court order have and incentive to request partial final judgment under Rule 54(b), and thus end the district court litigation. Winning parties have an incentive to seek judgment in order to enforce their win"); *Bank of Lincolnwood v. Federal Leasing, Inc.*, 622 F.2d 944, 951 (7th. Cir. 1980) (permitting prevailing party to obtain immediate judgment under Rule 54(b) in order to collect upon the claim despite remaining claims against other defendants); *Comite Pro Rescate de La Salud v. P.R. Aqueduct & Sewer Auth*, 888 F.2d 180, 183 (1st Cir. 1989) (granting Rule 54(b) certification sought by prevailing defendants, with support of plaintiffs); *Halliburton Energy Servs. v. NL Indus., No.H-05-4160*, 2008 U.S. Dist. LEXIS 50919, 1, 2008 WL 26973452008 (S.D.Tex. Jul. 2, 2008) (holding similarly).

- "According to the terms of Rule 54(b), an interlocutory order does not become final until the court determines that there is no just

reason for delay and expressly directs entry of a final judgment" *In re Chateaugay Corp.*, 922 F.2d 86, 90 (2d. Cir. 1990) (internal quotations and citations omitted). "That finality determination must be made in the context of the less rigid finality requirements of section 158(d) rather than section 1291 because section 158(d) is the relevant standard of finality in bankruptcy adversary proceedings." *Id.* "A district court must follow a two-step analysis in determining whether a partial final judgment may properly be certified under Rule 54(b)." *Lloyd Noland Foundation, Inc. v. Tenet Health Care Corp., 483 F.3d 773*, 777 (11th Cir. 2007). "First, the court must determine that its final judgment is, in fact, both 'final' and a 'judgment.'" Id. "That is, the court's decision must be 'final' in the sense that it is an ultimate disposition of an individual claim entered in the course of a multiple claims action, and a 'judgment' in the sense that it is a decision upon a cognizable claim for relief." *Id*. (quotation marks omitted). "Second, having found that the decision was a final judgment, the district court must then determine that there is no 'just reason for delay' in certifying it as final and immediately appealable." *Id*. (quotation marks omitted). "The district court must act as a 'dispatcher' and exercise its discretion in certifying partial judgments in consideration of judicial administrative interests—including the historic federal policy against piecemeal appeals—and the equities involved." *Id*. at 778 (quotation marks omitted). Certification is appropriate "if there exists some danger of hardship or injustice through delay, that would be alleviated by immediate appeal." *In re Southeast Banking Corp.,* 69 F.3d 1539, 1547 (11th Cir. 1995).

- The factors which a trial court should consider when making a Rule54(b) determination include: (1) the relationship between the adjudicated and unadjudicated claims, (2) the possibility that the need for review might or might not be mooted by future developments in the trial court; (3) the possibility that the reviewing court might be obliged to consider the same issue a second time, (4) the presence or absence of a claim or counterclaim which could result in setoff against the judgment sought to be made final, and (5) miscellaneous factors such as delay, economic and solvency considerations, shortening the time of trial, frivolity of competing claims, expense and the like. *General Acquisition, Inc. v. GenCorp, Inc.*, 23 F.3d 1022, 1030 (6th Cir. 1994) (citations omitted).

- Determination of whether to grant certification of dismissal of fewer than all claims is committed to discretion of district court, and will be set aside only for abuse of discretion. *Harriscom Svenska AB v. Harris Corp*., 947 F.2d 627, 629 (2d Cir. 1991); *Zahl v. New Jersey Dept. of Law and Public Safety Div. of Consumer Affairs*, 428 Fed.Appx 205, 208 (3rd. Cir. 2011).

- Ordinarily, issuance of separate final judgments should not be indulged as a matter of routine or as a magnanimous accommodation to lawyers or litigants; instead, separate final judgments under the Federal Rule of Civil Procedure governing separate final judgments must be reserved for the unusual case in which the costs and risks of multiplying the number of proceedings and of overcrowding the appellate docket are outbalanced by pressing needs of the litigants for an early and separate judgment as to some claims or parties. *Noonan v. Wonderland Greyhound Park Realty LLC*, 723 F. Supp. 2d 298, 354 (D. Mass. 2010) (citations omitted).

v. Stay Pending Appeal? Fed. R. Bankr. P. 8007.

- A stay pending appeal has some "functional overlap" with an injunction, however, "a stay simply suspends judicial alteration of the status quo." *Nken v. Holder*, 556 U.S. 418 (2009)

- Deciding whether to stay pending appeal lies within the discretion of the district court. In exercising this discretion, the court considers four factors: (1) the likelihood that the party seeking the stay will prevail on the merits on appeal; (2) the likelihood that the moving party will be irreparably harmed absent a stay; (3) the prospect that others will be harmed if the court grants the stay; and (4) the public interest in granting the stay. *In re Anderson*, 560 B.R. 84, fn. 5 (S.D.N.Y. 2016) ("when considering the four factors, some courts in the Second Circuit adopt a balancing approach, i.e., the lack of one factor is not dispositive, where others hold that the failure to satisfy any one factor will result in denying the motion").

- Generally, the most important of the four requirements is the moving party's likelihood of success on the merits of its appeal, and the court must ordinarily find that the appealed decision was clearly erroneous. However, if the balance of the equities identified in the other three requirements weighs heavily in favor of granting the stay, a stay pending appeal may be granted upon a lesser showing of the movant's likelihood of success on appeal. *Id.* (*quoting In re F.G. Metals, Inc*., 390 B.R. at 472, and *Garcia- Mir v. Meese*, 781 F.2d 1450, 1453 (11th Cir. 1986)).

- Bond Requirements. Fed. R. Bankr. P. 8007(c) and (d).

vi. Equitable Mootness - A bankruptcy appeal should be "dismissed as [equitably] moot when, even though effective relief could conceivably be fashioned, implementation of that relief would be inequitable." *Official Comm. of Unsecured Creditors of LTV Aerospace & Def. Co. v. Official Comm. of Unsecured Creditors of LTV Steel Co. (In re Chateaugay Corp.)*, 988 F.2d 322, 325-26 (2d Cir. 1993) ("*Chateaugay* I"). Failure to seek a

stay or expedited appeal "weighs strongly in favor of a finding of equitable mootness"). *Retired Pilots Assoc. of U.S. Airways, Inc. v. US Airways Group, Inc. (In re US Airwavs Group Inc.),* 369 F.3d 806, 810 (4th Cir. 2004*)*; *Chateaugay* I, 988 F.2d at 326 ("The party who appeals without seeking to avail himself of [a stay] does so at his own risk."); *In re Texaco, Inc.*, 92 B.R. 38, 45 (S.D.N.Y. 1988) ("[W]hen bankruptcy appellants have failed and neglected diligently to pursue the available remedies to obtain a stay of the Confirmation Order, they have thereby . . . permitted . . . a comprehensive change of circumstances to occur, and it [would be] inequitable to hear the merits of their case.").

- Mootness and Confirmed Plans. A bankruptcy appeal is strongly presumed to be equitably moot where the reorganization plan has been "substantially consummated." *See Aetna Cas. & Sur. Co. v. LTV Steel Co. (In re Chateaugay Corp.)*, 94 F.3d 772, 776 (2d Cir. 1996) ("Chateaugay II"); see also 11 U.S.C. § 1101(2) (defining term); *In re KK-PB Financial, LLC*, 2021 WL 5605085 (11th. Cir. Nov. 30, 2021) *cert. denied*, 142 S.Ct. 2778 (2022) (declining review of decision dismissing appeals of bankruptcy court order disallowing through estimation a secured claim and confirming a chapter 11 plan under the doctrines of constitutional and equitable mootness)

- Mootness and §363 Sales. There is currently a circuit split concerning the effect closing a bankruptcy sale has on appeals involving the sale order. However, the Supreme Court in has granted *certioari* to potentially resolve this split. *See MOAC Mall Holdings LLC v. Transform Holdco LLC (In re Sears Holdings Corp.),* 2021 WL 5986997 (2d Cir. Dec. 17, 2021), cert. granted, No. 21-1270 (U.S. June 27, 2022). Bankruptcy Code §363(m) provides that: the reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease was stayed pending appeal.

    - 2nd and 5th Circuits – "This section creates a rule of statutory mootness, which bars appellate review of any sale authorized by 11 U.S.C. §363(b) or (c) so long as the sale was made to a good faith purchaser and was not stayed pending appeal." *In re Westpoint Stevens, Inc.*, 600 F.3d 231, 247 (2d. Cir. 2010); *In re C. Whale Corp.*, 2022 WL 135125, at *4 (Jan. 13, 2022) (holding similarly); *Matter of Walker Cnty. Hosp'l Corp.*, 3 F.4th

229 (5th Cir. 2021) (holding that a sale order is "fatal" to the appeal)

- 3rd, 6th, 7th, 10th Circuits – "some courts limit the appealability of a Section 363 sale order to the issue of the purchaser's good faith." "By contrast, we interpret subsection 363(m) more broadly and will review any sale-challenge that doesn't affect the validity of the sale. Stated another way, so long as we can grant effective relief, §363(m) doesn't bar appellate review" *In re ICL Holding Co., Inc.*, 802 F.3d 547, 554 (3rd. Cir. 2015) (internal quotations and citations omitted); *In re Brown*, 851 F.3d 619, 623 (6th Cir. 2017); *Trinity 83 Dev., LLC v. ColFin Midwest Funding, LLC*, 917 F.3d 599 (7th Cir. 2019); *In re C.W. Mining Co*., 641 F.3d 1235 (10th Cir. 2011)

- Whether 363(m) is a jurisdictional bar, versus a limitation on relief, has a number of implications. For instance, buyers should be prepared to close the sale transaction as soon as the order is entered to preclude any appeals (other than to the good faith status of the buyer). On the other hand, parties objecting to the sale, or the assumption and assignment of executory contracts and unexpired leases as part of a sale, will have to be vigilant to appeal immediately and to seek a stay of the order pending appeal before the sale closes.

C. Standard of Review?

i. Generally, the United States District Court reviews the United States Bankruptcy Court's factual findings for clear error and its conclusions of law de novo. *In re Charter Communications, Inc.,* 691 F.3d 476, 483 (2d. Cir. 2012). On appeal to the United States Circuit Courts, the court reviews the District Court decision de novo. *Id*; *see also In re Imerys Talc America, Inc.*, 38 F. 4th 361, 370 (3rd. Cir. 2022) ("In [appellate court's] review of the Bankruptcy Court's decision, we stand in the shoes of the District Court and apply the same standard of review. Thus our review duplicates that of the district court and we view the bankruptcy court decision unfettered by the district court's determinations… [the appellate court] review[s] the bankruptcy court's legal determinations de novo, its factual findings for clear error, and its discretionary decisions for abuse of discretion"). Equitable decisions are subject to the abuse of discretion standard. *In re General Dev. Corp*., 84 F.3d 1364, 1367 (11th Cir. 1996) ("Equitable determinations by the Bankruptcy Court are subject to review under an abuse of discretion standard").

- "The 'abuse of discretion' standard of review controls appeals from orders involving motions to sell pursuant to § 363(b)*." Big Shanty Land Corp. v. Comer Properties, Inc*., 61 B.R. 272, 277 (N.D. Ga. 1985) (citing *In re Lionel Corp*., 722 F.2d 1063, 1071 (2d Cir. 1983)).

    - Settlements or compromises approved by bankruptcy courts are reviewed under the abuse of discretion standard. *In re Iridium Operating LLC*, 478 F.3d 452, 461 (2d. Cir. 2007); *In re Nutraquest, Inc.*, 434 F.3d 639 (3rd. Cir. 2006); *Terry v. Sparrow*, 328 B.R. 442, 447 (M.D.N.C. 2005).

- In the equitable mootness context, the District Court is not reviewing the bankruptcy court at all, but rather exercising its own discretion in the first instance. Because of the "unusual nature of equitable mootness dismissals" the courts of appeals are split over whether a de novo or abuse of standard of review should be applied by the court of appeals. ***Compare*** *Curreys of Neb., Inc. v. United Producers, Inc. (In re United Producers, Inc.),* 526 F.3d 942, 946–47 (6th Cir.2008) (reviewing determination of equitable mootness de novo), *Liquidity Solutions, Inc. v. Winn–Dixie Stores, Inc. (In re Winn–Dixie Store, Inc.),* 286 Fed.Appx. 619, 622 & n. 2 (11th Cir. 2008) (same), and *United States v. Gen. Wireless, Inc. (In re GWI PCS 1 Inc.),* 230 F.3d 788, 799–800 (5th Cir.2000) (same), ***with*** *Search Mkt. Direct, Inc. v. Jubber (In re Paige),* 584 F.3d 1327, 1334–1335 (10th Cir.2009) (reviewing determination of equitable mootness for abuse of discretion), and *Nordhoff Invs., Inc. v. Zenith Elecs. Corp*., 258 F.3d 180, 182 (3d Cir.2001) (same); *In re Charter Communications, Inc.,* 691 F.3d 476 (2d. Cir. 2012)

ii. **Clearly Erroneous Standard of Review**. The Bankruptcy Rules provide that a bankruptcy judge's findings of fact shall not be set aside unless clearly erroneous. *In re Cohen*, 191 B.R. 599 (D. N.J. 1996). Clear error is a highly deferential standard of review, and whether there is clear error is not always apparent. Nonetheless, a finding is clearly erroneous when although there is evidence to support the finding, the court reviewing the entire record is left with the definite and firm conviction that a mistake has been committed. *Anderson v. Cirt of Bessemer City, N.C.*, 470 U.S. 564, 573 (1985) (citing *United States v. United States Gypsum Co.,* 333 U.S. 364, 395, 68 S.Ct. 525, 542, 92 L.Ed. 746 (1948). In other words, "if the bankruptcy court's assessment of the evidence is plausible in light of the entire record, the appellate court may not reverse, even if it may have weighed the evidence differently" (and certainly if the district court agrees). *Rensin v. Fed. Trade Comm'n*, 604 B.R. 917, 924 (S.D. Fla. 2019)

iii. **Abuse of Discretion Standard of Review**. Abuse of discretion is a failure or refusal, either express or implicit, to exercise discretion, making a finding

of fact instead as if by applying a general rule, or arbitrarily, without reference to rule or the record. Failure to exercise discretion is shown where the court fails take into account judicially recognized factors regarding its exercise of discretion. Finally, discretion may be abused by judicial decision-marking that is based on erroneous factual or legal premises. *See James v. Jacobson*, 6 F.3d 233, 239 (4th. Cir. 1993); *In re Howe*, 563 B.R. 794, 805 (D. Md. 2016) (the same standard applies to the Bankruptcy Court).

iv. **Fair Ground of Doubt Standard of Review** – "The bankruptcy statutes, however, do not grant courts unlimited authority to hold creditors in civil contempt. Instead, as part of the "old soil" they bring with them, the bankruptcy statutes incorporate the traditional standards in equity practice for determining when a party may be held in civil contempt for violating an injunction. In cases outside the bankruptcy context, we have said that civil contempt "should not be resorted to where there is [a] fair ground of doubt as to the wrongfulness of the defendant's conduct. This [objective] standard reflects the fact that civil contempt is a "severe remedy,", and that principles of "basic fairness requir[e] that those enjoined receive explicit notice" of "what conduct is outlawed" before being held in civil contempt." *Taggart v. Lorenzen*, 139 S. Ct. 1795 (2019)

- *Taggart v. Lorenzen*, 139 S. Ct. 1795 (2019) (applying the fair ground of doubt standard for imposing contempt sanctions due to violations of the bankruptcy discharge injunction)

- *PHH Mortgage Corp. v. Sensenich (In re Gravel)*, 6 F.4th 503 (2d Cir. 2021), *petition for cert. denied*, No. 21-1322 (U.S. June 13, 2022) (applying the fair ground of doubt standard for imposing contempt sanctions for repeated violations of bankruptcy court orders declaring a home mortgage current)

- *Beckhart v. Newrez LLC,* 2022 WL 1122534 (4th Cir. Apr. 15, 2022) (applying the *Taggart* standard when considering whether to hold a creditor in civil contempt for violating a plan of reorganization of debts entered under Chapter 11, and further explaining that *Taggart* is not limited to violations of Chapter 7 discharge orders, or unique to the Chapter 7 context)

D. Pendent Appellate Jurisdiction

- Pendent appellate jurisdiction is "a judicially-created, discretionary exception to the final judgment requirement." *Rux v. Republic of Sudan*, 461 F.3d 461, 475 (4th Cir. 2006) (under this exception, the appellate court retains the discretion to review issues that are not otherwise subject to immediate appeal when such issues are so interconnected with immediately appealable issues that they warrant concurrent review); *National Union Fire*

Ins. Co of Pittsburgh, Pa v. City Sav., F.S.B., 28 F. 3d 376, 382 (3rd. Cir. 1994) (Pendent appellate jurisdiction over an otherwise unappealable order is available only to the extent necessary to ensure meaningful review of an appealable order); *In re Anderson*, 550 B.R. 228, 233 (S.D.N.Y. 2016) ("a careful exercise of discretion is required when granting pendent jurisdiction").

- Pendent appellate jurisdiction is a doctrine that should be "used sparingly and only when there is sufficient overlap in the facts relevant to both issues to warrant plenary review." *Reinig v. RBS Citizens, N.A.*, 912 F.3d 115, 130 (3rd. Cir. 2018). Its application is resitrcted to two circumstances: "(1) inextricably intertwined orders or (2) review of a non-appealable order where it is necessary to ensure meaningful review of an appealable order. *Id.* citing *Swint v. Chambers County Comm'n*, 514 U.S. 35, 49-50 (1995). "Issues are 'inextricably intertwined only when the appealable issue 'cannot be resolved without reference to the otherwise unappealable issue." *Invista S.A.R.L. v. Rhodia, S.A.,* 625 F.3d 75, 88 (3rd Cir. 2010); *Moses v. CashCall, Inc.* 781 F.3d 63 (4th. Cir. 2015) (calling pendent appellate jurisdiction "an exception to the final judgment requirement of limited and narrow application")

II. PERFECTING THE APPEAL[1]

A. Bankruptcy Appellate Panels (BAP). Pursuant to 28 U.S.C. §158(b), the federal appellate courts have the power to create a three-judge panel to hear appeals from the bankruptcy courts that would otherwise be heard by the district court. While each district has the ability to use a bankruptcy appellate panel (BAP), currently only five circuits have chosen to do so (first, sixth, eighth, ninth, and tenth). Appeals of BAP decisions, like district court decisions, are heard by the court of appeals. There are advantages to appealing to a BAP, almost all related to the fact that all BAP judges are essentially bankruptcy specialists, including wider knowledge of the bankruptcy code, exclusive jurisdiction only over bankruptcy appeals, and generally a quicker process.

B. Notice of Appeal

- Fed. R. Bankr. P. 8002(b)(1): List of authorized tolling motions
- Fed. R. Bankr. P. 8002(a): filed with the bankruptcy court within 14 days after entry of the judgment, order, or decree being appealed.
- Fed. R. Bankr. P. 8002(d): Authorized extensions of time to file a Notice of Appeal in certain instances

[1] Note that the bankruptcy appeals to the circuit court of appeals is different procedurally. Federal Rules of Appellate Procedure apply.

- Fed. R. Bankr. P. 8003(a)(3): Contents of Notice of Appeal taken as of right

- Fed. R. Bankr. P. 8004(a) Contents of Notice of Appeal by leave

C. Motion for Leave to Appeal. 28 U.S.C. § 158(a)(3) (utilizing the standards set forth at 28 U.S.C. § 1292(b) by analogy); Fed. R. Bankr. P. 8004(b) (contents of motion); and Fed. R. Bankr. P. 8007(b)(2) and (3) (showing or statement required and additional content).

- An appellant must show that the appealed order: "(1) presents a controlling question of law; (2) over which there is a substantial ground for difference of opinion among courts; and (3) the immediate resolution of the issue would materially advance the ultimate termination of the litigation." *Laurent v. Herbert,* 196 F. App'x 771, 772 (11th Cir. 2006); *In re Celotex Corp.*, 187 B.R. 746, 749 (M.D. Fla. 1995).

- Can the appellate court: (i) refer to the order for the background necessary to gain an appreciation of the controlling question of law; (ii) adjudicate it quickly and cleanly without the need to delve beyond the surface of the record to determine the facts; and (iii) resolve an issue having general relevance to other cases in the same area of law. *McFarlin v. Conseco Servs., LLC*, 381 F.3d 1251, 1271 (11th Cir. 2004); *In re Wiand*, No. 8:10-cv-00071-EAK-MAP, 2012 WL 611896, at *3 (M.D. Fla. Jan. 4, 2012).

D. Motion for Certification of Direct Appeal to Court of Appeal. 28 U.S.C. §158(d)(2)(A) (providing for jurisdiction for the courts of appeal if the bankruptcy court, district court, or BAP certifies that (1) the judgment, order, or decree involves a question of law as to which there is no controlling decision of the court of appeals for the circuit or of the Supreme Court, or involves a matter of public importance; (2) the judgment, order, or decree involves a question of law requiring resolution of conflicting decisions; or (3) an immediate appeal from the judgment, order or decree may materially advance the process of the case or proceeding.)

- *3M Occupational Safety LLC et al., v. John and Jane Does 1-1000*, Adv. Pro. No. 22-50059 (Bankr. S.D. Indiana, Sept. 13, 2022) (certifying direct appeal to 7th circuit of bankruptcy court's denial of litigation injunction citing both a matter of public importance and likely advancement of the proceeding in which the appeal was taken)

E. Statement of Issues

- Fed. R. Bankr. P. 8009(a)(1): Appellant must file the Statement and Designation within 14 days after the appellant's notice of appeal as of right becomes effective under Rule 8002 or an order granting leave to appeal is entered.
- Fed. R. Bankr. P. 8009(a)(2): Appellee may file a Designation within 14 days after being served with Appellant's Statement and Designation.

F. Designation of Items for Inclusion in the Record on Appeal

- Fed. R. Bankr. P. 8009(a)(4): Items which must be included.

- "The touchstone for the designation of matter as part of the record is whether the matter was before the lower court (or at least considered by that court) in entering the order or judgment appealed from." *In re Fundamental Long Term Care, Inc.),* 557 B.R. 824, 830 (Bankr. M.D. Fla. 2016).

III. APPELLATE MOTION PRACTICE

A. Motion to Strike/Correct/Modify/Conform the Record on Appeal.

- Fed. R. Bankr. P. 8009(e)(1) and 8013: "If any difference arises about whether the record accurately discloses what occurred in the bankruptcy court, the difference must be submitted to and settled by the bankruptcy court and the record conformed accordingly. If an item has been improperly designated as part of the record on appeal, a party may move to strike that item."

B. Motion to Supplement the Record on Appeal.

- Fed. R. Bankr. P. 8009(e)(2) and 8013: "If anything material to either party is omitted from or misstated in the record by error or accident, the omission or misstatement may be corrected, and a supplemental record may be certified and transmitted: (A) on stipulation of the parties; (B) by the bankruptcy court before or after the record has been forwarded; or (C) by the court where the appeal is pending."

- It would be inappropriate to supplement a record on appeal with new evidence. A "small measure of flexibility" can be afforded pursuant to Rule 10(e)(2) of the Federal Rules of Appellate Jurisdiction to allow any material that either party omitted from or misstated in the record by error or accident. *Knopf v. Esposito*, 803 Fed.Appx 448, 457 (2d. Cir. 2020); *Acumed LLC v. Advanced Surgical Services, Inc.*, 561 D.3d 199, 226 (only in exceptional circumstances can a court of appeals allow a party to supplement the record on appeal).

C. Motion to Seal Items in the Record on Appeal.

- Fed. R. Bankr. P. 8009(f) and 8013: "A document placed under seal by the bankruptcy court may be designated as part of the record on appeal. In doing so, a party must identify it without revealing confidential or secret information, but the bankruptcy clerk must not transmit it to the clerk of the court where the appeal is pending as part of the record. Instead, a party must file a motion with the court where the appeal is pending to accept the document under seal. If the motion is granted, the movant must notify the

bankruptcy court of the ruling, and the bankruptcy clerk must promptly transmit the sealed document to the clerk of the court where the appeal is pending."

IV. APPELLATE BRIEFS

- Fed. R. Bankr. P. 8018(a)(1): Appellant's Brief must filed within 30 days after the docketing of notice that the record has been transmitted or is available electronically. But see flexibility given to the district court.

- Fed. R. Bankr. P. 8018(a)(2): Appellee's Brief must be filed within 30 days after service of the Appellant's Brief.

- Fed. R. Bankr. P. 8018(a)(3): Appellant's Reply Brief may be filed within 14 days after service of the Appellee's Brief (or at least 7 days before scheduled argument unless the appellate court for good cause allows a later filing).

- Fed. R. Bankr. P. 8014(a) and (c): Contents of Appellant's Brief and Reply Brief

- Fed. R. Bankr. P. 8014(b): Contents of Appellee's Brief

- Fed. R. Bankr.P. 8015: Form and Length of Briefs; Form of Appendices and Other Papers

- Fed. R Bankr. P. 8018(b) and (c): Requirements for the Appendix to the Brief

V. ORAL ARGUMENT - Fed. R. Bankr. P. 8019. Note the presumption in the rule.

VI. POST-RULING MOTIONS

- Fed. R. Bankr. P. 8020(a): Motion for Damages & Costs for Frivolous Appeal

- Fed. R. Bankr. P. 8022: Motion for Rehearing. *See, e.g., Dandridge v. Scott, Trustee for Estate of Dandridge*, 2019 WL 4228457, at *1 (stating that while Rule 8022 is silent as to the appropriate standard for granting a motion for rehearing, courts in the 4th circuit generally apply the same standard applicable to motions for reconsideration under Rule 59(e) of the Federal Rules of Civil Procedure)

Faculty

Hon. Thomas L. Ambro is a U.S. Circuit Judge of the U.S. Court of Appeals for the Third Circuit in Wilmington, Del., appointed in 2000. Previously, he was in private practice in Wilmington from 1976-2000 at Richards, Layton & Finger and was instrumental in Wilmington becoming a preferred venue for large chapter 11 bankruptcy cases. He eventually headed the firm's bankruptcy practice. Prior to his time at the firm, Judge Ambro clerked for Chief Justice Daniel L. Herrmann of the Supreme Court of Delaware. He is a past chair of the Business Law Section of the American Bar Association and a past editor of *The Business Lawyer*. In addition, he chaired the Committee on the Uniform Commercial Code for the Commercial Law Section of the Delaware State Bar Association for 20 years. He also is a member of the Board of Trustees of the American Inns of Court, the American Law Institute and the National Bankruptcy Conference. Judge Ambro serves as an adjunct professor at Georgetown University, where he teaches a course on public speaking to undergraduate student. The Thomas L. Ambro Fellowship, awarded to support a summer internship with the U.S. Bankruptcy Court for the District of Delaware, is named in his honor. Judge Ambro received his B.A. in 1971 from Georgetown University and his J.D. from Georgetown University Law Center in 1975.

Hon. Melanie L. Cyganowski is a partner with Otterbourg P.C. in New York and chairs its Bankruptcy practice. She joined the firm in 2008 after serving a full 14-year term as a U.S. Bankruptcy Judge for the Eastern District of New York and as its Chief Judge from 2005-08. She is currently co-counsel to the Ad Hoc Committee in *Purdue Pharma*, and was appointed as a member of a blue-ribbon committee by the Rockville Center Diocese with former Chief Bankruptcy Judge Arthur Gonzalez and former Comptroller of the City of New York Harrison J. Goldin. Judge Cyganowski's fiduciary appointments include receiver in *SEC v. Platinum Partners*; CRO and temporary operator of Brooklyn's Interfaith Medical Center; patient care ombudsman in *Randolph Hospital Inc.*, *Promise Healthcare*, *Orianna Health Systems*, *21st Century Oncology* and *California Proton*; auditor of Capital One; and various trusteeships. She also served as special master in *Vivendi* and *Neogenix Oncology*, a court-appointed expert in Orion HealthCorp, and an arbitrator/mediator in cases including *Madoff* and *Lehman*. Judge Cyganowski has testified as an expert in international cases involving U.S. bankruptcy laws. She is a Fellow in the American College of Bankruptcy, sits on the editorial advisory board of the *Norton Journal of Bankruptcy Practice & Law*, and is an adjunct professor at St. John's University School of Law in the Bankruptcy LL.M. Program. She also is active in philanthropic organizations, including Tina's Wish. Judge Cyganowski received her J.D. *magna cum laude* from the State University of New York at Buffalo School of Law in 1981.

Hon. Dennis R. Dow is a U.S. Bankruptcy Judge for the Western District of Missouri in Kansas City, appointed on Nov. 10, 2003, by the Eighth Circuit Court of Appeals. Prior to taking the bench, he was a partner with the firm of Shook, Hardy & Bacon LLP, where he represented trustees in chapter 7 cases involving significant assets, individual and corporate debtors in proceedings under chapters 7 and 11, and secured, unsecured and priority creditors and lessors in chapter 7, 11, 12 and 13 cases, and had been listed in *The Best Lawyers in America* in the area of bankruptcy law every year since 1995. He also tried numerous adversary proceedings and contested matters, including preference actions, objections to discharge, dischargeability complaints and objections to confirmation of chapter 11 plans. Judge Dow is a member of ABI, the Missouri Bar and the Kansas City Metropolitan Bar

Association. He is a Fellow of the American College of Bankruptcy, inducted in March 2013, and was selected in November 2014 to become a conferee of the National Bankruptcy Conference. He also is a member of the National Conference of Bankruptcy Judges. Judge Dow is a member of the Bankruptcy Appellate Panel and was appointed in October 2014 to the Judicial Conference Advisory Committee on Bankruptcy Rules, then appointed in 2018 to chair the committee. He received his B.A. with honors from the University of Wyoming and his J.D. from Washburn University School of Law, where he was notes editor of the *Washburn Law Journal*.

Hon. Scott M. Grossman is a U.S. Bankruptcy Judge for the Southern District of Florida in Fort Lauderdale, sworn in on Oct. 2, 2019. He previously was a shareholder with a large international law firm in its global restructuring and bankruptcy practice, and he represented distressed companies, debtors, secured and unsecured creditors, official committees, trustees, landlords and purchasers of distressed assets, and worked on bankruptcy cases across various industries, including real estate, hospitality, health care, entertainment, banking, technology, energy and financial fraud. While primarily involved in chapter 11 reorganizations, he also represented clients in out-of-court workouts and restructurings, chapter 7 liquidations, receiverships, assignments for the benefit of creditors and insolvency-related litigation. Judge Grossman was active in local bar activities, including having served as president of the Bankruptcy Bar Association of the Southern District of Florida. When in private practice, he was listed in *Chambers USA*, *The Best Lawyers in America* and *Super Lawyers* magazine, and was a member of the winning teams for the Global M&A Network's Turnaround Atlas Awards for both "Cross Border Special Situation M&A Deal (Small-Mid Markets)" in 2019, as well as "Turnaround of the Year — Small Markets" in 2015. Judge Grossman began his legal career in the Attorney General's Honors Program at the U.S. Department of Justice, where he was a trial attorney in the Tax Division, Civil Trial Southern Section, from 1999-2004. He received his B.S. in 1996 from the University of Florida and his J.D. in 1999 from George Washington University Law School.

Hon. Cecelia G. Morris is a U.S. Bankruptcy Judge for the Southern District of New York in Poughkeepsie, appointed on July 1, 2000. She also served a term as Chief Judge, starting on March 1, 2012. Prior to her appointment to the bench, Judge Morris clerked for the U.S. Bankruptcy Court for the Southern District of New York starting in December 1988. Prior to that, she clerked for the U.S. Bankruptcy Court for the Middle District of Georgia from February 1986 until she moved to New York. Before her career with the court, Judge Morris had a private law practice in Macon, Ga., from May 1981 until February 1986. She served as an Assistant District Attorney and as the administrator of the Civil Division Child Support Recovery Unit, Griffin Judicial Circuit in Griffin, Ga., from September 1979 until May 1981. She also had a private law practice in Griffin from October 1977 until January 1978 and clerked at Seay Sims & Park (now Bolton & Park) in Griffin in 1976. Judge Morris has participated as a trainer in many mediation/arbitration programs sponsored by the Federal Judicial Center, the Association of the Bar of the City of New York, the National Association of Security Dealer Regulation and Bankruptcy Court, Endispute Inc. and the Center for Public Resources, Inc. She has successfully mediated many disputes in some of the most prominent cases pending before the U.S. Bankruptcy Court for the Southern District of New York. Judge Morris is an active participant in many bar outreach programs and has been honored to be the keynote speaker at several events, including the Federal Judicial Center's Clerk of Court and Chief Deputies Conference and Weil Gotshal and Manges' Women@Weil program. She has served as an editor of a treatise on bankruptcy being developed by Bloomberg Law, and she published an article describing

the history and legal basis of the court's loss-mitigation program in the Spring 2011 edition of the *ABI Law Review*. She has also authored several articles on electronic filing, including a chapter on electronic case filing in *Collier on Bankruptcy*, and has published articles on loss-mitigation, mediation, the consumer credit counseling requirement in bankruptcy and cross-border insolvency cases under chapter 15 of the Bankruptcy Code. Judge Morris has testified before Congress and served on the Bankruptcy Judges Advisory Board to the Administrative Office of the U.S. Courts. She also has taught bankruptcy ethics at St. John's University's LL.M. in Bankruptcy program and served as a member of the Barry Zaretsky Roundtable Steering Committee at Brooklyn Law School, on the advisory board of the *ABI Law Review*, and as a member of the International Insolvency Institute, American College of Bankruptcy, National Conference of Bankruptcy Judges and the Global Restructuring Organization's Scientific Committee, headquartered in Modena, Italy. Judge Morris received the Annual Conrad B. Duberstein Memorial Award for Excellence and Compassion in the Bankruptcy Judiciary and the *New York Law Journal* Impact Award for pioneering the use of e-filing in federal court. She received her B.S. from West Texas State University and her J.D. from the John Marshall Law School.

Michael B. Schaedle is a partner with Blank Rome LLP in Philadelphia in its Finance, Restructuring and Bankruptcy Practice Group. He concentrates his practice on bankruptcy, reorganizations and workouts, debt and equity restructuring, and commercial and public debt transactions. Mr. Schaedle frequently represents secured creditors, creditors' and other committees and creditor groups, creditors, contract counterparties, asset-purchasers/plan-of-reorganization proponents, and trustees, debtors, foreign representatives and other fiduciaries. He is a Fellow in the American College of Bankruptcy and a member of the International Insolvency Institute, and he has been certified as a Business Bankruptcy Specialist by the American Board of Certification. Mr. Schaedle is ranked by *Chambers USA* as a leading bankruptcy lawyer and was a member of the 2020 faculty for ABI's Complex Financial Restructuring Program. He routinely publishes on bankruptcy topics. Mr. Schaedle received his B.A. *cum laude* with distinction in major from the University of Pennsylvania and his J.D. from the University of Wisconsin-Madison.