



IWIRC ***NEWSLETTER***

International Women's Insolvency and Restructuring Confederation

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IWIRC AT THE NCBJ CONFERENCE ON OCTOBER 1&2, 2002

Enron, Worldcom, K-MART, or just the "ordinary bankruptcy case" in your local hometown— these cases are getting more and more media attention, and more and more technical. Managing media questions, such as whether your case has enough exposure or creditors that it needs its own website, is new to most of us. Most schools do not offer courses on media management, and textbooks on media issues are not readily available; and if they were, who has the time? You are too busy handling the cases, managing your business and your clients' business affairs, and networking to bring in more business.

So, what do you do? The best answer is to attend the IWIRC Fall 2002 Conference in Chicago, Illinois on October 1 and 2, 2002. The conference will offer information on these issues and others and allow you to network with other insolvency professionals at the same time.

Here is a summary of the schedule for the conference:

On October 1, 2002, we will meet at the Chicago Museum of Contemporary Art from 5:30 p.m. to 8 p.m. This event will include live jazz, food catered by Wolfgang Puck, networking, and guided tours of the

museum's permanent collection. Judge Susan Sonderby, Chief Judge for the United States Bankruptcy Court for the Northern District of Illinois will also speak on "Mega Bankruptcy Cases." The K-MART case is assigned to Judge Sonderby.

On October 2, 2002, we will meet at the Chicago Hyatt Regency (On the Riverwalk). At 7:45 a.m., start your day by registering and networking, while enjoying a continental breakfast. At 8:45 a.m., Faye Feinstein of Altheimer & Grey will moderate the "World Auto Parts - An Insolvency Case Study" panel. Panelists will include: Margot Schonholtz, Regional Head of the Restructuring Group / Americas Clifford Chance LLP; Elizabeth Manning, Managing Director of GE Capital Commercial Finance; Holly Etlin of Crossroads, LLC; and Carmen Lonstein of Bell, Boyd & Lloyd LLC.

At 10:15 a.m., we will learn about "Handling the Media." John Calloway, a winner of nine Emmy Awards and former news director for WBBM Chicago will moderate a panel and show us how interviews can be good and can go bad. The panelists will include Ned Reynolds, Senior Vice President of GE Capital Commerce Finance; Melanie Rovner Cohen of Altheimer & Grey; Debra Riley of Matkins, Leck, Gamblet & Mallory; and Bettina Whyte of Alix Partners.

From noon to 1:30 p.m., we will have a networking round table lunch and receive an update on IWIRC news and business. You should have already received your conference brochure. If you have not, go to the website: www.IWIRC.com or call IWIRC at 703-449-1316 for more information concerning registration for this event.

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IWIRC appreciates the support of all our sponsors this year. A full listing of all sponsors will be included in the next edition of the Newsletter.

RECRUITING COMMITTEE REPORT

Submitted by Debra Kuptz, Alix Partners
Development Director

The membership drive has netted us thirty-one new members as of the end of June. The current membership drive leader, with three recruits, is Francine Gordon of Trumbull Services in Ohio. Good work, Francine.

Remember, for each person you recruit you earn a raffle ticket and a chance to win some great prizes. There is only one month left in the contest so check out those working groups and start recruiting! See www.iwirc.com for rules and membership information.

Thank you to everyone who has found and recruited such talented new members!

Here are a few of our newest members:

Jennifer M. Meyerowitz is an associate at the law firm of Alston and Bird LLP in Atlanta, GA, where she focuses on bankruptcy law and related litigation. She earned her J.D. in 1999 from the Emory University School of Law, and her B.A. in Political Science and Judaic Studies in 1995 from the University of Michigan. Debra Kuptz, head of the membership committee, used her contact and Jennifer's group practice leader at Alston and Bird, to recruit Jennifer. If you have a contact that is a practice head, etc., it might be a good idea to ask him or her to spread the word about IWIRC at his or her next meeting.

Olga L. Bogdanov is an associate in the Litigation Department of Murtha Cullina Roche Carens & DeGiacomo LLP focusing on bankruptcy matters involving debtors, creditors, and trustees and Chapter 7, 11 and 13 cases. She is also a member of the Business and Bankruptcy Sections of the

Boston Bar Association, the American Bankruptcy Institute and the Turnaround Management Association. Olga found out about IWIRC while attending a meeting with another organization. It is always nice to hear that we have members touting the benefits of IWIRC throughout industry events, which is a great way to recruit new members.

Erica Bramer recently joined Alix Partners in Dallas. Before joining Alix Partners, Erica worked at Bain & Company, where she supported the turnarounds of a number of multinational companies. Prior to her work at Bain, Erica interned with Mercer Management Consulting. Erica holds an MBA in Strategic and Multinational Management from the Wharton School of Business and an MA in Latin American Studies and Spanish from the Lauder Institute of International Management. She graduated Phi Beta Kappa from the University of Texas with dual Bachelor degrees. Erica speaks Spanish and is pursuing the CFA certification.

Teresa W. McMahon is a founding partner of Reese McMahon, L.L.C. and has extensive experience as a corporate financial executive. Teresa has over twenty years of business experience including senior management responsibilities leading financial management and accounting, treasury, information technology and human resources. In addition, Teresa is a Certified Public Accountant and is involved with organizations such as the American Bankruptcy Institute, the Association of Corporate Growth, the International Association of Insolvency Regulators, the Executives' Club of Chicago, as well as the TMA.

Once again, thank you to all of our members for the substantial efforts that you have made to make this membership drive a

success thus far. Remember to keep the Membership Drive in mind at industry meetings, conferences, and when you're out on a project, etc. These avenues provide good networking opportunities to build new relationships and encourage recruiting!

We would like to provide profiles of all our new members, so please feel free to email a paragraph about yourself to debkutz@alixpartners.com.

BANKRUPTCY FRAUD

By Alan D. Lasko

(Alan D. Lasko and Associates, P.C.)

Each year over a million individuals and business entities find that their financial plans have not worked out as expected. Overwhelmed with bills they cannot pay, they seek protection from their creditors by filing for bankruptcy. The bankruptcy laws are intended to help honest but unfortunate debtors who are overcome by serious financial difficulties to get their financial house in order. Like the U.S. tax system, the bankruptcy system relies on individuals to be completely truthful. In an effort to escape their debts without fairly treating their creditors, some individuals abuse the system. Such dishonesty is fraud, either civil or criminal depending on the circumstances. This article looks at several bankruptcy fraud schemes of which creditors should be aware.

Asset Concealment

Attempting to conceal assets is the most common type of bankruptcy fraud. Dishonest debtors have found numerous ways to perpetrate this deception. The easiest and most common is simply to conceal the truth both in the respective written bankruptcy pleadings and in court.

In a recent case, for example, the debtor filed a petition that reflected no real net income. In court, however, the debtor testified that neither a \$2,000 a month disability income nor the fact that she shared expenses with her partner of 17 years was disclosed on the bankruptcy petition. As punishment for this civil fraud the judge dismissed her case and barred her from re-filing it. In another case, the husband and wife debtors' payroll stubs reflected \$1,500 more in income than what was listed in the court filings. The couple also listed a car payment twice and claimed their daughter's vehicle expense as theirs. After adjusting for these inaccuracies in their filing, it was clear the debtors could pay all their debts. Their case, too, was dismissed. Many debtors also conceal proceeds from personal injury lawsuits and other causes of legal action as well as from inheritances in their filings.

Other types of false statements that recur often in these cases are failure to disclose an interest in corporate assets, misrepresenting the number of bank accounts the debtor has, or omitting a fact about the highest bid for property.

Unfortunately, for the dishonest debtor, the temptation to engage in asset concealment is great. The perceived risk of detection seems small to them, since there are so many bankruptcy filings and so few resources expended to detect civil fraud. The chances of detection may have somewhat improved, however, since the Bankruptcy Trustee Program has recently launched an initiative to more aggressively use existing civil enforcement methods to curb civil abuse of the bankruptcy system.

Criminal Fraud

The difference between civil and criminal fraud is that the bankruptcy judge punishes civil fraud, most often by simply dismissing

the petition and therefore leaving the debtor obligated to pay his or her debts. By contrast, convicting someone of criminal fraud requires the full investigatory and prosecutorial resources of the government and a federal jury trial. The FBI investigates and provides evidence used by the U.S. Attorneys in prosecuting cases in federal court.

As a matter of law, one could say that the difference between civil and criminal bankruptcy fraud is the specific intent. To convict someone of criminal fraud, the prosecution must convince a jury that the person had the desire to bring about gain or benefit to himself and/or a desire to cause loss to someone else. As dishonest debtors do not generally announce their purpose explicitly, the jury may glean intent by evidence of the debtor's "course of conduct."

The jury apparently gleaned that last August in the case of Stephen Lacy, a 36-year-old Shreveport, La., resident and former owner of a company called Professional Computer Analysis (PCA). In 1995, Lacy closed PCA and moved the inventory, equipment, and supplies to a self-storage unit. When Premier Bank filed suit to recover loans made to PCA, Lacy and PCA filed for bankruptcy protection. Lacy then omitted from the bankruptcy court under oath certain information in order to conceal his assets from his creditors. He was convicted of criminal fraud, sentenced to eight years in prison and ordered to pay restitution of over \$500,000 to more than 130 creditors.

Juries can infer fraudulent intent from a variety of activities. For example, where a business debtor hurriedly forms a new company after filing a bankruptcy petition, using the assets of the purportedly bankrupt business in the new business, the jury may infer fraudulent intent. In one case, the fact that the debtor removed carpeting belonging

to his landlord revealed an intent to start a new business with the assets from the old business even though the carpet was not actually an asset of the bankruptcy estate, but belonged to the landlord.

Some of these types of debtors don't stop at concealing only one or two assets. A former Continental Airlines DC 10 captain who lived in Idaho was convicted earlier this year of fraudulently concealing stock options and profit-sharing benefits he held through Continental Airlines, as well as an interest in his personal Cessna 185, and his interest in an air courier service he had purchased just five weeks before filing for bankruptcy. Additionally, he had concealed other debts for which he was also found guilty. Debtors are required to disclose all their liabilities as well as their assets. In this case, the perpetrator apparently wanted to avoid ruining his reputation with at least one of his creditors whom he presumably intended to repay in full. This, of course, deprived the other creditors of a fair division of the debtor's assets.

Other Schemes

According to recent FBI statistics, concealment of assets and false statements relating to that concealment make up over 70% of all bankruptcy crimes. But some schemes operate differently. One of the most damaging is the "bust-out" scheme. This occurs when individuals start a new company with no other intention than theft. By paying promptly for their orders at first, they establish good credit ratings with a number of consumer goods providers. They leverage this credit history to place larger and larger orders eventually obtaining significant quantities of goods. There is no intention of paying for these goods, which are promptly sold for cash at bargain prices to more legitimate retailers. As the demands for payment from creditors increase in intensity, the business files for bankruptcy

protection so as to have more time to complete the fraud. Common warning signs of a bust-out include a company with a short life, disproportionate liabilities to assets, no receivables, few or no bank accounts, and sometimes rent paid in advance or with cash.

Fraudulent debt accumulation that the debtor then attempts to discharge in bankruptcy is another danger to the honest creditor. A debt is fraudulent if at the time the debtor took on the debt he or she had no current or prospective future means to pay it; in other words, the underlying intent was to have the goods or use of services without paying for them. In one of these cases recently, a New Jersey man was convicted of fraudulently accumulating credit card debt of approximately \$450,000 and then attempting to escape the obligations by filing for bankruptcy. Pleading guilty, the man admitted that in four months, between November 1995 and February 1996, he had used more than 20 different credit accounts to obtain cash advances, gift certificates, and luxury items. His purchases reached his credit limits and he had no way to pay the bills. He sent his creditors checks drawn on accounts with insufficient funds. In fact, he sent the credit card companies checks equal to or greater than his credit limits. For a few days after the creditor received the check but before it was returned for insufficient funds, this debtor had an apparent credit balance on his cards that he then used to make more purchases and obtain more cash advances.

So-called "serial filers" is another type of bankruptcy scheme. They file numerous Chapter 7 and Chapter 13 cases solely for the benefit of the automatic stay, which prevents foreclosure on property they knowingly cannot pay for. Obtaining the use of the automatic stay for the price of the bankruptcy filing fee has been most pronounced in connection with foreclosure scams. Fraudulent operators often promise indebted homeowners that they can save

their homes for them. The homeowner deeds his or her property to the fraudulent operator or one of his aliases. The operator then files a bankruptcy petition on the eve of the foreclosure sale. This action delays the foreclosure from one to six months, depending on how long the secured lender takes to obtain relief from the stay or the bankruptcy court to dismiss the case. After the first petition is dismissed, the operator transfers the property, or an interest in it, to another entity in whose name the next bankruptcy will be filed on the eve of the next foreclosure sale to delay the foreclosure a second time, and on and on. A knowledgeable abuser uses the automatic stay to avoid foreclosure for an indefinite period of time until caught.

What Can Creditors Do

As long as there are greedy and dishonest people, there will be bankruptcy fraud. A certain amount of it is one of the unalterable costs of providing credit. Obviously, the risk is lowered by not extending credit to higher risk debtors. However, since bankruptcy is often precipitated by unpredictable events in the debtor's life, there is no way to identify all the risks ahead of time.

Criminal fraud, however, is pursued and punished by prison terms and large fines. If there is evidence of criminal fraud, a referral can be made to your nearest office of the U.S. Trustee. This can be located by going to the Agencies list on the Department of Justice website or www.usdoj.gov/us. Law enforcement agencies lack the resources to review, investigate, and, if warranted, prosecute based on every referral they receive. These agencies also receive many reports that do not provide enough information to pursue. A suspicion that something "seems fishy" or that the debtor is not an honorable person will not be sufficient to precipitate an investigation. To

increase the chances that a referral will be sufficient to pursue, a written statement can be prepared and submitted naming the potential acts committed, such as concealing assets or making a false statement or using a false identity. State what evidence there is for the alleged abuse or crime. Also, include the amount of money involved, if it is known. Providing identifying information about the perpetrators, birth dates, and social security numbers can also be helpful. Last, state the names of any witnesses, their addresses and telephone numbers, if you have them, as well as any other documentary evidence which may be useful.

Conclusion

In a system that relies on debtor honesty, the dishonest debtor will only be caught when someone notices and reports the attempt to defraud creditors. Meanwhile, the costs of both honest and dishonest bankruptcy continue to rise.

Alan D. Lasko is with Alan D. Lasko and Associates, P.C., Certified Public Accountants in Chicago.

NETWORK SPOTLIGHT: IWIRC NORTHEAST OHIO NETWORK

Submitted by Jean Robertson,
Network Chair

Since its recent charter in Fall, 2001, the Northeast Ohio Network has been growing at full speed and is spreading the good word. As of June 1, 2002 we had twenty-five members join the Network, and we've gone from just three international members to eight. Hopefully you will have an opportunity to meet some of our new members in Chicago this year for the IWIRC/NCBJ program!

On June 20, 2002 the Network partnered up with the local Cleveland Chapter of the Turnaround Management Association to put on a wonderful evening networking reception and panel discussion about various "professional" tools used in successful bankruptcy cases: claims processing and public relations. Bowne of Cleveland (Alan Friedman and Lizz Warner) was a corporate sponsor, along with Trumbull Services (Francine Gordon). We had approximately seventy men and women join us for this event, and we fully expect to continue our partnership with TMA again next year.

The Network adopted an idea for a program from our sister network in Columbus, Ohio for our next event, which is scheduled for this October. We are planning a law school and MBA school "social" with our members and a distinguished panel of women in the industry. Judge Whipple, from the U.S. Bankruptcy Court in Toledo, OH, has agreed to be on a panel with other women practitioners from a variety of backgrounds in the field of insolvency. We expect the schools to be actively involved in getting the word out about the program, so that we can create an open forum for the students to ask questions about the field and the opportunities their degrees will provide them once they graduate.

Lastly, the Network has secured for a third year in a row its partnership with the Cleveland Bar Association's William J. O'Neill Bankruptcy Institute, which will be held this December 2002. Network member Becky Bishop is a co-chair for this annual two-day bankruptcy seminar, and she is assisted by Network vice-director Julie Zurn, who is coordinating the IWIRC cocktail reception the first night of the seminar. Last year, this event attracted more than 100 bankruptcy professionals from all over northeast Ohio, and we are

very proud to be able to continue our association with such a prestigious local event.

Jean can be reached at 216.348.5769 (direct dial) or by e-mail at jrobertson@mhbh.com.

MEMBER NEWS

IWIRC congratulates each of the following members:

B. Gail Reese of the firm Wyatt, Tarrant & Combs in Nashville, TN will moderate a program at the annual ABA meeting in Washington, D.C. on August 10, 2002 entitled "Annual ADR Update." The program will be held from 2:30 - 5:00 at the Hyatt Regency.

Jean R. Robertson has moved to McDonald Hopkins. Her new contact information is as follows:

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