



IWIRC Newsletter

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From the Chair

Leslie A. Berkoff, IWIRC Chair

Thank you to those who joined us at our annual Fall conference in Orlando and to the sponsors who graciously lent their continued financial support to IWIRC and this event. Our Program Committee, headed by Leigh Ann Ihrig and Anna Taruschio, worked hard to put together a phenomenal series of events. On behalf of IWIRC and the Board, I again extend our thanks and appreciation.

The conference opened with a reception at Jimmy Buffet's Margaritaville where we hosted over 100 members and 40 Judges and their guests. The next day the conference began with a fascinating discussion on Chapter 15, for many of us this was an introduction to this developing area of the law. We followed the educational program with a new Business Session, providing an open forum to our members to offer thoughts on programming, network development, member benefits as well as discuss future projects being developed by the Board. We wrapped the morning program with a continuation of our smaller break-out sessions, which allow us time to focus on the more personalized needs of our members. During lunch we all enjoyed a fascinating presentation by Terri Morrison, author of *Kiss Bow or Shake Hands*. (Each attendee received a copy of this book generously supplied by Kurtzman Carson Consultants). Ms. Morrison guided us through an analysis of cultural differences and we learned a tremendous amount about both our culture and those of other countries. Finally, the Afternoon Dessert Reception offered us view of the outdoors and an opportunity to relax.

Friday brought a new event; for the first time ever, IWIRC partnered with the International Judicial Relations Committee of the National Conference of Bankruptcy Judges to Co-sponsor an educational panel at the NCBJ entitled the Uncoordination of International Bankruptcy. Additionally, for the second time IWIRC in conjunction at the National Conference of Bankruptcy Judges, hosted another program featuring George Will of Newsweek and the Wall Street Journal.

While I thank our planning committee for doing double duty this year, planning both the IWIRC conference and this additional event, I would be remiss if I did not again thank our NCBJ Liaison Committee comprised of Judge Parsons, Judge Walrath and Judge Diehl, along with outside assistance of Judge Elizabeth Stong, for all of their hardwork in building IWIRC's programming at the NCBJ and making many of these events possible.

For those of who missed this wonderful conference, you did not get a chance to learn about some new

developments within the Board. The IWIRC International Board has been restructured into global regions - North America, Europe and Asia-Pacific. While some board positions easily lend themselves to work across geographical borders, others have required the addition of new board members in order to effectively represent IWIRC throughout North America, Europe and Asia-Pacific. Thus, we now have a Program Director, Recruitment Director and Network Director as well Vice Directors for not just for North America, but for Europe and Asia-Pacific as well. While we have already filled the position of Director and Vice Director of Programs for Europe - and welcome Delphine Becker-Cooke and Clare Watkinson, to those roles, we are still looking for people to serve as Director and Vice Directors of Programs for Asia-Pacific as well as to fill the roles of Director and Vice Directors of Recruitment for Asia-Pacific and Europe. (Recommendations are welcomed, but the individuals must be internationally placed.) These modifications and additions will also allow us to further expand the work of the International Board, its members and will allow us to carry forth on a goal of this Board to bring greater balance and strength to our International Networks and events.

The Fall Board Meeting also saw the adoption of a San Diego Network and a formal welcome to Mountain-Desert Network as well. Welcome Ladies.

Finally, as we look forward to spring and our Founders Awards Conference to be held on April 3, 2008, please look for the nomination forms, which will soon be in the mail. Also when planning to attend the conference, please try to make plans to stay through Saturday as IWIRC will host a lunch program at ABI on that day. Please mark your calendars with these dates and if you can please attend some or all of these events please do so. The more you give, the more you will get from this fantastic organization each year.

Until the next update, I send best wishes for a lovely holiday season, and I look forward to seeing all of you at the Spring Conference, if not before.

New Legislation Impacts Ch. 11 Omnibus Objections *Juliet Babros, Kurtzman Carson Consultants*

New legislation is about to change the process by which debtors and creditors navigate claims objections in the course of major Chapter 11 restructurings. On Dec. 1, 2007, the Federal Rules of Bankruptcy Procedure will enact new procedural requirements that significantly



impact the way that distressed companies and their professionals administer omnibus objections. The amended Bankruptcy Rule 3007 sets out to provide clear notice and fair due process measures for creditors.

I'm writing to suggest that you consider a story on this new development with commentary from various perspectives and reactions from within the restructuring industry. To provide a claims-management and legal perspective, Jonathan Carson can offer his expertise as a former corporate restructuring attorney at Kirkland & Ellis and co-founder of Kurtzman Carson Consultants, a provider of administrative-support and technology solutions for the legal and financial industries.

In its role as a claims and noticing agent engaged in some of the country's largest corporate bankruptcies, KCC assists legal professionals in navigating the claims objection process and plays a crucial role in helping professionals adapt to new requirements, such as the amended Bankruptcy Rule 3007. Among other issues, Jonathan can address:

- * The impact of the amended Bankruptcy Rule 3007 on both debtors and creditors
- * What legal professionals can do to prepare for and adapt to the Amended Bankruptcy Rule 3007
- * The role of the claims agent in supporting legal professionals throughout the claims objection process

Taint Clear: "Purchased" Claims are Not Subject to Equitable Subordination or Disallowance Based Solely on Seller's Conduct, but Purchaser's Knowledge of the Seller's Conduct May Be Fatal

Scott Everett and Frances Smith, Haynes and Boone, LLP

On August 27, 2007, a United States district judge in New York, acting as an appellate court, overturned the Enron bankruptcy court's ruling on equitable subordination and claims disallowance that had drawn harsh criticism from economists and distressed-debt traders. The ruling provides protection to good-faith "purchasers" of claims in bankruptcy cases, but the ruling also leaves several pitfalls for those unwary of the details. *Enron Corp. v. Springfield Associates, L.L.C.*, Case Nos. 06-Civ-7828 and 07-Civ-1957, Scheindlin, J.

The ruling arose out of a suit by Enron against distressed-debt traders who acquired bank-facility claims from banks that allegedly committed inequitable conduct or received avoidable transfers in connection with transactions unrelated to the credit facility. Certain of those traders filed motions to dismiss, arguing that their claims were not subject to subordination or disallowance because the traders did not act inequitably or receive avoidable transfers.

In denying the motions to dismiss, the bankruptcy court ruled that equitable subordination under section 510(c) of the Bankruptcy Code and disallowance under section 502(d) can be applied, as a matter of law, to claims acquired by a transferee based solely on the alleged bad actions of the seller—in other words, claims held by a "tainted" seller who committed bad acts or received

avoidable transfers are fixed as of the bankruptcy petition date and cannot be "cleansed" by transferring the claims to a new holder.

Noting that the bankruptcy court's decision "threatened to wreak havoc on the markets for distressed debt," Judge Shira Scheindlin reversed and remanded. The district court first noted that the purpose of equitable subordination under section 510(c) is to undo wrongdoing by an individual creditor in the interest of the other creditors. Likewise, section 502(d) was intended to force the recipient of an avoidable transfer to return the transferred property. It was undisputed that the transferee in this case, Springfield Associates, LLC, was not alleged to have acted inequitably or to have received any avoidable transfer that would subject its claims to equitable subordination or disallowance.

Enron argued for equitable subordination and disallowance despite Springfield's lack of wrongdoing on the grounds that (1) the Bankruptcy Code fixed the priority and nature of the banks' claims on the bankruptcy petition date, and (2) under principles of assignment law, a transferee can have no greater claim than a transferor would have. Therefore, according to Enron, Springfield's claims were "forever tainted." The district court disagreed.

Equitable subordination and disallowance are not fixed as of petition date. According to the district court, while some priorities become fixed and immutable on the petition date, claims of equitable subordination and disallowance do not. Equitable subordination under section 510(c) is not fixed as of the bankruptcy petition date because the remedy (a) requires court action; (b) is permissive, not mandatory; (c) may be based on post-petition conduct; and (d) is not available to creditors who have suffered no injury, so creditors who acquired their claims post-petition, after the alleged misconduct, may not be entitled to the remedy.

Similarly, according to the district court, claim disallowance under section 502(d) is not fixed as of the petition date because (a) again, court action is required; (b) disallowance is contingent on the refusal or failure to return the recipient's avoidable transfer; and (c) disallowance could be premised upon receipt of an unauthorized postpetition transfer under section 549 of the Bankruptcy Code. These circumstances cannot be determined on the petition date.

Equitable subordination and disallowance are "personal disabilities" of the claimant that travel with the claim only when the claim is assigned, not when it is sold. The court next addressed whether equitable subordination under section 510(c) and disallowance under section 502(d) are attributes of a claim or personal disabilities of a particular claimant. If they are attributes of the claim, the court reasoned, "they will travel with the claim regardless of the method of transfer, whereas if they are personal disabilities, their application to transferees depends on whether the transfer was by way of a sale or an assignment."

After considering the plain language of the statute, the legislative history, and the case law, the district court concluded that equitable subordination under section



510(c) and disallowance under section 502(d) are personal disabilities. Congress intended equitable subordination to be specific to the individual who acted inequitably. "Congress did not intend section 510(c) to be applied to the transferee of the claim—who has not acted inequitably—merely because that claim was transferred, directly or indirectly, by a bad actor." Likewise, the plain language of section 502(d) focuses on the claimant rather than the claim, and the purpose of section 502(d) is to coerce the return of assets obtained by an avoidable transfer. The purpose would not be served where the claimant never received the avoidable transfer. Because subordination and disallowance are both personal disabilities of the seller, the outcome of the case depended on whether Springfield received its claim by way of sale, or instead, by assignment.

According to the district court, "[s]ales and assignments can have very different consequences for the transferee." The assignee stands in the shoes of the assignor and is subject "to all equities against the assignor." The "assignee of a claim takes with it whatever limitations it had in the hands of the assignor" because "an assignor cannot give more than he has." These principles of assignment law do not apply to sales. The purchaser does not stand in the shoes of the seller and may, under certain circumstances (such as when the purchaser is a holder in due course), obtain more than the transferor had.

The court criticized the bankruptcy court for its failure to distinguish between assignments and sales. To Judge Scheindlin, this distinction was especially important in the distressed debt market, where, according to the court, sellers are often anonymous and purchasers have no way of knowing whether that seller has acted inequitably and no amount of due diligence would reveal the information. In contrast, the court stated that parties to "true assignments" can easily contract around the risk of equitable subordination by executing indemnity agreements. The district court therefore remanded the case back to Bankruptcy Judge Gonzalez so that he could determine, among other things, whether Springfield was a purchaser or an assignee.

While the court's analysis would apply to good-faith purchasers without knowledge of the seller's inequitable conduct, other purchasers may not be so fortunate: "Indeed, purchasers of claims with actual notice of the inequitable conduct of the seller may be subject to equitable subordination based on their own misconduct." What must the trader know to commit this misconduct? Knowledge that an original seller is rumored to have participated in a fraud? Knowledge that the debtor or creditors' committee is investigating the original seller's conduct? Knowledge that lawsuit based on allegations of fraud or similar misconduct is imminent or has been filed against the original seller? The district court gives little guidance to Judge Gonzalez (or to the claims-trading market) on this issue. The impact of this lack of direction will be increased litigation, especially since allegations of bad acts by lenders have almost become *de rigueur* in large chapter 11 cases and the factual nature of the inquiry will eliminate the availability of pre-trial summary resolution.

Judge Gonzalez must also grapple with the issue of whether a sale or a "true assignment" was involved in the Springfield acquisition. What is required for a true assignment? What is required for a sale? The district court suggests the following potentially distinguishing factors: (i) whether there is a fully negotiated contract containing representations, warranties and/or indemnities provided by the assignor, or instead whether there is a plain-vanilla agreement without such bells and whistles; (ii) whether there is an anonymous seller and a purchaser who has no opportunity to conduct due diligence, or instead whether there are face-to-face negotiations and lots of due diligence; and (iii) whether there is a potentially insolvent or financially troubled assignor. Are any of these factors controlling? Are there other factors? What if the instrument is a hybrid and is not clearly a "true assignment" or a clear sale agreement? Again, Judge Gonzalez and the claims-trading market have little guidance from the district court. It is hard to come up with examples of something that is an "assignment" but not a sale, other than how such transactions have customarily been designated. While the standard forms used to trade bank debt will surely be modified to attempt to adapt to this decision, the issue of substance over form will continue to be litigated until courts reach a consensus on how exactly claims are transferred.

Finally, even if there is a true assignment, Judge Scheindlin suggests that the assignee still might take the claim free of the seller's personal disabilities under certain circumstances, such as when the assignee is a holder in due course or when controlling state law provides the doctrine of third-party latent equities. Here again, the need for a knowledge based inquiry will increase litigation.

In short, the district court opinion provides protection to good-faith "purchasers" of claims in bankruptcy cases, but is less than clear regarding what constitutes a protected transaction. Stay tuned for further updates on how Judge Gonzalez determines which parties are protected and for how this issue is handled by other courts soon to fact it in other large chapter 11 cases.

Assessing the Dimensions of Business Fraud

Alan D. Lasko & Associates, P.C., Chicago

The problem of business fraud permeates organizations of every size and at every level. Regularly, public and private business officials and managers, labor leaders, politicians, and other high profile individuals are found to have committed fraud, to be participants in a "culture of corruption." Indeed, one of the inarguable truths about fraud is that — much like death and taxes — it will always be with us.

There are, of course, periodic efforts at mitigation. In 2002, President Bush addressed the problem, vowing that his administration would "end the days of cooking the books, shading the truth and breaking our laws." "The business pages of American newspapers," he said, "should not read like a scandal sheet." That was the year the president signed into law the Sarbanes-Oxley Act



mandating stricter rules to reduce the risk of fraud in financial reporting.

Debate continues over whether the law is too strict and stifles business or too lenient and fails to adequately address the fraud problem. Most observers agree it is still too soon to assess the law's impact.

Meanwhile, in 2006, four years after Sarbanes-Oxley was passed, several high profile former corporate leaders were sent to jail for fraud:

- Jeffrey K. Skilling, the former chief executive of Enron, was sentenced to 24 years in prison for his role in the fraud and conspiracy at the company.
- Sanjay Kumar, former chief executive of Computer Associates, received a 12-year prison sentence after pleading guilty to fraud and obstruction of justice for participating in a \$2.2 billion accounting fraud at his company.
- David C. Wittig, former chief executive of Westar Energy, a Kansas utility, got an 18-year sentence for looting millions from the company.
- Stuart Wolff, founder and chief executive of Homestore, an online real estate listings concern, was found guilty of insider trading, lying and conspiring, and received a 15-year sentence.

Such high profile cases receive a great deal of publicity. Are they the "tip of the iceberg," the visible portion of an underlying problem of great magnitude? Or are they "just a few rotten apples" and not indicative of a greater problem? In other words, how common is business fraud? And is it on the increase?

At the outset, it must be admitted that anything like certainty in answering either of these questions is impossible. When fraud is uncovered, businesses often do not reveal it publicly. The reasons include concern about the possible impact on stockholder value, fear of regulatory scrutiny, worry about being sued for improper controls, professional embarrassment, fear of bad publicity, or just unwillingness to confront and deal with the repercussions. There is obviously no way to measure the tremendous amount of fraud that remains unreported.

Comprising an even larger area of the problem, most fraud is never discovered, so, obviously, that cannot be calculated.

Barriers to accuracy notwithstanding, the Association of Certified Fraud Examiners (ACFE), accounting firms, and various other experts have done their best to get a handle on the incidence and extent of fraud. This article looks at some of their findings, as well as at various efforts to determine whether dishonesty is increasing.

Professional Opinion

Each year the ACFE publishes a report on occupational fraud. Concerning the extent of the problem, the mean estimate by the more than 1,000 certified fraud examiners who participated in the 2006 ACFE study is that 5 percent of the annual revenues of a typical U.S. organization are lost to fraud. Based on the 2006 U.S. gross domestic product, that would mean about \$652

billion lost to fraud. Just to put that amount in perspective, through the end of 2006, about \$350 billion had been spent on the Iraq War.

For its 2006 study, ACFE examined more than 1,100 cases of occupational fraud that were investigated over the last two years. The median dollar loss from these schemes was \$159,000. One-quarter of the frauds studied resulted in losses of \$1 million or more and there were nine cases with reported losses of at least \$1 billion.

More than 91 percent of the frauds ACFE studied involved some type of asset misappropriation. This is any scheme that involves the theft or misuse of an organization's assets (for example, fraudulent invoicing or skimming revenues). Those cases had median loss of \$150,000.

In about 32 percent of the cases, corruption was involved, such as accepting or paying a bribe or engaging in a transaction where there is an undisclosed conflict of interest. These cases had a median loss of \$538,000.

About 11 percent of the cases studied involved falsification of financial statements to make the corporation look more or less profitable. Though the least common, these cases were far more costly, with a median loss of \$2 million.

The percentages reported add up to more than 100 percent because many cases involved more than one type of fraud.

Future Indicators

There is little reason to hope that the fraud problem will improve. On the contrary, sadly, there are many indicators it's liable to increase.

One indicator may be the rising number of corporations that have to restate their accounts. Back in the 1980s it was only a dozen or so each year. But in 2002, 330 companies restated their earnings, up from 233 in 2000. In 2004, 414 companies restated their financial statements. There has also been a rising trend in the number of periods contained in each restatement.

For its 2003 *Fraud Survey*, KPMG interviewed more than 450 executives in medium-sized businesses and in state and federal government agencies. Three-quarters of the surveyed companies reported an instance of fraud, an increase of 13 percent over 1998. The rate of fraudulent financial reporting more than doubled since 1998.

The public believes dishonesty is increasing. In a 2006 Zogby Poll three quarters of those surveyed said the state of honesty in America is worse than it was when they were young, and 45 percent expect the state of honesty to decline in the next five years with only 13 percent expecting improvement.

More than three-quarters (77 percent) have less trust than they used to that corporations are doing the right thing by their employees.

Future business leaders are actually more dishonest than average, according to a recent study researchers



call "alarming." A report by three academic researchers published last September in *Academy of Management Learning & Education* found that more than half of the graduate business students surveyed admitted to cheating at least once during the last academic year. The study found that among the 5,331 students at 32 graduate schools in the United States, most of whom were pursuing MBAs, 56 percent admitted they had cheated in the past year, compared with 47 percent of graduate students in nonbusiness programs.

The students said the main reason they cheated was they believed that everyone else was doing it. "Many graduate business students have work experience where they have been exposed to the 'get it done at all costs' culture still found in many corporate workplaces," the report says.

An Era of Rising Temptations

A piece of received wisdom among fraud examiners is that in the typical organization, 10 percent will be rotten apples inclined to criminality, 10 percent will have strong ethics and morals, and the other 80 percent could go either way depending on such factors as the culture and environment and the perceived likelihood of being caught and punished. Many believe that the scale today is tipped toward making that 80 percent more likely to commit fraud.

In *Trust and Honesty: America's Business Culture at a Crossroad* (Oxford University Press, 2006), author Tamar Frankel identifies a number of factors that cause her to conclude that for that 80 percent this is an era of "rising opportunities and temptations" to commit fraud.

There is now a well-publicized runaway competition for compensation at the top of companies and the same is true in sports and entertainment, Frankel notes. America is becoming a "winner-take-all" system, which "amplifies people's tendencies to compare themselves to others and their salaries to the salaries of others. This leads to resentment of inequality."

"The compensation that corporate managers started collecting during the last decade of the twentieth century triggered envy and status building that drove to greed — the hunger without limits," Frankel writes. Desire to be seen as a winner, resentment of inequality, greed, pressure to meet objectives with the implicit threat that the result of failure would be job loss — these pressures with only weak pressures for self-limitation are the conditions that promote increased fraud, Frankel says.

It's true, she continues, that historically there have always been cycles of fraud and abuse and rebuilding of trust. Still, she argues, this era is different: "What is new, however, is the change in the balance between the pressure to gain, which may lead to fraud, and the personal and institutional barriers to dishonesty, which prevent fraud from rising."

Changes in How Fraud is Uncovered

According to the 2006 ACFE Report, most frauds are uncovered as the result of tips (34 percent) or by accident (25 percent). The fact that the discovery of fraud remains so haphazard and unpredictable indicates that

organizations, which care about uncovering fraud, need "to do a better job of designing controls and audits to identify fraud," the ACFE Report states.

An even more recent study, however, indicates change may be occurring in how fraud is uncovered. In a report entitled "Who Blows the Whistle on Corporate Fraud?" the nonprofit National Bureau of Economic Research (NBER) found that since the enactment of Sarbanes-Oxley, employee reports have actually declined as a source for the discovery of fraud. In the same period, the percentage of corporate fraud that was uncovered by audit firms has quadrupled, from 7 percent to 29 percent.

The NBER researchers studied all reported corporate fraud cases from 1996 to 2004 in U.S. companies with more than US \$750 million in assets. Prior to Sarbanes-Oxley, mandated detectors of fraud such as the Securities and Exchange Commission detected about 35 percent of frauds. After the enactment of Sarbanes-Oxley which increased incentives and penalties fraud detection rose to 55 percent.

Prior to Sarbanes-Oxley, the group which led in fraud detection was employees, but their involvement has declined from 20 percent of cases to 15 percent since the law took effect. Employees have too much to lose from blowing the whistle, according to the study's authors. In 82 percent of cases where the whistleblower's identity was known, the person was fired, quit, or saw significant changes in his or her job.

Recently, Treasury Secretary Paulson, corporate officials and others have complained that the onerous requirements of Sarbanes-Oxley make it difficult for US companies and financial markets to compete with foreign markets. Many would like to ease or eliminate the restrictions that were put into place to protect investors after the Enron scandal. Others complain that the restrictions did not go nearly far enough to root out and prevent fraud.

Regardless of what happens with Sarbanes-Oxley, business fraud at all levels — from the lowliest retail clerk taking a pack of cigarettes to a CEO ripping off millions — will almost certainly continue to be a pervasive, extremely costly problem.

Member News

Bankruptcy Law 360
Outstanding Women: Sharon Zemel Weiss
Anne Urda, anne.urda@portfoliomedia.com

For a long time, Sharon Weiss laughed off the idea of becoming a lawyer. But ultimately she could not escape her calling.

As a "clueless" freshman at the University of California at Irvine, she landed in an Introduction to the Study of Law class with some of her upperclassmen friends.



"I said to myself: No, I am not going to be a lawyer. That would require more school," she said.

But what began as one class soon morphed into four classes with a dynamic, visiting professor, who encouraged her to pursue law.

"I was talked into it by a professor from undergrad," she said. "He said 'you know, you really do think like a lawyer.' The next thing I know, I was signing up for LSAT classes."

Weiss graduated from South Western University Law School in Los Angeles in 1993 at a time when law jobs were impossible to get, she remembers.

After attending an informational interview at an area firm, Weiss opted to take a position there helping to do bankruptcy law.

"During law school, I had made fun of people who wanted to do bankruptcy," she said. "I wanted to defend the Constitution, and I was not going to represent deadbeats."

She quickly changed her attitude about the practice, though, once she became involved in the bankruptcy arena. "What I found out really quickly is that you really can help people," said Weiss. "I did consumer work and a lot of these people were coming from tremendously bad situations and the relief that the system was providing was doing some good."

After getting her feet wet in the field, she moved to bankruptcy boutique firm Weinstein, Weiss & Ordubegian LLP, where she has practiced for the past decade and was made partner in January 2001.

Throughout her career, Weiss has benefited from a long line of strong, female mentors, beginning with her immediate family.

"My mom and my grandmother both always worked so they were always very supportive of not being in the traditional work role for women," she said. "I have been really fortunate that I have had lots of role models period and in addition to that some of them were women."

Weiss has come across numerous examples of inspirational females in her work with the American Bar Association, a crucial element of her life in the law.

"I have been immersed in professional organizations," she said. "I have been very active in the business law section of the ABA, serving as the vice-chair of the executory contracts subcommittee, co-chair of membership and vice-chair of the litigation subcommittee."

Beyond the ABA, Weiss has served on the board of directors for the Los Angeles Council of Bankruptcy forum in addition to her work for the International Women's Insolvency and Restructuring Confederation and a slew of other associations.

"My experience in these organizations has been invaluable," she said. "I have been exposed to legal talent that I never would have been exposed to otherwise."

In her work with the various associations, Weiss has also found a tremendous network of supportive females, who struggle with the same questions of juggling career and family.

"It's amazing, the amount of support you get and the network of people out there that you can turn to," she said. "If I have a union question in a bankruptcy case, I know the specialist to call. I have been empowered by that."

Though men may still outnumber the women at ABA meetings, Weiss has never seen her gender as a hindrance and says the women can more than hold their own.

"I don't have issues about being a woman bankruptcy attorney," she said. "If anything, I think it helps. Women are naturally problem-solvers which is what bankruptcy uses."

Weiss points to the diversity that can be found in the Los Angeles bankruptcy bar as a sign that being female is not an obstacle in this area.

"I am really lucky because in the LA bankruptcy bar you don't feel like a minority by being a woman," she said. "We have prominent women attorneys in our group so I don't feel it in my community as others may."

For those young female attorneys who may be considering a career in bankruptcy law, Weiss, though, does have a few pieces of advice.

"Pick one or two professional organizations to become active in- not just involved in and find those mentors; not just women mentors but people who are going to be supportive of you and want to see you succeed," she said.

Weiss also encourages attorneys to give back and become a mentor themselves once they are in a position to do so.

In her own career, she believes that the key to her success has been a wonderful support system both personally and professionally.

"You really need to put yourself in an environment that you are comfortable with both at home and at the office," she said. "My husband and family have been extremely supportive, and I have partners who are amazing."

Though there are challenges, being a woman should never stop anyone from pursuing a career in the law, according to Weiss.

"I think you can use your gender to your advantage," she said. "You still have to do everything- perform the research, write the brief, argue the case- and that has nothing to do with being a female."



Susan M. Smith and Annette W. Jarvis honoured with large company transaction of the year awards from turnaround management association

Kimberly A. Blackburn, Ray Quinney & Nebeker P.C.

Susan M. Smith, a Senior Vice President at Mesirow Financial Consulting, LLC resident in Miami, Florida, and Annette W. Jarvis, a shareholder and member of the Executive Committee of Ray Quinney & Nebeker P.C. in Salt Lake City, Utah, will be honored with the Large Company Transaction of the Year Awards from the Turnaround Management Association at its annual convention in Boston, Massachusetts on October 19, 2007.

Ms. Smith and Ms. Jarvis are receiving these awards in recognition of their work in the Chapter 11 cases of USA Commercial Mortgage Company, USA Capital First Trust Deed Fund, LLC, USA Capital Diversified Trust Deed Fund, LLC, USA Capital Realty Advisors, LLC, and USA Securities, LLC, filed in Las Vegas, Nevada in April of 2006. Ms. Smith served as interim turnaround CFO and Ms. Jarvis was the lead bankruptcy counsel for the USA Capital companies.

When Ms. Jarvis was retained, the USA Capital companies were short on cash, were under investigation by the Securities and Exchange Commission and the Nevada Mortgage Lending Division, and were servicing a loan portfolio of approximately \$1 billion in unpaid loan balances. Ms. Jarvis immediately oversaw the replacement of pre-bankruptcy management with experienced turnaround management, including Mr. Thomas J. Allison of Mesirow Financial as CEO and Ms. Smith as CFO. Mr. Allison, Ms. Smith and Ms. Jarvis assembled and coordinated turnaround specialists from Mesirow Financial as well as Ray Quinney lawyers with expertise in bankruptcy, real estate, banking, securities, tax, corporate, pension plan, and employment law to salvage the business of the USA Capital companies. Within eight months of the filing of the bankruptcy cases, Ms. Smith and Ms. Jarvis were successful in obtaining the confirmation of a consensual plan of reorganization for the resolution of these bankruptcy cases that was negotiated with and supported by four separate creditors' committees and then accepted by all voting classes of creditors. Ms. Smith and Ms. Jarvis and their teams collected approximately one third of the principal amount of a seriously delinquent loan portfolio along with additional interest and fees for the benefit of approximately 7,000 investors, investigated and restated the books and records of the business, identified and collected for the benefit of creditors \$32 million in improper payments made by pre-bankruptcy management, conducted a highly successful auction for the sale of the servicing business and certain portfolio assets for \$67 million (which included a \$21 million overbid at the auction), closed the sale of the auctioned assets, analyzed and commenced litigation against several insiders of the companies to recover alleged diverted and mishandled funds, and negotiated with former insiders of the companies to acknowledge and secure a newly identified \$58 million in previously unacknowledged pre-bankruptcy debts. Since the confirmation of the plan of reorganization, Ms. Jarvis also successfully obtained the dismissal of three appeals of the confirmation order, with only one appeal of the

dismissal still pending, and Ms. Smith oversaw the implementation of the confirmed plan, including the completion of distributions in one of the USA Capital cases, resulting in returns to investors in excess of 75% of their principal investment.

Ms. Smith is a member of the Florida Network. Ms. Jarvis is the chair of the new Mountain/Desert Network



News from Becky Roof, AlixPartners LLP

Becky Roof, Managing Director with AlixPartners LLP recently assisted the Federal Judicial Center, the U.S. federal courts' statutory agency for education and research in Washington D.C., in the development of an education course for incoming federal bankruptcy law clerks. Filmed in the FJC's television studio and developed with the assistance of the American Bankruptcy Institute, the program provides bankruptcy law clerks with a basic understanding of bankruptcy terminology, financial statements, projections, and other financial information that they are likely to encounter during a Chapter 11 reorganization, among other topics. The program will be offered within the court system via the Federal Judicial Television Network. Aleks Bozic, a V.P. and Patrick Murray, an associate, of AlixPartners, assisted in the development of portions of the script and supporting documentation for the program.

Julia W. Brand joined Liner Yankelevitz

Julia W. Brand joined Liner Yankelevitz Sunshine & Regenstreif, LLP as a partner in the corporate group, effective September 4, 2007. Liner, a full service California law firm, has a sophisticated corporate practice with an emphasis on finance transactions in the entertainment industry. Prior to joining Liner, Julie spent 16 years at Katten Muchin Rosenman LLP, focusing on corporate reorganization, lending transactions and bankruptcy. Julie will continue to focus her practice on both corporate and bankruptcy work and is excited about the opportunities provided by Liner in these areas. Julie is a Co-Chair of IWIRC's Southern



California Network. Julie is also a member of IWIRC's Program Committee.

IWIRC Spotlight

IWIRC Hits the International Party Circuit

Judith Elkin, Haynes Boone

In conjunction with the Annual Meeting of the International Bar Association (IBA) in Singapore from October 14 - 19, IWIRC once again sponsored the cocktail reception and dinner for the Section on Insolvency, Restructuring and Creditors' Rights (SIRC). The reception and dinner were held at the historic Raffles Hotel. Nearly 140 people attended and dined on both regional and Western specialties. IWIRC's sponsorship was well received. Judy Elkin, secretary and treasurer of IWIRC international and also an officer of SIRC, attended and gave a short talk about IWIRC and the benefits of membership. Ms Elkin handed out numerous brochures, and was approached by a number of people seeking information on how to get the young women in their offices to join - especially in London.

At a second event cosponsored by CLS Communications and IWIRC's European Network, invited guests partook in cocktails and hors d'oeuvres at the spectacular Mandarin Marina Hotel and were then shuttled to a private viewing of "Iridescence" by Swiss artist Christiane Wylar in MICA (Ministry of Information, Communication & Arts); organised by "ArtManagement Singapore" in conjunction with the Swiss Embassy. Many thanks to European Network members Delphine Becker-Cooke and Rosmarie Muster, both with CLS, for organizing this lovely event.

IWIRC-DFW

Carol Logue, Bridge Associates, LLC

IWIRC-DFW Chapter would like to thank Stephanie Anderson, Holly Meister, Holly O'Neil, Kathleen Wu and Valinda Barrett Wolfert for their participation as panelist in IWRIC-DFW September 27th, "Life-Work Balance" presentation held at SMU Dedman School of Law Karcher Auditorium. As seasoned professionals, the panelists were extremely candid, open and honest. For example, one panelist noted how she worked 2800 hours during the first few years of her career and took only 3 days for maternity leave because she wanted to remain on the "A Team" at the firm. The Director of SMU's Career Services Office stood up at the end of the program and commended the women on their candidness; she said she had never heard so many women at that level be as open, especially with law students in the audience. The overall conclusion was that the women all loved what they do and that is what leads them to make things work. Although there is no one formula that fits all in creating a balance between work and personal life, we are fortunate today to have an association of women mentoring and helping women. To quote Maya Anglou

"Every woman should know what she can accomplish...in a day...a month...a year."

Network Spotlight

News from the Connecticut Network

Melissa Zelen Neier, Esq., Ivey, Barnum & O'Mara, LLC

The Connecticut Network has had a productive Spring and Summer. The Network completed its third annual public service project with The Cove Center for Grieving Children. The Network helped The Cove with its annual fundraising Spring Gala - "A Taste Of The Cove" held in Hartford on May 12, 2007. The event include a wine tasting, silent and live auctions and entertainment. Our Network is proud to have participated in raising over \$30,000 for programs in Connecticut for Children who have lost a sibling or parent.

On September 5th, the Connecticut Network will host a late summer garden cocktail party and IWIRC membership drive at the Butler-McCook House & Garden in Hartford. Wells Fargo Trumbull is our sponsor for this program and Risk Management Association is our partner organization. We are looking forward to an exciting Fall, which will be kicked off with our annual Fall Dinner on October 17th at the Graduate Club in New Haven.

News from the Central Ohio Network (Columbus)

Jill A. Whitworth, Secretary, Ohio BWC

Central Ohio Network has spent the summer months taking a fresh look at our programming and brainstorming several future events. Our co-chair, Kristin Richner (Squire Sanders), attended the Network Chairs Retreat in Chicago, bringing back numerous ideas for discussion.

Susan Rhiel (Rhiel & Associates) hosted a summer picnic at her offices in August. Despite the high temperatures, there was a great turnout - this may be due in part to the delicious food from City Barbecue.

The October 25 lunch meeting involved a personal training session, with attention to stress relief and at-desk exercises.

The November 14 lunch meeting will focus on setting the 2008 event schedule. Planning has also begun for a spa retreat in early 2008. Central Ohio Network continues its holiday tradition of helping the less fortunate by sponsoring two needy families, in conjunction with the Christmas luncheon to be held December 7.

Co-Chair Andria Harraway recently accepted a position with Bricker & Eckler, after serving as Law Clerk to the Hon. Charles Caldwell. We wish Andria well in private practice.

**News from the Florida Network***Allison R. Day, Esq., Genovese Joblove & Battista P. A.*

For those of you who attended the recent IWIRC conference in Orlando - it was great to see you. I hope you enjoyed the conference as much as I did. The Florida Network is having a networking luncheon in conjunction with the Florida Bar's View from the Bench seminar on October 19, 2007 at the Hyatt Regency in Miami, Florida immediately following the seminar. We have lots of new programs planned for the future, so please refer to the website for more information once it has been posted.

News from the Southern California Network*Julia W. Brand, Liner Yankelevitz Sunshine & Regenstreif LLP*

The Southern California Network will be holding a series of informal networking cocktail parties at various locations in Southern California. The first cocktail event will be held on October 30, 2007 at 5:30 p.m. at Harper's Restaurant in Century City. The address is 10250 Santa Monica Boulevard, Los Angeles, CA. Look for upcoming events in downtown Los Angeles and Orange County. The Southern California Network is also hosting a Holiday High Tea on November 27, 2007 at 5:00 p.m. at the Ritz Carlton Marina Del Rey. It will be a fun and festive event. We encourage anyone who is in Los Angeles to join us for our events.

News from the Michigan Network*Susan G. Gordon and Gina M. Capua, Co-Chairs*

The Michigan Network of IWIRC ("MIWIRC") commenced the 2007 fall season in full force. MIWIRC's fall kick-off event, "Private Equity and the Auto Industry: Savages or Salvation?" featured Kathleen Ligocki, former CEO of Tower Automotive ("Tower"). Ms. Ligocki led Tower through a successful chapter 11 restructuring process culminating in the confirmation of an uncontested plan of reorganization and the sale of Tower to a new investor, Cerberus Capital Management. Kathleen was a dynamic speaker and the event was well attended. The event was an evening cocktail reception graciously sponsored by Dykema at its Bloomfield Hills office.

MIWIRC's next event is a Holiday Shopping for Charity event scheduled for November 29, 2008 from 6:00 p.m. to 9:00 p.m. at Leon & Lulu, a family owned store in Clawson, specializing in furniture, gifts and accessories. Other events for the year in the planning stages include a panel discussion on work/life balance issues, a joint event with the local chapter of the Turnaround Management Association, and "Martinis, Manicures and MIWIRC," to be held in the spring. MIWIRC also plans to coordinate with local sister chapters the second annual Central States cocktail reception at the American Bankruptcy Institute Central States conference in Traverse City, MI to be held in June, 2008.

We are happy to report that MIWIRC's revitalization has continued with new members, new sponsors and new

board members. MIWIRC would like to thank its sponsors, AlixPartners, LLP, Grant Thornton, O'Keefe & Associates, Conway Mackenzie & Dunleavy, Jaffe Raitt Heuer & Weiss, P.C., Mackinac Partners LLP, Pepper Hamilton LLP, Wells Fargo Trumbull and Citizens Bank Business Finance, for their support.

MIWIRC would also like to thank Daniella Saltz of Ford Motor Company, Laura Marcero of Grant Thornton, LLP and Kathy Yeater of Wells Fargo Trumbull for joining the existing board members to provide support and new ideas for MIWIRC.

MIWIRC, its board of directors, members and friends, anticipate an exciting year of growth and development.

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Upcoming Events

Save the Date – IWIRC’s Annual Spring Luncheon
Thursday, April 3, 2008 Renaissance Hotel, Washington, D.C.

Save the Date – IWIRC’s 15th Annual Fall Conference
September 23, 24, 26, 2008, Desert Ridge Marriott, Scottsdale, Arizona

Central Ohio Network (Columbus)

- Lunch meeting on November 14
- spa retreat in early 2008

Central Ohio Network continues its holiday tradition of helping the less fortunate by sponsoring two needy families, in conjunction with the Christmas luncheon to be held December 7.

Southern California Network

- The Southern California Network is holding a series of informal networking cocktail parties at various locations in Southern California. The first cocktail event will be held on October 30, 2007 at 5:30 p.m. at Harper’s Restaurant in Century City. The address is 10250 Santa Monica Boulevard, Los Angeles, CA.
- The Southern California Network is also hosting a Holiday High Tea on November 27, 2007 at 5:00 p.m. at the Ritz Carlton Marina Del Rey. We encourage anyone who is in Los Angeles to join us for our events.

Michigan Network

- Holiday Shopping for Charity event scheduled for November 29, 2008 from 6:00 p.m. to 9:00 p.m. at Leon & Lulu, a family owned store in Clawson, specializing in furniture, gifts and accessories. MIWIRC also plans to coordinate with local sister chapters the second annual Central States cocktail reception at the American Bankruptcy Institute Central States conference in Traverse City, MI to be held in June, 2008.

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