



IWIRC Newsletter

Vol. 11, No. 2
Summer 2007

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From the Chair

Leslie A. Berkoff, IWIRC Chair

the fall, just like the weather, activity for IWIRC is heating up. On June 21, 2007, IWIRC held its second annual Woman of the Year in Restructuring Award during the Corporate Reorganization Conference. This year's award was presented to Lisa Donohue of Alix Partners. Lisa co-heads Alix Partners' Turnaround and Restructuring practice specializing in financial and operational reorganizations. Lisa is currently serving as the Executive Vice President and Chief Financial Officer at Calpine Corporation and previously served as Chief Executive Officer at World Pasta and then as Chief Financial Officer and Chief Restructuring Officer of Exide Technologies. We were thrilled to honor her with this year's award.

Just prior to that Conference, I had the pleasure of visiting our New England Network. I was welcomed by almost 35 network members, as well as several non-network members who traveled from neighboring networks to join us. At the dinner, I was afforded the opportunity to speak about the growth of IWIRC over the past ten (10) years as well as my own personal history of involvement in IWIRC and what the organization has meant to me. I want to thank the Chairs of the New England Network, Pamela Harbeson and Carolyn Bankowski, for hosting my visit, as well as Janet Bostwick for facilitating the process. I truly appreciated all of the hard work that went into putting the event together. The attendance by our members was fabulous and the trip resulted in several expressions of interest by members in joining both the Board of the New England Network, but several of our International Committees as well.

By the time you read this letter IWIRC will have hosted its first ever Network Chair retreat in Chicago. I attended this retreat along with several members of our International Board and with few exceptions, almost every network had a representative in attendance. Not only did this retreat give all of us a chance to get to know one another better, but it afforded us ample time to brainstorm on common issues or concerns facing our networks and work as a group to develop proposed strategies for addressing the same. The sub-committee headed by Emily Chou of Warner Stevens put together a fabulous event and I thank them for all of their hard work. We look forward to next year's retreat, the planning for which is already in the works.

Finally, we are thrilled to announce that next year IWIRC will be sponsoring a Saturday spotlight lunch at the ABI Spring Conference; this event will be an addition to our Founders Awards luncheon. The Saturday luncheon affords us an opportunity to draw

attention to IWIRC as an organization, as well as its members, many of whom I hope will attend in support. The program should also enhance and serve to further develop our ever growing relationship with the ABI.. Please keep this additional event in mind when planning to attend next year's Conference in Washington, DC.

Until the next update, I send my best wishes for a wonderful and relaxing Summer, and I look forward to seeing all of you at the Fall Conference, if not before.

Tribute to Honorable Tina Brozman

Leslie A. Berkoff, IWIRC Chair,

It is with great sorrow we that we mourn the passing of a true leader in our field. Tina Brozman, the former Chief Judge of the U.S. Bankruptcy Court in the Southern District of New York and the co-head of Bingham McCutchen's restructuring practice, died recently after a long battle with cancer. In 1985, at the age of 32, Brozman became the youngest bankruptcy lawyer appointed to the Second Circuit. During her time on the bench, she issued more than 150 decisions, many of which had a major impact on bankruptcies involving multinational corporations. Leaving the bench in 2000, she joined the firm of Bingham McCutchen. She recently was named one of the 50 Most Influential Women Lawyers in America by the National Law Journal. In May, the UJA-Federation of New York's bankruptcy and reorganization group unanimously selected Brozman as the 2007 recipient of the Professor Lawrence P. King Award for her contributions to the bankruptcy field.

For many of us Judge Brozman will be remembered as a role model for women in this field, a success story on how to balance work and family. Judge Brozman will also be remembered as a partner, a jurist, a lawyer, a mentor and a friend and she will be missed by all.



**Deepening Insolvency Is Not Recognizable Cause of Action in Delaware**Denise Seastone Kraft, [Edwards Angell Palmer & Dodge LLP](#)**Background**

A much-discussed topic over the past several years is a theory of legal liability that has become known as 'deepening insolvency'. Litigation targets have included directors and officers, lenders, financial advisers, turnaround consultants, accountants and attorneys. Many of the claims have been alleged widely, often against vague factual backdrops, resulting in inconsistent - or at least evolving - judicial determinations and making it difficult to predict with certainty what may constitute actionable deepening insolvency in a particular situation and jurisdiction.

Deepening insolvency claims against directors and officers, lenders and professionals who manage, direct or advise companies typically allege that a company, while actually insolvent or within the 'zone of insolvency', incurred or was caused to incur additional debt, and/or that its corporate life was prolonged by artificially maintaining liquidity and concealing its true financial condition, causing damage to the company, its shareholders and its creditors. Asserted damages might include all unsecured creditor claims and bankruptcy administrative costs, potentially amounting to millions of dollars.

State law determines whether a claim based on deepening insolvency may be brought against likely targets. Until the decision in *Trenwick America Litigation Trust v Ernst & Young, LLP*,⁽¹⁾ it was unclear whether a cause of action based on claims of deepening insolvency would be sustained by a Delaware state court, as the most notable decisions on the topic had been rendered by federal courts stating their view of how a particular state, including Delaware, might rule. Delaware court decisions that involve officers' and directors' fiduciary duties are watched closely because Delaware is the state of incorporation of over 500,000 corporations.

In *Trenwick* the Delaware Court of Chancery definitively weighed in on the deepening insolvency issue when it dismissed a deepening insolvency claim brought by a litigation trust to recover money for the benefit of the creditors of a bankrupt estate. Although the federal courts had touched upon the issue of deepening insolvency previously and predicted that Delaware state courts would recognize the claim, the *Trenwick* decision was the first Delaware state court decision to address and reject the tort claim that has become known as deepening insolvency. The court also took a closer look at whether additional duties are owed by directors to creditors where a company is in the zone of insolvency and determined that the proper exercise of the directors' business judgement is all that is required. As a Delaware Court of Chancery case, *Trenwick* has already spawned several debates and articles in its relatively short life.

Facts

The court was quick to point out that the allegations in the complaint were deficient in numerous respects; however, it attempted to set forth a proper and extensive accounting of the most relevant facts in its 88-page opinion. The alleged facts most pertinent to the court's pronouncements on deepening insolvency and the zone of insolvency involved the director defendants of a public global insurance holding company (Trenwick) executing a business plan in which the company acquired three additional insurance companies in quick succession. After the acquisitions, the businesses reorganized themselves so that one of Trenwick's US subsidiaries (Trenwick America) became the intermediate parent to all the holding companies of the US operations. Trenwick America also became the guarantor of the overall debt of its parent, Trenwick. As guarantor, Trenwick America was the primary guarantor of \$260 million of a \$490 million line of credit for Trenwick and the secondary guarantor of the remaining debt on the line of credit. Trenwick America also became responsible for approximately \$190 million in debt securities of Trenwick. In August 2003 Trenwick and its subsidiary, Trenwick America, filed for bankruptcy.

In the process of reorganizing Trenwick America, a plan of bankruptcy reorganization was agreed upon; a litigation trust was formed and granted the right to prosecute claims belonging to the bankrupt estate of Trenwick America. On September 20 2005 the litigation trust filed a complaint on behalf of the creditors of Trenwick America against the former directors of Trenwick, the former directors of Trenwick America and various former professional advisers of Trenwick. The complaint named the following former professional advisers: Ernst & Young, LLP, PricewaterhouseCoopers, LLC, Baker & McKenzie, LLP and Milliman, LLP. The complaint alleged that: (i) Trenwick employed a bad business strategy when it acquired insurance companies that were in poor financial condition due to underestimation of insurance claims; and (ii) such business strategy caused Trenwick and its US subsidiary, Trenwick America, to become insolvent, resulting in financial harm to Trenwick America's creditors. The litigation trust further alleged that Trenwick America and its creditors were harmed to a greater extent than Trenwick and its creditors due to the debt obligations undertaken by Trenwick America on behalf of its parent. In its most simple form, the complaint alleged that because the chosen business strategy failed and caused the company to file for bankruptcy, the process leading to the adoption and execution of the business strategy must have been flawed.

The court initially pointed out that the complaint was badly drawn and did not state a viable motive for Trenwick to cause itself or Trenwick America to become insolvent or to harm its creditors. The court also found that the complaint did not specifically allege facts indicating a lack of due diligence by the board of directors. As the court stated, "had this claim been brought by a stockholder of the holding company, it would be easily stopped at the gate, because the complaint failed to plead a breach of fiduciary duty".



However, the court was charged with determining whether additional duties - beyond those owed to a stockholder - are owed to creditors of an insolvent company or a company in the zone of insolvency.

'Zone of Insolvency' May Not Be Worth Defining Legally

At the core of deepening insolvency is the issue of insolvency itself. In many states the fiduciary duties of officers and directors have been held to extend solely to the company's shareholders, unless the company is actually insolvent. However, courts in certain states have ruled that fiduciary duties to creditors arise prior to actual insolvency, at the point at which a company moves into the zone of insolvency.

Of particular note and debate in Delaware is the case of *Credit Lyonnais Bank of Netherland, NV v Pathe Communications Corp.*⁽²⁾ That case was interpreted by some as stating that fiduciary duties to creditors arise prior to actual insolvency (ie, in the zone of insolvency). However, in late 2004 the Delaware Court of Chancery revisited the *Credit Lyonnais* decision in the case of *Production Resources, LLC v NCT Group, Inc.*⁽³⁾ In its footnote discussion of *Credit Lyonnais*, the court questioned whether *Credit Lyonnais* had been misunderstood and whether the amorphous concept of 'zone of insolvency' was being used improperly to expand to creditors fiduciary duties ordinarily owed to shareholders only.

The debate was picked up again by the court and fleshed out in *Trenwick*. The court noted that:

"[The use of the word] insolvency, or more amorphously, the words 'zone of insolvency' should not declare open season on corporate fiduciaries. Directors are expected to seek profit for stockholders, even at risk of failure."

As the court further stated:

"The general rule embraced by Delaware is the sound one. So long as directors are respectful of the corporation's obligations to honour the legal rights of its creditors, they should be free to pursue in good faith profit for the corporation's equity holders. Even when the firm is insolvent, directors are free to pursue value maximizing strategies, while recognizing that the firm's creditors have become its residual claimants and the advancement of their best interests have become the firm's principal objective."

Deepening Insolvency Is Not a Cause of Action

With regard to the deepening insolvency claim, *Trenwick* stated in the first instance that the complaint failed to plead insolvency before or after the transactions at issue. However, even if insolvency had been properly pled, the court held unequivocally that "Delaware law does not recognize this catchy term as a cause of action, because catchy though the term may be, it does not express a coherent concept." In making its point, the court further stated:

"Put simply, under Delaware law, deepening insolvency is no more of a cause of action when a firm is insolvent than a cause of action for 'shallowing profitability' would be when a firm is solvent. Existing equitable causes of action for breach of fiduciary duty, and existing legal causes of action for fraud, fraudulent

conveyance and breach of contract are the appropriate means by which to challenge the actions of boards of insolvent corporations."

Moreover, and again assuming that the complaint had properly pled facts of insolvency, a parent causing its subsidiary to accrue additional debt to support the parent's business strategy does not create a claim in and of itself. As the court stated,

"Wholly owned subsidiary corporations are expected to operate for the benefit of their parent corporation; that is why they are created. Parent corporations do not owe such subsidiary's fiduciary duties. That is established Delaware law."

With respect to deepening insolvency, the court held that:

"If the board of an insolvent corporation, acting with due diligence and good faith, pursues a business strategy that it believes will increase the corporation's value, but that also involves the incurrence of additional debt, it does not become a guarantor of that strategy's success. That the strategy results in continued insolvency and an even more insolvent entity does not in itself give rise to a cause of action. Rather, in such a scenario the directors are protected by the business judgement rule. To conclude otherwise would fundamentally transform Delaware law."

Further, creditors of Delaware subsidiaries have significant rights with which to protect themselves. Creditors are actually in a better position than equity holders and other corporate classes (eg, employees) because of their contractual rights. As the court stated:

"Delaware has a potent fraudulent conveyance statute enabling creditors to challenge actions by parent corporations siphoning assets from subsidiaries. Delaware public policy is strongly supportive of freedom of contract, thereby supporting the primary means by which creditors protect themselves - through the negotiation of toothy contractual provisions securing their rights to seize on the assets of the borrowing subsidiary."

Post-Trenwick

On November 17 2006 the Bankruptcy Court of the District of Delaware became the first federal court to recognize and apply *Trenwick* in a decision rendered in *Official Comm of Unsecured Creditors of Radnor Holding Corp v Tennenbaum Capital Partners, LLC (In re Radnor Holdings Corp)*.⁽⁴⁾ The *Radnor Holdings* decision reiterated that deepening insolvency is not a cause of action under Delaware state law.

Trenwick is currently on appeal to the Delaware Supreme Court and *Radnor Holdings* is currently on appeal to the US District Court for the District of Delaware. Both cases will be watched closely by the legal community for further developments.

Endnotes

- (1) 2006 WL 2333201 (Del Ch).
- (2) 1150, 1991 WL 277613, *34 (Del Ch, December 30 1991).
- (3) 863 A2d 772 (Del Ch 2004).
- (4) 2006 WL 3346191 (Bankr D Del, November 17 2006).

**Paris Judicial Summer Camp, July, 2nd – 4th 2007***Louise Roussel**Business Interface Consultant
France / Anglo-Saxon countries*

Above : Judge Gavin LIGHTMAN of the High Court of England and Wales addressing the conference.

The first annual PARIS JUDICIAL SUMMER CAMP took place July 2nd through 4th 2007 organised by the French GRIP 21 organisation, the French think tank on insolvency and its prevention. The event took place under the patronage of the United Nations Commission (UNCITRAL) and the International Insolvency Institute (III).

The purpose of the three-day Paris Summer Camp was to provide a forum for exchange for judges and insolvency practitioners from two major continents on their experience and knowledge gained in the application of the new cross-border legislation.

The event began with the French Judicial Administrator Isabelle DIDIER inviting each participant to provide their own introduction from the floor, which set the tone for the remainder of the conference. Discussions pursued, spontaneous interventions were frequent and interaction continued in a round table format, allowing all present to participate when they felt it pertinent to do so.

As such judges present from Austria, Denmark, France, Germany, Italy, Poland, Romania, Serbia, the U.S.A. and the U.K were able to question their colleagues on the particularities of their domestic systems. They also discussed problems encountered in adopting the UN Model Law (5 countries present had adopted the model law on the management of cross-border insolvencies at June 2007), all exchanges remaining in an informal and private setting. The open floor facilitated the accessing countries' delegates who were present in learning from the more experienced western insolvency judges on procedure and application.

Nevertheless, UNCITRAL's model law of 30 May 1997 and the European Regulation (No. 1346/2000 – 29 May 2000) remained the focus of discussions, more specifically on interpretations given to the legislation by the various jurisdictions. Opposing views emerged and of course lawyers present articulately vocalised the differing arguments. The judges appeared at ease with the many cases brought forward during the conference.

Some of the highlights of the event included a visit to the Nanterre Commercial Court hosted by President Jean-Bertrand DRUMMEN where actual proceedings were observed, as well as a tour of the French Supreme Court by the Appeal Court Judge Chantal LARDENNOIS.

Of course hospitality was at its finest! French cuisine was enjoyed by many at the different buffets, restaurant meals and gala dinners organised by the too numerous to mention international sponsors to the event.

The event was a unanimous success!

All those present voiced their interest in attending next year's Paris Summer Camp for promoting judicial communication and cooperation in insolvency proceedings.

UNCITRAL**Session on Treatment of Corporate Groups***Anna Taruschio, Allen & Overy LLP and
Tinamarie Feil, BMC Group*

We recently attended the United Nations Commission on International Trade Law's (UNCITRAL) working group sessions on the treatment of corporate groups in insolvency. The UNCITRAL working group deliberations are held biannually at the United Nations in New York and at UNCITRAL's headquarters in Vienna.

There were delegates in attendance from 34 different member states, the most vocal being France, Germany, Italy, Mexico, the UK and the US. The 10 observer states were Denmark, Egypt, Ireland, Malaysia, Netherlands, Philippines, Romania, Senegal, Slovenia, and Yemen. In addition to these, there were a number of governmental and non-governmental observer organizations who were invited to send representatives as well. Among these were the International Monetary Fund, the World Bank, the Asian Development Bank, the European Central Bank and European Commission, the American Bar Association, Insol International, the International Bar Association, the International Insolvency Institute, and IWIRC. We were most pleased to see a respectable percentage of women delegates from around the world. It is our personal goal to stay involved with UNCITRAL, facilitate more active participation on IWIRC's part and, of course, recruit some of these women into IWIRC.

As you may know, UNCITRAL and its working groups have previously promulgated the UNCITRAL Model Law on Cross Border Insolvency (1999), the European Council Regulation No. 1349/2000 (2000) on insolvency proceedings, and the UNCITRAL Legislative Guide on Insolvency Law (2005). By way of background, at the close of its session in 2005, UNCITRAL recognized a need for future work in the following areas relating to insolvency: the treatment of corporate groups in insolvency, cross-border insolvency protocols in transnational cases, post-commencement financing in international reorganizations, directors' and officers' responsibilities and liabilities in insolvency and pre-insolvency cases, and commercial fraud and



insolvency. It was thus determined that further working groups should be held on these topics as none of UNCITRAL's previous publications and recommendations had directly addressed these topics.

The main issues which were debated at this session of the working group were: the definition of a "corporate group"; commencement and jurisdictional issues relating to corporate groups where members reside in different jurisdictions; treatment of cases in which a member of the corporate group is solvent at the commencement of the case; the level of notice required to creditors about commencement of the insolvency proceeding; the issue of joint administration with reference to varying levels of integration of proceedings; the appointment of an insolvency representative(s) and coordination among different members of a corporate group; the issue of the differences between joint administration and substantive consolidation (which was discussed at great length); and the allocation and incurrence of post-commencement financing among members of a corporate group.

Most (if not all) documents and reports of the working groups, the Legislative Guide, Model Law, as well as additional information about UNCITRAL can be found on its website at <http://www.uncitral.org/uncitral/en/index.html>.

Bankruptcy Law 360
Outstanding Women: Evelyn Biery
By Anne Urda, anne.urda@portfoliomedia.com

Please note: This article was already published; several typos were corrected.

Monday, April 16, 2007 --- If Evelyn Biery had been just two inches taller, she might never have become the renowned bankruptcy expert she is known as today.

After graduating from college in 1968 with a degree in English, math and Latin, she first tried to get a job as a flight attendant, but the venture proved unsuccessful.

"I was two inches too short and ten pounds too heavy for the rigid requirements of the olden days," she recalled.

Her foray into the world of business also proved short-lived given her lack of typing skills, and she eventually found herself in a classroom teaching.

"I taught school for two years and then decided law school was the way out of lesson plans and classroom drudgery," she said.

Though the road to her current career was a winding one, Biery never looked back after attending law school at Southern Methodist University, where she learned early on that bankruptcy was her calling.

"The women made up less than five percent—actually less than three percent, I think—of the SMU law school class, but two excellent bankruptcy law teachers

helped me realize that bankruptcy law is fun and challenging," she said.

In the beginning, Biery thought that bankruptcy law would enable her to put her math degree to good use, but as her career evolved she found that her English degree proved more vital.

"In later years, I learned that the words are generally more important than the math, and my English major provided the necessary tools for persuading the court to rule in favor of my client," she said. "It has been a great 33 years of practice, and I am delighted I was able to select the right area of law early in my practice."

Since choosing that path, she has achieved a number of important firsts in a legal career that has spanned more than three decades.

Biery was the first female senior partner and the first female department head at Fulbright & Jaworski LLP, where she still practices today, leading the bankruptcy, reorganization and creditors' rights group.

She was also the first female chair of the American College of Bankruptcy as well as the first woman to serve as a director of the International Insolvency Institute.

Biery points to a number of trailblazing females in her own life who helped inspire her to knock down a few doors previously closed to women.

One was Judge Sarah T. Hughes of the U.S. District Court for the Northern District of Texas, whom Biery met while in law school.

"She told me the story of being a young lawyer, fresh out of law school, during the Depression," she said. "When she went around to the Dallas firms asking for a job, she was turned down by many firms and then finally was told that she could practice law at one of the firms if she would serve as the receptionist."

Hughes had then gone on to become one of the first female district judges, swearing in Lyndon Johnson and gaining a reputation for being seldom overturned on appeal, according to Biery.

Later, Biery became acquainted with Judge Carolyn King of the U.S. Court of Appeals for the Fifth Circuit, who served as another role model.

"She, too, had and has a reputation of being absolutely brilliant, dedicated, a no-nonsense person who insists on the ethical and effective practice of law," Biery said.

She praised her older sister as well for providing her with much-needed encouragement at each step of her career.

Biery also cited her involvement in numerous professional associations as fundamental to her own overall career development.

"Professional organizations have not only produced excellent clients but also introduced me to a number of



people who have become good friends throughout the years," she said. "Every organization has provided to me consistently excellent updates on the law and also increased my interest in the practice of law."

Over the past thirty years, Biery has been involved in a dizzying array of organizations both within and outside of Texas.

She is a member of the business bankruptcy committee of the American Bar Association, the Federal Bar Association, the American Bankruptcy Institute, the International Bar Association, and the International Women's Insolvency and Restructuring Confederation to name just a few.

Biery also routinely speaks on bankruptcy-related topics, frequently delivering seminar presentations to a slew of institutions including the University of Texas School of Law, the International Bar Association, and the National Conference of Bankruptcy Judges.

Although she is now a recognized bankruptcy authority, Biery has worked tirelessly throughout her career to overcome the gender stereotypes that she believes haunt both men and women in the field.

Whereas some clients may seek the services of female attorneys for what they consider typically female characteristics like compassion, others may turn to women lawyers in the belief that they are all brutal and no-nonsense and go for the jugular, said Biery.

"We must overcome the predetermined inclinations of both groups to let clients know we are logical, intelligent, businesslike and dedicated to getting the right result for the client while we also communicate well, thereby giving the client the most prized feeling: peace of mind," she said.

In her role as mentor, however, Biery always offers the same advice to those considering careers in the law, regardless of gender.

"I always advise young lawyers to plot a course of client development and stick to it," she said. "All lawyers should set goals for the first one, three, five and ten years of practice and then twenty, thirty and forty."

For Biery, establishing and maintaining relationships with other lawyers and with clients is of critical importance and has proven a formula for success in her own career.

"Good client communications will always be the difference between the lawyer who maintains a good client base and the lawyer who is always looking for new clients to take the place of those who have gone elsewhere."

Look Beneath the Surface for Hidden Assets

By Amy E. Gavartin

More often than not, when a company is going through a bankruptcy or restructuring, the existing corporate owned/Key Executive Life Insurance Policies are overlooked and treated as an expense instead of the valuable and saleable asset that they are. Why is this the case? Up until recently, the only options that were typically considered by the DIP or trustee were: (1) allow the life insurance policy to lapse; (2) continue to pay premiums and keep the policy in place; (3) surrender the policy to the insurance company for the cash surrender value (CSV). None of these options posed considerable value. Now with the rapidly emerging market of Life Settlements, significant additional funds can be realized to help enhance the debtor's bankruptcy estate.

What is a Life Settlement?

A Life Settlement is the sale of a life insurance policy, from the current owner (the company, if it is a Key Man Policy) to an institutional investor who is accumulating a portfolio of policies strictly for investment purposes. Life Settlements are often confused with the old Viatical marketplace. While they are similar in that the insured is selling their policy to an outside 'investor', there are two very substantial differences. Viaticals typically refer to someone who is terminally ill with a maximum life expectancy of 2 years and the policy was almost always sold to an individual or group of individuals. The inherent problem is obvious; the buyer knows who the insured is and has a financial interest in their death. This has some serious potential risks. Life Settlements, however, refer to those with changing needs and greater than 3 years of life expectancy and the policies are almost always packaged in blind trusts and sold as securities to institutional investors such as AIG, Merrill Lynch, Morgan Stanley and Berkshire Hathaway. As a result of the blind trust, the insured's information is never known to the end investor.

How is price determined?

The Life Settlement process is relatively simple; after all medical information is collected, life expectancy reports and in-force illustrations are ordered on the insured, (all processes Melville Capital handles for you, free of charge) and a complete package is sent out to multiple institutional funders (Melville Capital currently works with nearly 50 funders), an auction-like process begins in which all bids are presented back, usually through a broker, for acceptance.

The procedure needed to generate real offers on policies does not work well within the confines of a typical section 363 auction process. For this reason, it is recommended that a motion be obtained to conduct the life settlement separate from the 363 sale. There are many factors that influence the purchase offers; age, gender and health of the insured, type of policy, amount of future premiums needed, etc. To achieve the maximum offer, it is imperative that one uses the expertise of an experienced Life Settlement Broker, a disinterested third-party to such bankruptcy cases, and



whose compensation is tied directly to obtaining the highest and best offer for the policies.

Who is eligible and what kind of policies apply?

General rule of thumb is the insured should be over 65 years old with a minimum of \$250,000 of insurance. All types of policies are eligible for a Life Settlement including Term, Whole Life, Universal Life and Variable Universal Life.

Recent findings in the courts:

Melville Capital is pleased to have been a part of the recent motion that was presented and approved (Case No. 06-12737 (SMB) July 07) by the United States Bankruptcy Court in the Southern District of New York. This motion requested the sale of certain insurance assets free and clear of liens, claims, encumbrances or other interests. The case involved two Key Executive Life Insurance Policies from a company in Chapter 11 bankruptcy. The judge allowed the policies to be excluded from the 363 auction due to Melville Capital proving that there was an 'auction' that already had taken place amongst sophisticated buyers who could more accurately assess the value.

Both of these policies had cash value that accumulated, but because the policies were less than four years old, they had even higher surrender charges, rendering them with net values of zero. After comprehensively marketing the policies to all interested funders, Melville Capital was able to realize net proceeds for the estate of \$1,340,000. Obviously a significant amount of money compared to surrendering these policies for nothing.

What you need to know:

In the Opinion letter from Susan Gummow of Clausen Miller P.C., she writes, "The estate's representative will need to file a motion seeking authorization from the bankruptcy court to sell the policy. If there is a specific bid, the amount of the highest bid as well as the identity of the purchaser can be included in the motion. If the policy has already been in to the marketplace, and there is not yet a specific bid, then a general authorization to sell the policy at the discretion of the representative may be appropriate." She also goes on to state what information the motion should include (she has 6 key points of inclusion). Her conclusion reads, "A bankruptcy trustee and DIP have a duty to maximize recovery for the estate. If a key-man policy exists, it should not be allowed to lapse. Further, the trustee or DIP should determine whether the policy has a great potential value in the life settlement market before he or she simply settles for the cash surrender value...."

Melville Capital is a Full Service Life Insurance Broker and Advisor, specializing in the Secondary Market for Life Settlements. Melville's staff of professionals has worked closely with many bankruptcy Attorney's and is extremely familiar with the issues surrounding insolvency and life insurance. If you would like further information, have cases or scenarios to discuss or would like copies of the above mentioned Motion, Order

of Approval or Opinion Letter, please contact Amy Gavartin, Senior Settlement Advisor at 800-710-7806 X5208 or at agavartin@melvillecapital.com. Amy is also the Co-Vice Chair of the new Desert-Mountain Network of IWIRC.

Member News

American Bankruptcy Institute Names New Vice President of International Affairs

As reported by HispanicBusiness.com, Josefina Fernandez McEvoy has been named the vice president of international affairs for the American Bankruptcy Institute (ABI), the largest multi-disciplinary, non-partisan organization dedicated to research and education on matters related to insolvency.

Ms. Fernandez McEvoy, a partner in the Los Angeles office of Kirkpatrick & Lockhart Preston Gates Ellis LLP, is the first woman to hold the position of vice president. Ms. Fernandez McEvoy has been a member of the institute for more than 10 years, serving on its executive committee and board of directors. "My longtime work with ABI has allowed me to contribute to a number of initiatives that have helped to improve the bankruptcy system in the U.S. and abroad," said Ms. Fernandez McEvoy. "I look forward to serving the institute as its vice president of international affairs as we continue to make positive changes in this important area of law."

In her role as vice president, Ms. Fernandez McEvoy will focus on increasing ABI's foreign membership and enhancing its internal foreign relations.

Jean Robertson Joins Calfee



Jean Robertson of Shaker Heights, Ohio joins Calfee as a partner in the Bankruptcy and Creditors' Rights group. She has extensive experience representing creditors, debtors, creditors' committees and trustees on a wide range of creditors' rights, reorganization and bankruptcy matters, including

Chapter 11. She has represented clients on a wide range of industry and transaction-specific matters, including large and middle-market companies in the steel, automotive, manufacturing, coal and health care industries.

Active in the community, Jean is also a frequent lecturer and author on bankruptcy matters and, since 2001, has been managing editor of a column in the *ABI Journal*. She is co-chair of the ABI's Unsecured Trade Creditors Committee.

Jean has been recognized by *The Best Lawyers in America*, named an Ohio Super Lawyer by *Cincinnati*



Magazine, named a Leading Lawyer in Ohio by *Chambers USA*, listed as a Leading Lawyer in *Inside Business Magazine* and was named one of 11 Outstanding Young Bankruptcy Attorneys by *Turnarounds and Workouts*.

She received her J.D. from The Ohio State University College of Law in 1990.

Sheryll Sternheimer Tahiri joins Cole, Schotz, Meisel, Forman & Leonard

Sheryll Sternheimer Tahiri has joined Cole, Schotz, Meisel, Forman & Leonard as an associate in the Bankruptcy & Corporate Restructuring Department.

Ms. Tahiri received her J.D. from New England School of Law, and her B.A. from the State University of New York at Albany. Ms. Tahiri is admitted to the bars of the States of New Jersey, New York and Massachusetts, as well as the U.S. District Court for the District of New Jersey and the District of Massachusetts. She is secretary of the New Jersey Network of the International Women's Insolvency and Restructuring Confederation (IWIRC). In addition, she is a barrister in the New Jersey Bankruptcy Inn of Court and a member of the Debtor-Creditor Section of the New Jersey State Bar Association.

Cole, Schotz, Meisel, Forman & Leonard, P.A., with 110 attorneys, is based in Hackensack, New Jersey and New York City. The firm has eight primary practices: Bankruptcy & Corporate Reorganization; Corporate, Finance & Business Transactions; Litigation; Real Estate; Tax, Trusts & Estates; Employment; Environmental Law; and Construction Services.

Tracy Gopal Joins GCA America

Tracy Gopal has joined GCA America, a subsidiary of publicly held GCA Co. Ltd., the only listed independent M&A advisory firm in Japan. GCA America, a wholly owned subsidiary of GCA, was established in 2007 in response to the demand for cross-border M&A services by GCA clients. GCA America has established offices in both New York and San Francisco.

Tracy will be leading the West coast operations. While her main focus will be cross-border transactions for non-distressed companies, Tracy is hoping to keep one foot in the restructuring world through bringing her Japanese clients to the table in distressed sale situations.

If you or your clients have any needs related to Japan (information/research, client introductions, understanding of new triangular merger law), please feel free to contact Tracy at tgopal@gcaamerica.com or 415-205-0721. In addition, in the spirit of networking, if you have counterparts that deal with Japan cross-border transactions, please pass along her contact details.

Trish D. Lazich promoted...

Trish D. Lazich, former NEON chair and IWIRC member was named Assistant Chief of the Collections Enforcement Section of Ohio Attorney General Marc Dann's Office. She will be working out of the Cleveland Office and handling bankruptcy issues arising from Courts in the Northern District of Ohio, complex collections issues and supervising the regional offices bankruptcy and collection personnel. Trish's new contact information is as follows:

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tlazich@ag.state.oh.us

Sarah Frankel of KCC Relocates to New York

Sarah Frankel recently moved to KCC's New York office as Business Development Manager for Kurtzman Carson Consultants (KCC). Sarah manages the activities of the firm's business development team and actively supports the firm's business development efforts. Prior to joining the New York team, Sarah developed in-depth knowledge of the company and the claims and noticing industry working in the marketing and business development departments in the firm's Los Angeles headquarters.

Kurtzman Carson Consultants LLC (KCC) is a premier provider of administrative-support services and technology solutions that help legal and financial professionals expedite decision-making and maximize efficiencies. Based upon its industry expertise, highly responsive client service and industry-leading technologies, KCC offers a comprehensive suite of corporate restructuring, transaction-support, class-action and litigation-support solutions. Corporate America's industry leaders have relied on KCC for their business-critical data management needs. A pioneer of web-based technology for the legal and financial markets, KCC has been recognized as one of the fastest growing companies in the United States.

Victoria Pavlick joins Administar as executive Vice President

Victoria Pavlick has joined Administar Services Group LLC as Executive Vice President. Pavlick leads Administar's business development efforts and has direct responsibility for the development of the company's bankruptcy and class action administrative services.

Administar is a leading provider of bankruptcy administration and class action litigation consulting services. In Chapter 11 bankruptcy proceedings, Administar serves as claims, noticing, balloting and



disbursing agent, handling all administrative tasks in a bankruptcy so that companies and their advisors can focus on the core legal, business and financial issues of a case. In addition, the company helps creditors' committees fulfill their administrative and information sharing duties in bankruptcy proceedings. Administar also helps corporations, attorneys, law firms and their clients navigate the complexities of the class action process.

Pavlick has over 19 years of bankruptcy and class action experience. Prior to joining Administar, Pavlick led a similar business development effort for JPMorgan Chase Bank, and worked in management roles at Bank One Corporation and Bank of Boston.

Since joining Administar, Pavlick has overseen Administar's aggressive nationwide sales efforts, which have included office openings in New York City and Columbus, Ohio, and the hiring of two vice presidents in the company's New York office. Pavlick also led the development of Administar's new corporate brand identity, including a new logo, brochures and website. She is currently involved in the company's sales efforts related to its newly developed customized database solutions for both corporate and government clients that require highly specialized and/or highly intensive database support.

Additional information regarding Administar and its services can be found at www.administarllc.com.

Patricia Missal has joined Bridge Associates, LLC...

Nancy A. Valentine, Esq., Hahn Loeser & Parks LLP

Patricia Missal has joined Bridge Associates, LLC a leading turnaround, crisis and interim management firm headquartered in New York, with offices in six cities, including Cleveland, Ohio. NEON is thrilled that Ms. Missal will continue her career in turnaround and crisis management with Bridge, a Platinum sponsor of NEON.

Carmen H. Lonstein joins Baker & McKenzie LLP

Carmen H. Lonstein, July the 13th, 2007

As you may know, my last day at Bell Boyd and Lloyd LLP is today, July 13th. I will be joining Baker & McKenzie LLP's North American Financial Restructuring, Creditors Rights & Bankruptcy practice as co-head of the Chicago office starting August 1, 2007.

Robin Mayer promoted....

Robin L. Mayer, CPA, CFE was recently promoted to Principal of Forensic Accounting Services at Friedman LLP. Robin specializes in workout and insolvency accounting and consulting services to financially troubled companies, secured and unsecured creditors and court appointed trustees. Her experience also

includes performing financial and operational internal controls analyses for privately-held companies, fraud investigations, litigation support services, damage claim analyses, due diligence services, and royalty and collateral examinations. For further information, please feel free to contact her at rmayer@friedmanllp.com or visit the firm's website at www.friedmanllp.com.

Network Spotlight

The Virginia Network has been busy!

Sarah Beckett Boehm, McGuireWoods LLP

The Virginia Network has partnered with Hilliard House, a program based in Richmond that assists homeless women and their children to build their capacity to live productively within the community. To kick off our partnership, we sponsored a happy hour and received donations to benefit Hilliard House.

Before the weather got too hot, we sponsored a golf clinic and then put our new skills to the test on a Par 3 course. We had a great turnout and everyone enjoyed the clinic and the reception at the clubhouse that followed. We also recently co-sponsored a happy hour with the Richmond Bankruptcy Bar and the Business Finance & Turnaround Association.

For those of you attending the ABI Southeast Bankruptcy Workshop on Kiawah Island, please join us for the dessert reception on opening night, which we are co-hosting with the Georgia, Florida and Carolinas Networks.

We managed to pull all of this off even with three of our board members out on maternity leave. Congratulations to Jennifer West, Heather Williams and Jennifer McLemore!

Northeast Ohio Network ("NEON")

Nancy Valentine, Co-Chair of NEON

NEON had an exciting second quarter of 2007. It started with NEON's kickoff event, a cocktail party at the William J. O'Neill Great Lakes Bankruptcy Institute. NEON hosted approximately 65 people after the first day of the Institute with new and old faces. In June, NEON hosted its annual membership event at the rooftop at the Velvet Dog. The event generated almost 100 people over the two and half hour cocktail swelling NEON's ranks with new members. NEON particularly has its committee for the membership event, Tina Lucas of Lucas Consulting, Chris Kuwamoto of DecisionPoint and Nancy Jazwa of MP Star Financial to thank for the successful event. NEON's next event will be in the fall with the local TMA Chapter with an educational and networking focus. In the meantime, NEON continues to have its quarterly meetings with a member spotlight and dinner following the meeting. We are looking forward to a great second half.



Jean R. Robertson joined Calfee, Halter & Griswold LLC on May 1, 2007 to lead its bankruptcy practice. NEON is thrilled with the continued success of one of our founding members.

News from the Georgia Network

Wendy Reingold Reiss, Alston & Bird LLP

The Georgia Network co-hosted the Welcome Cocktail Reception at this year's Southeastern Bankruptcy Law Institute which was held in Atlanta Georgia. Along with the Florida Network, the Georgia Network welcomed registrants and their spouses to this exceptional three day institute. The institute brought together the most respected judges, practitioners and insolvency and restructuring professionals for three days of intensive lectures and informative panel and group discussions on the hottest topics facing our industry. It was an excellent seminar and a wonderful opportunity to learn, mix and mingle with insolvency and restructuring professionals from across the nation. The Georgia Network looks forward to being apart of this fantastic event again next year.

Recently, the Georgia Network held its summer program that included a cooking class and opportunity to network with old and new members. The event was a huge success and all attendees were impressed with the wonderful turnout and the fabulous food and conversation had by all.

Finally, the Georgia Network would like to thank its sponsors Alston & Bird LLP, Kurtzman Carson Consultants, The Trumbull Group and Trial Graphix for their continued support and generosity. It is clear that the Georgia Network is continuing to grow and succeed on so many levels and we are thankful to our sponsors for helping us realize all of our accomplishments.

News from the Michigan Network of IWIRC ("MIWIRC")

On May 16, 2007, the Michigan Network of IWIRC ("MIWIRC") was pleased to host a presentation by Lynn Tilton, founder and CEO of Patriarch Partners, a \$6 billion dollar private equity fund based in New York and North Carolina. You could have heard a pin drop as Lynn spoke about her personal and professional journey, which started at Goldman Sachs, and how she came to believe that her path was destined to be different. After the presentation, Lynn answered questions from the audience, which focused mainly on the stresses and challenges faced by automotive suppliers -- the recently announced potential purchase of Chrysler Corporation by Cerberus Capital was of particular interest and the subject of lively discussion. The presentation and reception that followed were graciously hosted by Bodman, LLP, whose offices, located at Ford Field (home of the Detroit Lions), proved to be an excellent

venue. The event was well attended and well received by men and women alike.

Additionally, on June 15, 2007, members of MIWIRC were delighted to join other Midwestern networks in hosting a cocktail reception at the annual ABI Central States Workshop. MIWIRC looks forward to other exciting programs this summer, including a July luncheon and demonstration for MIWIRC members given by Wells Fargo Trumbull.

News from the Central Ohio Network of IWIRC (Columbus)

Sally E. Edison, McGuire Woods LLP

The Central Ohio Network of IWIRC is excited to report that it successfully sponsored its annual Law Student Reception, which will be held in March at the law firm of Bricker & Eckler. The Law Student Reception is designed to explore and explain the many different job opportunities that involve restructuring and bankruptcy. All law students who attend the two local law schools, The Ohio State University and Capital University, are invited each year.

In May, the Columbus Network sponsored a luncheon during the Bankruptcy Law Institute and had as its guest speaker, the Honorable Steven W. Rhodes from the U.S. Bankruptcy Court in the Eastern District of Michigan, who discussed the difficulties in balancing a career with family and other work-life balance issues. And in June, the Network co-sponsored a Cocktail Reception at the ABI Central States Workshop in Traverse City Michigan on June 15, 2007.

As far as upcoming programming is concerned, the Network is planning for the Fall, a few health and wellness activities, such as what are the best exercises to do at our desks, and a special spa day escape!

The Central Ohio Network would also like to report that it holds monthly meetings at a different members' office each month, which member graciously furnishes drinks and dessert. At the monthly meetings, the members get together to talk about work, family, and frustrations in general, if only for an hour. We believe that monthly meetings are a highlight of the Network and an integral part of its success.

Western Pennsylvania Network

Sally E. Edison, McGuire Woods LLP

On June 26, 2007, the Western Pennsylvania Network hosted the Fourth Annual Not-Ready-for-Prime-Time-Players Ladies Golf Invitational at Grandview Golf Club. The event was well attended by over 30 accounting and legal practitioners. We enjoyed a great day and great company at a picturesque course just outside Pittsburgh, Pennsylvania. "Skill" prizes included: Shortest drive, highest score, most missed, closest to the pin and fewest putts. Many thanks to all who attended and to our corporate sponsors for making the event another great success for the Western



Pennsylvania Network. Stay tuned for updates on our next event.

IWIRC Membership Contest

Nancy Valentine, Vice-Director of Recruitment

The 2007 IWIRC membership contest is in full swing with fabulous prizes including a free trip to the 2008 IWIRC conference. We hope all of IWIRC's members continue to help us grow the network. With that in mind, please remember to renew your membership and reach out to those that might be interested in membership or whose membership has lapsed. If you have any questions regarding the contest or approaches to and assistance in growing your membership, please contact Director of Recruitment, Francine Gordon (fgordon@kccllc.com), or Vice-Director, Nancy Valentine (navalentine@hahnlaw.com).

Good Luck!

IWIRC New Members between April 1 and June 30, 2007

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Jacksonville, FL USA

Paula Galbraith
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Jennifer L. Haluptzok
Nathan Sommers Jacobs, P.C.
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Amy Gavartin
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Susan Johnston
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Sarah Foster
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Lisa Lambert
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Kristin Going
Drinker Biddle & Reath LLP
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Jessica Keating
Bernstein Shur
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Mary Johnson
Sheppard, Mullin, Richter & Hampton LLP
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Joanne Lee
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Upcoming Events

National Association of Bankruptcy Trustee's Conference

Join IWIRC at the National Association of Bankruptcy Trustee's Conference at the Drake Hotel, Chicago, Illinois, August 22 -25, 2007.

IWIRC is proud to sponsor the President's Reception at the NABT Conference from 7:00 pm to 8:00 pm on August 25, 2007. We hope members attending the Conference will be sure to join us. (No separate registration is required, as the reception is included in the conference registration.) For those interested in attending the conference, please check www.nabt.com for more information on NABT and registration for the conference

For IWIRC members who are interested in attending the reception only, please contact Shari Bedker at IWIRC, sbedker@iwirc.com, 703-449-1316, for information.

IWIRC Fall Conference October 9-10, 2007 Orlando, Florida And October 12, 2007, George F. Will, Headline Speaker!

IWIRC's 14th Annual Fall Conference will be held in conjunction with NCBJ's Annual Conference in Orlando, Florida at the Orlando World Center Marriott. Our opening reception will be held on Tuesday, October 9 from 5:30-7:30 p.m. On Wednesday, October 10th, the program committee has scheduled an informative panel on International Bankruptcy Topics followed by a presentation on "International Etiquette" by Terri Morrison, author of "Kiss, Bow or Shake Hands." Following the panel sessions, there will be smaller networking breakout discussions to discuss topics of interest. The October 10th event then concludes with a luncheon.

On Friday, October 12th from 2:30-4:30, IWIRC is sponsoring for NCBJ attendees and their guests, a presentation by George Will: The Political Argument Today - America's foremost political commentator and columnist, George F. Will, presents a penetrating and incisive commentary on the Washington political scene, offering a glimpse into what the future holds for public affairs, public policy and American society.

Connecticut Network Meetings and Social Events

Brown Bag Lunch at the Bridgeport office of Pullman & Comley, June 12, 2007



Brown Bag Lunch at the New Haven office of Reid & Riege, July 25, 2007
Brown Bag Lunch at the West Hartford office of Blum Shapiro & Company, August 9, 2007

The Georgia Network, along with the Virginia, Florida and Carolinas Networks, is also co-sponsoring a Dessert Reception at the upcoming American Bankruptcy Institute's Southeast Regional Bankruptcy Workshop at Kiawah Island, South Carolina. The Dessert Reception will be held after the opening reception on Wednesday, July 25 from 9:00 pm to 11:00 pm. In addition to a variety of mini-dessert selections, we will be serving specialty coffees. This will be the fourth year these Networks have co-sponsored an event at the ABI SE and we are looking forward to seeing old friends and making many new ones. If you will be attending the ABI SE and want to be on the invite list for the dessert reception, please contact Leanne Gould at (678) 904-1990 ext. 13 or by email at lgould@glassratner.com. Hope you can join us!

The Georgia Network has many upcoming exciting events. On July 20, 2007, the Georgia Network Chairs and Alston & Bird LLP, one of our sponsors, will host a lunch at Lloyd's Chicago for the attendees of the IWIRC Board and Network Chairs Retreat. On August 1, 2007, the Georgia Network will join the Women's Finance Exchange of Georgia for their annual Summer Cocktail Party at Ali Oli in Atlanta from 6:30 pm to 8:30 pm. The Georgia Network is thrilled to be teaming up with the Women's Finance Exchange to celebrate summer. In September, the Georgia Network will hold its Annual Meeting and elect its new Board for 2007-2008. As we enjoy our summer and look ahead to the next chapter for the Georgia Network, we are truly excited about the opportunities and programs that are to come. We hope to catch up with you all in the coming months.

European Network
Joint Reception with TMA during the Begbies Conference in Riga / Latvia, September 21, 2007.



The Newsletter
Editors wish you
a lovely and
relaxing summer
break !

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