



COLLEGE COLUMNS

A MAGAZINE FOR AMERICAN COLLEGE OF BANKRUPTCY FELLOWS | MAY 2023

Officers

Melissa S. Kibler

Chair

Charles A. Beckham, Jr.

President

Karen A. Giannelli

Vice-President

Hon. Craig Goldblatt

Vice-President

Hon. Laurel M. Isicoff

Vice-President

Prof. Elizabeth Tashjian

Treasurer

Annette W. Jarvis

Secretary

Paul E. Harner

DEI Committee Liaison

Board of Directors

Patrick Ang

Hon. Lisa G. Beckerman

Hon. Janet E. Bostwick

Robert M. Charles, Jr.

Hon. Roberta A. Colton

Charles T. Coleman

Douglas M. Foley

Laura Davis Jones

Robert J. Keach

Demetra Liggins

Taft A. McKinstry

Cynthia Nelson

Timothy F. Nixon

Sandeep Qusba

Alexandra CC Schnapp

George T. Snyder

Berry D. Spears

Ex Officio Directors

Mark D. Bloom

Jan M. Hayden

Board of Regents

Patricia A. Redmond

Chair, Board of Regents

John J. Monaghan (1st Cir.)

Kelley A. Cornish (2nd Cir.)

Derek C. Abbott (3rd Cir.)

Michael St. Patrick Baxter (4th Cir.)

Deborah D. Williamson (5th Cir.)

Rozanne M. Giunta (6th Cir.)

Brian L. Shaw (7th Cir.)

Eric W. Lam (8th Cir.)

Debra Grassgreen (9th Cir.)

Mark A. Craige (10th Cir.)

Elizabeth A. Green (11th Cir.)

Randall S. Eisenberg

At Large

Hon. Clifton R. Jessup, Jr.

At Large

Prof. Robert M. Lawless

At Large

Hon. Erithe A. Smith

At Large

Scholar-in-Residence

Richard B. Levin

Of Counsel

R. Patrick Vance

Executive Director

Shari A. Bedker

College Columns May 2023 Editors

Melanie L. Cyganowski

Dion W. Hayes

From the Chair

Recap: 2023 Annual Meeting

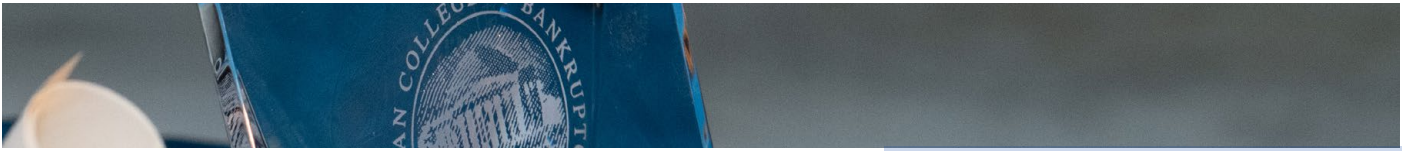
*Melissa S. Kibler, Accordion
Chair, American College of Bankruptcy*



The first thing that I saw on my ride into Washington, DC was the cherry blossoms. They had arrived early, imbuing a sense of welcome and promise. It was a fitting sign of what was to come during our Annual Meeting held March 23-25. For so long, this was the only place we gathered and, indeed, the College's last meeting in Washington, DC was five years ago. This year, our numbers not only exceeded those from 2018 but were a record for the College, with over 460 people attending the Induction Ceremony and over 300 Fellows attending education sessions and other events. For those who were not able to attend, I will provide a brief recap of the weekend's activities:

Honoring: On Thursday, we celebrated new Fellows, Distinguished Students, our Distinguished Service Award Winner, and International Fellows at the President's Reception hosted by Charlie Beckham. On Friday, we honored Professor Douglas Baird with our Distinguished Service Award and inducted 37 new Fellows from Class 34 and 11 from prior classes. It was truly thrilling to look out from the stage on the group assembled at the National Historic Landmark building that houses the Center for American Art and Portraiture; the grandeur of its atrium provided a setting worthy of this momentous occasion. On Saturday morning, we recognized our Distinguished Students. We had much to celebrate as individuals, as Fellows and as the College.

Learning: Rich Levin, our Scholar in Residence, put together a fabulous education program that included a wide variety of formats and topics. Friday started with an interactive presentation on the bankruptcy jurisprudence of the Roberts Court, followed by a practical discussion of best practices in mentoring hosted by our Senior Fellows and Diversity, Equity and Inclusion ("DEI") Committees. On Saturday, Professor Douglas Baird again took the podium for an academic presentation on his recent book, *The Unwritten Law of Corporate Reorganization*, followed by judicial commentary. Next, we had a lively policy discussion on attorneys'



fees in consumer cases that raised issues of importance to all of us as practitioners in this field. Finally, we moved on to concurrent sessions – a new option that enabled us to present more programs appealing to a broader range of Fellows – with one panel addressing liability management and “creditor on creditor violence” and another reflecting on Subchapter 5’s history, current state and potential future evolution. These programs collectively showcased the important roles that our Fellows and the College play as thought leaders in the industry.

Inspiring: The Foundation announced giving away almost \$500,000 – half a million dollars – in 2022 alone to support pro bono and other programs, an outstanding result by any measure. And throughout the weekend, the DEI Committee built anticipation for the big reveal of an exciting new program – DRIVE – that we hope you all will support. The “sizzle” video starring several notable College Fellows was truly inspirational, and perhaps even showcased some hidden talents. Importantly, this program offers a tangible way our Fellows can contribute to enhancing diversity in our profession. Read more about it in the DEI Committee column.

Working: In addition to our College and Foundation Board meetings, many committees met during our time in Washington. At our luncheon on Saturday, we recognized both those leaders who have concluded their service and those who are taking on new roles, including the election of new board members. ([The full announcement can be found here.](#)) Our leaders dedicate a tremendous amount of time and effort to ensuring that our Fellows have opportunities to contribute to fulfilling the missions of the College and Foundation.

Socializing: Our International Committee, in conjunction with III, hosted a well-attended welcome dinner on Thursday that was open to all Fellows. Circuit lunches on Friday offered an opportunity for Fellows to reconnect, introduce new Fellows, and discuss topical issues. As part of our Freshman Fellows Committee’s programs, we redesigned the Saturday inductee breakfast to be less about teaching our new Fellows

[continued on page 21](#)

In This Issue

- President’s Message.....4
- From the Foundation.....6
- From the Pro Bono Committee.....7
- The College and DEI: Whither from Here?.....8
- Welcome to Class 34.....10
- Doing the Splits.....11
- The Anatomy of a Chapter 13 Case.....12
- A Higher Purpose: Service.....14
- Harvey Miller.....16
- Fourth Circuit Moot Court.....17
- Photos and Speeches from Class 34 Induction & Events.....18
- How I Got Started: Bob Gerber...20
- ACBF Grantees.....32
- 2023 Patrons & Sponsors.....34
- ACBF 2023 Donations.....40
- Upcoming Events.....42
- Focus on Fellows.....44

President's Message: Keep Austin Weird

*Charles A. Beckham, Jr., Haynes and Boone, LLP
President, American College of Bankruptcy*



On October 11, Austin, Texas, the city of my youth (I went to first grade in Austin), the city of my enlightenment (I went to college at Texas) and the city that I love, will welcome the College

for its Fall meeting in conjunction with NCBJ. One of our Fellows, Judge Dan Collins (Class XXXII) of Arizona is the President of NCBJ. Dan and his Team are busily preparing for NCBJ's first visit to Austin. Melissa Kibler, Rich Levin, Shari Bedker, Trish Redmond and I are actively planning the College's Fall meetings and Luncheon. There will be a lot to see and do in Austin. And, the NCBJ headquarters Hotel, the JW Marriott (the "Hotel") is at the corner of 2nd and Congress -- a great location for exploring Austin. To help you prepare for your visit to Austin I wanted to provide you with a list of Austin superlatives and a few suggestions on what to do in Austin.

First, you need to know that Austin ain't like the rest of Texas. It is where Cowboys and Hippies came together in the 70's and now are joined by Techies in the 20's. It is not a city where divergent groups merely tolerate each other, it is a town where diverse groups hug each other. So be prepared to abide by Austin's motto: "Keep Austin Weird."

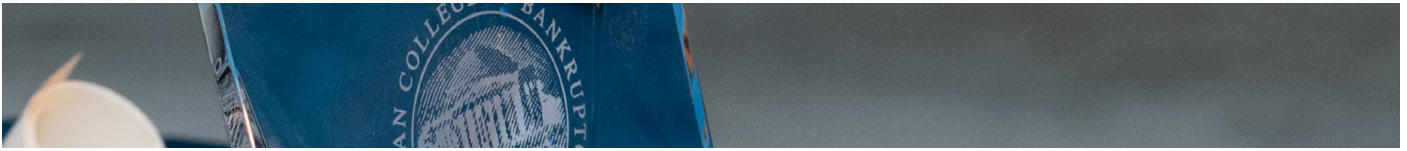
Best Bankruptcy Law Professor in Austin: Long time University of Texas Bankruptcy Law Professor, Jay Westbrook. Jay received

the College's Distinguished Service Award in 2016 and was a member of Class IV of the College. Two other College Fellows are also UT Law School professors, Mechele Dickerson (Class XXII) and Angela Littwin (Class XXX), but I suspect they would point to their mentor, Jay, as the best bankruptcy law professor in Austin.

Best Bankruptcy Judge in Austin: H. Christopher Mott. Chris is a member of Class XXI of the College and has served on the bench in Austin since 2010. Chris started his bankruptcy career in El Paso and knows the story of These Old Boots. Chris will be retiring from the bench before the Fall meeting but as of this writing, he is the only Fellow who is a sitting bankruptcy judge in the Western District of Texas. Retired Bankruptcy Judge Leif Clark (Class V) and deceased Bankruptcy Judge Glen Ayers (Class V) are also Fellows who served on the bankruptcy bench in Austin.

Best Former Chair and President of the College Living in Austin: Evelyn Biery. Evelyn, a member of Class II of the College, the first woman to serve as Chair and President of the College, and retired head of the Bankruptcy Section at Norton Rose Fulbright, resides in Austin. Hopefully we can lure Evelyn out of retirement to join us at our Fall meeting.

Best Chapter 13 Trustee in Texas. Debbie Langehennig (Class XX) has served as the Chapter 13 Trustee in Austin since 2002. Debbie has also served as the Co-Chair of the College Columns Committee for the last 2 years along with Retired Bankruptcy



Judge (EDNY) Melanie Cyganowski (Class XXV). Debbie and Melanie, now joined by Dion Hayes (Class XXVI) deserve our thanks for making sure we go to press.

To plan your busy day in Austin, here are a few must do's.

Best Thing to do First Thing in the Morning: Stroll over to the walking/running path surrounding Lady Bird Lake. It is literally one block from the Hotel. The path goes on forever and a handful of bridges span Lady Bird Lake so you can extend your walk or run from short to long and enjoy the scenery along the way.

Best Breakfast Taco Close to the Hotel: After your walk or run, amble up Congress to Tacodeli. Tacodeli is two short blocks from the Hotel. Grab one or two tacos and you will be well prepared for your day. I recommend the Barbacoa Madruguera Taco.

After your morning meetings, you are going to need lunch. The two primary food groups in Austin for lunch are Tex-Mex or BBQ. Fortunately, there are an abundance of choices. Two of my favorites are:

Best Tex-Mex Food: Matt's El Rancho. You can't come to Austin without enjoying Tex-Mex. Matt's El Rancho on South Lamar, a ten-minute car ride from the Hotel will reward you with Authentic Classic Austin Tex-Mex. Any Texan will tell you that Tex-Mex has numerous genres but Matt's is the classic Austin variety. Matt's El Rancho has been around since 1952. Try the Chile Rellenos with Texas Pecans and raisins.

Best BBQ: The problem in Austin is not being able to find great BBQ, the problem is can you get into the restaurant to eat great BBQ. Franklin's BBQ is legendary but the three-hour line to get in is daunting. Your solution is to walk two blocks from the Hotel to Iron Works. Great BBQ but seldom a wait. Try the mixed plate with brisket, sausage and ribs. Add a slice of pecan pie to reward

yourself for all of your hard work.

After lunch it is time to see the best of Austin. Some of my favorites include a visit to:

Best State Capitol: The Texas State Capitol and Surrounding Grounds. The Capitol is a mere ten blocks from the Hotel and is well worth a visit. The Capitol opened in 1888 and you guessed it, it is the largest state capitol building in the United States and the Texas Capitol is taller than the United States Capitol.

I worked at the Capitol four years during college as an Assistant Sergeant at Arms in the Texas Senate. (Don't be impressed, it was the title given to a bunch of college students whose daddy, or in my case my sister, got us a job at the Capitol running errands.) Last year when the Governor demanded that Senate Sergeants at Arms go arrest Democrat members of the Texas Legislature on their sojourn to Washington, D.C. to deny the Legislature a quorum, I smiled. The closest that I and our group of Sergeants ever came to arresting a State Senator was rousting them back in the Capitol from nearby bars to vote on pending legislation. I was successful in retrieving Senators back to the Capitol on several occasions but only after enjoying a courtesy cocktail.

Best University of Texas: At the risk of angering Melissa, our Chair and a fighting Texas A&M Aggie, I'll point you a few blocks north of the Hotel to the campus of The University of Texas at Austin. If you visit, don't miss the LBJ Presidential Library;



[continued on page 22](#)

Foundation Officers

Jan M. Hayden
Chair
Vincent E. Lazar
Vice Chair
Lisa M. Schweitzer
Secretary
Rebecca A. Roof
Treasurer
Paul E. Harner
Immediate Past Chair

Foundation Directors

Isabel C. Balboa
Charles Beckham
Jay Bender
Steven N. Berger
E. Frank Childress, Jr.
Katie Coleman
Jeanne P. Darcey
Jay M. Goffman
Paul Harner
Jan Hayden
John Hoffman
Michael Johnson
Marjorie Kaufman
Vincent Lazar
Julio (Rick) Mendoza
Dwayne Murray
Patrick J. Nash
Norman Pernick
Rebecca Roof
Robert Rosenberg
Lisa Schweitzer
Mark Shinderman
Prof. Elizabeth Tashjian
Lynn Lewis Tavenner
J. Scott Victor
William L. Wallander
David A. Warfield
Scott Wolfson

Senior Director

Robert J. Rosenberg

Ex Officio

Charles A. Beckham, Jr.

Executive Director

Shari A. Bedker



From the Foundation

*Jan Hayden, Baker Donelson Bearman Caldwell & Berkowitz, PC
Chair, American College of Bankruptcy Foundation*



The Foundation continues to grow and prosper. As our Vice Chair Vince Lazar reported to the College Board at the Spring meeting in March, we once again exceeded our fund-raising goals to support our grant program. Our 2022 campaign raised a total of \$459,178, an all-time high for the Foundation. This performance exceeded not only our gifts last year of \$412,554 — for an increase of 11% — but also our internal goal of \$403,000. We continue to see strong participation by the Fellows in this worthy endeavor. Most interesting, we saw that 85% of the contributions were from Fellows whose contributions matched or exceeded their prior year's donations. We have a lot of people to thank for this success. First, Jenny Cudahy who keeps us all in line and informed throughout the campaign. She is a wealth of information, and we honestly could not do the campaign without her help. And of course, our solicitation teams led by the Board Members of each Circuit. Asking folks to give to a good cause may sound easy, until you have to do it! These folks continue to do a yeoman's job year after year. And of course, you! I have often thought that our task to raise money for the Foundation is a bit easier because we have such a receptive and generous group of leaders in the College. And year after year you prove that true! Now that we have completed our campaign, we can get on with the really joyful part of our job which is spending the money raised on good and worthy programs. For this I will refer you to Norm's report in his capacity as the Grants Pro Bono Committee Chair. Norm has a team of over forty Committee Members who did a great job last year. Now our focus has expanded to DEI programing, and everyone will be hard at work to identify both worthy pro bono projects and DEI programs this spring and summer. As he asks in his report, please encourage any worthy programs to apply to the Foundation. Our goal is to make your donations as impactful as possible, and we welcome your help. Finally, we have several members of our board whose terms have

[*continued on page 25*](#)



From the Grants and Pro Bono Committee

*Norman L. Pernick, Cole Schotz, P.C.
Chair, Grants Committee*



I am very proud and excited to acknowledge the tremendous work of the 40+ members of the Grants and Pro Bono Committee (the "Committee") over the past year.

Support for access to justice is an important part of the mission of the Foundation and the College, and that mission is executed by the Committee. On behalf of the Committee and our grantees, I thank the College, the Foundation, the DEI Committee, and the Fellows, whose support and generosity make the grants possible. You have made the College and the Foundation the largest private funder of pro bono programs in the country, and you have enabled us to provide a lifeline of assistance to the most vulnerable and diverse populations our grantees serve.

Pro Bono Grants

Because of everyone's generosity, in 2022 the College and Foundation awarded \$456,587 to 47 organizations, funding programs in 25 states plus the District of Columbia. With pro bono grant applications for 2023 funding due by June 1, the Committee will begin its work to review and recommend pro bono grants to be funded this year. Our grantees come from across the country, in every circuit, in cities large and small, as well as in rural areas. We fund programs designed to maximize the reach of our grantees by increasing volunteers and expanding and leveraging resources. Applications include requests to fund (1)

pro bono clinics and volunteer attorney trainings to recruit additional volunteers, or expand the reach of volunteer attorneys, (2) self help desks and pro se clinics to assist those individuals who must navigate the process on their own, (3) development of training or informational videos to reach pro bono attorneys or potential clients, (4) software and hardware upgrades to enable remote connections to clients, and (5) community education and outreach, to provide individuals with needed information on debt and bankruptcy relief.

I would like to continue the tradition of sharing with you a few stories of clients you helped last year (client names have been changed to protect their privacy):

- From The Pro Bono Project (New Orleans): "Lisa requested legal help from The Pro Bono Project with a Chapter 7 bankruptcy case. She was self-employed, a student, had recently lost her transportation due to a car accident, and had about \$45,000 in debt. She gave us a list of her creditors and debts and met with a volunteer attorney to discuss her legal options. After he determined that L.T. was a candidate for Chapter 7, another volunteer accepted the case. The volunteer attorney met with the client, made sure that she met all of the legal requirements to move forward with bankruptcy, represented her at a hearing, and ultimately secured a discharge order forgiving her debts. The client is now able to move on with her life and pursue her goals."

- From Put Something Back Pro Bono Project (Miami): "Jeremy, an elderly African American individual, sought our

[continued on page 30](#)



Looking to the Future

Hon. Erithe Smith, C.D. California

Paul E. Harner

Co-Chairs, Diversity, Equity and Inclusion Committee



Your Standing Committee on Diversity, Equity and Inclusion (the DEI Committee or Committee) remains hard at work, and we are honored and thrilled to have enthusiastic support from all corners of the College. In this regard, at the Board of Directors meeting held during our March gathering in Washington, D.C., we were delighted to learn that several of

ways to contribute to the profession by supporting potential future restructuring and insolvency professionals from diverse backgrounds, as well as diverse individuals already in the early stages of their careers. Our efforts to achieve the third objective already have borne substantial fruit; and in this issue of College Columns, we highlight two of the Committee’s “pipeline” and “mentoring” initiatives.

Just the Beginning Summer Judicial Internship Stipends

In late 2021, the College’s DEI Commission (the predecessor of the standing Committee) set a goal to further its mission by identifying a “pipeline” program or programs that, with financial and other support from the College, promoted the interest of diverse law students or young professionals in careers in bankruptcy, insolvency and restructuring. Then, in early 2022, the Committee recommended, and the College’s Board of Directors approved, a partnership between the College and Just the Beginning – a Pipeline Organization (JTB), a non-profit organization that, among other things, provides highly qualified law students from socioeconomic, ethnic, and cultural backgrounds underrepresented in the legal profession with summer judicial internships around the country.¹

In 2022, the College provided stipends ranging from \$1,000 - \$3,000 to six JTB law students who interned with bankruptcy judges, for a total of \$16,000 in funding. The recipients were:

the College’s committees have incorporated DEI-focused elements into their work including, among other things, preserving the oral histories of diverse members of bankruptcy and insolvency community, sponsoring inclusive educational programs, developing DEI-friendly policy positions, and reaching out to the broader bankruptcy and insolvency community.

As we have reported previously, the DEI Committee itself has focused on three principal tasks: first, improving the College’s internal workings to further diversity and inclusion in our general Fellowship; second, reaching out to our industry colleagues outside the College to communicate our DEI mission and goals, as well as to provide meaningful related education opportunities; and third, exploring tangible



- Deiona Camargo, University of Kentucky Rosenberg College of Law, Hon. Tracey N. Wise

- Cameron Love, Emory Law School, Hon. Bess Cresswell

- Brian Lozano, City University of New York School of Law, Hon. Ann Nevins

- Yuree Nam, Syracuse University College of Law, Hon. Erithe Smith

- Myoungin Isaac Oh, Washington University School of Law, Hon. Kathy Surratt-States

- Sequra Washington, Nova Southeastern Shepard Broad College of Law, Hon. Scott Grossman

In 2021 and 2022, the National Conference of Bankruptcy Judges (NCBJ) had entered into a similar funding arrangement with JTB. However, in addition to providing summer stipends to bankruptcy interns, NCBJ also offered their interns (NCBJ Fellows) the opportunity to attend the NCBJ Conference by waiving the \$500 registration fee and providing up to \$1,000 in expense reimbursement for travel and lodging. The program, which allowed the students to network with judges, attorneys, and other insolvency professionals, was an enormous success. Nearly all of the students attended the NCBJ's conferences in Indianapolis (2021) and Orlando (2022) and provided overwhelming positive feedback. In post-Conference surveys, all reported that, although they thought they had no particular interest in a career in bankruptcy prior to their internships and attendance at the conferences, the two experiences together had inspired them to consider bankruptcy as a career path. Three of those students have since become law clerks to bankruptcy judges.

Given the success of the NCBJ Fellows

program, we are excited to announce that this year the College (through its Foundation) has again partnered with JTB to provide six \$3,000 stipends to bankruptcy interns and, in addition, has invited its stipend recipients to the College and NCBJ conferences in Austin, Texas in October. Those attending the conferences will be reimbursed up to \$2,000 (including the \$500 registration fee) for travel, lodging and related expenses. Each student will be paired with a judge, a NextGen and/or Blackshear attorney, and a College Fellow to assist them in navigating the conferences.

In addition, starting this year, the recipients of JTB externship stipends sponsored by the College will be known as "American College of Bankruptcy Scholars." For the Summer of 2023, these outstanding honorees are:

- Tanner Bowen, Washington & Lee University School of Law, Hon. Tracey Wise

- Hans Brownstein, University of Illinois Chicago School of Law, Hon. Janet Baer

- Vasily (Vas) Levin, University of Florida School of Law, Hon. Peter Russin

- Joseph Ulloa, University of North Texas Dallas College of Law, Hon. Michelle Larson

- Kemberly Viveros, Temple University Beasley School of Law, Hon. Rosemary Gambardella

- Qingqing (Kris) Zhang, Drexel University Thomas Kline School of Law, Hon. Ashley Chan

The students will be joined by and able to spend time with other externs receiving stipends from NCBJ, IWIRC, ABI and other organizations. We have also planned a number of networking, educational and other activities for them, and we encourage

[continued on page 23](#)



Welcome to Class 34: Insolvency Rockstars

*Patricia Redmond, Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
Chair, Board of Regents*



Having served one year of my term as Chair of the Board of Regents, I am even more aware of the critically important role that the Regents play in the College. As in the past, this year's Board of Regents

is comprised of extraordinary insolvency professionals and is also the most diverse in the history of the College.

Back in Washington, D.C., the College inducted 38 new Fellows and 11 fellows from previous classes. The inductees consisted of 28 lawyers, three judges, two financial advisers, two international professionals, and three academics. Class 34 is the most geographically inclusive in the College's history and represents the College's focus on diversity, equity and inclusion. The College is proud that over 51% of new fellows have diverse backgrounds and one-third of Class 34 is under the age of 50. Class 34 also includes a high percentage of consumer-focused professionals, including five Chapter 13 trustees and our first fellow who has served as a judge both in the U.S. and Singapore. You may access additional information with respect to our new fellows by clicking [here](#).

Although it seems like the D.C. meeting was yesterday, it is time to restart the process of identifying and vetting new fellows for Class 35 to be inducted in March of 2024. The Board of Regents will be meeting on October 11, 2023 during the NCBJ in

Austin to nominate the Class 35 fellows. We are looking for excellent insolvency professionals and academics. Whether your circuit is discussing candidates in person, by zoom meetings, or soliciting nominations from fellows, please remember that it is strictly confidential and candidates should not know they are being considered. Nominations are due to your Regent and Circuit Admissions Council by June 30, 2023.

Prior to this last nomination year, the Regents implemented certain bylaw revisions to the composition of the Circuit Admissions Councils. For the first time, each of the Circuit Admissions Councils included a member of the DEI Committee to implement the College's diversity equity and inclusion mission and help create the pipeline necessary to develop and mentor diverse insolvency professionals for potential fellowship in the College later in their career. The results are overwhelmingly successful.

To continue the DEI initiative, we need your help with respect to our outreach. The Regents are asking each of you to look beyond those professionals with whom you engage on a regular basis, and identify outstanding insolvency practitioners, who are potential candidates or may have been overlooked, both for nominations as new fellows in Class 35, or for future consideration as part of a pipeline. This means diversity in every respect. Please contact your Regent or any member of your Circuit Admissions Council with names of individuals who you believe satisfy the criteria for admission to the College.

[*continued on page 25*](#)



Doing the Splits

Committees, Adversary Proceedings and Intervention: The Meaning of “Case” in Section 1109(b)

*Annette W. Jarvis, Greenberg Traurig, LLP
Secretary, American College of Bankruptcy*



The question that first reached the Third Circuit in 1982 in *In re Marin Motor Oil, Inc.*, 689 F.2d 445 (3rd Cir. 1982) is one that is still subject to disagreement among the circuits: whether a creditors’ committee has an absolute right to intervene in an adversary proceeding in a Chapter 11 case. The Third Circuit in *Marin*, citing extensively to pre-Code law, held that Section 1109(b) grants a creditors’ committee an absolute right to intervene in an adversary proceeding that had been commenced by a Chapter 11 trustee. Three years later, the Fifth Circuit in *Fuel Oil Supply and Terminaling v. Gulf Oil Corp.*, 762 F.2d 1283 (5th Cir. 1985) created the now 38-year-old circuit split

when it held that a creditors committee has no absolute right to intervene in an adversary proceeding in Chapter 11 under Section 1109, but must meet other requirements for intervention under Fed. R. Civ. P. 24, made applicable by Fed. R. Bankr. P. 7024. It was not until 2002 when the Second Circuit lined up with the Third Circuit in deciding that a creditors committee has an unconditional statutory right to intervene under 1109(b) in *In re Calder Corp.*, 303 F.3d 161 (2d Cir. 2002), followed by the 2017 decision by the First Circuit taking the same position in *In re Fin. Oversight and Mgmt. Bd. for Puerto Rico*, 872 F.3d 57 (1st Cir. 2017). While the First, Fourth and Tenth Circuit have addressed this issue only in dicta, these circuits appear to follow the Fifth Circuit’s view, continuing the debate over this issue. See *In re Thompson*, 965 F.2d 1136, 1142 n. 8 (1st Cir.1992); *In re Richman*, 104 F.3d 654, 658 (4th Cir. 1997); *In re Kaiser Steel Corp.*, 998 F.2d 783, 790 (10th Cir.1993).

The crux of this circuit court disagreement on a creditors’ committee’s statutory right to intervene is the interpretation of the phrase “any issue in a case” found in Section 1109(b). This section reads: “A party in interest, including the debtor, the trustee, a creditors’ committee, an equity security holders’ committee, a creditor, an equity security holder, or any indenture trustee, may raise and may appear and be heard on any issue in a case under this chapter.” It is a close restatement of Section 206 of the former Bankruptcy Act, which has complicated the “plain language” analysis engaged in by both sides of this debate.

Marin Motor, decided only three years after the Bankruptcy Code went into effect, naturally looked extensively to pre-Code law to interpret the new statute. This case involved the granting of the committee’s motion to appoint a Chapter 11 trustee, and the committee’s subsequent motion to intervene in two adversary proceedings brought by the trustee after it became dissatisfied when the trustee allowed a stipulation freezing the assets of various companies and individuals related to the

[*continued on page 26*](#)



The Anatomy of a Chapter 13 Case

*Marie-Ann Greenberg, Ch. 13 Standing Trustee
District of New Jersey – Newark Vicinage*



While taking part in the educational programs of the 2022 Fellows induction, a new acquaintance referred to me as a unicorn. She and others agreed that there are few Chapter 13 trustees inducted as Fellows in this

prestigious organization and the masses have little working knowledge of Chapter 13 as a whole.

Chapter 13 is a living, breathing and often complex Chapter of the Bankruptcy Code. Standing Trustees are required to multi-task at the highest level and do so throughout the entire pendency of the case. Contrary to what some may believe, what brings a debtor to Chapter 13 varies greatly, as do the goals of the debtors. In fact, a debtor's goals may change over the course of the case itself, and that is ok; Chapter 13 is the people's code.

Getting In:

Debtors entering Chapter 13 must be individuals; limited liability companies or estates may not file a Chapter 13 petition. They must have regular income according to Section 109(e). That may seem simple enough; it is not. Regular income can mean different things to different people. It can be salary from a job, family contributions, social security or rent. Depending on the jurisdiction, if a debtor has incoming

"money" into the household, that can be used to fund the plan with little regard to the source. Also, the "source" might be assets that can be liquidated by the debtor. In many cases, a sale of property, which the debtor would otherwise stand to lose but for bankruptcy, will be sufficient to fund a plan. Thus, the funding mechanism can be extensive.

Inexplicably, debtors are also required to take a credit counseling course prior to filing a Chapter 13 petition. The value of this requirement has been debated over the years. It is an unnecessary additional cost and blocks an individual from unfettered access to justice – to the bankruptcy protection they need, usually immediately. While there are exceptions to the requirement and sometimes the ability to waive it, the mere requirement of having to seek out the exception or waiver is just another roadblock for many debtors. Alas, it is in the Code and thus is subject to enforcement at this time.

In addition to being an individual with regular income and the credit counseling requirement, the non-contingent, liquidated debt level of a Chapter 13 debtor must be less than a combined total secured and unsecured amount of \$2,750,000. This is a fairly recent update to Section 109(e) which no longer requires the parties to parse out and distinguish between secured and unsecured debt. Moreover, it increased the maximum to reflect a more realistic financial scenario and to allow individuals to be in a more cost-effective Chapter 13,

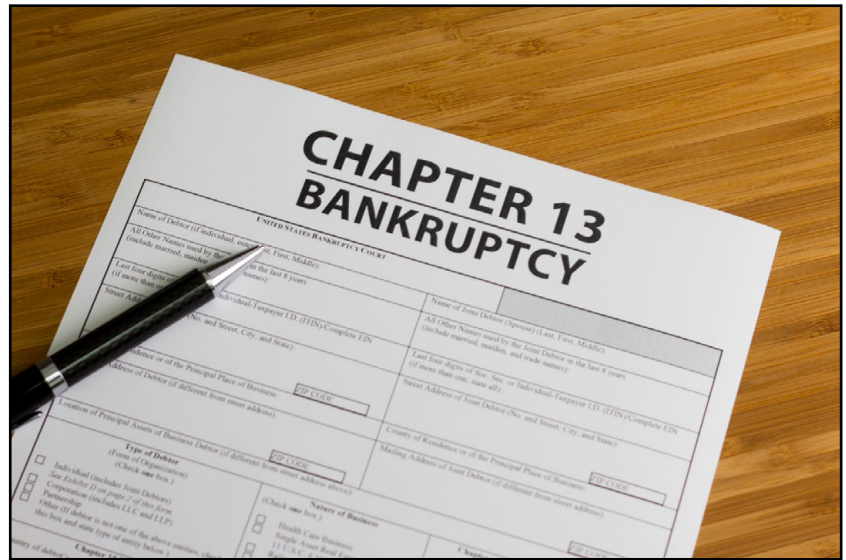


rather than forcing them into an onerous and expensive Chapter 11. This change was applauded almost universally.

Staying In:

As with all debtors, individuals in a Chapter 13 must report all of their assets, debt, monthly income and expenses on their schedules. They must also propose a plan of reorganization which is consistent with the Code and are subjected to means testing. For many debtors, the outcome of the means test might be the difference between a Chapter 7 liquidation and a Chapter 13 repayment plan. For others, it will be the difference between a 36-month repayment plan and a 60-month repayment plan. While the efficacy of means testing is a topic for another day, there is an overwhelming number of Chapter 13 debtors who are not affected by this 2005 BAPCPA product, in that they often need more than 36 months to accomplish their financial goals, whatever they may be. That said, means testing is often viewed as an overly complicated and punitive outcome of BAPCPA.

Debtors must also provide verification of all sources of income (both current and 60 days to 6 months prior to filing), valuations of assets such as homes and autos, tax returns, and insurance. All of this information is reviewed by the Chapter 13 trustee along with all of the schedules, the petition and the plan. The plan must be feasible and properly address claims, equity, best efforts and the like. To be clear, Chapter 13 is a multi-faceted venture, and the trustee is charged with reviewing it all and does so on a continuous basis throughout the case. The work of the Standing Trustee does not end at confirmation.



Getting Out:

Essentially, to emerge from Chapter 13, a debtor must satisfy the terms of the confirmed plan. In addition, per Section 1328(g), there is a requirement to obtain a Financial Management Certificate, otherwise known as Debtor Education, pursuant to Section 111. Also, under Section 1328(h), there must be a finding that Section 522(q) (1) does not apply. This section addresses exemption limitations for certain debtors who are convicted felons or committed securities fraud. While this sounds simple and straightforward, it may not be easy. A lot happens over the course of a Chapter 13 plan period. Issues with illness, employment, divorce or financial mismanagement can easily derail a plan and its completion. It is important for debtors to keep the lines of communication with their counsel open during the pendency of the plan period and to be proactive in making modifications in real time, rather than letting them fester until there is a motion for relief from stay or a motion to dismiss filed. A modified plan can often assist a debtor and allow a regrouping of sorts. Section 1329 allows for modifications, subject to limitation and

[*continued on page 21*](#)

A Higher Purpose: Service

*Melissa S. Kibler, Accordion
Chair, American College of Bankruptcy*



As we all know, the College recently celebrated the induction of our newest Fellows. Without question, one of the greatest privileges of being Chair of the College is being able to stand

on the stage and welcome them, sharing such a special moment in their personal and professional lives. When preparing my remarks, I found myself examining the fundamental purpose of the College. And thus I set out to explain what the College is and what induction means to our new Fellows and their friends, colleagues and loved ones, who might be less familiar with the College. I came away with a focus on service that I found to be central to our organizational mission and to the nature and character of our Fellows. For those who were unable to join us at the induction ceremony, this column summarizes my remarks from that night.

Being inducted as a Fellow of the College is the highest form of honor, because it is recognition by our peers. You can't apply, you can't lobby. Instead, through a confidential and highly selective process, those who encounter you in practice – whether or not on the same side of the table, or on the same side of the Bench, or in the same area of practice – determine that you have met the high standards for nomination to the College.

But what does that mean? Criteria for selection as a Fellow of the College include:

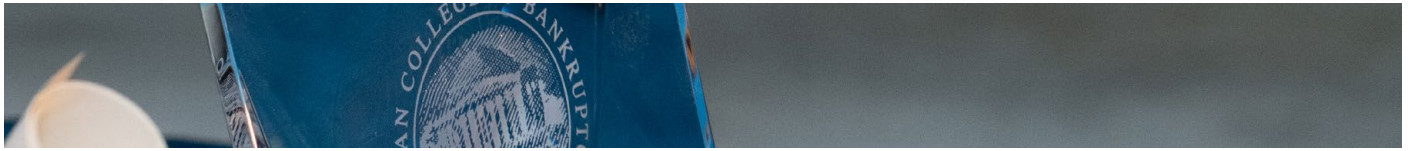
- the highest standards of professionalism, ethics, character, integrity, and professional expertise;
- leadership contributing to the enhancement of bankruptcy and insolvency law and practice;
- sustained evidence of scholarship, teaching, lecturing or writing on bankruptcy or insolvency;
- community service; and
- commitment to elevating knowledge and understanding of the profession and public respect for the practice.

There are many excellent practitioners in our field who are not Fellows of the College – but you will note that professional expertise was only one of many criteria I mentioned. What distinguishes Fellows is what we refer to within the College as "Part B," which is a section of our nomination form. It is that service element – what each of you do to enhance the profession and the communities in which you live and work.

So why is this service element so important? It goes back to the mission of the College:

The American College of Bankruptcy is an honorary public service association dedicated to the enhancement of professionalism, scholarship, and service in bankruptcy and insolvency law and practice.

The word service appears twice in that mission statement – we are a service association dedicated to service in law and



practice.

More fundamentally, let's start with the definition of College, which is "an organized body of persons engaged in a common pursuit or having common interests or duties." This definition takes us to a further exploration of that common pursuit – and the three elements of our mission.

The first is *professionalism*.

At the heart of our mission is a commitment to promoting ethical conduct, excellence in practice, and dedication to the highest standards of client service. The restructuring process is often complex and emotionally charged, and clients need professionals who not only provide expert legal or financial guidance, but also act with the highest levels of professionalism and integrity. They need judges who can expertly and impartially decide the important issues before them.

Professionalism is necessary to uphold confidence in our system of insolvency in the United States and globally. The bankruptcy law provides the framework for resolution of insolvency, whether in court or out of court. It has been said that in bankruptcy, there is a reason that the hallways are bigger than the courtrooms. That is because our bankruptcy law is often at its best when it drives consensus – agreements made out in the hall by the parties and their professionals. That can only happen in an environment of professional competence and respect. The College fosters this very environment, whether through providing education, establishing awards, setting standards for admission that encourage excellence,



facilitating collaboration with other bankruptcy associations, or engendering collegiality between professionals.

The second element of our mission is *scholarship*.

The bankruptcy process continues to evolve as our economy, capital markets and financial systems change. Our bankruptcy law in the United States is now 45 years old. Rich Levin, our Scholar in Residence and one of the original architects of the Code, would tell us that it looks different and is applied differently than when it was originally drafted. However, its fundamental essence has remained, and our law has proven to be an amazingly adaptable tool for resolving both corporate and individual insolvency.

The College plays an important role in the resilience and integrity of the insolvency system through its commitment to scholarship. Our Fellows include the foremost academics in the field, exemplified by Professor Douglas Baird, tonight's Distinguished Service Award winner. These academics lend their expertise to our educational programs, our publications and our work more broadly. Our Fellows identify

[*continued on page 24*](#)



Harvey Miller

*Harry W. Greenfield
Bernstein Burkley*



The College offers numerous programs for its Fellows. One example is the oral histories of various Fellows that the Archives Committee has created. These oral histories are

archived at the Biddle Library of the University of Pennsylvania.

I started working in the bankruptcy field my second year of law school when, in 1968, I was hired by a bankruptcy and collection firm. During the ensuing 54 years, I studied various court decisions, heard lectures, and read articles by or involving many of the attorneys and judges whom the Archives Committee has interviewed. In some of its upcoming columns, the Senior Fellows Committee will highlight some of those interviews.

It was a challenge to decide which of the Fellows' interviews to highlight first. But, one has to start somewhere, so I chose Harvey Miller (Class VIII). Below is a link to Harvey Miller's archived interview.

The New York Times once called Harvey the preeminent bankruptcy attorney in the United States. That makes sense. During his career, which spanned from 1959 until his death in 2015, Harvey was at the nucleus of most of this country's major bankruptcy cases. Among other roles, he represented the debtors in the Continental Airlines, Eastern Airlines, Macy's Federated Department Stores, W.T. Grant, Enron, General Motors and Global Crossing chapter 11 cases. That is just a few of the major roles

Harvey held in the largest bankruptcies filed in the United States. Harvey filed the first major case in Delaware. He practiced under the Bankruptcy Act, the Bankruptcy Code, and BAPCPA. Along the way, he observed how secured debt changed over the years and how developing reorganization plans became more challenging as banks took more and more collateral and hedge funds grew to become major players in the chapter 11 arena.

Beginning with his role as a first year associate working on what then was the largest Chapter XI case in the country (at the office of Frederick Ballon), his experiences with Charles Seligson, where two of his associates were Leonard Rosen and Martin Lipton (co-founders of Wachtel, Lipton, Rosen & Katz), to his years at Weil Gotshal & Manges, the interview traces Harvey's growth into one of the most skilled bankruptcy practitioners at the same time it traces the growth of bankruptcy practice itself. Throughout his interview, Harvey provides his unique impressions of the bankruptcy practice and shares entertaining stories about his cases, other lawyers, judges and clients. Harvey's interview is captivating and provides a road map of how business bankruptcy transformed into the practice we now know. The interviewer, Don Bernstein, does a fantastic job of moving the interview forward and, due to his knowledge of the New York bankruptcy practice, is able to guide Harvey through most of those major cases.


I encourage all of you to watch all of these video histories. Harvey's interview can be accessed [here](#).



ACB Fourth Circuit Moot Court | February 20, 2023

The Education Committee of the DC and Fourth Circuits was pleased to host the 2023 American College of Bankruptcy Fourth Circuit Moot Court. The final two teams were Campbell (advocates King, Pierce and Richardson) and Maryland (advocates Gaskell and Young).





Congratulations to Class 34 of the American College of Bankruptcy, Prof. Douglas Baird and the 2023 Distinguished Students





SEE MORE PHOTOS

View and download photos from the event. Enter your email address to view and download photos.



"One of the College's important initiatives is mentoring. Douglas has been an extraordinary mentor even before that became something professionals valued and pursued. The list of people who count him as their primary mentor includes dozens of law professors, several judges, former deans at major law schools, and countless law firm partners. His commitment to his mentees has led to his being named godfather to the children of two of them and to being invited to and attending former students' graduation parties and weddings." — **Richard Levin**

[Read Richard Levin's Full Speech](#)

"But, like many before me, I discovered that the world of bankruptcy was not how Robert Frost described free verse. It was not playing tennis without a net. There were principles deeply embedded in the law. The honest, but unfortunate debtor deserves a fresh start. Nonbankruptcy rights should be respected in bankruptcy unless a specific bankruptcy policy requires a different result. Plans of reorganization should preserve going-concern value and be fair and equitable." — **Prof. Douglas Baird**

[Read Prof. Douglas Baird's Full Speech](#)



How I Got Started: Bob Gerber

The Senior Fellows Committee, in coordination with the Bankruptcy History Committee, has launched a new initiative to collect the stories of Senior Fellows (those who started in 1983 or earlier) about how they became insolvency professionals. Hopefully, this narrative from Bob Gerber will inspire you to send your narrative (1,000 words or less) to jcudahy@amercol.org. Help make this project a success.

Spring 1973. I'd just been released from Extended Active Duty in the Air Force; returned to my old firm (then recently renamed Fried, Frank, Harris, Shriver & Jacobson, after Kennedy Administration alum Sargent Shriver joined it); and was finishing up an internal investigation of U.S. Financial, a Southern California real estate developer and mortgage company, whose management had falsified transactions—and hence its EBITDA and assets. It turned out that U.S. Financial wasn't worth nearly what it held itself out to be, and it was quickly apparent that it would have to file a Chapter XI. It would be filed in California, which was then the bankruptcy capital of the world. Though the size of its Chapter XI proceeding (they were called "proceedings," and not "cases," in those days) would pale in comparison to chapter 11 cases later filed (including many on my watch, later in my life), it was a big deal at the time—one of the largest Chapter XI cases ever filed.

But Fried Frank (like most large N.Y. firms, at the time) didn't then have a bankruptcy department. So it teamed up with Shutan & Trost—a distinguished bankruptcy boutique in the Century City part of LA—for the bankruptcy filing. I was detailed to work with Ron Trost, who quickly became my mentor, and for whom I worked far more than the partners at my own firm.

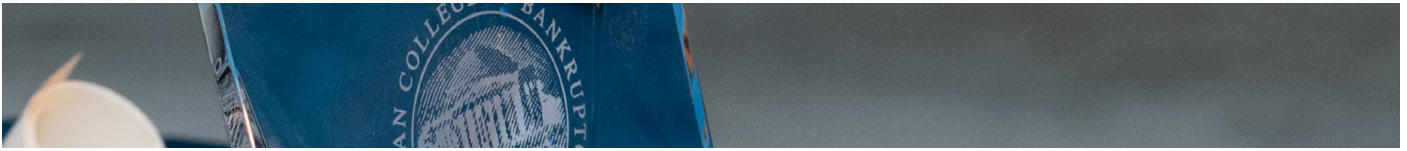
The day-to-day work would take place in the Southern District of California, in San Diego, before Bankruptcy Referee (and then

Bankruptcy Judge) Herbert Katz (an early Fellow of the College, who sadly passed in 2014), a wonderful judge for a young lawyer to appear before, and an outstanding judge in every other respect as well. But I lived in New York. And there was so much work to be done in that case that my firm would need to send someone out to San Diego to work with Shutan & Trost to get all the work done.

It would mean living in San Diego for the better part of three years. So my firm reached out to its young associates. It needed someone whose social life in New York was such that he could be away for three years and no one would miss him. I raised my hand. "I'm your boy." I then spent the next three years working and living in San Diego, working principally under Ron Trost's wing. In a strange and far-off land, Southern California, a land of PSA stewardesses in hot pants, beach volleyball, and Cheech and Chong.

One night, Ron Trost called me. He and I were to handle a trial before Judge Katz the next day, with me second-chairing him. But an emergency came up. "Bobbie" (that what he called me, then and maybe still now), "you'll need to do it on your own." I did. And I won it. And I learned that I could try a case, and not just argue motions and write briefs.

The rest is history. About 25 years later, I was a bankruptcy judge. With Ron Trost as your mentor, you could do a lot worse. 🏛️



[From the Chair continued from page 3](#)

about the College and more about getting to know one another. And our closing luncheon provided a final opportunity to catch up with Fellows before we parted ways.

After months of planning, our time at the 2023 Annual Meeting seemed to pass in the

blink of an eye. But the renewed enthusiasm for finally being back in DC with our Fellows was evident – for honoring, learning, inspiring, working and socializing – and becoming better professionals and better people in the process. ¶

[Chapter 13 from page 13](#)

a continued adherence to Sections 1322, which sets forth the required contents of the plan, and 1325, which sets forth the confirmation requirements. In short, an order of confirmation is akin to a contract. When the debtor meets their end of the contract, a discharge should ensue.

The Role of the Chapter 13 Standing Trustee:

Standing Trustees are appointed by the Office of the United States Trustee and administer all of the Chapter 13 cases filed within the appointed district or vicinage. Our duties are codified, and we are also guided by the procedures of the Office of the United States Trustee and relevant caselaw. Our offices are self-funded through plan payments. Our budgets are approved by the Executive Office, and our financials are reviewed annually by auditors.

Standing Trustees have a unique role and function. We have no clients. In many ways we are the gatekeepers who ensure the notions of fair play and equity are maintained within the schematics of Chapter 13. Standing Trustees are fiduciaries and handle the financials of the plans by receiving debtor plan payments and making disbursements pursuant to confirmed plans and orders of the court. We review everything from schedules, plans and motions, to paystubs, valuations and tax returns. We provide transparent access to all of the financials of the case to the parties in interest. Standing Trustees conduct the meeting of creditors and appear at confirmation hearings and motions over the course of the entire case. The detailed tasks are too many to mention; suffice to say that we are actively involved in all aspects of each of our cases and strive for positive outcomes for all parties. ¶



[President's Message from page 5](#)

the Harry Ransom Center which includes a 1450's Guttenberg Bible and the 1827 Niépce Heliograph; Santa Rita No. 1 rig (the original source of The University of Texas endowment) and The University of Texas Athletics Hall of Fame. (Does it worry you that your College is led by an Aggie and a Longhorn?)

Nicest Bats: When you get back to the Hotel around sunset, walk down to the Congress Avenue Bridge. Several million bats emerge from under the bridge each night at sunset to feed on insects and such. It is a sight to behold. If you want to enjoy the nice bats with a nice cocktail, you can view them from the bar at the Four Seasons Hotel or LINE Hotel.

For dinner, if you enjoyed Tex-Mex for lunch, try BBQ or vice versa. There are also an endless number of steakhouses in downtown Austin but my favorite is Lonesome Dove, a few blocks from the Hotel.

After dinner, you have many entertainment options. Austin is the Live Music Capital of the World.

Best Honky-Tonk: Broken Spoke. You don't have to wear cowboy boots and a hat to the Broken Spoke but you do have to dance. If you go early enough, the legendary Texas dance hall has \$10 dance lessons. Maybe you can learn the original Texas Two-Step! Zack Clement (Class X) would be proud to lead a contingent to the Broken Spoke.

Best Chicken Fried Steak: If you are still hungry, you might want to try a chicken fried steak. I don't recommend chicken fried steak because chicken fried steak isn't good for you! But, it is delicious. If you have

to have one, the chicken fried steak at the Broken Spoke is a pretty good one.

Where the Best Bars Are: 6th Street has a vibrant bar scene with plenty of live music within easy walking distance of the Hotel. When given a choice go West. East of Congress on 6th Street is called Dirty 6th. Anyone reading this Column should not go to Dirty 6th.

And when you are out in Austin enjoying live music, you can ponder the relationship between music and our profession.

Best Country and Western Legend to go Broke: Willie Nelson. Willie Nelson honed his iconic style in Austin. He also received some poor tax advice along the way. In the early 90's Willie owed the IRS over \$16 million. The IRS filed tax liens and seized most of his assets. Contrary to popular belief, Willie did not file bankruptcy. He refused to. Instead he hung on to his most important exempt assets, his musical soul and his guitar, and worked out a deal with the IRS. If you ever wonder how the famous country and western legend got *On The Road Again* after owing over \$16 million to the IRS, look no further than a creative workout with the IRS. In 1993 Willie proposed to produce two albums *The IRS Tapes* and *Who'll Buy My Memories* and to split the proceeds with the IRS. The IRS agreed to the deal and Willie avoided bankruptcy. Thirty years later, Willie is turning 90 and still delivering joy with his music on his exempt asset and tool of his trade, his trusty guitar, Trigger.

See Y'all In Austin! 🍷



[Looking to the Future continued from page 9](#)

all of our Fellows to greet and become acquainted with these wonderful young people at our meetings in Austin.


DRIVE – Diversity in Restructuring & Insolvency Volunteer Effectiveness

As part of the programming at the All Fellows Luncheon at our March 2023 meetings in Washington, D.C., the Committee launched its Diversity in Restructuring & Insolvency Volunteer Effectiveness (DRIVE) program to facilitate interaction between Fellows and diverse, mid-level professionals in a manner that encourages dialogue about enhancing one’s career in the insolvency arena. DRIVE is designed to create a professional development network with and for diverse, mid-level professionals in our industry.

The rollout of the DRIVE program, which was developed jointly by the External and Communications Subcommittees and presented by Committee members Paula Beran, Jane Kim, and Omar Alaniz, included the premiere of a video montage featuring several of our Fellows. After viewing the video, nearly 100 Fellows made initial commitments (at varying levels representing increasing numbers of calls to be made to young professionals on a quarterly basis) to reach out to participating mentees and initiate conversations about our career experiences, our industry and professional development. We are now in the process of inviting a select number of up-and-coming diverse professionals to participate in the program and are excited about this unique opportunity for our Fellows to give back to the next generation.

These are but two concrete examples of the work being undertaken by the Committee, particularly in its efforts to enhance the College’s outreach to the younger, diverse professionals (and even future academics and judges) who one day will be among the leaders in our field. And there are any number of other “works in process.” Our External Subcommittee is, among other things, evaluating other potential “pipeline” programs and developing various educational and outreach opportunities. Our Communications Subcommittee is developing additional mentorship and other similar programs and, in the near future, will be revamping the DEI section of the College’s website and evaluating potentially appropriate uses of social media. Finally, our Internal Subcommittee, working closely with the Board of Regents, is finalizing “working principles” regarding improvements to our already well-developed processes for identifying, nominating and electing new Fellows.

On these and all topics, we welcome your questions and input. We also thank all of you for your continued enthusiastic support.

¹Students in JTB’s Summer Judicial Internship Diversity Project undergo extensive vetting and training. Those who clear the initial application review process and a telephone interview with an attorney are then referred to a judge who interviews the JTB candidate and makes the final decision. Students who are hired must then commit to two mandatory trainings as well as a legal writing assignment in preparation for the internship. 



Service continued from page 15

and analyze policy issues and coordinate with other organizations, as appropriate, to enhance the quality and scope of the bankruptcy practice. Our efforts include providing feedback to Congress on pending legislation or acting as an amicus curiae, or “friend of the court,” on issues of systemic importance. We also chronicle the history of the profession with the contribution of important papers, oral histories and other support for the National Bankruptcy Archives at the University of Pennsylvania. It is through the lens of history that we can better prepare for the future.

The third element of our mission brings us back to *service*.

Our commitment to service is embodied in the elements of professionalism and scholarship that I previously noted. However, it goes beyond that. We provide education and outreach to law and business schools, many of whom joined us at the induction ceremony. We provide mentoring to young professionals. Together with our affiliated Foundation, the College is one of the largest financial supporters of bankruptcy and insolvency-related pro bono legal services programs in the United States through grants to legal aid services helping consumers who could not otherwise afford bankruptcy and insolvency advice or services. We now give away approximately \$500,000 – half a million dollars – each year.

We now can proudly point to a fourth element of our mission, one added by our Board recently, and that is: *promoting diversity, equity and inclusion within the organization and across the insolvency profession*.

In March of 2021, we appointed a

Select Commission on Diversity, Equity and Inclusion, or “DEI”, headed by two distinguished judges. The Commission undertook a year, not just of study but of action, to develop and set into motion a plan that instills mindfulness regarding all aspects of DEI and promotes those values through the resources and endeavors of the College and Foundation. As a result of their work, the College and Foundation boards one year ago approved resolutions that ingrain DEI in our organizational priorities, membership and governance. We appointed a DEI Committee to carry out the Commission’s plan, and that committee has quickly become one of the most active in the College. I am happy to report that not only have we made these changes institutionally, but that they are making a difference. They have created a mindset that is running throughout every facet of the College.

Professionalism, scholarship, service and diversity – these are our guiding principles.

The College is not a self-laudatory institution. Instead, the honor of inducting Fellows has a higher purpose. We have identified and invited each of our new Fellows as individuals who share our commitment to these ideals to join us in using our collective power as leaders to make a difference in our industry and our society more broadly.

A distinguished judge recently said that his induction as a Fellow of the College was one of the proudest moments of his career. I hope that each of our new Fellows, together with their loved ones, felt that same way on their special evening. As Chair, I was thrilled to recognize their accomplishments and welcome our inductees into our community of Fellows. ¶



[A Warm Welcome from page 10](#)

The criteria are set forth in the College By-Laws which provide that the College honors those professionals who sustain performance in the practice of their profession and exemplify the highest standards of professionalism among bankruptcy specialists by granting them membership as Fellows. Those consist of bankruptcy professionals, including lawyers, judges, law professors, accountants, appraisers, auctioneers, officers of the government, officers of lending institutions, reorganizations, workout and liquidating specialists and others who are dedicated to the improvement of the bankruptcy process and the enhancement of the professional quality of, and public respect for the insolvency and bankruptcy practice. Membership is by invitation only.

The time from nomination to selection is very busy. After the nomination packages are received by the Regent or Nominating Committee, the Circuit Admissions Council and the two (2) Nominating Committees review and vet each of the nominations. The vetting process includes reaching out to fellows who know the candidate or who have been involved in professional or case related activities with the candidate. Please

respond to any inquiry and be involved in the nomination process. It cannot be stressed enough that your input has been, and is, vital to identifying and choosing candidates who reflect the high standards of the College and developing the pipeline necessary to define our future.

Applications will be reviewed and thoroughly vetted by the relevant Circuit Admissions Councils and Nominating Committees between June 30 and August 22, 2023. Thereafter, the Circuits Admissions Councils and Nominating Committees will meet and determine which candidates will be selected for submission to the Board of Regents. The Board of Regents will then meet on October 11, 2023 to make final decisions on the admissions of new fellows for the 35th Class of the College.

Please reach out to me with any questions or suggestions. The Board of Regents is interested in any input or recommendations for improvement as our "Best Practices" are constantly evolving. I want to thank you for your past, present and future involvement in this process. As every Chair of the Board of Regents has recognized, the selection of new fellows is among the most important functions of the College as the preeminent organization for insolvency professionals.

[From the Foundation continued from page 6](#)

ended. We want to thank Cori Lopez-Castro, Cecily Dumas, the Hon. Margaret Mann, Kenneth Eckstein and Richard Wasserman for their diligent support of our work during their tenure with us. And last, but certainly

not least, I must personally thank Vince Lazar, our Vice Chair. His counsel has been invaluable and his willingness to cover for me in my absence is greatly appreciated. Looking forward to seeing all of you soon,
Jan 🏛️



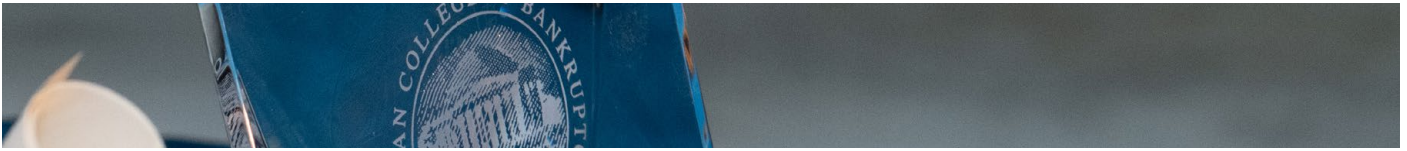
[The Splits from page 11](#)

debtor to lapse. The committee argued that under Section 1109(b) it had “an absolute right to intervene regardless of the Trustee’s performance.” *Marin Motor*, 689 F.2d at 447. The bankruptcy court refused to grant intervention, finding 1109(b) to be permissive, rather than mandatory. The district court held section 1109(b) was mandatory and reversed, with the matter then being brought before the Third Circuit. Deciding first that the order appealed from was a final order under 28 U.S.C. § 1293(b) and therefore properly before the circuit court, the court then analyzed the language and intent of Section 1109(b). Noting first that Section 1109(b) applies only in Chapter 11 cases, the Court explained that “Congress intended a creditors’ committee to have more extensive rights in a reorganization than in a liquidation.” *Id.* at 450. As there was no dispute that Section 1109(b) gave the committee the absolute right to be heard in the main Chapter 11 case, the only question was the committee’s right to intervene in the two adversary proceedings. The court noted: “Neither the term ‘case’ nor the term ‘adversary proceeding’ is defined by the Bankruptcy Code; indeed, the Code makes no explicit mention of ‘adversary proceedings.’” *Id.* Rather, the Court explained that the term “adversary proceeding” is only defined at the end of what used to be Bankruptcy Rule 701: “Such a proceeding shall be known as an adversary proceeding.” *Id.* Consequently, the Court found, it was “hardly surprising, given that Congress did not specifically mention adversary proceedings anywhere in the Bankruptcy Code,” that this term was not found in Section 1109(b). *Id.* at 451. Recognizing that litigated matters in bankruptcy can take the form of contested matters or

adversary proceedings while finding that “[m]ost litigated matters in a bankruptcy case are adversary proceedings,” the Court felt reading Section 1109(b) as other than an unconditional right to intervene “would drastically restrict the rights of parties to appear and be heard.” *Id.* at 450. Citing to the 1982 version of *Collier on Bankruptcy*, the Court describes a universal agreement that “case” is to be broadly defined. *Id.* at 450–51. Further, the court focused on the fact that Section 1109(b) is not limited to being heard in a “case,” but “on any issue in a case.” *Id.* at 451. Referring to this wording, the court stated: “It is unlikely that Congress would have used such sweeping language if it had not meant ‘case’ to be a broadly inclusive term.” *Id.* Turning then to the legislative history, the Court explained that Section 1109 is derived from Section 206 of Chapter X of the Old Act (11 U.S.C. § 606), and stated that “the derivation of section 1109(b) from section 206 of Chapter X suggests that Congress had no intention of upsetting the long line of section 206 cases granting a broad, absolute right to appear and be heard.” *Id.* Section 206 allows for the “right to be heard on all matters arising in a proceeding under this chapter,” with Bankruptcy Rule 10-210(a) stating that there was a “right to be heard on all matters arising in a Chapter X case.” *Id.* As noted by the court, “Congress’ obvious borrowing in section 1109(b) from the language of Rule 10210(a) is further evidence that Congress intended for there to be no sharp break between section 206 and section 1109(b).” *Id.*

Looking back on the history of section 206, the court explained that section 206 was intended to broaden the rights of creditors to participate in reorganizations because

[continued on page 27](#)



[The Splits from page 26](#)

it replaced a statutory provision that “had given creditors and stockholders an absolute right to be heard on only a limited number of issues, and it was to remedy perceived deficiencies in this system of limited rights that section 206 was enacted.” *Id.* Citing from *Collier on Bankruptcy*, the Third Circuit further explained that “[t]he standing conferred by Section 206 of the Bankruptcy Act and Chapter X Rule 10-210(a)(1) was absolute and unlimited, and gave the debtor, creditors, stockholders and indenture trustees the same rights as if they were successful intervenors in the case, but without the necessity of a formal order of intervention.” *Id.* at 452. Citing to the pre-Code case of *Matter of Duplan Corp*, 450 F. Supp. 790, 791 (S.D.N.Y. 1978), the court noted that the court there “granted the indenture trustee a right to participate without even filing a motion to intervene, and read section 206 as intended ‘to remove procedural barriers to full participation’ by interested parties.” *Id.* The Third Circuit compared the permissive intervention provision under Chapter X, which was section 207, with the mandatory provision in section 206. As stated by the court: “When Congress chose to derive section 1109(b) from section 206 rather than from section 207, it understood that it was adopting the mandatory and not the permissive provision.” *Id.* The court rejected the argument that the change in language from “all matters arising in a proceeding under this chapter” to “any issues in a case under this chapter” meant any change in the law with respect to participation in litigated matters connected with a reorganization. The Court also used the pre-Code caselaw and practice to reject the policy arguments that mandatory intervention would complicate and cause disorder and expense to the process by

pointing out that “the unqualified right of creditors and stockholders to intervene appears to have been the rule under section 206 for approximately 40 years, and the legislative history of section 1109(b) shows no dissatisfaction with it.” *Id.* at 453. Turning to the situation before it, the court found that the intervention sought by the creditors committee would “speed up the proceedings and prevent dissipation of the estate.” *Id.* The Court also embraced the reasoning of lower court decisions under Fed. R. Civ. P. 24(a)(1), incorporated into Bankruptcy Rule 7024, which allowed intervention as of right based on the intervention rights granted under Section 1109(b). Distinguishing some cases, the court left for another day the decision on whether a committee has to formally intervene under Fed. R. Civ. P. 24 or whether Section 1109(b) bypasses technical intervention because in this case, the committee had formally moved to intervene.

Creating the circuit split, the Fifth Circuit in *Fuel Oil Supply* held that a committee has no statutory right to intervene in a bankruptcy adversary proceeding. In this case, the committee filed a motion to intervene under Rule 24(a) as of right in an adversary proceeding brought to set aside a claimed preferential transfer. While acknowledging the persuasive elements of the Third Circuit’s *Marin* decision, the Fifth Circuit ultimately reached the opposite conclusion based on its reading and interpretation of the procedural rules governing intervention found in Fed. R. Civ. P. 24. The Fifth Circuit noted that this provision “has been narrowly construed; courts have been hesitant to find unconditional statutory rights of intervention” and explained that “private parties are rarely given an unconditional

[continued on page 28](#)



[The Splits from page 27](#)

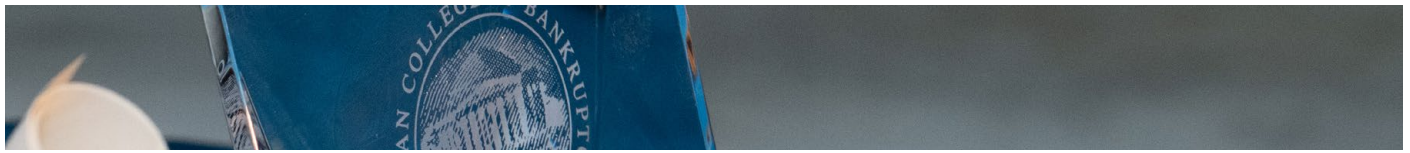
statutory right to intervene.” Fuel Oil Supply, 763 F.2d at 1286. The court also looked at how Congress had distinguished between bankruptcy “cases” and “proceedings” related to cases and citing to the Advisory Committee Notes to Bankruptcy Rule 7024, the court quoted the following: “Intervention in a case and intervention in an adversary proceeding must be sought separately.” Id. at 1286–87. Interpreting this comment to reinforce its conclusion that an absolute statutory right to intervene is rare, it explained that this statement “makes no sense if intervention in the ‘case’ provided entrance to the adversary proceeding as well.” Id. at 1287. The Fifth Circuit concluded that this interpretation does not limit the committee’s right to participate as it can still intervene as of right under Fed. R. Civ. P. 24(a)(2) or by means of a permissive intervention under Fed. R. Civ. P. 24(b) if the conditions of these sections are met. The court concluded that its interpretation furthers “the expansive right to be heard created by Section 1109(b)” while at the same time “the bankruptcy court is permitted to control the proceedings by restricting intervention to those persons whose interests in the outcome of the proceedings are not already adequately represented by existing parties.” Id. Finally, the court compared its conclusion with the analysis done, by using the Fed. R. Civ. P. 24(a) (2) analysis, to permit creditors’ committees to initiate adversary proceedings only if the “debtor-in-possession has failed to act to protect the creditors’ interests.” Id.

Seventeen years later, the Second Circuit in the Calder Corp. weighed in and reverted back to the position taken by the Third



Circuit. In this case, the committee moved to intervene in an adversary proceeding under Section 1109(b) and Fed. R. Civ. P. 24. After the motion to intervene was denied by both the bankruptcy court and the district court, the committee appealed to the Second Circuit. Finding that the “plain text of the statute indicates Congress intended to grant [an unconditional statutory] right” to intervene, the court reversed and remanded the case. Calder Corp., 303 F.3d at 163. Interestingly, in reviewing the history of the circuit split on this issue, the Second Circuit highlighted the change in position on this issue by Collier on Bankruptcy with the “treatise [changing] its position several times through its various revisions, from favoring a view that § 1109(b) covered adversary proceedings to opposing such an view and then back again to favoring it.” Id. at 165. While acknowledging that this “flip-flop . . . undermines its authoritativeness,” the court also recognized that this is “an indication of the closeness of the question.” Id. The Second Circuit noted that “[a]lthough no other circuit courts [other than the Third and Fifth] have directly addressed this issue, the First, Fourth, and Tenth Circuits have indicated in dicta that they favor the

[continued on page 29](#)



[The Splits from page 28](#)

Fifth Circuit's view." *Id.* at 167. Beginning with the "language of the statute itself," the court looked at both "whether the language at issues has a plain and unambiguous meaning" and whether the plain language has an "ordinary, common meaning" rendering it unambiguous. *Id.* at 167–68. The court interpreted "case" as "a term of art in the bankruptcy context" that is "well-understood" as the "umbrella litigation often covering numerous actions that are related only by the debtor's status as a litigant." *Id.* at 168. The court then referred to Black's Law Dictionary, which interprets "proceeding" to have "a generally accepted meaning in the bankruptcy context" as a "particular dispute or matter arising within a pending case—as opposed to the case as a whole." *Id.* Finally, again citing Black's Law Dictionary, the court found an "issue" to be a "point in dispute between two or more parties." *Id.* at 169. While it noted that issues are raised in both contested matters and adversary proceedings in bankruptcy, the court found "the plain text of § 1109(b) does not distinguish between issues that occur in these different types of proceedings within a Chapter 11 case." *Id.* at 169 (emphasis in original). The court concluded: "We hold, therefore, that the phrase 'any issue in a case' plainly grants a right to raise, appear and be heard on any issue regardless whether it arises in a contested matter or an adversary proceeding." *Id.* (emphasis in original).

The court rejected the argument that differing views on the statute demonstrate that it is ambiguous, pointing out that the decisions had based their conclusions on other than text, including "the bankruptcy rules, advisory committee notes, legislative history, or policy concerns." *Id.* at 170. The court refused to use these other sources to create ambiguity in what the court found

was a plain meaning. The court also noted that section 1109(b) refers to "parties in interest," such that there may be others who do not fit within this category which would be subject to regular intervention rules. *Id.* at 171–72. The Second Circuit also rejected arguments made on Section 307 and the addition of "and proceedings" after "case" in granting standing to the United States Trustee because this Code section was not added until 1986, after the circuit split had already occurred. Upon an extensive review of the intent behind the Bankruptcy Code and its focus on expanding the jurisdiction and ability of bankruptcy courts to manage all proceedings arising in a bankruptcy case, and the Third Circuit's reaffirmance of its holding in *Marin*, the Second Circuit refused to be drawn into policy discussions and instead relied solely on the "natural reading of the text." *Id.* at 176.

After another fifteen-year break, the First Circuit addressed this issue in *Fin. Oversight and Mgmt. Bd. for Puerto Rico*. While decided under PROMESA (Puerto Rico Oversight, Management, and Economic Stability Act), which incorporated large parts of the Bankruptcy Code, including Section 1109, the First Circuit reversed the denial of a motion to intervene brought by a creditors' committee and found Section 1109 provides an "'unconditional right to intervene' within the meaning of Fed. R. Civ. P. 24(a)(1)." *Fin. Oversight and Mgmt. Bd. for Puerto Rico*, 872 F.3d at 59. Noting that both the Fourth Circuit and the Tenth Circuit in dicta appeared to follow the Fifth Circuit's lead in *Fuel Oil Supply* finding no absolute right to intervene, the First Circuit cited as more persuasive the more recent decisions out of the Second and Third Circuits finding Section 1109(b)

[continued on page 30](#)



[The Splits from page 29](#)

allows for an absolute statutory right to intervene. In responding to some of the arguments opposing intervention, the First Circuit noted: "Our holding that the UCC is entitled to participate in the district court proceedings does not, of course, dictate the scope of that participation." *Id.* at 64. The court acknowledged that when intervention is allowed, the court still has the right to condition or restrict participation to ensure an "efficient conduct of the proceedings." *Id.* (citing Fed. R. Civ. P. 24, advisory committee's note to 1966 amendment). As the committee in this case had already agreed to limit its participation, the court found this was not a necessary issue to address in this case. While the committee had failed to comply with Fed. R. Civ. P. 24(c) in accompanying its motion with a pleading setting forth the claim or defense for which

intervention was sought, the court excused this non-compliance because it said the committee's "interest in the litigation was sufficiently clear." *Id.* at 65.

So can committees intervene as of right in adversary proceedings and do they have to follow the procedural rules for intervention under Fed. R. Civ. P. 24? It all depends on the circuit and the circumstances of the intervention. Despite the reasoning in these cases, it is probably best to formally intervene under Fed. R. Civ. P. 24, either based on an absolute right under Section 1109(b) and Rule 24(a)(1) or compliance with Rule 24(a)(2) or Rule 24(b), and to remember Rule 24(c)'s requirement to attach a pleading setting forth the claim or defense. It took 38 years to have this issue decided by only four circuits. Let's hope it doesn't take another 38 years before this circuit split is resolved. 🏛️

[Pro Bono continued from page 7](#)

assistance due to financial distress. He had heard about our program on the radio and since he was unable to keep up with his financial obligations due to his limited resources after losing his job as a delivery driver, he applied online with the help of his pastor. After 40+ hours extensive services from his pro bono attorney, the Court entered a Final Order of Discharge of his debts in Chapter 7 Bankruptcy. The client was extremely happy and relieved."

- From Pro Bono Indiana, dba District 10 Pro Bono Project: "Cameron is a disabled veteran whose wife and child were killed in a car accident. He was also in danger of losing his rental housing because he was struggling

to pay rent. Years before he had gotten a judgment against a woman who allegedly did work on his prior home, but was never able to collect, both because he struggled with doing proceedings supplemental and she dodged service. He heard a rumor that she would be inheriting money from her father's estate. A volunteer attorney filed a claim against the woman's inheritance and helped him collect. \$7,103."

Best Case Discount

I am very pleased to report that we were able to negotiate a 50% discount with Stretto for those approved pro bono grant applicants in 2022 and in the future who request grant money to make an initial

[continued on page 31](#)



[Pro Bono continued from page 30](#)

purchase of Best Case software. For the several 2022 applicants, we let them know about the discount, and suggested that they submit a modification request for use of the additional available funds that were awarded. Three groups submitted those requests (DC Bar Pro Bono, Denver Bar Association-Metro Volunteer Lawyers, and Legal Aid of San Diego), and our Modifications Working Group approved those requests. If you see Travis Vandell, Ray Stuchell or anyone else at Stretto that you know, please be sure to thank them for their generosity, which will allow us to leverage our grant funds even further!

DEI Progress

In 2022 the Foundation took on a more active role in implementing the College's DEI initiatives. The Committee has been working closely with the leadership of the DEI Committee and the Foundation to expand the Foundation's grant function to include programs designed to implement those goals. The Committee is expanding its role in 2023 and will be reviewing grant requests for DEI initiatives. In line with its expanded mission, the name of the Pro Bono Committee was changed to the Grants and Pro Bono Committee.

In 2023, the Committee's work has included the establishment of a Grants and Pro Bono

subcommittee to address DEI grants; the imbedding of a DEI Committee member in the Grants and Pro Bono subcommittee; work on a grant application/information form and end of grant report form specific to DEI grants; the development of criteria to evaluate DEI applications, and ongoing work with the DEI Committee to develop a DEI grant identification and approval process. The subcommittee will also be developing ways to more formally evaluate the DEI impact of the grants program. While we have not yet finalized all of these items, we are encouraging those with programs that promote diversity, equity and inclusion in the bankruptcy industry (for example, funding Court and Clerk internships) to still apply this year. Their applications will be considered at this point on a case-by-case basis.

Let's Get Those Applications In!

If you are aware of a worthy pro bono program (particularly if they are not a current grant recipient), please encourage them to submit an application on or before June 1. Likewise, if you are aware of a worthy DEI program, please encourage them to apply also. Thank you again for your generosity and for enabling us to be able to make a difference in so many lives. 🙏





THE FOUNDATION PROUDLY SUPPORTS THE FOLLOWING 2022 GRANTEEES:

1ST CIRCUIT

VETERANS
LEGAL SERVICES



2ND CIRCUIT



3RD CIRCUIT



4TH CIRCUIT



Financial Protection Law Center

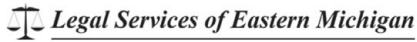


5TH CIRCUIT





6TH CIRCUIT



8TH CIRCUIT



9TH CIRCUIT



10TH CIRCUIT



11TH CIRCUIT





2023 Patrons & Sponsors

The American College of Bankruptcy would like to acknowledge and thank the following 2023 Sustaining Patrons, Patrons, Sponsors, and Supporters. Over 170 firms support the College through the Patrons & Sponsors program and make our educational sessions and events possible.

SUSTAINING PATRONS

AlixPartners

Jay Alix
John Castellano
Lisa J. Donahue
Randall S. Eisenberg
Holly Felder Etlin
Albert A. Koch
James A. Mesterharm
Rebecca A. Roof

Alston & Bird LLP

R. Neal Batson
Dennis J. Connolly
Grant T. Stein
David A. Wender

Alvarez & Marsal

Lawrence R. Hirsh
Bryan P. Marsal
Jeff Stegenga

Baker McKenzie

Mark D. Bloom
Paul J. Keenan, Jr.

Berger Singerman LLP

Jordi Guso
Christopher A. Jarvinen
Paul Steven Singerman

BRG

Stephen Coulombe
Robert J. Duffy
Mackenzie Shea
Paul N. Shields

Bernstein Shur

Robert J. Keach
Hon. Louis H. Kornreich

Blank Rome LLP

Thomas E. Biron
Regina Stango Kelbon
Michael B. Schaedle
Raymond L. Shapiro

Cole Schotz P.C.

Norman L. Pernick
Michael D. Sirota
Warren A. Usatine
Irving E. Walker

Davis Polk

Donald S. Bernstein
Marshall S. Huebner
Brian M. Resnick

Debevoise & Plimpton

M. Natasha Labovitz
Sidney P. Levinson

Foley & Lardner

John P. Melko
Deirdre B. Ruckman

FTI Consulting

Albert S. Conly
Guy A. Davis
Robert Del Genio
Dominic DiNapoli
Michael C. Eisenband
Ronald F. Greenspan
Cynthia Nelson
William J. Perlstein
David Rush
Carlyn R. Taylor

Goodwin Procter LLP

Daniel M. Glosband
Michael H. Goldstein
Michael J. Pappone
William P. Weintraub

Greenberg Traurig

Annette W. Jarvis
J. Gregory Milmoie
Nancy A. Peterman
Keith J. Shapiro

Haynes and Boone, LLP

Charles A. Beckham, Jr.
Patrick L. Hughes
Kenric D. Kattner
Stephen M. Pezanosky

Jenner & Block LLP

Vincent E. Lazar
Richard B. Levin
Daniel R. Murray
Ronald R. Peterson
Melissa M. Root
Catherine Steege

Jones Day

Corinne Ball
Bruce Bennett
Carl E. Black
Gregory M. Gordon
Carl M. Jenks
Heather Lennox
Kevyn D. Orr



SUSTAINING PATRONS, CONT.

Kirkland & Ellis

Jonathan Henes
Chad J. Husnick
Marc Kieselstein
Todd F. Maynes
Alan B. Miller
Patrick J. Nash
Anup Sathy
James H.M. Sprayregen
Joshua A. Sussberg

Kramer Levin

Kenneth H. Eckstein
Thomas Moers Mayer

Latham & Watkins, LLP

Jeffrey E. Bjork
George A. Davis
Peter M. Gilhuly
David S. Heller
Richard A. Levy
Kimberly A. Posin
Caroline A. Reckler
Suzanne Uhland

M3Partners

Mohsin Y. Meghji

Milbank LLP

Paul S. Aronzon
Gregory A. Bray
Dennis F. Dunne
Evan R. Fleck
Mark Shinderman

Mintz

Daniel S. Bleck
William W. Kannel

Morgan, Lewis

Robert M. Dombroff
Julia Frost-Davies
Edwin E. Smith
P. Sabin Willett

Norton Rose Fulbright

Jason L. Boland
Toby L. Gerber
William R. Greendyke
Ryan E. Manns
Howard Seife

Pachulski Stang Ziehl & Jones LLP

Jeffrey H. Davidson
Robert J. Feinstein
Debra Grassgreen
Laura Davis Jones
Henry C. Kevane
Jordan Kroop
Richard E. Mikels
Isaac M. Pachulski
Richard M. Pachulski
Jeffrey N. Pomerantz
James I. Stang

Paul, Weiss, Rifkind, Wharton & Garrison LLP

Paul Basta
Kelley A. Cornish
Brian S. Hermann
Alan W. Kornberg
Stephen J. Shimshak

PJT Partners

Timothy R. Coleman
Steven Zelin

Richards, Layton & Finger, P.A.

Mark D. Collins
Daniel J. DeFranceschi

Ropes & Gray

Gregg M. Galardi
Steven T. Hoort
James M. Wilton

Skadden, Arps, Slate, Meagher & Flom LLP

Mark S. Chehi
James Eric Ivester

Paul D. Leake
Kayalyn A. Marafiotti
Ron E. Meisler

Squire Patton Boggs Stephen D. Lerner

S&S Capital Advisors, LLC

Teresa C. Kohl
J. Scott Victor

Sullivan & Cromwell LLP

James L. Bromley

Teneo

James S. Feltman
Jay Goffman
Harrison J. Goldin
Marc S. Kirschner

Troutman Pepper

Hon. Ezra H. Cohen
Robert S. Hertzberg
Kay Standridge Kress
Gary W. Marsh
Michael H. Reed

Watchell, Lipton, Rosen & Katz

Scott K. Charles
Richard G. Mason
Harold S. Novikoff

Weil, Gotshall & Manges LLP

Gary Holtzer
Stephen Karotkin
Ray C. Schrock

Young Conaway Stargatt & Taylor, LLP

Robert S. Brady
James L. Patton, Jr.
Pauline K. Morgan



PATRONS

Accordion

Melissa S. Kibler

Ankura

M. Benjamin Jones
Kevin Lavin

BakerHostetler

Brian A. Bash
Cecily A. Dumas
Elizabeth A. Green

Bradley Arant Boult Cummings LLP

Jay Bender
Robert B. Glenn
William L. Norton III

B Riley Advisory Services

Ian Ratner

Brown Rudnick

Jeffrey L. Jonas

Bryan Cave Leighton Paisner

Laurence M. Frazen
Brian C. Walsh

Buchanan Ingersoll Rooney

William H. Schorling

Burr & Forman LLP

Michael Leo Hall
Derek F. Meek

Bush Ross, P.A.

Jeffrey W. Warren

Butler Snow LLP

James E. Bailey III
Stephen W. Rosenblatt
David S. Rubin
Martin A. Sosland

Covington & Burling LLP

Michael St. Patrick Baxter

CR3 Partners LLC

Suzanne B. Roski
William Knight Snyder

Dilworth Paxson LLP

Anne M. Aaronson
Lawrence G.
McMichael

Drummond Woodsum

Benjamin E. Marcus

Faegre Drinker Biddle & Reath LLP

Jay Jaffe
Andrew C. Kassner
Dennis M. Ryan
Michael R. Stewart

Fried Frank

Brad Eric Scheler

Frost Brown Todd LLC

Edmund J. Adams
Ronald E. Gold
Douglas L. Lutz

Gibson Dunn

Jeffrey C. Krause

Gordon Brothers

Mitchell H. Cohen
Kenneth S. Frieze
Sheila T. Smith

Goulston & Storrs

Douglas B. Rosner
James F. Wallack

Hunton Andrews Kurth LLP

Tyler P. Brown
Robin Russell

Huron Consulting

Stephen B. Darr

JAMS

Hon. Joan N. Feeney
Hon. Randall J. Newsome
Hon. Phillip J. Shefferly

Jones Walker

Elizabeth J. Futrell
Kristina M. Johnson
R. Patrick Vance

Keller Benvenuto Kim LLP

Peter J. Benvenuto
Tobias S. Keller
Jane Kim
Berry D. Spears

Klee, Tuchin, Bogdanoff & Stern LLP

Daniel J. Bussel
Kenneth N. Klee
Thomas E. Patterson
David M. Stern
Michael L. Tuchin

Kozyak Tropin Throckmorton

John W. Kozyak
Charles W. Throckmorton

Levene, Neale, Bender, Yoo & Golubchik LLP

Eve H. Karasik
Gary E. Klausner

Lighthouse Management Group

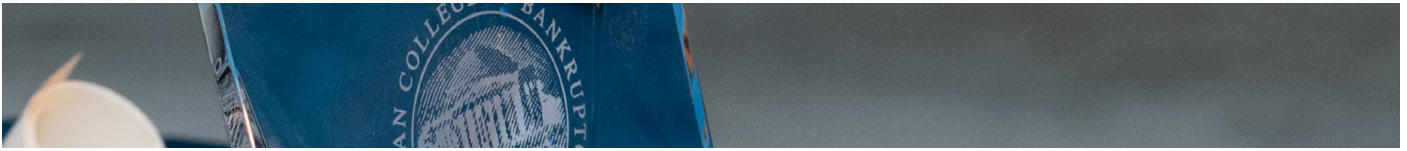
James A. Bartholomew

McDermott Will & Emery LLP

Felicia Gerber Perlman

McGuire Woods LLP

Douglas M. Foley
Dion W. Hayes
Demetra L. Liggins



PATRONS, CONT.

Morrison Foerster
James M. Peck

Munger, Tolles, & Olson LLP
Seth Goldman
Thomas B. Walper

Orrick, Herrington & Sutcliffe LLP
Marc A. Levinson

Otterbourg. P.C.
Melanie L. Cyganowski

Phoenix
Michael E. Jacoby

Proskauer
Martin J. Bienenstock
Charles A. Dale III
Alan B. Hyman

Reed Smith
Omar J. Alaniz
Kurt F. Gwynne
Paul M. Singer

Robinson + Cole, LLP
Natalie D. Ramsey

Sidley Austin LLP
H. Bruce Bernstein
Jennifer C. Hagle
Richard W. Havel
Richard T. Peters

Stroock & Stroock & Lavan
Michael Luskin
Richard Stern

Verdolino & Lowey, P.C.
Craig R. Jalbert
Keith D. Lowey

Vinson & Elkins LLP
Harry A. Perrin
William Louis Wallander

Whiteford, Taylor, Preston LLP
Marc Abrams
David B. Stratton

Willkie Farr & Gallagher LLP
Hon. Shelley C. Chapman
Matthew A. Feldman
Brett H. Miller
Rachel C. Strickland

SPONSORS

Adams & Reese LLP
Richard P. Carmody
John A. Thomson, Jr.

Adelman & Gettleman LTD
Howard L. Adelman

Baker Donelson
E. Franklin Childress, Jr.
Jan M. Hayden
Timothy M. Lupinacci

Barnes & Thornburg LLP
Connie A. Lahn

Bernstein-Burkley, P.C.
Robert S. Bernstein
Harry W. Greenfield

Buchalter
Pamela K. Webster

Campbell & Levine, LLC
Douglas A. Campbell
Stanley E. Levine

Casner & Edwards LLP
Michael J. Goldberg
Lynne F. Riley

Choate, Hall & Stewart LLP
Douglas R. Gooding
John F. Ventola

Cleary Gottlieb
Lisa M. Schweitzer

Cozen O'Connor
Robert M. Fishman
Brian L. Shaw

Deloitte
Michael J. Epstein
Richard Infantino

Dentons
Samuel R. Maizel
Robert B. Millner

Development Specialists, Inc.
Bradley D. Sharp

Dorsey & Whitney LLP
Monica L. Clark

D.R. Payne & Associates, Inc.
David R. Payne



SPONSORS, CONT.

Duane Morris

Lawrence J. Kotler

Dykema

Deborah D. Williamson

Engelman Berger, P.C.

Steven N. Berger

Eversheds Sutherland

David A. Wender

Fowler Bell PLLC

Taft A. McKinstry

Fredrikson & Byron, P.A.

James L. Baillie

Clinton E. Cutler

Ryan T. Murphy

Furr Cohen

Robert C. Furr

GableGotwals

G. Blaine Schwabe III

Sidney K. Swinson

Genovese Joblove & Battista

Paul J. Battista

Godfrey & Kahn S.C.

Timothy F. Nixon

Katherine Stadler

Brady C. Williamson

Goldberg Kohn

Ronald Barliant

Randall L. Klein

Gray & Company LLC

Stephen S. Gray

Guggenheim Securities

James E. Millstein

Holland & Knight

Leonard H. Gilbert

John J. Monaghan

Samuel J. Zusmann, Jr.

Houlihan Lokey

Stephen T. Spencer

Eric M. Winthrop

Husch Blackwell LLP

Gary D. Barnes

Mark T. Benedict

John Cruciani

K&L Gates

Margaret R. Westbrook

Keller & Almassian, PLC

A.Todd Almassian

Kroll

James J. Waldron

Landis Rath & Cobb LLP

Adam G. Landis

Lane Powell, P.C.

Charles R. Ekberg

Lewis Roca Rothgerber Christie LLP

Ogonna M. Brown

Robert M. Charles, Jr.

Susan M. Freeman

Maddin Hauser Roth & Heller, P.C.

Julie B. Teicher

MalekRemian LLC

Kenneth J. Malek

Maynard, Cooper & Gale, P.C.

Jayna Partain Lamar

Morris Nichols Arsht & Tunnell

Derek C. Abbott

Munsch Hardt Kopf & Harr, P.C.

Jay Ong

Murphy & King, P.C.

Charles R. Bennett

D. Ethan Jeffery

Harold B. Murphy

Murtha Cullina

Daniel C. Cohn

Neal & Harwell, PLC

James R. Kelley

Nelson Mullins

George B. Cauthen

Novo Advisors

Claudia Z. Springer

Osler

Tracy C. Sandler

Parker Hudson

Eric W. Anderson

C. Edward Dobbs

Harris B. Winsberg

Perkins Coie

Steven M. Hedberg

David M. Neff

John D. Penn

Daniel A. Zazove

Phillips Lytle LLP

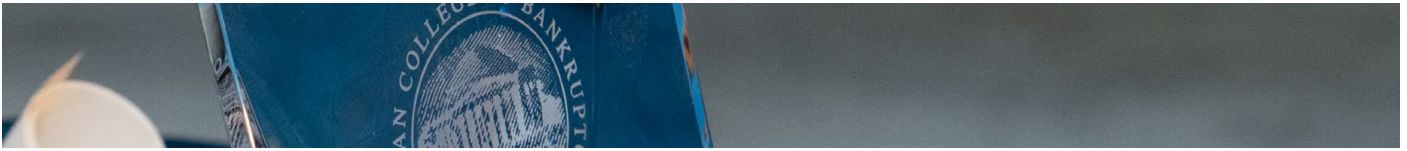
William J. Brown

Plunkett Cooney

Douglas C. Bernstein

Porter Hedges

John F. Higgins



SPONSORS, CONT.

Ray Quinney & Nebeker
Michael R. Johnson

Riker Danzig
Dennis J. O'Grady

Rubin & Levin, P.C.
Deborah J. Caruso
Elliott D. Levin

Saul Ewing, Arnstein & Lehr LLP
Adam H. Isenberg

Sequor Law
Leyza F. Blanco

Sheppard Mullin
Michael H. Ahrens
Ori Katz
Joel R. Ohlgren

*Sherman Silverstein Kohl Rose
& Podolsky*
Arthur J. Abramowitz

*Simmons Perrine Moyer
Bergman PLC*
Eric W. Lam

Sklar Kirsh
Robbin L. Itkin

Spencer Fane
Scott J. Goldstein
Eric L. Johnson
James A. Lodoen

Steptoe
Jeffrey M. Reisner

Stevens & Lee
Robert Lapowsky

*Stichter, Riedel, Blain & Postler,
P.A.*
Russel M. Blain
G. Christopher Meyer
Edward J. Peterson
Harley E. Riedel

Stinson
Thomas J. Salerno

Thompson Coburn LLP
Mark V. Bossi
Francis X. Buckley, Jr.
David A. Warfield

Thompson Hine LLP
Alan R. Lepene

Venable LLP
Jeffrey S. Sabin

Warner, Norcross & Judd
Susan M. Cook
Rozanne M. Giunta

Wolfson Bolton PLLC
Scott A. Wolfson

SUPPORTERS

Brant Point Partners
Martha E.M. Kopacz

Cornerstone Restructuring
C. Kenneth White

*Felderstein Fitzgerald
Willoughby & Pascuzzi LLP*
Steven H. Felderstein
Donald W. Fitzgerald
Paul J. Pascuzzi

Fox Swibel Levin & Carroll LLP
N. Neville Reid

HJW Advisor
Howard J. Weg

*Law Office of Christine E.
Devine LLC*
Christine E. Devine

McDonald Hopkins
Shawn M. Riley

Nyemaster Goode PC
Kristina M. Stanger

Parker Law
Nina M. Parker

ShemanoLaw
David B. Shemano

Stonecipher Law Firm
Philip E. Beard
Eric A. Schaffer
George T. Snyder

Tavener & Beran, PLC
Paula S. Beran
Lynn Lewis Tavener

The Steffes Firm
William E. Steffes



American College of Bankruptcy Foundation 2023 Donations

As of April 24, 2023, the following Fellows have donated over \$35,000 to the Foundation. We are grateful for the generous support of our Fellows.

FOUR FIGURE CLUB

Derek C. Abbott
Michael L. Cook
Robert Del Genio
Hon. James L. Garrity, Jr.
In honor of Michael L. Cook
Debra Grassgreen

Paul E. Harner
Jan M. Hayden
M. Benjamin Jones
Melissa S. Kibler
Connie A. Lahn
Julio (Rick) E. Mendoza, Jr.

Rakhee V. Patel
Jeffrey N. Pomerantz
Joshua A. Sussberg
R. Patrick Vance

FOUNDATION DONORS

Barbara George Barton
Michael St. Patrick Baxter
Shari A. Bedker
Hon. Jeff Bohm
Hon. Janet E. Bostwick
Jack Butler
Lawrence D. Coppel
H. David Cox
Melanie L. Cyganowski
Guy A. Davis
Hon. J. Michael Deasy
William Q. Derrough
Ramona D. Elliot
Hon. Joan N. Feeney
Peter C. Fessenden
Hon. Patrick M. Flatley
Sandra D. Freeburger
Rozanne M. Giunta

Daniel M. Glosband
Hon. James D. Gregg
David J. Hamernik
Hon. Bruce A. Harwood
Hon. John E. Hoffman
Hon. David W. Houston III
Hon. Kevin R. Huennekens
Hon. Peggy Hunt
Eric L. Johnson
Hon. Ralph B. Kirscher
Lawrence J. Kotler
Phillip L. Kunkel
Eric Lam
Marc A. Levinson
Peter M. Lively
Keith D. Lowey
Samuel R. Maizel
Hon. Geraldine Mund

Daniel R. Murray
Hon. Randall J. Newsome
Hon. Cynthia A. Norton
Marianne T. O'Toole
N. Neville Reid
Prof. Mark J. Roe
Stephen W. Rosenblatt
Suzanne B. Roski
Ann Ustad Smith
Hon. Susan Pierson Sonderby
Paul Douglas Stewart, Jr.
Lynn Lewis Tavenner
Steven C. Turner
Behrooz P. Vida
Lori A. Vosejпка
James J. Waldron
Elizabeth Corinne Wiggins
Hon. Gregg W. Zive



Upcoming Events

Gender Equality Workshop June 1, 2023

Based on the responses we received from participants in our gender equality program last fall, and in sponsorship with the DEI Committee of the American College of Bankruptcy, we are planning an afternoon workshop on June 1, 2023, from 2:00 - 5:00pm, with a cocktail reception to follow. The workshop will provide actionable, practical tools to begin the implementation of best practices in, among other areas, hiring, evaluations, retention, and promotions. The workshop will be led by Professor Iris Bohnet, who shared many of her ground-breaking insights with us during the November 2022 program.

[Learn More Here](#)

Annual All Fellows Luncheon, Austin, TX October 11, 2023

The College will host its annual All Fellows Luncheon as well as board and committee meetings immediately before NCBJ in Austin, TX. Registration will be available in early summer.

Class 35 Induction Ceremony and Events March 22, 2024

We will be in Washington, D.C. for the Induction of the 35th Class! The ceremony will be held at the Smithsonian Portrait Gallery Atrium on Friday, March 22, 2024. Further details will be provided in late 2023.



Focus on Fellows

We invite all Fellows to submit information about awards, news, and/or recent publications. Member highlights will be published on a bi-monthly basis to all Fellows through email or the College Columns as appropriate. If you have news about yourself or a colleague, please send announcements to Michelle Foster, ACB Communications Director, at focus@amercol.org.

Michael St. Patrick Baxter gave an address at his alma mater, Western University, in London, Canada, on March 16, 2023, entitled "From Windsor to Washington: How a Western Student From Essex County Made His Way to Partnership in an Elite American Law Firm."

Douglas C. Bernstein was recently named to the Michigan Lawyers Weekly Hall of Fame Class of 2023.

J. Scott Bovitz is a musician. Along with his virtual band members, Bovitz has composed, or performed, or mixed and mastered 648 original songs (bovitz.com). The American Bar Association recently licensed one of Bovitz' songs for the ABA's popular podcast, "Bad Boys in Bankruptcy." As you might expect, Bovitz' business card is a guitar pick with "bovitz.com" printed on the side.

Toby Gerber, Norton Rose Fulbright US LLP, co-authored the bankruptcy chapter in *The Trial Lawyer's Guide to the Attorney-Client Privilege and Work Product Doctrine* (American Bar Association 2023) "Litigating Attorney-Client Privileges Under the United States Bankruptcy Code and the Federal Rules of Bankruptcy Procedure." Gerber co-authored the chapter with his daughter Jane Gerber, an associate at McDermott Will & Emery.

Marie-Ann Greenberg, Esq. is the Chapter 13 Standing Trustee in the Newark Vicinage of the District of New Jersey. She is the 2023 Co-Chair of the William H. Gindin Bankruptcy Bench Bar Conference.

Paul Heath, a domestic and international mediator and arbitrator, has recently assisted as a faculty member for judicial symposiums organised by the World Bank in Mauritius, India, Laos and (upcoming) China. Heath is also co-convenor of the INSOL International ADR Colloquium, currently finalising a programme as part of INSOL's conference in Tokyo in September. In addition, Heath has recently co-presented a seminar on Arbitration and Insolvency for the Singapore International Arbitration Academy and will be part of a panel addressing the same topic at the Hong Kong Arbitration Week.

Hon. Corali Lopez-Castro was sworn in as a bankruptcy judge for the Southern District of Florida on May 30, 2023.

Professor Samir Parikh's new article, *Financial Disequilibrium*, explores the often-times ruthless world of distressed debt investing and is forthcoming in the *University of Pennsylvania Law Review*. Further, his new essay, *Opaque Capital Invades Mass Torts*, spotlights how litigation finance companies are distorting resolution in mass tort bankruptcies and is



forthcoming in the Yale Law Journal Forum. Both pieces are available [here](#).

Kristina Stanger of Nyemaster Goode, PC in Des Moines, Iowa was appointed to the ABI Board of Directors.

David Stratton joined Whiteford Taylor & Preston as Senior Counsel in its Wilmington office, after 33 years at Pepper Hamilton LLP and then Troutman Pepper Hamilton & Sanders LLP.

Albert Togut was invited to join the the RAND Corporation and its Kenneth Feinberg Center for Catastrophic Risk Management and Compensation (and is now on the Board) that, in part, studies the use of defective products or exposure to hazardous substances that can cause widespread injury and economic loss.

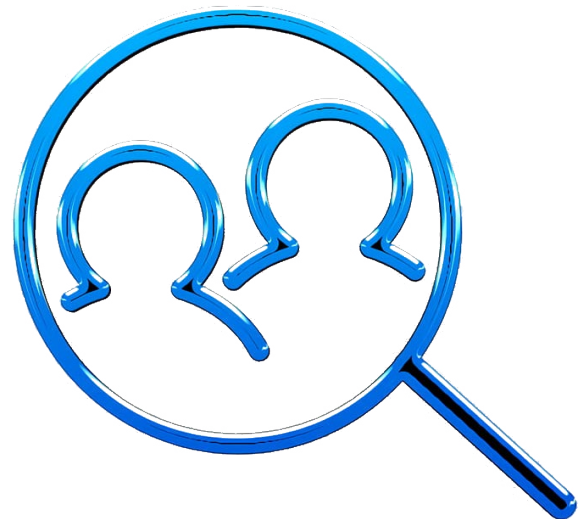
Travis Torrence won the Texas Minority Counsel Program's Corporate Counsel of the Year Award, which recognizes an in-house attorney who has opened doors for Texas minority, women, and LGBTQ+ attorneys by promoting diversity within their legal department or company, by consistently hiring diverse attorneys in private practice to perform legal work on behalf of their company, and by engaging in mentorship and volunteerism with the Bar or community to foster diversity in the legal profession. Torrence was also ranked #1 on INvolve - The Inclusion People's Global Top 100 Outstanding LGBTQ+ Future Leaders Role Model list.

Tara Twomey was appointed as the new Director of the U.S. Trustee Program at the Department of Justice.

Brian Walsh was appointed to the United States Bankruptcy Court for the Eastern District of Missouri, effective January 16, 2023.

David Wender was recently elected to his first term on the American Bankruptcy Institute Board of Directors

Bob Wessels was appointed as Officer in the Order of Orange-Nassau. Mayor Kolff of Dordrecht presented the decorations to Wessels for his longstanding contribution to the advancement of private law and in particular insolvency law in the Netherlands, Europe and beyond.





Email the Editors

We are constantly adding content to the Columns and making other updates. If you have input on what you would like to see here, please email us at:

Melanie Cyganowski, mcyganowski@otterbourg.com
Dion Hayes, dhayes@mcguirewoods.com

We value your input. Thank you!

American College of Bankruptcy
P.O. Box 249
Stanardsville, VA 22973
Tel: 434-939-6004 Fax: 434-939-6030
Email: sbedker@amercol.org
www.amercol.org