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Program Schedule

FORTY THIRD ANNUAL SOUTHEASTERN BANKRUPTCY LAW INSTITUTE

MARCH 30 - APRIL 1, 2017

THURSDAY, MARCH 30, 2017 (Morning Session)

8:00 - 9:00 **Registration** (continued through program) and **Continental Breakfast** (Registrants only – included in registration fee).

9:00 - 9:05 **Welcome** by Angelyn M. Wright

9:05 - 9:45 **Economic Overview and Outlook:**
Dennis Lockhart, President and Chief Executive Officer of the Atlanta Federal Reserve Bank, will present an overview and outlook for national and global economic conditions and discuss how our nation's monetary policymakers assess those conditions in crafting US monetary policy.

SPEAKER: **Dennis Lockhart**

9:45 - 10:45 **The Issues That Divide Us: Recent Bankruptcy Cases in the Supreme Court and Some Conflicts Among the Courts of Appeals.**

Eric Brunstad will discuss recent and pending Supreme Court bankruptcy cases and how these may affect our practices. Eric will also examine some of the significant splits among the Courts of Appeals on bankruptcy issues, the likelihood of resolution by the Supreme Court, and implications for consumer and business practitioners.

SPEAKER: **Eric Brunstad**

10:45 - 11:05 **Coffee Break** (Registrants only – included in registration fee)

11:05 - 12:25 **Before You File: How to Plan, Questions to Ask, Pitfalls to Avoid:**
This panel will explore the key issues for practitioners to address when planning to file a chapter 11 case, including how to prepare your client for operations in bankruptcy, time the filing for most advantage and minimal disruption of payroll, ask the right questions in order to spot and address often-overlooked important legal and operational issues, ensure you get paid, and initiate and conduct pre-filing negotiations with lenders, critical vendors, and other essential constituencies.

SPEAKERS: **Elizabeth Green, Judge Neil Olack, David Eades & Deryck Palmer**

11:05 - 12:25

BREAKOUT SESSIONS

Consumer Litigation Toolbox Breakout Session

Mortgage Issues Toolbox.

Issues abound in the vast world of mortgages in both Chapter 7 and Chapter 13 cases. This esteemed panel of experts from all sides of the equation will discuss a myriad of issues that Judges, Trustees, and practitioners encounter on a daily basis. They will discuss end of case controversies, motions for relief and ensuing payment disputes, automatic stay violations (innocent vs. willful violations), HOA issues, reaffirmation agreements in Chapter 7 cases, surrender issues (vesting with or without agreement and related implications for due process), cost of sale issues, and more.

SPEAKERS: **Mark Leffler, Carey Ebert, Cathy Moran & Alice Whitten**

12:25 - 1:40

Special Lunch Presentation with Linda A. Klein, President, American Bar Association (Registrants only – included in registration fee)

THURSDAY, MARCH 30, 2017 (Afternoon Session)

ELECTIVE PROGRAMS A AND B

Program A (Chapter 11 Workshop)

- 1:40 - 3:00 **All in A Day's Work: Best Practices and Trends in First Day Motion Practice in Chapter 11 Cases.**
From the perspective of experienced practitioners and the bankruptcy bench, find out the best and most efficient way to obtain critical "first day" relief in Chapter 11 cases. What types of motions are appropriate for the first day? What should wait? What can't you do on the first day, regardless of the circumstances? Are first day orders too broad? Are they too long? When do you need live testimony? What are the things the Court wishes we would do better / different in first-day motions practice? All these and other issues will be addressed by our panel of experts.
SPEAKERS: Jessica Knowles Boelter, Judge Mary Grace Diehl & Reginald Jackson
- 3:00 - 3:20 **Coffee Break** (Registrants only – included in registration fee).
- 3:20 - 4:40 **DIP Financing: A Review of Best Practices and Recent Developments.**
In this session we will briefly review the basics of debtor in possession financing, and then move to a discussion of recent trends and best practices – including a discussion of roll up financing, loan to own DIP financing structures, and an overview of key provisions in DIP financing orders that frequently draw scrutiny from the bench, and objections from unsecured creditors, including liens on avoidance actions, waivers of claims, Section 506(c) waivers, automatic stay modifications, and other lender-favorable provisions.
SPEAKERS: David Eades, Corali Lopez-Castro & Judge Frank Santoro
- 4:40 - 6:30 **Cocktail Reception** (Registrants and Spouses)

Program B (Consumer Workshop)

- 1:40 - 2:20 **Challenging Debtor Issues in 7 & 13: All Debtors Are Not Created Equal.**
Everyone has dealt with a challenging debtor or two, but the real issues arise with an incompetent or deceased debtor. What do you have to do if your debtor client dies? Can someone with a power of attorney proceed? Can you file a petition for an incompetent debtor? What if incompetency is determined post-petition? What about the §341 meeting? And most importantly, what are your duties and obligations as counsel in both situations? This is a must see panel for every bankruptcy attorney who doesn't want to handle these challenging issues on the fly!
SPEAKERS: Neville Reid & Jill Michaux
- 2:20 - 3:00 **CFPB Part I:**
"The CFPB" is in the headlines almost every week. Its activities touch every aspect of consumer finance, from regulating consumer lenders, industry participants and even lawyers, to rulemaking, enforcement actions, consumer protection initiatives and education. This session will cover what you need to know about the CFPB as a bankruptcy practitioner, a lawyer, a consumer financial service provider, and a consumer.
SPEAKERS: Alane Becket & Barbara Sinsley
- 3:00 - 3:20 **Coffee Break** (Registrants only – included in registration fee).
- 3:20 - 4:00 **CFPB Part II:**
The discussion of the CFPB and its impact on consumer finance continues.
SPEAKERS: Alane Becket & Barbara Sinsley
- 4:00 - 4:40 **New National Chapter 13 Plan: Ready or not, here it comes!**
Get prepared by attending this important session that is essential to any chapter 13 practice. Nancy J. Whaley, Standing Chapter 13 Trustee for the Northern District of Georgia, has played an integral role in the development of this plan. Nancy and Jill Michaux will walk you through this ten part plan, section by section. Learn the reasons for this new

plan, the expected impact, and whether districts can opt out.

SPEAKERS: **Jill Michaux & Nancy Whaley**

4:40 - 6:30 **Cocktail Reception** (Registrants and Spouses)

FRIDAY, MARCH 31, 2017 (Morning Session)

8:00 - 9:00 **Continental Breakfast** (Registrants only – included in registration fee).

9:00 - 9:40 **Oversight Insight: We're the Government and We're Here to Help!**
Hear about the latest issues, areas of concern, and hot topics in the world of bankruptcy from the perspective of the Office of the United States Trustee. Know the areas of concern for client representation, schedule preparation, operating reports, audits, and other potential pitfalls in debtor and creditor representation.

SPEAKER: **Samuel Crocker**

9:40 - 10:40 **Litigating Ordinary Course of Business Defense in Preference Actions: What is ordinary, and how do you prove it?**
This session will examine the development of key ordinary course defense issues including the difference between the objective test and the subjective test; required evidence to prove ordinary business terms in the industry under the objective test; determining the historical period and baseline of payments to establish course of dealing under the subjective test; analyzing evidence of supplier's reducing of credit limits or otherwise requiring prompter payment. Our experts will discuss the best practices and most effective strategies in litigating ordinary course defenses.

SPEAKERS: **Joseph Steinfeld & Judge Frank Santoro**

10:40 - 11:00 **Coffee Break** (Registrants only – included in registration fee).

11:00 - 12:20 **363 Sales: The Frequent Sine Quo Non of Chapter 11 Cases.**
More and more, the Section 363 sale has become a centerpiece of Chapter 11 cases. Our panel of experts will review the structure and critical elements of a successful Section 363 sale process and will offer their perspectives on recent developments and precedent impacting bankruptcy sales – including recent opinions on the "free and clear" status of 363 sales, the sufficiency of notice, the impact on creditors and interested parties on the failure to object to sales, sub rosa plan objections, and the ability of creditors to collaterally attack a 363 sale order.

SPEAKERS: **John Higgins, Elizabeth Green, Jessica Knowles Boelter & Judge Clifton Jessup**

11:00 - 12:20
**BREAKOUT
SESSIONS**

Consumer Litigation Toolbox Breakout Session

Dealing with the Worst Case Scenario: A Discharge Roundtable.
It's the one thing no debtor wants: a discharge or dischargeability complaint. In this interactive roundtable discussion you and experts in the field will discuss the many aspects of bringing and defending a discharge or dischargeability action. When should you bring one? How can you properly settle one? Object to discharge and dischargeability or only to dischargeability? How do you put on your best defense? You'll be ready to deal with all this and more after this session!

SPEAKERS: **Mark Leffler, Carey Ebert, Alice Whitten & William Brewer**

12:20 - 1:40 **Lunch** (Registrants only – included in registration fee).

FRIDAY, MARCH 31, 2017 (Afternoon Session)

ELECTIVE PROGRAMS A AND B

Program A (Chapter 11 Workshop)

1:40 - 2:20 **Assumption and Assignment of Executory Contracts: Preserving the Value of Non-Burdensome Contracts and Leases.**

A chapter 11 debtor might eagerly reject costly or non-market contracts or leases under Section 365, but a debtor often wants to retain some contracts, which may be critical to overall reorganization strategy or attractive to potential purchasers due to favorable terms. Predictably, counterparties to those same contracts may have strong economic incentive to oppose the debtor's efforts. This session will explore what contracts or leases are subject to assumption, what assumed contracts can be assigned to a third party, and what hurdles the debtor could face in achieving its ends. We will also discuss non-debtor party rights under Section 365(h) and (n).

SPEAKER: **Reginald Jackson**

2:20 - 3:00

Employee Issues in Chapter 11:

Some of the most important and sensitive issues in Chapter 11 relate to current and former employees of the debtor. This session will spotlight the most critical employee issues that counsel may face in a chapter 11 case. Issues to be considered include: retention and compensation of key employees during the chapter 11 process; continuation, modification and termination of insurance, retirement and other employee benefit plans; dealing with the PBGC and potential priority claims arising from termination of a pension plan; modification of collective bargaining agreements under §1113 and retiree benefits under §1114; anticipating and avoiding potential WARN Act liability; objections to employee claims, including under §502(a)(4) or (7); and potential conflicts of interest by key employees and the use of CROs and other ways to deal with them.

SPEAKER: **Deryck Palmer**

3:00 - 3:20

Coffee Break (Registrants only – included in registration fee).

3:20 - 4:40

Formulating the Chapter 11 Plan and Post-Confirmation Plan Strategy.

This session will focus on some of the strategic considerations in negotiating and formulating a Chapter 11 plan – both reorganization and liquidating plans – including consideration of the latest trends with respect to claim classification, impairment, "gifting", injunctions and exculpations, assumption and rejection provisions, and other critical plan elements. We will also address plan confirmation and best practices in presenting or defeating plan confirmation objections. Finally, we will examine post confirmation practice and procedure – including a discussion of "lessons learned" and ways to address issues at the confirmation stage that will improve the efficiency and productivity of the post confirmation process.

SPEAKERS: **Coral Lopez-Castro, Eric Brunstad & Joseph Steinfeld**

Program B (Consumer Workshop)

1:40 - 2:20

Recent Developments: What's the Latest Buzz?

Hear about the latest developments and cases that will impact your consumer practice. From bankruptcy courts to the Supreme Court, this session will discuss all the cases that you need to know about to keep your client and yourself out of trouble!

SPEAKERS: **Samuel Crocker & Judge Mary Grace Diehl**

2:20 - 3:00

Proving Valuations: It's My Stuff! It's Worth the World to Me!

In nearly every case you need to know what the debtor's property is worth. In this session we will discuss how to effectively determine and present evidence on disputed valuations of real and personal property. For real property, do you have to hire an appraiser or should you just talk to a real estate agent? Who is competent to testify about the value? For personal property do you need to come up with the liquidation or replacement value? So many issues and so little time! We'll help you cut through the morass and convince the court your value is the right one.

SPEAKERS: **Frank Drake & Judge Clifton Jessup**

3:00 - 3:20

Coffee Break (Registrants only – included in registration fee).

3:20 - 4:00

Student Loans: A Case Update.

Discharging student loans may be easier than you think ... or is it? The Supreme Court recently declined to review a student loan discharge case, *In re Tetzlaff*. Does this mean lower courts are still not discharging student loan debt or are decisions like the *In re Campbell* on the rise? This session will guide you through the recent developments in student loan discharge cases.

SPEAKER: **William Brewer**

4:00 - 4:40

Proof of Claims Issues: Untangle the NEW Bankruptcy Proof of Claim Rules and Forms.

Practical implications of the new forms including how the changes impact creditors; new Claims Bar Date requirements and what happens to late filed claims. Approach the form changes with confidence and learn about recent case decisions: does filing a stale claim violate the FDCPA? Can an untimely proof of claim amend a timely filed "informal" proof of claim? What is an "informal" proof of claim? When can you object to a claim due to lack of sufficient documents when the debtor lists the claim in the petition?

SPEAKER: **Cathy Moran**

SATURDAY, APRIL 1, 2017 (Morning Session)

8:00 - 9:00

Continental Breakfast (Registrants only – included in registration fee).

9:00 - 10:00

Legal Ethics: Protecting the Attorney-Client Privilege.

This session will cover a variety of ethical issues related to the attorney-client privilege, including applicability of attorney-client privilege to attorney-client communications shared by attorney or client with the client's spouse or other family members; a trustee's right to waive the debtor's attorney client privilege and compel the attorney to testify; trustee's right to compel the debtor's attorney to turn over work-product such as notes of witness interviews or notes of mental impressions and theories; establishing a pre-litigation common interest with another party, separately represented, so that the attorney-client privilege is maintained with respect to communications between the attorneys and the clients.

SPEAKER: **Neville Reid**

10:00 - 10:40

Key Issues Under the Federal Fair Debt Collection Practices Act and the Fair Credit Reporting Act.

Uncertainties abound under both of these statutes. This session will cover key issues including determining which creditors and mortgage servicers subject to the FDCPA; what constitutes harassment or abuse, false or misleading representations, or unfair practice, and liability of debt collectors for seeking to collect claims barred by the statute of limitations or the bankruptcy discharge. We will also discuss the mechanics of credit reporting and who qualifies as a credit reporting agency under the FCRA; how Chapter 7 bankruptcy and discharge of debts should be reported; special reporting rules for Chapter 13 cases; liability and damages under the FCRA; and liability under the Bankruptcy Code for willful failure to report debt as discharged.

SPEAKER: **Frank Drake**

10:40 - 11:00

Coffee Break (Registrants only – included in registration fee).

11:00 - 12:00

Professionalism: Curbing Overzealous Advocacy.

As advocates for their clients, lawyers must be competent, honest, and loyal, but must they also be rude, contentious, and rancorous? What are the boundaries of appropriate zealous advocacy? The lines of civility are crossed by obstructive, abusive, and insulting behavior, but not all adversarial excess rises to the level of inappropriate behavior. This presentation focuses on the blurry lines of zealous advocacy.

SPEAKER: **Judge Neil Olack**