

**THIRTY-SIXTH ANNUAL
SOUTHEASTERN BANKRUPTCY LAW INSTITUTE
MARCH 18-20, 2010**

THURSDAY, March 18, 2010 (Morning Session)
J. Robert Williamson, Presiding

<u>TIME</u>	<u>SUBJECT</u>	<u>SPEAKER</u>	<u>TAB</u>
8:00 - 9:00	Registration (continued through program) and Continental Breakfast (Registrants only - included in registration fee).		
9:00 - 9:05	<u>Welcome by J. Robert Williamson</u> President, Southeastern Bankruptcy Law Institute, Inc.		
9:05 - 9:45	<u>The Select New Cases and Other Recent Developments in Bankruptcy About Which All Practitioners Should Know.</u>	Robin E. Phelan	A
9:45 - 10:25	<u>Securitization and Servicing of Mortgage Loans</u> - Servicers' rights, powers and duties under servicing agreements; authority, incentives and disincentives to forbear, modify or grant relief to distressed borrowers; conflicting demands from holders of tranches of debt; proof of claim errors, motions for relief and post-discharge foreclosures; U.S. Trustee's role.	Honorable Frank J. Santoro	B
10:25 - 10:45	Coffee Break (Registrants only - included in registration fee).		
10:45 - 11:25	<u>Crisis in the Banking System</u> - Securitization, credit default swaps, and "mark-to-market" accounting in creating banks "too big to fail"; effect of TARP/TALF in rescuing banks and stimulating lending; role of commercial real estate lending and loan participations in failures of community and regional banks; FDIC approach to disposal of bank assets.	Mark C. Ellenberg	C

**CONSUMER LITIGATION TOOLBOX
BREAKOUT SESSION A**

THURSDAY, MARCH 18, 2010
Lisa A. Ritchey Craig, Presiding

<u>TIME</u>	<u>SUBJECT</u>	<u>SPEAKER</u>	<u>TAB</u>
10:45 - 12:25	<u>Lien Stripping under 506(a) vs. 506(d)</u> - Legal basis; proof via documents and other evidence; pleadings; discovery; introducing and admitting evidence and witnesses; objections and responses raised at hearing; burden of proof; ethics, professionalism; tactics; settlement; successful hearing; finality of order; conversion or dismissal; recordation on state court deed records.	Andrea E. Celli and Robin R. Weiner	D

**CONSUMER LITIGATION TOOLBOX
BREAKOUT SESSION B**

Ira D. Gingold, Presiding

<u>TIME</u>	<u>SUBJECT</u>	<u>SPEAKER</u>	<u>TAB</u>
10:45 - 12:25	<u>Motions under 707(b)</u> - Legal basis; proof via documents and other evidence; pleadings; discovery; introducing and admitting evidence and witnesses; objections and responses raised at hearing; burden of proof; ethics and professionalism; tactics; settlement; successful hearing.	Fredrick E. Clement and Douglas B. Jacobs	E

<u>TIME</u>	<u>SUBJECT</u>	<u>SPEAKER</u>	<u>TAB</u>
11:25 - 12:25	<u>Litigation: Ethics Topic: Representing Multiple Debtors in Administratively Consolidated Cases</u> - Ethical issues in representing multiple debtors; attorney's role in prevention or disclosure of creeping DIP financing form intercompany cash management; preserving estate claims in case of no consolidation pursuant to the plan; disclosure rules and duties of counsel in resolution of intercompany claims.	Honorable Michael G. Williamson	F
12:25 - 1:45	Lunch (Registrants only - included in registration fee).		

THURSDAY, March 18, 2010 (Afternoon Session)
ELECTIVE PROGRAMS A AND B

PROGRAM A (Consumer Workshop)
Ira D. Gingold, Presiding

<u>TIME</u>	<u>SUBJECT</u>	<u>SPEAKER</u>	<u>TAB</u>
1:45 - 2:25	<u>Recent Developments for Consumer Bankruptcy Practitioners.</u>	Mark S. Zuckerberg	G
2:25 - 3:05	<u>Homestead Exemptions</u> - Optimizing Debtor's claim of exemptions; implementation of domiciliary rules; choice of law issues; effect of domiciliary requirements after Debtor has moved; applying opt out rule; resident or person domiciled; use of federal exemption; savings clause; extraterritorial application of another state's homestead exemption law; avoiding judicial liens; property location.	William E. Brewer, Jr.	H
3:05 - 3:25	Coffee Break (Registrants only - included in registration fee).		
3:25 - 4:05	<u>Intersection of Divorce and Bankruptcy</u> - Domestic support obligations excepted from discharge; dischargeability of property division debts; nondischargeable joint debts as to former spouse; recovery of DSO creditor from exempt property; protected transfers which satisfy domestic support obligations; priorities for claims for domestic support obligations; filing priority claim; automatic stay exceptions.	Honorable Margaret Dee McGarity	I
4:05 - 4:45	<u>Disposable Income</u> - Test for projected disposable income in Chapter 13; means test vs. Schedule J; determining projected disposable income upon surrender of collateral on which secured payments are scheduled; median income for determining applicable commitment period based solely on "means test" calculations without regard to actual income; temporal vs. multiplier.	Honorable Frank J. Santoro	J
5:00 - 6:30	Cocktail Reception (Registrants and Spouses).		

PROGRAM B (Chapter 11 Workshop)
Grant T. Stein, Presiding

<u>TIME</u>	<u>SUBJECT</u>	<u>SPEAKER</u>	<u>TAB</u>
1:45 - 2:25	<u>Asset Sales: Part 1 - Update on Break-Up Fees, Bid Procedures, Etc.</u> - Prepetition marketing and sale motions on petition date; breakup fees; bidding procedures; secured creditor as stalking horse; sales of substantially all assets for less than all secured debt; direct competitors as bidders; §363 sales to avoid compliance with state law; "free and clear" issues.	Jordi Gusó	K
2:25 - 3:05	<u>Asset Sales: Part 2 - Sub Rosa Plans</u> - Structuring §363 sales to avoid sub rosa plan challenges (<u>Chrysler</u> and <u>General Motors</u> cases); successor liability and asbestos issues; mootness; using settlements and sale structures to avoid statutory priorities.	Reginald W. Jackson	L
3:05 - 3:25	Coffee Break (Registrants only - included in registration fee).		
3:25 - 4:05	<u>Plan Issues in Single Asset Real Estate Cases</u> - Extending the 90-day plan deadline; interest payments under §362; "reasonable possibility" of confirmation within "reasonable time"; viability of "eat dirt" plans, secured creditor cramdown, and indubitable equivalence; claim classification, impairment and discriminatory treatment; "good faith" objections; strategic use of §1111(b) election.	Professor Jack Williams	M

4:05 - 4:45	<u>The Intersection of Bankruptcy Law and Franchise Law</u> - franchise agreements as executory contracts; pre-petition termination of franchise agreements; impact of the Uniform Franchise Act on stay relief and post-petition termination; security interests in franchise rights and the valuation of such interests; enforceability of post-termination covenants not to compete.	Thomas J. Salerno	N
5:00 - 6:30	Cocktail Reception (Registrants and Spouses).		

FRIDAY, March 19, 2010 (Morning Session)
Gary W. Marsh, Presiding

<u>TIME</u>	<u>SUBJECT</u>	<u>SPEAKER</u>	<u>TAB</u>
8:00 - 9:00	Continental Breakfast (Registrants only - included in registration fee).		
9:00 - 9:40	<u>Lessons from the Mega-Cases</u> - Lehman Brothers and the overnight sale; <i>Chrysler</i> and the 363 sale to a creditor-sponsored buyer; <i>General Motors</i> and successor liability; <i>General Growth Properties</i> and securitization; public policy implications and impact on bankruptcy practice.	Robin E. Phelan	O
9:40 - 10:20	<u>Taxation Issues That Impact Bankruptcy Cases</u> - Discharge of tax liabilities, including individual liability and 100% penalty liability in individual cases; repayment of arrearages in Chapter 11; priority of tax; priority and enforceability of prepetition levies and liens; income from debt cancellation or discharge of non-tax debt obligations.	Professor Jack Williams	P
10:20 - 10:40	Coffee Break (Registrants only - included in registration fee).		

10:40 - 11:20	<u>Defending Preference Actions</u> - Ordinary course defense under BAPCPA; proving ordinary course with few transactions; limits on substantially contemporaneous exchange defense; elements of the earmarking defense; calculating new value; improvement of position on floating liens of inventory and accounts receivable; domestic obligations payments defenses.	Thomas J. Salerno	Q
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**CONSUMER LITIGATION TOOLBOX
BREAKOUT SESSION A**

FRIDAY, March 19, 2010
Ira D. Gingold, Presiding

<u>TIME</u>	<u>SUBJECT</u>	<u>SPEAKER</u>	<u>TAB</u>
10:40 - 12:20	<u>Lien Stripping under 506(a) vs. 506(d)</u> - Legal basis; proof via documents and other evidence; pleadings; discovery; introducing and admitting evidence and witnesses; objections and responses raised at hearing; burden of proof; ethics, professionalism; tactics; settlement; successful hearing; finality of order; conversion or dismissal; recordation on state court deed records.	Andrea E. Celli and Robin R. Weiner	R

**CONSUMER LITIGATION TOOLBOX
BREAKOUT SESSION B**

Lisa A. Ritchey Craig, Presiding

<u>TIME</u>	<u>SUBJECT</u>	<u>SPEAKER</u>	<u>TAB</u>
10:40 - 12:20	<u>Motions under 707(b)</u> - Legal basis; proof via documents and other evidence; pleadings; discovery; introducing and admitting evidence and witnesses; objections and responses raised at hearing; burden of proof; ethics and professionalism; tactics; settlement; successful hearing.	Fredrick E. Clement and Douglas B. Jacobs	S

<u>TIME</u>	<u>SUBJECT</u>	<u>SPEAKER</u>	<u>TAB</u>
11:20 - 12:20	<u>Litigation: Evidence; Litigating Ponzi Schemes: Winners and Losers</u> Trial of issues arising from bankruptcies/receiverships involving Ponzi schemes, as withdrawals from pooled investments outpace new investor deposits; evidence necessary to prove fraudulent transfers to recovering investors; other causes of action available to recover funds; claim priorities; claims against professionals for advising or abetting.	Jeff J. Marwil	T
12:20 - 1:40	Lunch (Registrants only - included in registration fee).		

FRIDAY, March 19, 2010 (Afternoon Session)
ELECTIVE PROGRAMS A AND B

PROGRAM A (Consumer Workshop)
Ira D. Gingold, Presiding

<u>TIME</u>	<u>SUBJECT</u>	<u>SPEAKER</u>	<u>TAB</u>
1:40 - 2:20	<u>Claim issues</u> - Objections to claims; trustee or debtor's attorney as movant; claims reclassification vs. reconsideration; the effect of confirmation and modification on claims; mortgage, personal property, and unsecured claims documentation required; requirement for payment on adequate protection payments; requirement for stay termination argument.	Professor Michael Sabbath	U
2:20 - 3:00	<u>Fraudulent Conveyances</u> - Conversion of nonexempt assets into exempt assets pre-petition; proving debtor's intent to hinder, delay, or defraud creditors; standards under Uniform Fraudulent Transfers Act, including constructive fraud; effect of lack of evidence of fraud in Debtor's pre-bankruptcy planning; debtor's prepetition transfer of residence to relative immediately before filing.	Mark S. Zuckerberg	V
3:00 - 3:20	Coffee Break (Registrants only - included in registration fee).		
3:20 - 4:00	<u>Discharging Taxes</u> - Dischargeability of tax debt and discharge of personal income taxes; three-year, two-year, and 240-day rules and tolling; dischargeability of payroll and	William E. Brewer, Jr.	W

	employer's taxes; interest, and penalties; requirements to file and produce tax returns; effects of disallowance of superdischarge, pending offer-in-compromise, extension to file tax return; obtaining and using transcripts; tax liens and levies.		
4:00 - 4:40	<u>Discharge and Dischargeability</u> - Collateral estoppel effect of pre-bankruptcy judgments; acts or omissions that result in "willful and malicious" injuries; when reliance on misrepresentations is unreasonable reliance; what misstatements will be deemed "material"; denial of discharge due to lack of records; fraudulent intent; failure to disclose transactions and assets.	Brett Weiss	X

PROGRAM B (Chapter 11 Workshop)
Wendy L. Hagenau, Presiding

<u>TIME</u>	<u>SUBJECT</u>	<u>SPEAKER</u>	<u>TAB</u>
1:40 - 2:20	<u>Recent Developments for Chapter 11 Practitioners.</u>	Mark C. Ellenberg	Y
2:20 - 3:00	<u>Key Employee Retention, Incentive, and Severance Plans after BAPCPA</u> - Non-officer retention or severance programs; plans for executives under §503(c)(3); setting meaningful goals; applying the business judgment standard and adopting a "holistic" views of incentive/retention plans; seeking concessions from union and retirees while proposing retention and incentive programs; pre-petition management incentive programs as ordinary course.	Jordi Guso	Z
3:00 - 3:20	Coffee Break (Registrants only - included in registration fee).		
3:20 - 4:00	<u>Dealing With the Under-Funded Chapter 11 Debtor</u> - Pre-petition carve-out requests for professionals and use of cash collateral; first-day motions to dismiss under §1112(b)(4)(A); evidentiary issues connected with debtor's pre-petition financial performance; the use of the small business provisions of §§308 and 1116.	Honorable Michael G. Williamson	AA
4:00 - 4:40	<u>Trade Creditors in Bankruptcy</u> - Reclamation rights and administrative claims under §503(b)(9); conflicts between DIP Lenders and holders of	Reginald W. Jackson	BB

	administrative claims; critical vendor protocols; post-petition credit pursuant to terms of a pre-petition executory supply contract; "amendments to the course of dealing" defense to preference actions; plan classification issues for trade and bond debt.		
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SATURDAY, March 20, 2010 (Morning Session)
J. Robert Williamson, Presiding

<u>TIME</u>	<u>SUBJECT</u>	<u>SPEAKER</u>	<u>TAB</u>
8:00 - 9:00	Continental Breakfast (Registrants only – included in registration fee).		
9:00 - 9:40	<u>Bankruptcy Relief for the Entrepreneur/Developer</u> - Discharge for individuals with primarily commercial guaranty debt; bad faith objections to discharge under §707(a); individual Chapter 11 for a previously high net worth individual; post-petition income as property of the estate under 11 U.S.C. §1115; prosecution and confirmation of a Chapter 11 plan for a debtor with significant commercial guaranty debt.	Brett Weiss	CC
9:40 - 10:20	<u>Commercial Deposit Accounts Under UCC Article 9</u> - Article 9's provisions regarding perfection of security interest in commercial deposit accounts, perfection and priority of security interest in deposit account pursuant to state law, priority of conflicting security interests in and setoff rights against deposit account, rights of transferees of funds from encumbered deposit account, enforcement of security interests in deposit accounts, contrasting common law applicable to consumer deposit accounts.	Professor Michael Sabbath	DD
10:20 - 10:40	Coffee Break (Registrants only – included in registration fee).		
10:40 - 11:20	<u>Update on Fiduciaries and Zone of Insolvency</u> - Issues affecting directors and officers of insolvent corporations: duties under Delaware and other state law; recent developments on duties to creditors; claims brought by liquidating trustees, plan administrators and other company fiduciaries; director's and officer's liability policies; coverage of	Jeff J. Marwil	EE

	defense costs; exclusions from coverage such as insured vs. insured and regulatory exclusions; tips for advising boards.		
11:20 - 12:20	<p><u>Litigation: Professionalism Proper Legal Representation of the Client</u> - Advisability of engagement letters and termination noting the termination of representation if the client is not a regular client or if the representation is of multiple parties; terms to consider in engagement letters; protecting the attorney-client or work-product privilege when consulting with the client's family members, advisors, or business associates; the client's accountants or business associates; special rules dealing with communications with experts; limits of legitimate advice and assistance to the client with respect to protecting the client's assets from creditors; duties of candor to the opposing party and to the court.</p>	Honorable Margaret Dee McGarity	FF