STATE BAR of TEXAS

BANKRUPTCY LAW Section Newsletter

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IN THIS ISSUE

A MESSAGE FROM THE CHAIR

Layla Milligan

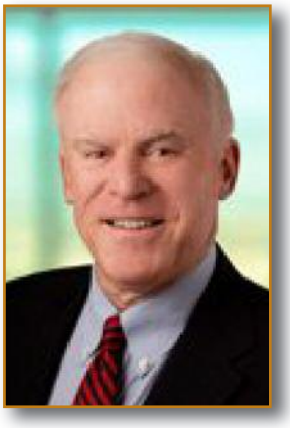
Welcome! I'm Layla Milligan, Chair of the Bankruptcy Law Section for 2018-2019. It is an exciting time for the Section, and there are many ways that you can fully enjoy all the benefits of membership. Join us!

Some examples of these opportunities include:

- A webinar series, which rotates between consumer and business topics and is free to members.
- The **Bankruptcy Pro Bono Project**, offered through the University of Texas at Austin School of Law, St. Mary's University School of Law, and South Texas College of Law Houston, with other law schools on the horizon. Volunteers working on this project consist of bankruptcy attorneys, trustees, judges, law professors, and law students from across the State of Texas coming together to help those in need of bankruptcy assistance.
- The Section sponsors and supports the **Elliott Cup**, a moot court competition focusing on bankruptcy issues and argument. This competition features teams from law schools in Texas, Louisiana, and Mississippi, and is lauded as a premier moot court competition leading up to the national Duberstein Moot Court Competition.
- The Section contributes annually to legal aid organizations across the State through the Bill Wallander Legal Aid Fund, and has worked, through the leadership of former Bankruptcy Law Section Chair Hon. Eduardo Rodriguez, to create a training video used to provide guidance and instruction to attorneys who agree to take pro bono Chapter 7 bankruptcy cases across the State.
- The Section offers multiple conferences and CLE presentations throughout the year, including the Starting Out Right Conference, local bankruptcy conferences, and the bi-annual **Statewide Bench Bar Conference**, scheduled for April 17-19, 2019 in Austin at the Fairmont Hotel.
- For Bankruptcy Law Section members under the age of 40, the **Young Lawyers Committee** provides a fantastic way to become involved in Section activities, and provides numerous opportunities to work with attorneys and judges from across the State. The Young Lawyers Committee is actively involved in the **MoneyWise Financial Education Program**, a program developed to teach high school students and young adults financial literacy through the lenses of bankruptcy attorneys and judges. The Young Lawyers Committee also sponsors social events throughout the year, including an annual party held during the Westbrook Bankruptcy Conference in Austin each November, and contributes articles and assists with the production of the quarterly Section newsletter as well.

We will be introducing even more new initiatives over the coming year. This is an exciting time for the Bankruptcy Law Section. Join us!

A MESSAGE FROM THE EDITOR



Roger S. Cox

Welcome back to the State Bar of Texas Bankruptcy Law Section Newsletter. This is our first newsletter since August of 2016, so we are still in a bit of a learning curve.

You should find some news updates, information about upcoming events, and in future issues, a "Troop Movement"/bragging rights section to keep you up to date with your friends and colleagues.

With apologies to our authors, we are clearing a backlog of articles that were submitted some time back. Future issues should contain more timely, substantive content of interest to Texas practitioners. If you have any suggestions regarding future content, please let me or any of the newsletter staff know.

We are also in the process of developing additional means of communication. This should include a comprehensive list of regional specialty bar associations and sections devoted to bankruptcy and insolvency law. That will be posted on our Section website. We will also have other internal means of communications so that the Section counsel and local bar leaders can communicate better and in turn, keep all of our Section members better aware of upcoming events and developments.

Finally, please make your plans to attend the **Bench Bar Conference** in Austin on April 17-19. More about that in our next issue and on the website!

Please bookmark **www.statebaroftexasbankruptcy.com**, and check the site for upcoming events and other news.

Roger S. Cox

EDITOR'S NOTE

As mentioned above, it has been over two years since the Bankruptcy Law Section published a newspaper. Meanwhile, numerous authors invested a great deal of time and energy in the submission of substantive articles, some of which were prepared well over a year ago. In appreciation for that work, those articles are being published in this and the next edition of this section's newsletter. Although efforts have been made to maintain the timeliness of these earlier submissions, the reader is urged to update cases and other authorities cited in these articles.

Helping Law Students Learn Helps Pro Bono Clients

How the Law School Bankruptcy Pro Bono Project Was Started

By: Beth Smith, Historian, State Bar of Texas Bankruptcy Section

In 2015 the Bankruptcy Law Section of the State Bar of Texas could see a need to provide practical bankruptcy training to law students. Texas law schools maintain a pro bono office, which records the hours students dedicate to representing clients who cannot afford to pay for legal services. Many students yearn for an opportunity to see the "law in action" by participating in an actual case, yet students need a seasoned attorney to work with to facilitate the learning process and to represent the client well.

With the mentoring goal in mind, in 2015 Austin Chapter 13 Trustee, Debbie Langehennig, set out to establish bankruptcy pro bono clinics in as many Texas law schools as possible. Debbie first approached the University of Texas Law School about establishing a bankruptcy pro bono clinic. UT representatives were thrilled to create an opportunity for law students to participate in a speciality area of law, as it the school already had a pro bono office in place. Encouraging students to learn while giving back is a goal of many law schools.

Debbie set out to coordinate and match UT law students with Austin attorneys, who would offer representation to clients needing bankruptcy relief services. The potential clients were vetted and referred by Texas Rio Grande Legal Aid. Recruitment efforts began by Debbie consulting the bankruptcy judges and the attorneys in the United States Trustee's Office to garner their support. Debbie then solicited local bankruptcy lawyers from small and large firms utilizing the Austin Bankruptcy Bar Association. UT handled the recruitment of law students, communications about dates for bankruptcy training, and pairing law students with lawyers Debbie referred to UT.

Then the practical part of the process of the Pro Bono Project began. A training session was designed to teach the law students how a chapter 7 case works; the necessary information a lawyer needs to properly represent the client; the pitfalls that might occur in the representation; and the ultimate goal of obtaining a fresh start for the client. Detailed written bankruptcy information was given to law students during the training, as well as practical training on how to complete the Schedules and Statement of Financial Affairs ("SOFA"). The Bankruptcy Section donated the funds to purchase a lap top to be used by the law students and Legal Pro donated the chapter 7 bankruptcy software program.

A training session was designed for volunteer attorneys who might need to brush up on consumer representation. Forms were created to aid the attorneys in the areas of exemptions, schedules, deadlines and the minutia of what is necessary for representation of a client in a chapter 7 case. A checklist of all necessary documents that the client would need to give to the attorney was also created.

A "homework" packet was created to be sent to the potential client who would gather the pertinent personal and financial client information to be used by the volunteer attorneys. A similar packet is often used by consumer bankruptcy practitioners to insure all information that will be included in the schedules and SOFA is revealed by the client.

Debbie realized that some attorneys might shy away from taking a case due to concerns about possible malpractice claims and being considered a "debt relief agency" as per The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"). Addressing those concerns Debbie met with the Western District of Texas Bankruptcy Judges, who signed Judges signed Standing Orders 15-03 and 17-01, declaring the following: that malpractice insurance coverage for the legal representation in the case shall be provided by the legal aid office making the referral; and that a volunteer attorney or law firm's acceptance of clients who are referred by legal aid organizations or other similar nonprofit organizations should not render the firm or lawyer as a "debt relief agency" due to the pro bono nature of the representation. The Standing Orders cleared the path for many lawyers to accept pro bono cases.

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CRUISING DOWN MEMORY LANE AND BACK TO THE FUTURE WITH THE HONORABLE H. CHRISTOPHER MOTT

By: Trinitee Green

Bryan Cave – Chicago

For many seasoned practitioners, the Honorable H. Christopher Mott ("Judge Mott") is someone with whom they have shared beers, tried cases, exchanged war stories, and maybe even enjoyed practical jokes. But, for many lawyers, especially younger ones, he is a black robe behind a bench in an intimidating courtroom. This article will introduce Judge Mott, as a person, by: (i) looking into his rearview mirror to a time when he was known as "Fang" rather than Judge; (ii) taking a peek from his bench and into his chambers; and (iii) peering into his future and reflecting back again. As a bonus, this article includes a message directly from the bench.

The Boy and His Beginning

Judge Mott spent his childhood as an "Army brat" who landed in El Paso, Texas. As a youngster, he would have been recognized as a "skinny, big-eared, goofy, little boy with big, black-framed glasses" that was sometimes called "Fang because of a steel front tooth." And, for anyone who might have been searching for the kid matching this description, the best place to look would have depended on whether school was in session. On a summer day, for example, he could have been found outside, most likely playing baseball, tennis, or football. During the school year, however, playtime gave way to schoolwork. Interestingly, and most likely because he liked to have a good time no matter what he was doing, Judge Mott struggled with the one "subject" that did not require him to study or do any homework. Accordingly, his report cards almost always reflected A's in every subject except for conduct, where he consistently earned U's (for unsatisfactory).

As a teenager, Judge Mott played the drums in his school's marching band, was an Eagle Scout, and played on his school's tennis team. When he was not backpacking, playing sports, or beating the drums, Judge Mott was studying or working. In fact, he had several jobs throughout high school, with his primary source of income being the Sizzlin' Sirloin. There, customers could enjoy thick, juicy steaks for only $5.00, and Judge Mott was in the kitchen making it happen for $2.10 per hour.[1] Judge Mott also earned spending money by playing local gigs with his garage band, "Railroad." The band's name was inspired by their shared appreciation for Grand Funk Railroad, and one of Judge Mott's favorite songs to perform with Railroad was "La Grange" by ZZ Top. But, the job "that really motivated [him] to do well on grades in college and get a law degree" was a summer job at a brick factory in El Paso, where he spent his whole summer outside pulling bricks from a conveyer belt and stacking them on pallets in exchange for about $2.30 per hour.

After graduating near the top of his class from Eastwood High School, Judge Mott moved to Lubbock, Texas to attend Texas Tech University. Judge Mott maintained good grades and multiple jobs throughout college. He worked at a dinner theater, where he waited tables and played the drums during intermission. Occasionally, he would even make his way behind the bar to earn extra cash. In 1980, Judge Mott graduated college with a 3.96 G.P.A and a bachelor's degree in business administration, but a business degree was not the only – or the most – valuable "thing" he took away from Texas Tech University. At the age of 20, Judge Mott met his sweetheart, who eventually became his wife by using "one of the oldest tricks in the book." He "asked to borrow her class notes," and she said "yes."

With his sweetheart by his side and a bachelor's degree under his belt, Judge Mott enrolled in law school at Texas Tech School of Law. He always attended classes, studied, and made good grades. During the school years, Judge Mott clerked for several law firms in different Texas cities. But, he spent his summers outside doing yard work because he found it was the fastest way for a law student to make the most money. Judge Mott and a law school buddy started a lawn-mowing business, and depending on

[1] When asked whether cooks really take out their frustrations with customers on their food, Judge Mott paused before cautioning that customers should be nice to their waiters and even nicer to their cooks. That said, he "never spit in anyone's steak."

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A Little Knowledge Is a Dangerous Thing: The Texas Supreme Court's Examination of Executory Contracts and Disclosure in *Noble*

By: Hannah L. Roblyer

Beck Redden LLP

State courts are seldom saddled with the task of interpreting and applying the Bankruptcy Code. In June of 2017, the Supreme Court of Texas rose to the occasion and decided *Noble Energy, Inc. v. ConocoPhillips Co.*,[1] which posed questions regarding executory contracts and the role disclosure plays in their assumption and assignment. In a 5–3 decision,[2] the court found that a purchaser who had constructive knowledge of an assumed executory contract was properly assigned and bound by it, even though the contract was not disclosed during the debtor's bankruptcy proceedings.

1. Facts and Proceedings

In 1994, a predecessor of ConocoPhillips ("Conoco") entered into an Exchange Agreement with Alma Energy Corporation ("Alma") in which the two parties exchanged oil and gas interests. The contract also contained a crucial indemnity provision: both parties agreed to accept responsibility and indemnify the other for any environmental claims related to the properties received. The indemnification would apply regardless of the cause or timing of the injury, and the obligation would run with the interests assigned and extend to the parties' heirs, successors, and assigns.

Alma eventually filed for chapter 11 bankruptcy. Conoco was a party to the bankruptcy. During the proceedings, Alma sold its assets through an auction to a predecessor of Noble Energy, Inc. ("Noble") pursuant to an Asset Purchase and Sale Agreement ("the APA"). By entering into the APA, Noble agreed to buy Alma's "oil and gas leases, mineral interests, and other significant Assets described in Exhibit 'A'"; Exhibit A included the properties Alma received from Conoco.[3] Further, the APA also provided that the purchaser would agree to buy all of Alma's "rights and interests in and to all . . . agreements . . . in any way associated with the Assets, including but not limited to, those Material Contracts . . . described on Exhibit 'D'"; this included any indemnification outside of the ordinary course of business.[4]

While Noble knew of the assigned property interests it would receive, the Exchange Agreement complete with indemnity clauses was not listed in either relevant exhibit. It was not disclosed or mentioned during the course of the bankruptcy. The plan of reorganization specified a default rule that executory contracts *not* specifically referenced were to be assumed and assigned to Noble *unless* rejected at closing. No such rejection occurred. The confirmation order approved and confirmed the plan and the APA in all respects.

Years passed and Noble conducted business as though it had, in fact, assumed the Exchange Agreement: it removed an unused facility as required by the contract, and it indemnified Conoco—on two occasions—when environmental contamination lawsuits arose in relation to the assigned properties. Upon the third suit brought by the State of Louisiana, however, Noble refused to indemnify Conoco, and Conoco settled the lawsuit for $63 million. Conoco then sought damages for Noble's alleged breach of the Exchange Agreement, maintaining that Noble had been assigned the contract through the APA and was bound by its indemnification obligation. Noble responded that the Exchange Agreement was not an executory contract and, even if it were, Noble could not have been assigned the contract because it had no actual knowledge of it. The 113th District Court granted summary judgment in favor of Noble; the 14th District Court of Appeals reversed and rendered summary judgment for Conoco. Noble appealed to the Supreme Court of Texas.

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1 *Noble Energy, Inc. v. ConocoPhillips Co.*, 532 S.W.3d 771 (Tex. 2017), *cert. denied*, 17-1438, 2018 WL 1858882 (U.S. Oct. 1, 2018).

2 Justice Lehrmann did not participate in the decision.

3 *Noble*, 532 S.W.3d at 773.

4 *Id.*

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In the Land of Structured Dismissals, the Code's Priority Scheme is Still King: The Supreme Court Resolves the Circuit Split in *Czyzewski v. Jevic Holding Corp.*

By: Amber M. Carson

Gray, Reed & McGraw, LLP

On March 22, 2017, in a highly anticipated decision, the Supreme Court of the United States handed down a 6-2 decision[1] in *Czyzewski v. Jevic Holding Corp.*,[2] resolving the circuit split regarding so-called "structured dismissals" that do not follow the Bankruptcy Code's priority scheme. The majority held that a deviation from the Code's priority rules is not permitted in structured dismissals over the objection of affected parties. This narrow holding will necessarily require practitioners to secure the agreement of all parties when proposing a structured dismissal that does not strictly comply with ordinary priority rules and will be a strong weapon in the arsenal of creditors who feel they are not getting their due in such a structured dismissal.

I. Background

Jevic stems from the bankruptcy cases of three affiliated debtors, Jevic Holding Corp., Jevic Transportation, Inc. and Creek Road Properties, LLC (collectively, "Jevic") in the Third Circuit. After Jevic filed their voluntary petitions under Chapter 11 of the Bankruptcy Code, their secured creditors were sued by the unsecured creditors committee under fraudulent conveyance law. Jevic, the committee, and Jevic's senior secured creditors reached a settlement agreement that contemplated, *inter alia*, a settlement of the fraudulent conveyance lawsuit, payment of administrative claims in full, payment to unsecured creditors on a pro rata basis, and the dismissal of Jevic's bankruptcy cases. The problem, however, is that the settlement did not provide for a distribution to truck drivers who had obtained a judgment against Jevic for violations of federal and state Worker Adjustment and Retraining Notification ("WARN") Acts. Under a Chapter 11 plan or in a Chapter 7 liquidation, part of the truck drivers' judgment would have been a priority wage claim entitled to payment ahead of general unsecured creditors.

Over the objection of the truck drivers and the United States Trustee, the bankruptcy court and the United States District Court for the District of Delaware (on appeal) permitted the structured dismissal because it was essentially the better of two bad options. The bankruptcy court noted that the estates were administratively insolvent and that without the proposed settlement, it was unlikely that any constituents outside of Jevic's secured creditors would receive a distribution.

The Third Circuit Court of Appeals agreed with the lower courts.[3] Preliminarily, it determined that structured dismissals are permissible under the Bankruptcy Code, so long as there is not an attempt to "evade the procedural protections and safeguards of the plan confirmation or conversion processes."[4] In rejecting the Fifth Circuit's strict application of the absolute priority rule to settlements,[5] the Third Circuit adopted the Second Circuit's more flexible approach,[6] that the absolute priority rule does not apply to settlements, but the policy behind the rule does. Thus, it emphasized, if a settlement (and, in turn, a settlement that incorporates a structured dismissal) deviates from the priority scheme of Section 507, the parties must have "spe-

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1 Justice Thomas, joined by Justice Alito, dissented, arguing that the original question presented was "whether a bankruptcy court may authorize the distribution of settlement proceeds in a manner that violates the statutory priority scheme," but that once certiorari was granted, Petitioners "switch[ed]" the question to "whether a Chapter 11 case may be terminated by a 'structured dismissal' that distributes estate property in violation of the Bankruptcy Code's priority scheme." Justice Thomas was disinclined to answer the newly presented question because the parties had briefed only the first question, the justices would benefit from more guidance on the new question from other courts, and because he didn't want to encourage similar "bait-and-switch tactics." *Czyzewski v. Jevic Holding Corp*, No. 15-649, 2017 WL 1066259, at *15 (U.S. Mar. 22, 2017) (Thomas, J., dissenting) (citations omitted).

2 *Id.* (majority opinion).

3 *In re Jevic Holding Corp.*, 787 F.3d 173 (3d Cir. 2015), as amended (Aug. 18, 2015), cert. granted sub nom. *Czyzewski v. Jevic Holding Corp.*, 136 S. Ct. 2541 (2016), and rev'd and remanded sub nom. *Czyzewski v. Jevic Holding Corp.*, No. 15-649, 2017 WL 1066259 (U.S. Mar. 22, 2017).

4 *Jevic*, 787 F.3d at 182.

5 *United States v. AWECO, Inc.* (*In re AWECO, Inc.*), 725 F.2d 293, 295–96 (5th Cir. 1984).

6 *In re Iridium Operating, LLC*, 478 F.3d 452, 464 (2nd Cir. 2007).

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Profile of the Honorable Judge Eduardo V. Rodriguez, U.S. Bankruptcy Court for the Southern District of Texas, McAllen, Brownsville, and Laredo Divisions

By: Jonathan L. Howell

Glast, Phillips & Murray, P.C.

Johnathan L. Howell

The Honorable Eduardo V. Rodriguez was appointed as a bankruptcy judge for the Southern District of Texas, McAllen, Brownsville and Laredo Divisions, effective July 31, 2015. Prior to being sworn in, Judge Rodriguez successfully operated his own private practice in the Rio Grande Valley for nearly 20 years while actively practicing bankruptcy law.

The second of four siblings, Judge Rodriguez grew up in the Rio Grande Valley—specifically, Brownsville, Texas—during which he was greatly influenced by his father's hard work, his mother's encouragement, and both parents' insistence that Judge Rodriguez do the best he could, no matter the job.

Judge Rodriguez's father served in World War II and as an officer in the U.S. military police in Japan. After his father returned home from Japan, he opened up a barber shop with Judge Rodriguez's uncle in Brownsville, Texas. His father first met Judge Rodriguez's mother while she was working at a local diner as a waitress. As part-owner of a barber shop, his father had become an artful conversationalist and storyteller. It was a necessity in his line of work after all. But, when it came to matters of the heart, the World War II veteran and local storyteller found himself lacking the courage to ask out his future wife on their first date. Before too long, Judge Rodriguez's uncle interceded on his brother's behalf. And, after their first date, followed by a successful courtship, the couple married and began to lay roots together in Brownsville.

After Judge Rodriguez was born, his parents decided that his mother would take steps to advance her education and pursue a career of her own, in case something were to happen to Judge Rodriguez's father, the family would have another source of income. Eventually she accepted an offer to work for a prominent, regional law firm at the time, Hardy, Sharp & Rodriguez. Coincidentally, the last-named partner of the firm shared the same first and last name with Judge Rodriguez. Indeed, upon learning of this coincidence during a visit to his mother's workplace, a young Judge Rodriguez first declared to his mother that he too, like his namesake, would become a prominent lawyer one day. He would then frequent the firm's library and, during these visits, immerse himself in whatever law book he happened to pick out.

But while a young Judge Rodriguez may have had aspirations to practice law from a very early age, any plans to attend law school and to become an attorney would take a back seat to a successful business career that also started to take root at a very early age. As a child, Judge Rodriguez began to grow curious as to why his father woke up and started his work day so early, usually around 4:00 a.m. So eventually he asked his father. Rather than directly answering Judge Rodriguez's question, however, his father invited a young Judge Rodriguez to tag along with him one morning. Soon thereafter, Judge Rodriguez did just that. Judge Rodriguez and his father first stopped at a local diner for an early breakfast. While at the diner, Judge Rodriguez discovered that his father and other early-rising, breakfast regulars of the diner had forged a fraternal bond over the years. Along with his father, they swapped stories; they told jokes; and they sung his father's praises. After the breakfast at the diner, at around 7:00 a.m., Judge Rodriguez found himself traveling in the car with his father on their way to his father's barbershop. As they approached the shop, Judge Rodriguez was surprised by the long line of loyal customers who had gathered at the shop so early in the morning, before the shop was even open. He learned that each one of them was hoping to get their haircut or a fresh, hot shave from his father before they had to be at work. And of course, his father did his best to tend to as many of those loyal customers as he could.

Inspired by the time he had spent with his father, a young Judge Rodriguez asked his father for a job that very morning. He wanted to help. As a result, he soon secured his first job—sweeping floors at the very barbershop that his father and uncle

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BANKRUPTCY IN THE SUPREME COURT – SPRING 2019

As this newsletter went to press, the following matters were among the bankruptcy cases pending before the Supreme Court in early 2019:

***Taggart v. Lorenzen* (18-489) (*In re Taggart*).**

Issue: Whether a subjective, good faith belief that an action does not violate the post-discharge injunction absolves the creditor of a potential contempt finding, even if that belief is "unreasonable" under the circumstances. On appeal from *In re Taggart*, 888 F.3d 438 (9th Cir. 2018), *cert. granted*, 2019 WL 98543 (2019).

***Obduskey v. McCarthy & Holthus, LLP* (17-137).**

Issue: Whether the Fair Debt Collection Practices Act applies to nonjudicial foreclosures. On appeal from *Obduskey v. Wells Fargo*, *et al.*, 879 F.3d 1216 (10th Cir. 2018), *cert. granted*, 138 S.Ct. 2710 (2018).

***Mission Product Holdings v. Tempnology, LLC* (17-1657) (*In re Tempnology*).**

Issue: Whether rejection of a trademark license bars the licensee from continuing to use the mark. On appeal from *In re Tempnology, LLC*, 879 F.3d 389 (1st Cir. 2018), *cert. granted*, 139 S.Ct. 397 (2018).

According to Bill Rochelle, of *Rochelle's Daily Wire* (American Bankruptcy Institute), Daniel L. Geyser of Dallas will argue on behalf of the debtors in the *Obduskey* and *Taggart* cases.

JOSHUA SEARCY NAMED TO ABI 40 UNDER 40 LIST

Longview's Joshua Searcy was named to the American Bankruptcy Institute's "40 Under 40" list for 2019. Josh is a partner in Searcy and Searcy, P.C., in Longview. He represents estate officers and parties on both sides of the docket in a variety of bankruptcy proceedings.

Josh serves as Secretary of the State Bar of Texas Bankruptcy Law Section, and he is a past recipient of the section's Romina L. Mulloy Bossio Achievement Award.

Josh is a community leader in Longview, serving organizations such as Asbury House Child Enrichment Center and the East Texas Regional Development Corp.

330 lawyers were nominated to the ABI's second 40 Under 40 group. Read about Josh and his fellow honorees in the January edition of the American Bankruptcy Institute Journal.

Troop Movement and Mergers

Liz Boydston joined K&L Gates as a partner in its restructuring and insolvency practice last November. She is resident in the Dallas office.

Amber Carson has been elected chair of this section's Young Lawyers Committee. Amber practices in Gray Reed's Dallas office.

Amber Fly is now an associate with Pulman, Kappuccio & Pullen in its San Antonio office. Ms. Fly previously clerked for Judge Ronald B. King in the Western District of Texas.

The Honorable E. Lee Morris is now a United States Bankruptcy Judge, sitting in the Northern District of Texas, Fort Worth Division. Judge Morris was formerly in private practice at Munsch Hardt.

Kelli Norfleet has been named a partner at Haynes & Boone. Kelli is a member of that firm's Restructuring Practice Group in its Houston office. Among other activities, she has served as President of the Houston Association of Young Bankruptcy Lawyers and Secretary of the Houston Bar Association Bankruptcy Section.

Robin Russell has been named Deputy Managing Partner of Hunton Andrews Kurth. Ms. Russell was previously managing partner of the Houston office of Andrews Kurth Kenyon before the firm's merger with Hunton and Williams. Robin was also recently recognized by Oil and Gas Investor as one of its 25 Influential Women in Energy for 2019. Ms. Russell will be featured in a future edition of that publication.

Frances Smith and ***Judith Ross*** of Dallas have joined forces, and the firm is now known as ***Ross & Smith***. Both lawyers have been recognized in D Magazine's Best Lawyers in Dallas and numerous other publications. Other Ross & Smith lawyers include Eric Soderlund, Neil Orleans, Rachael Smiley, and Jessica Voyce Lewis.

Sara Keith of Houston has joined Shell Oil Company's Global Litigation Group as Legal Counsel – Bankruptcy & Credit. Sara is based out of the company's Woodcreek Complex location on Dairy Ashford Road in west Houston's Energy Corridor.

Section members: please provide news of any movements, promotions, or notable events. Submit your information to **roger.cox@uwlaw.com** or **jorfowle@gmail.com**.

Helping Law Students Learn Helps Pro Bono Clients
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Fall 2015, the UT Pro Bono Bankruptcy Clinic was the inaugural pilot program and since then six cases per semester have been assigned to law students and volunteer lawyers.

In the Fall of 2017, a pro bono clinic was established at St. Mary's University School of Law. Local San Antonio bar associations participated to make the inaugural clinic a success.

Pro bono clinics at South Texas College of Law-Houston and Baylor Law School will debut the Fall of 2018. Texas Tech University School of Law is scheduled to roll out a pro bono bankruptcy clinic Spring 2019.

The results of the project are fantastic, as clients are given incredible representation; law students are mentored by attorneys and learn how to work with a client in a distressed situation; and volunteer attorneys are provided assistance from the law students, while helping a client who could not afford to pay legal fees. The project is one of the best ways to teach law students how to practice bankruptcy law and the importance of giving back.

Thanks goes to Legal Pro which continues to provide chapter 7 bankruptcy software to any law student and attorney participating in the pro bono project. The Bankruptcy Section has also been a tremendous supporter and provided laptops to UT and St. Mary's. At this point it seems law students have their own laptop and the donation is no longer necessary. Without the support of local bar associations, the project might have taken longer to launch.

Special thanks to Debbie Langehennig for her vision and perseverance in making the pro bono project a reality and continuing to establish new clinics. Others who continue to work on the project are Brian Cumings, Alicia Grant, Sean Flynn, Sara Keith, Tim Million, and Liz Freeman. And of course, thanks to the heart of the pro bono project the law students and volunteer attorneys who represent the clients.

If you would like to be involved in the pro bono law project please contact Debbie Langehennig at **trustee@ch13austin.com**.

Cruising Down Memory Lane and Back to the Future - Honorable Christopher H. Mott
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the size of the lawn, they earned about $5.00 to $15.00 per lawn. The law-student lawn-mowers closed shop when Judge Mott graduated as the salutatorian in 1983.

The Lawyer and His "Charmed" Practice

Judge Mott's bankruptcy practice began, in large part, out of necessity. Initially, he thought he would become a transactional lawyer, but as fate would have it, the big oil and gas busts in Midland and Odessa, Texas set the stage for what would become his bankruptcy practice. According to Judge Mott, "timing is everything" and "back then, firms did not have [designated] bankruptcy groups like they do today." His first firm had only one lawyer who was remotely knowledgeable in the area of bankruptcy, and he "knew just enough to get [Judge Mott] going" on cases that were "relatively large." Armed with a mentor and a Bankruptcy Code that was only about five years old, Judge Mott became his firm's bankruptcy lawyer.

In 1993, just ten years after earning his J.D., Judge Mott co-founded a firm, which is now known as Gordon, Davis, Johnson & Shane, P.C. This is when his practice really became what he refers to as "charmed." In other words, Judge Mott was able to pick and choose his cases. With time, he began to make good connections, including relationships with national turnaround and consulting firms. Although he continued to live and office in El Paso, Texas, Judge Mott had cases all over the United States and regularly argued in courtrooms across the country.

By the early 1990's, Judge Mott's hard work and good connections started to truly pay off, which resulted in the development of a niche that would carry him to the bench. It all began when he agreed to represent the receiver for the largest trust company that ever failed in the State of Texas. At that time neither he nor any other lawyer had experience liquidating Texas regulated trust companies, and the governing law was sparse and undeveloped. According to Judge Mott, the applicable statutes filled up "no more than a handful of pages," which Texas courts had not previously interpreted. He agreed to accept the challenge, hit the ground running, and learned along the way. In uncharted waters with a handful of statutes as his guide, Judge Mott hustled to accomplish for a state-regulated trust company what would have been much easier to do for a federally insured and regulated bank.

In the late 1990's, a second Texas trust company failed and was put in receivership in Austin, Texas. Once again, Judge Mott was invited to the party. This time, with a better understanding of what to expect, Judge Mott gladly accepted the invitation. Finally, in 2000, when the largest trust company in Illinois failed, Illinois called Texas for guidance, and Texas directed Illinois to the lawyer who paved the way in Texas. For several years thereafter Judge Mott spent a great deal of time in the Cook County courthouse in Chicago, Illinois.

The Judge and His "Charmed" Judgeship

On September 20, 2010, Judge Mott took the bench for the Bankruptcy Court in the Western District of Texas and has "never looked back." Right away, he discovered what would become his biggest challenge: large volume and variety of cases. Of course he knew he would be responsible for a substantial number of cases that involved as many different fact patterns as legal issues, but knowing does not equate to understanding. Because he "never was a law clerk" which "is the only way to have any idea what being a judge is like," Judge Mott did not fully appreciate the adjustment that his transition judgeship would require. Unlike his "charmed" practice, he could no longer spend all of his time and energy focusing on one or two cases that he had carefully elected to accept. Nevertheless, Judge Mott says his judgeship has been "charmed" since day one.

Judge Mott feels fortunate to be in the Fifth Circuit, and doubly fortunate to be in the Western District of Texas. First, his judgeship has been particularly enjoyable because of the judges he works with. He cannot recall "even one moment of discord" between the bankruptcy judges in the Western District. Indeed, they "do everything by consensus and never need to even take a vote." And, with respect to the Texas Bankruptcy Bench, Judge Mott's view is that it is "really, really good" because the "Fifth Circuit selects bankruptcy judges based on merit," which in the old days may have not always been the case.

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Cruising Down Memory Lane and Back to the Future - Honorable Christopher H. Mott
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Judge Mott is extremely focused in chambers, but makes sure to create a positive work environment. Getting it right the first time by hard work is his go-to play every day, so his team works hard and takes their jobs seriously. Although Judge Mott's ability to focus is one of his "biggest strengths," he understands it "can also be one of [his] biggest weaknesses." Thus, being self-aware and determined to keep "fun" as a priority, Judge Mott occasionally takes steps to initiate chambers humor. Admittedly, his practical jokes are not what they once were, but upon occasion he plays pranks on members of his staff. For instance, chambers is where he shops for employee "prizes." Rest assured, they are "really nice" prizes, all of which are individually and carefully selected from his very own closet and drawers.

The Future and Back Again

Judge Mott plans to retire when his judicial term expires many years from now because he has "been working [his] entire life," but he does not have clear expectations for how his retirement will look. After all, long-term goal setting has never been one of Judge Mott's pastimes. That said; Judge Mott knows without doubt what he will not do during retirement: practice law. When he "crossed that bridge" on September 20, 2010, "that was it for [him]." In his retirement, he will continue to stay physically active by working out and golfing, but he looks most forward to the opportunity to do more manual labor. He "want[s] to use [his] hands to build something tangible" and "do something that is sort of mindless and not mentally taxing." The mere thought of this idea brings him a sense of relief and relaxation.

Regardless of what the future holds, Judge Mott's proudest accomplishments will remain the same. Hands down, his marriage and his now adult children are his proudest accomplishments. In Judge Mott's eyes, his wife is a "saint" and the "key to their happy marriage of thirty-five years." And, second to marrying Cindy, "having children was the best thing [they] ever did." Falling into the "pride and joy" category, there are two treasures Judge Mott currently holds near and dear to his heart. He often enjoys them simultaneously: (1) Maggie May, a Goldendoodle, who they inherited from his son; and (2) the RaiderMobile, his 1965 Mustang Convertible, which he inherited from his father.

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Bonus from the Bench

Judge Mott would like young lawyers to know that, as a judge, two of his favorite things include: "working with law clerks" because they are "smart people with fresh minds" and "meeting young lawyers at professional events." Additionally, he offers the following advice to the young and the not-so-young:

1. Eat a good breakfast before coming to court; we will likely not be taking a lunch break.
2. Be prepared and on time because I will be. It sounds simple, but it is not. Just do it.
3. Submit good proposed orders, and be ready for me to mark them up.
4. If a motion involves issues that could require lawyers to talk to one another, avoid telephonic appearances and be present and available to step outside.
5. If you're a baby bankruptcy lawyer, "learn the law and develop and maintain good connections."
6. If you're a baby partner, get a signed shareholder agreement. It sounds funny, but it's true.
7. The view is completely different from the bench.
8. Don't wish me a happy birthday. Don't even mention it.
9. If you've never been to the Grand Canyon, go! It will knock your socks off!
10. The best Texas bankruptcy lawyers are just as good as the best bankruptcy lawyers anywhere else in the United States. I have "never seen a cream of the crop Texas bankruptcy lawyer that could not go toe to toe with a cream of the crop New York bankruptcy lawyer."

The Author's Two Cents

I learned a lot about Judge Mott during the interview process. Obviously, I gained information by asking questions and receiving answers, but I discovered as much, if not more, simply by sitting across the table and sharing dinner with him. He has an upbeat personality, a welcoming energy, is highly engaged, and left me feeling inspired and honored to share his story with the Bankruptcy Section. Since childhood, Judge Mott has consistently worked and played hard. Like many in the legal profession, he is a busy "bee," but what most surprised and impressed me is how organically the "goofy" looking little boy grew up to become the Honorable H. Christopher Mott.

With the benefit of hindsight, it is apparent that Judge Mott's career developed naturally but not effortlessly. His story reminds me of a Thomas Edison quote: "[e]verything comes to him who hustles and waits."[2] If I may, I respectfully suspect Judge Mott would agree with the late Thomas Edison. Rather than meticulously planning out his future (and limiting himself to a list of set goals), Judge Mott remained flexible but fervently focused on his "here and now." For instance, he did not spend his younger years dreaming of becoming a lawyer. That seed was planted the summer he spent stacking bricks. And, it was only because he graduated when and where he did that he found himself practicing bankruptcy law. Finally, after many years of practicing law, he first considered a bankruptcy judgeship because it seemed like a "fitting end to what had been a successful career." Actually, Judge Mott has maintained only one goal throughout his life, which he continues to renew daily. That is, "wake up and do a good job." Because of this simple but powerful goal coupled with an unrelenting need to enjoy life, Judge Mott has experienced much success while enjoying the ride.

In addition to revealing the man behind the robe, I hope this article encourages us all to maintain a present state of mind and steadfast dedication to doing good work, which may in turn, allow us to enjoy our lives without sacrificing career success. Instead of worrying about the next chapters of our lives or whatever else might wait for us in the future, perhaps we should take a lesson from Judge Mott and ensure a better tomorrow by giving our all to today.

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[2] *Sixty Years of an Inventor's Life* (1908), Francis Arthur Jones, p. 14.

A Little Knowledge Is a Dangerous Thing – Hannah L. Roblyer
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2. Executory Contract

The first question the court needed to resolve was whether the Exchange Agreement fit the definition of an executory contract, such that it could be assumed or rejected under 11 U.S.C. § 365. Using tests from the U.S. Supreme Court[5] and the Fifth Circuit Court of Appeals,[6] the court concluded that the agreement was an executory contract because performance was still due on both sides and failure to perform by either party would constitute a breach.

Noble argued that the heart of the Exchange Agreement was the exchange of interests, which had been substantially performed years past, and the indemnification provisions were merely tangential; therefore, there was no outstanding executory contract. The court disagreed entirely, saying that the indemnification provisions were "in no sense minor or unrelated" to the interest swap and failing to perform under the indemnity obligation would deny the other party its benefit of the bargain.[7] Thus, the court held—and the dissenting justices agreed with respect to this point—that the Exchange Agreement was an executory contract.

3. Assumption and Assignment

The most disputed issue, and the subject of Noble's later-filed motion for rehearing and then petition for certiorari, was whether the assumption and assignment of the Exchange Agreement could occur under § 365 when the Exchange Agreement had not been disclosed. The court found that it could for several reasons: (1) the APA specified that the purchased assets were not limited to the Material Contracts laid out in Exhibit D; (2) the assumed-unless-rejected provision in the plan was not boilerplate language; (3) Noble's post-bankruptcy conduct was consistent with knowledge of and compliance with the Exchange Agreement; (4) Noble had at least constructive knowledge of the Exchange Agreement; and (5) parties should be able to rely on the enforcement of the plain language in plans and court orders.

The constructive-knowledge finding stemmed from documents in Noble's possession: namely, Conoco's assignment of leases to Alma was expressly subject to the Exchange Agreement and detailed the indemnifications. Therefore, the information existed within Noble's own chain of title even though Alma failed to include the contract in its disclosures; Noble's post-bankruptcy actions only furthered the court's opinion that express disclosure was unnecessary in this instance. The Texas Supreme Court affirmed the court of appeals, concluding that per the language in the APA, the plan, and the bankruptcy court's order, the Exchange Agreement had been assumed by Alma and assigned to Noble.

4. The Dissent: Manifest Inequity

The dissenting justices[8] argued at length that to comply with the requirements of § 365, Alma needed to expressly assume the Exchange Agreement and expressly assign it to Noble. They also contended it was "manifestly inequitable" for the court to prejudice Noble as a result of Alma shirking its disclosure duties.[9] The dissent maintained that constructive knowledge was an inapplicable test in the bankruptcy context, and that post-bankruptcy conduct did not create a contract right that otherwise did not exist. Finally, the dissent emphasized disclosure as a mainstay of bankruptcy, and found Conoco—as a party to the bankruptcy proceedings—to have been in a position to object to Alma's failure to disclose. Therefore, the risk of nondisclosure should have fallen on Conoco and the reorganized Alma.

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5 *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 522 n.6 (1984).

6 *Phoenix Expl., Inc. v. Yaquinto (In re Murexco Petrol., Inc.)*, 15 F.3d 60, 62–63, 63 n.8 (5th Cir. 1994) (citing Vern Countryman, *Executory Contracts in Bankruptcy: Part I*, 57 MINN. L. REV. 439, 458–62 (1973)).

7 *Noble*, 532 S.W.3d at 777.

8 Justice Johnson dissented and was joined by Justices Green and Guzman.

9 *Noble*, 532 S.W.3d at 786 (Johnson, J., dissenting).

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Noble petitioned for rehearing on September 21, 2017, mirroring many of the arguments advanced by the dissent; the motion was denied on December 15, 2017. Noble then filed a petition for a writ of certiorari to the U.S. Supreme Court, which was denied on October 1, 2018. For now, the *Noble* precedent stands as a testament to intentional drafting of default provisions concerning the assumption and rejection of executory contracts and unexpired leases. Generally, reorganization plans include default assumption provisions to support the going concern enterprise, while sale plans include default rejection provisions to keep only those contracts and leases providing value. Certain cases demand exceptions to this general rule, but counsel should make clients aware of the consequences that undisclosed contracts or leases may have following an inadvertent assumption.

In the Land of Structured Dismissals, the Code's Priority Scheme is Still King - Amber M. Carson
Continued from page 6.

cific and credible grounds to justify the deviation."[7] The Third Circuit acknowledged that such a justification would be rare.[8] While the Third Circuit admitted the decision was a "close call," ultimately, the Court held that under these facts, the bankruptcy court was justified in approving the structured dismissal because it was the "least bad alternative."[9]

II. The Issues

The Supreme Court recognized two issues in this case. First, did the truck driver Petitioners have standing to challenge the structured dismissal? Article III standing requires a plaintiff to have sustained an injury that could be alleviated through a favorable judicial decision. Second, can a bankruptcy case be terminated by a structured dismissal that does not comply with the Code's priority rules? The majority opinion held first, that the truck drivers did have standing, because overturning the structured dismissal could possibly redress their injury, and second, that a bankruptcy court could not approve a structured dismissal that was inconsistent with the Code's priority scheme without the consent of affected parties.

III. The First Issue: Standing

The Respondents argued that the truck driver Petitioners lacked standing to challenge the structured dismissal because they did not suffer an injury that could be redressed. Whether or not the structured dismissal was granted, they argued, the truck drivers were unlikely to recover on their judgment—the estate simply did not have enough funds to provide them a recovery.

The Court disagreed for two reasons. First, the Court found that a settlement respecting the priority rules was now possible. After the structured dismissal was negotiated, the WARN lawsuit against one of Jevic's secured creditors had concluded. Thus, the secured creditor may now be amenable to some sort of distribution to the truck drivers.

Second, the fraudulent conveyance action against Jevic's secured creditors could have value to the estate that could be realized in a Chapter 7 liquidation. Alternatively, if Jevic's case were dismissed, the truck drivers could pursue the fraudulent conveyance action themselves, which could result in a recovery to them. In sum, because the truck drivers were deprived of a recovery in the settlement and could possibly recover a portion of their judgment if the structured dismissal was overturned, the Court found that they had standing to challenge the structured dismissal.

IV. The Main Issue: The Legality of Structured Dismissals that Deviate From the Code's Priority Scheme

In coming to its ultimate conclusion, the Court continued its recent practice of leaning strongly towards the plain meaning rule of statutory construction when interpreting the Bankruptcy Code. Citing Justice Scalia's oft-quoted tenet that "Congress . . . does not, one might say, hide elephants in mouseholes,"[10] the Court concluded that Section 349(b)'s allowance of a deviation from a return to the prepetition status quo after a dismissal "for cause"[11] simply does not contemplate a final disposition of a bankruptcy case that violates the Code's priority scheme. Had Congress intended to allow such a result, the Court reasoned that Congress would have made such an intent clear.[12]

The Court cited two examples to illustrate that even when structured dismissals have been allowed under the authority granted to bankruptcy judges under Section 349(b) or 105(a), courts have not suggested that Congress intended structured dis-

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7 *Jevic*, 787 F.3d at 184 (internal quotation marks omitted).

8 *Id.* at 185–86 ("[W]e believe the Code permits a structured dismissal, even one that deviates from the § 507 priorities, when a bankruptcy judge makes sound findings of fact that the traditional routes out of Chapter 11 are unavailable and the settlement is the best feasible way of serving the interests of the estate and its creditors. . . . this result is likely to be justified only rarely . . . .")

9 *Id.* at 184, 185.

10 *Whitman v. Am. Trucking Associations*, 531 U.S. 457, 468 (2001).

11 When a bankruptcy case is dismissed, 11 U.S.C. § 349(b) allows a court "for cause," to modify *inter alia* the reinstatement of an avoided transfer or a voided lien; allow orders, judgments, and/or transfers to stand; and to modify the revesting of property of the estate back into the debtor.

12 "The importance of the priority system leads us to expect more than simple statutory silence if, and when, Congress were to intend a major departure. . . . [W]e would expect to see some affirmative indication of intent if Congress actually meant to make structured dismissals a backdoor means to achieve the exact kind of nonconsensual priority-violating final distributions that the Code prohibits in Chapter 7 liquidations and Chapter 11 plans." *Jevic*, No. 15-649, 2017 WL 1066259, at *10.

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In the Land of Structured Dismissals, the Code's Priority Scheme is Still King - Amber M. Carson
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missals to act as a backdoor around the Code's priority scheme. *In In re Buffet Partners, L.P.*, out of the Northern District of Texas (by our very own Judge Hale),[13] none of the affected parties objected to the proposed structured dismissal. *In Iridium Operating*, out of the Second Circuit, the settlement did not contemplate a dismissal of the bankruptcy case, and merely provided for a distribution of settlement proceeds to a litigation trust that would pursue claims on behalf of the estate.[14]

As a relief to many practitioners, the Court distinguished first-day wage orders and critical vendor orders. Unlike structured dismissals, wage orders and critical vendor orders do not result in a final disposition of a bankruptcy case. Furthermore, they allow the debtor to continue operating as a going concern and to preserve value for the estate, provide the debtor a higher likelihood of completing a successful reorganization, and leave even "disfavored" creditors in a better position.

Even though the Third Circuit held that an acceptable departure from the priority scheme in structured dismissals would be "rare", the Supreme Court refused to allow even a limited concession to the priority rules. The Court expressed doubt that any such exception could be sufficiently defined and contained, and regardless, noted that the Code did not permit such an exception.[15]

Doubtlessly, many practitioners will be glad about this limited holding, which finally assuages fears about the Court determining the broader issue of whether structured dismissals, in general, are a permissible means of resolving a chapter 11 case.[16] The Supreme Court was careful not to express an opinion as to the legality of structured dismissals in general. This narrower holding will allow the continuation of the increasingly common practice of allowing structured dismissals and should do little to disturb non-case-dispositive orders in connection with an ongoing bankruptcy case.

13 No. 14-30699-HDH-11, 2014 WL 3735804 (Bankr. N.D. Tex. July 28, 2014).

14 *Iridium Operating*, 478 F.3d at 452.

15 *Jevic*, No. 15-649, 2017 WL 1066259, at *14 ("We cannot alter the balance struck by the statute. . . not even in rare cases" (citations omitted)).

16 Others, however, may feel as though this case is another in a line of cases from our nation's highest court leaving bankruptcy practitioners and judges "rowing upstream with an ever-shorter paddle" by reducing options in detriment to the practicalities associated with real-world bankruptcy cases. Donna Higgins, Jevic *Likely to Bring More Certainty, but Less Autonomy for Judges*, Bankruptcy Court Decisions Weekly News & Comments (April 13, 2017) http://westlaw.com.

Profile of the Honorable Judge Eduardo V. Rodriguez
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owned. After sweeping the floors for a while, Judge Rodriguez persuaded his father to allow him to open his own shoe-shine booth inside of his father's barbershop. Judge Rodriguez would charge customers of the barbershop $0.50 for each pair of shoes he would shine. After somewhat of a mediocre start, Judge Rodriguez also persuaded his father to adopt a warm-referral, soft-sale technique that would drive business from his father's barber chair to his booth. Shortly thereafter, the business started to take off. Most of the money he would earn Judge Rodriguez would later give back to his parents, merely taking pride in his ability to contribute to his family at a young age. As a young boy growing up in Brownsville, Judge Rodriguez also accepted multiple summer jobs, which included sacking groceries and working at a local Dairy Queen.

Later Judge Rodriguez would take his experiences working as a young child and pursue and obtain his BA in Psychology and later his MBA at Pan American University and apply them to greater business opportunities. While pursuing his higher education, for example, Judge Rodriguez purchased land, constructed multiple apartment complexes, and subsequently managed them. Before too long, Judge Rodriguez had successfully sold several apartment complexes while still managing over 30 apartment units. Around this same time, Judge Rodriguez was approached by a friend who had purchased a Precision Tune Auto Care franchise in the Rio Grande Valley but had begun to encounter some financial difficulties and was looking to sell the auto-shop. Judge Rodriguez ultimately purchased the franchise and was able to turn it around. In fact, before too long, the franchise was profitable enough that Judge Rodriguez was able to purchase a second Precision Tune Auto Care franchise.

Despite being the successful owner of two profitable auto-shops, the desire to become a lawyer never left Judge Rodriguez. So Judge Rodriguez sold the auto-shops to his former manager and used the income to enroll in law school at Texas Tech University. From the very beginning of his first semester at Texas Tech, Judge Rodriguez knew he had made the right decision. He readily admits to not only sitting on the first row of his classes and asking lots of questions during class but also to have actively pursued time with his law school professors outside of the class rooms. Despite his enthusiasm, Judge Rodriguez never became accustomed to the grading process in law school and, in particular, taking a 2-3 hour exam to test knowledge he accumulated throughout an entire semester. Nevertheless, Judge Rodriguez was frequently honored with receiving the highest grade in his class—receiving a total of 7 American Jurisprudence Awards. In May of 1995, Judge Rodriguez also received an award from the State Bar of Texas for a consumer law paper that swept both the law review and non-law review entries.

One of Judge Rodriguez's fondest memories while at Texas Tech was his work at an alternative dispute resolution clinic in Lubbock, run by Gene Valentini. As a first-year law student, Mr. Valentini was a guest speaker in one of Judge Rodriguez's classes, during which Mr. Valentini encouraged law students to work in his mediation clinic during their second and third year at school. After the class, Judge Rodriguez approached Mr. Valentini about working in the clinic. Mr. Valentini, however, again clarified that it was only for second-year and third-year law students; and, as such, Judge Rodriguez would have to wait at least another year to enroll in the clinic. But Judge Rodriguez would not take no for an answer and continued to contact Mr. Valentini. Ultimately, Judge Rodriguez was able to persuade Mr. Valentini and became the first first-year law student in the history of the clinic to enroll. During his tenure as a law student, Judge Rodriguez conducted a total of 105 mediations. To this day, Judge Rodriguez holds the record for the number of mediations conducted at the clinic by any law student. In fact, no one has come close to his record.

After graduating from law school and passing the bar exam, Judge Rodriguez did not begin his career practicing bankruptcy law. Initially, Judge Rodriguez pursued personal injury law because he wanted to be a trial lawyer. Over the course of two years in private practice, however, Judge Rodriguez came to realize that very seldom did personal injury cases ever go to trial. More often than not, they settled. One day, a senior attorney asked Judge Rodriguez if he could handle a bankruptcy matter for the firm. Judge Rodriguez accepted the task and, in the process, realized that his chances of going to court practicing bankruptcy law were much greater than if he were to continue to pursue personal injury. From that point on and aside from his work as a certified mediator in all areas of law, Judge Rodriguez practiced bankruptcy law almost exclusively. As a bankruptcy practitioner, Judge Rodriguez handled numerous Chapter 7s, 11s, and 12s, in addition to serving as a receiver and as a Chapter 11 trustee.

For someone who seemingly had his career mapped out at an early age, Judge Rodriguez surprisingly never considered becoming a bankruptcy judge before he read the posting for the vacancy for the position he now occupies. After all, it would mean

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giving up the very law firm he had worked so hard to build. But, much like his decision to sell his business interests and enroll in law school, he knows he made the right decision. As a seasoned bankruptcy attorney prior to being sworn in, not too much has taken Judge Rodriguez by surprise since he became a judge, other than perhaps learning how to dress and undress what he describes as a long, "black dress" (referring to his robe).

When asked about whether he has any particular pet peeves, Judge Rodriguez readily admits that he is very particular about making sure the attorneys speak up and directly into the microphones while in his court so that the record is clear and accurate. With regards to any advice he has for young bankruptcy attorneys and non-bankruptcy attorneys, Judge Rodriguez encourages them to seek help from more experienced bankruptcy practitioners instead of trying to handle a bankruptcy matter on their own because bankruptcy law, like perhaps patent law or administrative law, is nuanced both substantively and procedurally.

Beyond the courtroom, Judge Rodriguez is a loving husband and father. He works out regularly and enjoys salsa dancing. As a member of the State Bar, current Chair of the Bankruptcy Section, and a member other professional associations, Judge Rodriguez has continued to give his time as a volunteer and has served in a number of leadership capacities. Through the State Bar in particular, Judge Rodriguez has been instrumental to the encouragement of its members to pursue pro bono work, specifically in the area of bankruptcy law.

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Roger Cox
roger.cox@uwlaw.com
806-242-9651