

Effective Creditor Committees

June 1, 2017

3:30 p.m.

Hon. MARK X. MULLIN

U.S. Bankruptcy Court, Northern District of Texas – Fort Worth Division

MICHELLE V. LARSON

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12th Anniversary

Bench / Bar Bankruptcy Conference 2017

Sponsored by the Bankruptcy Law Section of the Texas State Bar

Westin Riverwalk, San Antonio

May 31 – June 2, 2017

Hon. Mark X. Mullin

Mark X. Mullin was sworn in as a bankruptcy judge for the Northern District of Texas on September 18, 2015. Mark received his B.S.B.A. degree in accounting from Creighton University in 1979 and his J.D. from St. Mary's University School of Law in 1986. Prior to attending law school, Mark held CPA licenses in Nebraska and Texas and was employed by the international accounting firm of Peat, Marwick, Mitchell & Co. (n/k/a KPMG). After graduating from law school in 1986, Mark joined the Dallas, Texas office of Haynes and Boone, LLP where he became a member of the Bankruptcy and Business Restructuring practice group. Mark became an equity partner in the firm in 1995 and he continued to practice law with the firm until September 17, 2015.

Mark has served in leadership roles in many local and national legal organizations, including serving as President of the Bankruptcy Section of the Dallas Bar Association, President and Executive Committee Member of the Hon. John C. Ford American Inn of Court, and Education Director and Co-Chair of the Secured Credit Committee of the American Bankruptcy Institute. Mark was also named as a 2010 honoree inducted into the DFW Serjeants of the Inn.

Michelle V. Larson



Partner

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Dallas

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BIOGRAPHY

Michelle has numerous years of experience in all areas related to commercial bankruptcy and restructurings, including complex debtor's and creditor's representations, out-of-court restructurings, liquidations, secured finance, and commercial litigation. She has also handled bankruptcy appeals before courts of appeal throughout the country and the U.S. Supreme Court. Michelle is also a Certified Public Accountant.

REPRESENTATIVE EXPERIENCE

- *In re Rincon Island Limited Partnership*—Represents Oil and Gas operator as a debtor in Chapter 11 bankruptcy.
- *In re CHC Group Limited*—Represents secured note holder in Chapter 11 bankruptcy.
- *In re Palmaz Scientific Inc.*—Represented official committee of unsecured creditors in Chapter 11 bankruptcy.
- *In re Carman Industries*—Represented major creditor/litigation adversary in successful dismissal of Chapter 11 bankruptcy.
- *In re Duer Wagner III Oil & Gas*—Represents senior secured lender in oil and gas bankruptcy.
- *In re NNN 3500 Maple*—Represented 27 tenant-in-common Debtors in connection with the sale of the 3500 Maple, Dallas commercial office building and the liquidation of the estates, including litigation with the Debtors' secured lender.
- Represents buyers, borrowers and secured lenders in out-of-court restructurings, foreclosures, loan sales and bankruptcies.

Among Michelle's notable prior representations are the following:

- *In re Texas Rangers Baseball Partners*—Represented the Texas Rangers with respect to the successful sale of the franchise in Chapter 11.
- *In re Crescent Resources, LLC*—Represented a multi-faceted real estate company and its 120 affiliates in Chapter 11 proceedings involving the restructuring of over \$2 billion of secured and unsecured debt.
- *In re Trenwick America Corp.*—Represented a group of bondholders as proponents of successful plan of reorganization for Trenwick America Corp., an insurance holding company.
- *In re Mirant Corp.*—Represented Lehman Brothers, Inc. as agent bank/lender in the Mirant bankruptcy proceedings with respect to a \$300 million bank facility and related litigation, achieving a full payout plus premium for the lending syndicate.

INDUSTRIES

Banking/Finance

Energy

Finance

Oil and Gas

Real Estate

PRACTICES

Appellate

Bankruptcy and
Financial Restructuring

Commercial Litigation

Litigation and Dispute
Resolution

Subprime and
Distressed Assets

EDUCATION

JD, 1996, *magna cum laude*, Loyola University School of Law, Law Review and Moot Court
BS, Accounting, 1992, *summa cum laude*, Nicholls State University, Valedictorian

ADMISSIONS

Texas 1996

US Supreme Court

US Court of Appeals for
the Fifth Circuit

US District Court for the
Northern District of
Texas

US District Court for the
Southern District of
Texas

US District Court for the
Eastern District of Texas

US District Court for the
Western District of
Texas

Michelle V. Larson

- *In re NextWave Personal Communications Inc.*—Represented a group of telecommunications companies as bankruptcy, litigation and appellate counsel, including extensive litigation over the federal government's attempted forfeiture of \$10 billion in licenses, which litigation was ultimately successful on behalf of NextWave at the Supreme Court.
- *In re GWI PCS 1, Inc. et al.*—Represented a group of telecommunications companies as bankruptcy, litigation and appellate counsel. Michelle was instrumental in the development of litigation and bankruptcy strategy under which General Wireless, Inc. n/k/a MetroPCS successfully avoided approximately \$1 billion in debt as a fraudulent conveyance and retained its telecommunications licenses pursuant to confirmed plan of reorganization.

INSIGHTS

- Late Is Never Better! Timeline to Protect Your Contract in a Market Downturn, *Straightline* (April 2016)
- "An Impasse Between Agency and Bankruptcy Jurisdiction," *Weil, Gotshal & Manges Bankruptcy Bulletin* (February 2004)
- "District Court Has Jurisdiction to Authorize Debtor to Reject Executory Power Contract Subject to FERC Regulation," (co-author) *Weil, Gotshal & Manges Bankruptcy Bulletin* (October 2004)
- "Preference Action Against State Agencies is Not Barred by Sovereign Immunity," *Weil, Gotshal & Manges Bankruptcy Bulletin* (March 2006)

PROFESSIONAL RECOGNITION

- AV Preeminent rating in Martindale-Hubbell

BRIEFINGS, SEMINARS & SPEECHES

- Speaker, "I Don't Answer To You! (Or Do I?) Fiduciary Duties and Insolvency," Financial Restructuring and Turn-Around for Oil & Gas Companies, Presented by Electric Utility Consultants (September 2, 2015)
- Co-Presenter, "Risk Assessment in a Time of Market Volatility," Executive Women's Retreat, sponsored by Andrews Kurth LLP (October 2015)
- Speaker, "Bankruptcy Nuts and Bolts: Guidance on Minimizing Risk of a Counterparty Bankruptcy," Andrews Kurth Informational Summer Series, Presented to Goldman Sachs (August 2013)

AFFILIATIONS

- Texas Bar Association
- Dallas Bar Association
- Fifth Circuit Bar Association
- American Association of Attorney-Certified Public Accountants
- Barrister, John C. Ford American Inns of Court (2004-2011)

Randy W. Williams



Partner

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Randy Williams focuses his practice on business bankruptcy and commercial disputes, with an emphasis on business reorganization. As a bankruptcy trustee, he is responsible for investigation of assets and pre- and post-petition transfers, evaluation, purchase and sale of assets, case and/or business administration, employee supervision, accounting functions and records review, and regulatory compliance. Mr. Williams serves as a member of the standing Chapter 7 panel of trustees and is an appointed Chapter 11 and post-confirmation trustee.

Randy is Board Certified in Business Bankruptcy Law and Consumer Bankruptcy Law by the Texas Board of Legal Specialization.

Experience

- Lead counsel to Chapter 11 Trustee in oil and gas case with confirmed Plan
- Counsel to unsecured creditors' committees in Chapter 11 cases (retail, manufacturing, and oil and gas)
- Liquidated a portfolio of more than 400 commercial and residential properties in Harris County, Texas
- Liquidated a mortgage loan portfolio secured by residential real estate
- Operated multiple hazardous waste injection wells and a chemical blending plant; negotiated the sale of the injection wells and plant and worked with federal and state regulators regarding the security for and clean-up of sites contaminated with radioactive material
- Managed an oil and gas operator for wells in Texas and Louisiana; mitigated environmental violations in order to be able to sell the oil and gas properties, supervised reworks on several wells, established a data room for the sales process, administered and terminated contracts, including hedges and forward contracts, and sold the properties through a sealed bid process
- Operated, rehabilitated, and sold a 400-unit apartment complex
- Operated two Houston commercial office buildings and arranged and conducted the sales process for the buildings
- Liquidated coastal property with frontage on Gulf Coast

Related Practices

Bankruptcy and Restructuring

Related Industries

Oil, Gas, and Energy

Education

J.D., 1985, University of Houston Law Center; Associate Editor, *University of Houston Law Review*; Order of the Barons; Honor Court

M.A., Political Science, 1982, Indiana University

B.A., English and Political Science, 1980, University of South Carolina; President's List; Dean's List

Admissions

New York

Texas

U.S. Ct. of App., Fifth Circuit
U.S. Dist. Ct., N. Dist. Texas
U.S. Dist. Ct., S. Dist. Texas
U.S. Dist. Ct., W. Dist. Texas

Randy W. Williams

- Appointed receiver in state court litigation
- Served as counsel for trustees and examiners in bankruptcy cases under both Chapter 7 and Chapter 11; represented creditors and debtors in and outside of bankruptcy cases
- Served as counsel to secured lenders primarily with real estate collateral
- Served as debtor's counsel in a Chapter 13 case with several hundred million in filed proofs of claims and confirmed and completed a Chapter 13 plan
- Served as counsel to indenture trustees and debenture holders in bankruptcy cases

Prior Experience

- Chapter 7 panel trustee for the Southern District of Texas, November 1990–present

Distinctions/Honors

- *The Best Lawyers in America*® by Woodward/White Inc. (Bankruptcy and Creditor Debtor Rights/Insolvency and Reorganization Law, Litigation–Bankruptcy); 2011–2014
- *Texas Super Lawyers*® by Thomson Reuters (Bankruptcy & Creditor/Debtor Rights); 2003–2013
- Houston's "Top Lawyers," *H Texas* magazine; 2004–2005, 2013

Activities (Memberships/Affiliations)

- Fellow, Texas Bar Foundation
- Fellow, Houston Bar Foundation
- Member, American Bankruptcy Institute
- Member, The Honorable Arthur L. Moller/David B. Foltz, Jr. American Inn of Court, Houston Bankruptcy Section; Treasurer, 2006–2008; President Elect, 2008–2009; President 2009–2010
- Member, Texas Board of Legal Specialization Bankruptcy Law Exam Commission
- Chair, Southern District Bench Bar Conference Planning Committee, 2008
- Member, Houston Bar Association Bankruptcy Section; Director, 2006–2008; Secretary, 2008–2010, President Elect 2010–2011
- Member, National Association of Bankruptcy Trustees
- Member, Greater Houston Partnership, Parks Committee, Green Spaces &

Randy W. Williams

Recreation Committee

Publications

Client Alert: "Heads Up" in the Gulf: A Checklist for Potential Counterparty Financial Distress	June 14, 2010
"Buying Oil and Gas Assets in Bankruptcy"	October 29, 2009;
"Strategies for Buying Oil and Gas Assets in Bankruptcy"	April 16, 2009
"Buying Oil and Gas Assets in Bankruptcy"	June 2008
"Bankruptcy Checklist for When the System Crashes"	May 2002
"Bankruptcy Road Map for Corporate Counsel"	April 2002
"Bankruptcy Road Map for Corporate Counsel"	April 2002
"Avoiding a Pyrrhic Victory When Collecting a Judgment"	February 2002
"Detour Ahead—Bankruptcy Road Map for the Judgment Creditor"	February 2002
"The Duties of a Bankruptcy Trustee or Charon and Cerberus"	August 2001
"Disposing of the Remains"	June 15, 2001
"Better Brite Casts Toxic Shadow on Trustee Liability"	1991

News

96 T&K Attorneys Listed in <i>Texas Super Lawyers</i> ® 2013 Press Release	September 09, 2013
116 T&K Attorneys Honored in <i>The Best Lawyers in America</i> ® 2014 Press Release	August 20, 2013
T&K Attorneys Recognized as Houston's "Top Lawyers" Press Release	August 7, 2013
Randy Williams Mentioned in <i>Houston Business Journal</i> on Vargo's on the Lake In the News	March 15, 2013
83 T&K Attorneys Listed in <i>Texas Super Lawyers</i> ® 2012 Press Release	September 10, 2012

Randy W. Williams

117 T&K Attorneys Honored in <i>The Best Lawyers in America</i> ® 2013 Press Release	August 23, 2012
Randy Williams Quoted in <i>Houston Business Journal</i> on Vargo's Restaurant Sale In the News	May 18, 2012
Randy Williams Quoted in <i>Houston Business Journal</i> on Vargo's Restaurant Sale In the News	May 10, 2012
76 T&K Attorneys Listed in <i>Texas Super Lawyers</i> ® 2011 Press Release	September 13, 2011
108 T&K Attorneys Honored in <i>The Best Lawyers in America</i> ® 2012 Press Release	September 08, 2011
T&K Attorneys Appointed to TBLS Bankruptcy Law Exam Commission Press Release	March 18, 2011
79 T&K Attorneys Listed in <i>Texas Super Lawyers</i> ® 2010 Press Release	September 13, 2010
95 T&K Attorneys Honored in <i>The Best Lawyers in America</i> ® 2011 Press Release	August 09, 2010
76 T&K Attorneys Listed in <i>Texas Super Lawyers</i> ® 2009 Press Release	September 16, 2009
Rhett Campbell, David Bennett, and Randy Williams Quoted in <i>Oil & Gas Investor</i> on Reichmann Petroleum Bankruptcy In the News	February 10, 2009
78 T&K Attorneys Listed in <i>Texas Super Lawyers</i> ® 2008 Press Release	September 17, 2008
Randy Williams Mentioned in <i>Daily Deal/The Deal</i> on St. Stephen the Great Bankruptcy In the News	July 25, 2008
74 T&K Attorneys Named Texas "Super Lawyer" Press Release	September 17, 2007
77 T&K Attorneys Named as Super Lawyers Press Release	September 18, 2006

Randy W. Williams

Randy Williams Quoted in <i>Houston Chronicle</i> on Bankruptcy Reform In the News	August 20, 2006
60 T&K Attorneys Named Super Lawyers Press Release	October 25, 2005
T&K Attorneys Receive 95 Super Lawyer Awards Press Release	October 07, 2004
T&K Attorneys Receive 26 "Best Lawyers in Houston" Designations Press Release	July 13, 2004
T&K Attorneys Receive 85 Super Lawyer Awards Press Release	November 19, 2003



KEITH H. WOFFORD

PARTNER

Keith Wofford, co-managing partner of the firm's 300-lawyer New York office, focuses on bankruptcy and creditors' rights. Keith primarily acts on behalf of investment funds specializing in distressed debt, and potential acquirors of assets of distressed companies. He regularly represents ad hoc committees of secured and unsecured creditors in Chapter 11 cases and in out-of-court workouts, and he also represents official committees in Chapter 11 cases.

Keith has been particularly active with respect to inter-creditor disputes, credit-bidding transactions and other acquisitions of company control through debt positions. In addition, he regularly represents clients in bankruptcy courts and other venues. Keith has represented a major energy trading concern with respect to the renegotiation or settlement of trading relationships (encompassing physical and financial trades) with several debtor counterparties (including Enron Corp., Bethlehem Steel Corporation, Mirant Corp. and others).

Prior to joining Ropes & Gray, Keith was a senior securitization analyst in the structured finance group at Moody's Corporation.

CONTACT

Keith.Wofford@ropesgray.com
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[Add to Contacts \(vCard\)](#)

EDUCATION

- JD, Harvard Law School, 1993
- AB, *cum laude*, Harvard College, 1990

ADMISSIONS / QUALIFICATIONS

Qualifications

- New York, 1994

Court Admissions

- Supreme Court of the United States
- U.S. Bankruptcy Court for the Eastern District of Michigan
- U.S. District Court for the Eastern District of Michigan
- U.S. District Court for the Eastern District of New York
- U.S. District Court for the Southern District of New York
- U.S. Court of Appeals for the Third Circuit

EXPERIENCE

- Represents an ad hoc group of unsecured noteholders of both GenOn Energy, Inc. and GenOn Americas Generation, LLC (which note issues are nearly \$3 billion in the aggregate). GenOn Energy and its subsidiaries are wholesale power generation subsidiaries of NRG Energy, Inc. GenOn Energy and its subsidiaries own and operate power generation facilities, with approximately 16,704 MW of net electric generating capacity located in the United States. GenOn Energy has approximately \$1.830 billion of unsecured notes outstanding, and GenOn Americas Generation has approximately \$695 million of unsecured notes outstanding. intercompany agreements and claims (including fraudulent conveyance claims), and sale-leaseback transactions.
- Represents the official committee of unsecured creditors in the Chapter 11 cases of Linn Energy, LLC, and Berry Petroleum Company, both independent oil and gas exploration companies, pending before the United States Bankruptcy Court for the Southern District of Texas.
- Represents the official committee of unsecured creditors in the Chapter 11 cases of Sabine, an independent oil and gas exploration and production company with approximately \$2.6 billion in funded debt obligations, which cases are pending before the United States Bankruptcy Court for the Southern District of New York. The cases involve complex legal issues relating to, among other things, an alleged fraudulent conveyance arising from a pre-bankruptcy merger between Forest Oil Corporation and Sabine Oil & Gas LLC.
- Represents an indenture trustee for \$3.9 billion of first lien notes of Energy Future Intermediate Holding Company LLC and EFIH Finance Inc. ("EFIH") and the Ad Hoc Group, in the Chapter 11 cases of EFIH and its debtor affiliates. The bankruptcy case is the largest ever filed in the District of Delaware and is the seventh largest Chapter 11 case filed in history (by liabilities).
- Represented certain second lien debt holders of *movie studio Relativity Media* before the U.S. Bankruptcy Court for the Southern District of New York.
- Represented EBIA at the U.S. Supreme Court arguing that the constitutional right to an Article III tribunal identified in *Stern v. Marshall* is not waivable by litigant consent, and that bankruptcy judges lack statutory authority to submit proposed findings of fact and conclusions of law to a district court in a proceeding deemed "core" where the bankruptcy court cannot adjudicate the proceeding because of constitutional concerns identified in *Stern*.
- Represented an ad hoc group of holders of more than \$40 billion of residential mortgage-backed securities issued by subsidiaries of Residential Capital, LLC (ResCap), in the case of *In re Residential Capital, LLC et al.*, a Chapter 11 proceeding before the U.S. Bankruptcy Court for the Southern District of New York.
- Represented an ad hoc group of first lien lenders to NewPage Corporation The Chapter 11 case of NewPage was filed in the U.S. Bankruptcy Court for the District of Delaware, and emerged in 2016.

MEMBERSHIP & AFFILIATIONS

- Bankruptcy and Corporate Reorganization Committee of the Association of the Bar of the City of New York (2007-2008)

PROFESSIONAL & CIVIC ACTIVITIES

- American Bankruptcy Institute
- Former Member, Board of Directors, Harlem Community Development Corporation

AWARDS

- *Turnaround Atlas Awards*: Chapter 11 Restructuring of the Year for Verso Corporation reorganization (2017)
- *The Best Lawyers in America* (2017)
- *Legal 500* (2016)
- *Benchmark Litigation* "Top 10 National Bankruptcy Practitioners" (2017)
- *Benchmark Litigation* "Local Litigation Star" (2017); "National Litigation Star" (2015-2017)
- *Chambers USA*: America's Leading Lawyers for Business (2010-2016)
- *New York Super Lawyers* (2013-2016)

- Represented an ad hoc group of holders of more than \$2.5 billion in face amount of senior unsecured notes of Edison Mission Energy (EME), in *In re Edison Mission Energy, et al.*, a Chapter 11 proceeding before the U.S. Bankruptcy Court for the Northern District of Illinois. EME, the merchant power subsidiary of Edison International, has \$3.7 billion in senior unsecured notes outstanding, as well as other, potentially significant unsecured obligations.
- Represented the Official Committee of Unsecured Creditors of Charter Communications, Inc. in connection with one of the largest Chapter 11 cases in the country (the 9th largest filing in 2009), including the leading litigation regarding the nonconsensual reinstatement of senior secured bank debt (in excess of \$11.8 billion). Charter Communications is a Fortune 500 company and the 4th largest cable operator in the United States.
- Represented hedge fund R3 Capital Partners in a sale and settlement transaction in the Chapter 11 cases of Lehman Brothers Holdings Inc. and its affiliates.
- Represented a Steering Committee of Term Lenders of Allied Systems Holdings, Inc. and its affiliates in connection with the evaluation of their legal rights and strategic options.
- Represented a group of US Term Lenders under the \$2.5 billion credit facility of SemCrude, L.P., a mid-stream energy services company based in Oklahoma.
- Represented a Steering Committee of First Lien Term Loan Lenders (\$265 million secured first lien credit facility) in the Chapter 11 case of Plastech Engineered Products, Inc. and its affiliates in the successful negotiation of a sale of substantially all the assets of the debtors. This sale included a credit bid of the First Lien Term Loan Lenders' secured debt, with substantial consideration flowing to the lenders from the buyers, and settlements with all the major constituencies in the case—the customers, the unsecured creditors and the equity holder.
- Represented certain project-level creditors in the Calpine Corporation bankruptcy in the negotiation of a global settlement of all disputes relating to the sale-leaseback transaction before the filing of Calpine's reorganization plan. Successfully litigated against PMCC's claims against Calpine and filed claims in excess of \$500 million.

PUBLICATIONS

- David Djaha, Keith Wofford and Chrystal LaRoche, "Protect Yourself From the 'Bad Boys'," Real Estate Law & Practice section of *The New York Law Journal* (August 13, 2012)
- "Lender 'Collective Action' Doctrine Provokes Controversy," *New York Law Journal* (December 2009)

PRESENTATIONS

- Panelist, "Locking Up the Case: Plan Support Agreements, Intercreditor and Forbearance Agreements, and Other Strategies for Pre-determining a Case's Outcome," National Conference of Bankruptcy Judges (October 28, 2016)
- Faculty Speaker, "Recent Developments in Distressed Debt, Restructurings and Workouts 2016," Practising Law Institute (January 29, 2016)

Texas Bankruptcy Bench Bar Conference (May 2017)

Break-Out Session: Effective Creditor Committees

Moderator: The Honorable Mark X. Mullin, United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division

Panel Participants: Michelle Larson of Andrews Kurth Kenyon LLP; Randy W. Williams of Thompson & Knight LLP; and Keith H. Wofford of Ropes & Gray LLP

- 1) Appointment of Committee
 - a) Eligibility to serve
 - i) Claims
 - (1) Undersecured Creditors
 - (2) Disputed/Unliquidated/Contingent Claims
 - (3) Insiders/Governmental Entities
 - ii) Diverse entities/interests
 - (1) Vendors
 - (2) Financial Creditors
 - (3) Landlords
 - (4) Indenture Trustees
 - (5) Unions
 - (6) Competitors/Litigation Adversaries/Hostile Creditors
 - b) Formation by Office of United States Trustee
 - i) Organizational meeting/“Beauty pageant”
 - ii) Selection of counsel/Financial Advisors
- 2) Getting up to Speed/Immediacy of Action
 - a) DIP/Cash Collateral
 - b) Sale Motion
 - c) Other “First Day Matters”
- 3) Role and Importance of Unsecured Creditors Committee
 - a) Objective Third Party
 - b) Singular, important voice for diverse constituency that otherwise would have little power
 - c) The Debtor’s “New Board”
- 4) Establishing Lines of Communication
 - a) Communications within Committee
 - i) Bylaws
 - ii) Fiduciary Duties
 - iii) Confidentiality
 - iv) Changes in Membership
 - (1) Removal
 - (2) Resignation
 - (3) Replacement
 - (4) Addition
 - v) Keeping Committee informed
 - vi) Members are decision makers, not counsel

- b) Communications with Debtor
 - i) Importance of open lines of communication
 - ii) Ability to negotiate deal up front/litigate
- c) Communications with Secured Creditors/DIP Lender
 - i) Carve-out
 - ii) Unencumbered assets/Chapter 5 COAs
 - iii) Budget
- d) Sharing Agreements
- e) Claims trading
- 5) Functioning within Framework of Chapter 11 case
 - a) Dealing with Debtor
 - i) Investigation of Financial Condition
 - b) Dealing with Secured Creditors/DIP Lender
 - i) Investigation of Liens
 - c) Standing to Sue
 - d) Formulation of Plan/Sale Process
 - e) Appointment of Examiner/Trustee
 - f) Claims Process
 - i) Insiders
 - ii) Claims of Members
 - iii) Preferences/Fraudulent Conveyances
 - iv) Equitable subordination